REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MUNICIPALITY OF LABRADOR, PANGASINAN AND THE OFFICE OF THE MUNICIPAL TREASURER OF LABRADOR, PANGASINAN,
Petitioners,

- versus -

NATIONAL TRANSMISSION CORPORATION,
Respondent.

CTA AC NO. 120
For: Local Business Tax Assessment

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
APR 08 2016 ; 2:10p.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution is petitioners' **Motion for Reconsideration**, filed on November 25, 2015, with respondent's **Comment/Opposition (on Petitioner's Motion for Reconsideration)**, filed on December 28, 2015.

Petitioners seek reconsideration of the Court's Decision (assailed Decision) promulgated on November 3, 2015. In the assailed Decision, the Court upheld the Decision dated June 10, 2014 issued by the Regional Trial Court (RTC) Branch 69 of Lingayen, Pangasinan, declaring the assessments against respondent for local business taxes for the years 2006, 2007, and 2008, amounting to One Hundred Thirty Seven Million Nine Hundred Sixty One Thousand One Hundred Fifty Nine and Sixty Two Centavos (₱137,961,159.62), inclusive of surcharges and interests, null and void.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assailed Decision of the Regional Trial Court dated June 10, 2014 is hereby **UPHELD** and the assessments for local business taxes for the years 2006, 2007 and 2008, made by the Municipality of Labrador against TRANSCO are declared null and void.
>
> **SO ORDERED.**"[1]

In its Motion, petitioners pray that respondent be held liable to pay local business tax based on petitioners' assessments. Petitioners argue that contrary to respondent's claim, petitioners could not have granted a tax exemption in favor of respondent because at the time of the enactment of Tax Ordinance No. 97-001, the business of transmission of electricity was not yet in existence. It was only in 2001 when Republic Act ("RA") No. 9136 took effect. Hence, petitioners could not have yet made the Municipal Tax Ordinance levying business tax upon respondent as it was not yet existing at the time the said ordinance took effect.

Moreover, petitioners contend that there is situs of taxation in all municipalities like the Municipality of Labrador, where respondent conducts its business. Since there is no law clearly exempting respondent from local taxation it is liable to pay local business tax to petitioners.

A perusal of petitioners' arguments in the Motion for Reconsideration reveals that such are mere rehash or reiteration of the issues thoroughly examined, discussed and passed upon by the Court in the assailed Decision.

The Court finds no cogent reason to deviate from its findings and conclusion as reiterated below:

> "As can be seen in the Municipal Tax Ordinance, although Section IIA.01(m) reads "On any Business, Not Otherwise Specified in the Preceding Sections", it is then

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[1] Docket, pp. 402-403.

followed by an exhaustive list of businesses to be taxed. However, the transmission of electricity is not one of those enumerated in the Municipal Tax Ordinance and therefore cannot be deemed included among the businesses subject to tax. This Court agrees with the RTC's opinion that the Municipality of Labrador is bound by and cannot go beyond the terms of its ordinance.

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Moreover, Section 5(b) of the Local Government Code provides that 'in case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer.' This qualification has to be respected as a constitutionally authorized limitation which Congress has seen fit to provide. Evidently, local fiscal autonomy should not necessarily translate into abject deference to the power of local government units to impose taxes.

To reiterate, the Court agrees with the RTC's ruling that since respondent's business does not fall within the enumerated classes of business subject to tax under the Municipal Tax Ordinance, respondent is not required to pay the local business tax."

With regard to the issue on situs of taxation, the Municipality of Labrador cannot collect local business tax from respondent for lack of tax situs, the Court held in the assailed Decision that:

"For purposes of collecting local business taxes, it is important to determine the city or municipality to which the said taxes accrue. Section 150(a) of the LGC provides for the rules on the situs of local business tax, to wit:

'SEC. 150. *Situs of the Tax.* - (a) **For purposes of collection of taxes under Section 143 of this Code,** manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers,

> contractors, banks and other financial institutions, and **other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.'**

Pursuant to Article 243 of the Implementing Rules and Regulations of the Local Government Code, a 'branch' or 'sales office' is defined in the following manner:

> 'ARTICLE 243. *Situs of the Tax.* - (a) *Definition of Terms-*
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> xxx xxx xxx
>
> (2) *Branch or Sales Office* - a fixed place in a locality which conducts operations of the business as an extension of the principal office. Offices used only as display areas of the products where no stocks or items are stored for sale, although orders for the products may be received thereat, are not branch or sales offices as herein contemplated. A warehouse which accepts orders and/or issues sales invoices independent of a branch with sales office shall be considered as a sales office.'

In the instant case, petitioners based the alleged local business tax liabilities on the power generated by the Masinloc Coal Fired Thermal Power Plant situated in Masinloc, Zambales that passed through and was transmitted to TRANSCO's Kadampat substation situated in the Municipality of Labrador.

Respondent TRANSCO has various substations and transmission assets all over the country, each one providing transmission services to customers in different provinces and cities. However, evidence shows that such substations are maintained simply to monitor the transmission assets and equipment. The testimonies made before the Court a quo proved said assertion, and they are stated in the Decision of the RTC in this wise:

> 'Gerardo Torres, former branch head of TRANSCO for Western Pangasinan during the years, subject of the herein questioned assessments, testified, without contravention from the defendants, that TRANSCO's two substations in the Municipality of Labrador, including the Kadampat substation, merely connect the power plant to the transmission lines. In his judicial affidavit, he described the functions of said substations in this wise: 'The Labrador and Bolo (Kadampat) Substations are part of the Luzon grid. Electricity generated by power plants passes through the substations for voltage regulation and distribution to the various transmission lines that are connected to it. The electricity then goes to the distribution utilities (electric cooperatives) for distribution to end-users of electricity'. While TRANSCO's Office in the Municipality of Labrador dealt with customers, such, according to Mr. Torres, was only on operation and maintenance aspects of the substation equipment and transmission facilities. Mr. Torres explained: 'operation and maintenance of substation involves the monitoring, control, conduct of inspection and maintenance of various power equipment, reporting and correction of defects. Maintenance of transmission line facilities involve the conduct of regular inspection of various transmission/sub-transmission lines, reporting, scheduling, and correction of

> defects.' Likewise, Nestor Felix testified that TRANSCO had no business office and had no customer within the Municipality of Labrador, neither did it receive payments, issue receipts or book payments within the said municipality.
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> The defendant's argument that the Kadampat substation is in the category of a 'plant' and hence, the sales allocation under Section 150 (b) of the Local Government Code, in relation to paragraph (e) thereof which mandates that such allocation 'shall be applied irrespective of whether or not sales are made in the locality where the factory, project office, plant, or plan is located', applies cannot be sustained. As provided for in said provision, such sales allocation is applicable to 'manufacturers, assemblers, contractors, producers and exporters', which TRANSCO has not been established to be one.'

TRANSCO's substations in the Municipality of Labrador do not fall under the afore-quoted definition of a 'branch' or 'sales office'. Therefore, the RTC's ruling that the Municipality of Labrador cannot collect local business taxes from TRANSCO is correct, the tax situs not being present."

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, the instant **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice