REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SMART COMMUNICATIONS, INC., Petitioner,	**C.T.A. CASE NO. AC 58**
	Members:
- versus -	**ACOSTA, *Chairperson*** **UY, and** **FABON-VICTORINO, *JJ.***
MUNICIPALITY OF MALVAR, BATANGAS, Respondent.	**Promulgated:** DEC 17 2010 / 9:50 am

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DECISION

***Fabon-Victorino, J.*:**

At hand is the Petition for Review filed by Smart Communications, Inc. allegedly under Section 11 of Republic Act 9282, assailing the Decision dated December 2, 2008 and the Order dated May 21, 2009, both rendered by the Regional Trial Court (RTC), Branch 6 of Tanauan City, Batangas in SP. Civil Case No. 04-11-1920, entitled Smart Communications, Inc. vs. Municipality of Malvar, Batangas. The decretal portion of the assailed Decision and Order read as follows:

> **WHEREFORE**, in light of the foregoing, the Petition is partly **GRANTED**. The assessment dated August 24, 2004 against petitioner is hereby declared null and void insofar as the assessment made from year 2001 to July 2003 and respondent is hereby prohibited from assessing and collecting, from petitioner, fees during the said period and the Municipal Government of Malvar, Batangas is directed to assess Smart Communications Inc. only for the period starting October 1, 2003.
>
> No cost.
>
> **SO ORDERED**.
>
> xxx xxx xxx
>
> **WHEREFORE**, in light of the foregoing, the Motion for Reconsideration is hereby **DENIED**.
>
> **SO ORDERED**.

Petitioner alleges that under Republic Act No. 7294,[1] it was granted a legislative franchise to provide telecommunication services to the general public. Its principal office is at Smart Tower, Makati City.

Respondent Municipality of Malvar, Batangas, on the other hand, is a local government unit created by law, represented by the

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[1] An Act Granting Smart Information Technologies, Inc. (Smart) A Franchise To Establish, Install, Maintain, Lease And Operate Integrated Telecommunications/Computer/Electronic Services And Stations Throughout The Philippines For Public Domestic And International Telecommunications, And For Other Purposes.

Office of the Municipal Mayor, with official address at the Municipal Hall, Malvar, Batangas.

In accord with its franchise, petitioner pays taxes on its real and personal properties as well as franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted which shall be in lieu of all taxes on its franchise or earnings. In connection with its operation, petitioner constructed a telecommunication tower within respondent's territorial jurisdiction.

On July 30, 2003, the Municipality of Malvar, Batangas passed Ordinance No. 18, Series of 2003,[2] entitled "An Ordinance Regulating the Establishment of Special Projects".

On August 24, 2004, petitioner received from the Permit and Licensing Division of the Office of the Mayor an assessment letter[3] with a schedule of payment for a total sum of Php389,950.00 allegedly for its telecommunication tower built within respondent's territorial jurisdiction. The letter reads as follows:

> "This is to formally submit to your good office your schedule of payments in the Municipal Treasury of the Local Government Unit of Malvar, province of Batangas which

[2] Annex "D", Petition for Review, docket, pp. 42-47.
[3] Annex "C", Petition for Review, docket, p. 41.

corresponds to the tower of your company built in the premises of this municipality, to wit:

TOTAL PROJECT COST :	PHP11,000,000.00
For the Year 2001 to 2003	
50% of 1% of the total project cost	Php55,000.00
Add: 45% surcharge	24,750.00
	Php79,750.00
Multiply by 3 years (2001, 2002 & 2003)	Php239,250.00
For the year 2004	
1% of the total project cost	Php110,000.00
37% surcharge	40,700.00
	Php150,700.00
TOTAL:	Php389,950.00

Hoping that you will give this matter your preferential attention."

Due to the alleged arrears in the payment of the foregoing assessment, respondent likewise caused the posting of a closure notice on the subject tower.

On September 9, 2004, petitioner filed a formal protest dated September 8, 2004, claiming lack of due process in the issuance of the assessment and closure notice. In the same protest, petitioner challenged the validity of Ordinance No. 18 upon which the assessment was based.[4]

[4] Annex "E", Petition for Review, docket, pp. 48-49.

In a letter dated September 28, 2004, respondent denied petitioner's protest.

On November 17, 2004, petitioner filed with RTC, Branch 6 of Tanauan City, Batangas, an Appeal/Petition[5] assailing the validity of Ordinance No. 18. The case entitled Smart Communications, Inc. vs. Municipality of Malvar, Batangas was docketed as SP. Civil Case No. 04-11-1920.

After exchange of various pleadings and trial, the RTC rendered the assailed Decision on December 2, 2008,[6] partly granting petitioner's Appeal/Petition ruling that the assessment dated August 24, 2004, issued against petitioner was null and void but only as regard the assessment covering the period from 2001 to July 2003 on the ground that Ordinance No.18 was approved only on July 30, 2003. However, the RTC pronounced the assessment from October 1, 2003 valid, citing Article 4 of the Civil Code of the Philippines, in relation to the provisions of Ordinance No. 18 and Section 166 of the Local Government Code (LGC). A copy of the Decision was received by petitioner on December 12, 2008.

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[5] Annex "G", Petition for Review, docket, pp. 52-63.
[6] Annex "A", Petition for Review , docket, pp. 34-38.

Not convinced, petitioner moved for a partial reconsideration of the foregoing Decision on December 24, 2008, which the RTC denied in the assailed Order[7] of May 21, 2009, copy of which was received by petitioner on June 8, 2009.

Hence, this Petition for Review filed on July 8, 2009, assigning the following errors allegedly committed by the RTC, thus:

I

> THE RTC-TANAUAN COMMITTED SERIOUS AND MANIFEST ERRORS IN RULING THAT THE RESPONDENT MUNICIPALITY HAD THE AUTHORITY TO IMPOSE THE FEES PURSUANT TO ORDINANCE NO. 18,

II

> THE RTC-TANAUAN COMMITTED SERIOUS AND MANIFEST ERRORS IN ALLOWING THE ASSESSMENTS OF RESPONDENT MUNICIPALITY ON THE BASIS OF ORDINANCE NO. 18"

Petitioner maintains that respondent has no authority to impose the fees pursuant to Ordinance No. 18 on the ground that the prescribed fees, particularly the mayor's permit equivalent to 1% of project cost, is not included in the fees and taxes that a municipality may levy under Book II, Title One, Chapter 2, Article 2

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[7] Annex "B", Petition for Review, docket, pp. 39-40.

of the LGC. No justification exists for the said imposition whether it be treated as local tax or fees considering that the antenna, tower, cell cites, relay stations are not revenue generating facilities but only infrastructures built to facilitate petitioner's business operation. The imposition of processing and approval fees and annual mayor's permit under the assailed Ordinance constitutes double taxation which is prohibited.

Petitioner postulates further that the designation of "fees" in the Ordinance is not controlling contrary to the RTC's ruling. The same is merely intended to obscure the nature of the Ordinance as a tax and not a regulatory measure. Petitioner opines that the object of the charge and not the name that determines its nature. The RTC's conclusion that the use of fees in the Ordinance indicates respondent's exercise of police power is as well erroneous as the Ordinance is intended to generate revenue and the regulatory purpose is merely incidental. It does not indicate any regulatory action on the part of respondent that will justify the collection of the prescribed fees.

Assuming that the imposition is a regulatory measure, still it is legally infirm under Section 130 of the LGC for being excessive as petitioner must pay a mayor's permit of Php110,000.00 annually regardless of actual operation.

Ordinance No. 18 likewise defiles the basic principle of uniformity of taxation when it singled out cell sites from the rest of the special projects without any basis for such distinction.

Further, by implementing Ordinance No. 18, respondent is in effect encroaching on the power of the National Telecommunications Commission (NTC) to regulate and supervise telecommunication entities such as petitioner. Respondent also has no authority to regulate existing structure, for which development permits and locational clearances were already issued by the Housing and Land Use Regulatory Board (HLURB).

Finally, petitioner disclaims mistake in filing the Appeal/Petition (for certiorari and prohibition) with the RTC, and maintains that it was the proper remedy under the circumstances.

In rejecting petitioner's proposition, respondent counters that petitioner cannot collaterally attack the validity or constitutionality of Ordinance No. 18 duly enacted by the local legislative body. A separate civil action need be filed directly assailing the validity of the Ordinance and not on this appeal where the said issue is but incidental to the main case. Moreover, the enactment of Ordinance No. 18, Series of 2003 is a valid exercise of police power, thus respondent may lawfully collect fees for purposes of regulation and supervision of special projects within its territorial jurisdiction.

On January 4, 2010, the instant petition was submitted for decision after petitioner and respondent filed their respective memoranda on October 29, 2009 and December 4, 2009.

The Ruling of the Court

The crux of the controversy actually lies on the validity of the assessment made by respondent by virtue of Ordinance No. 18, Series of 2003 covering the period from October 1, 2003 until the year 2004. Petitioner however asserts the need to determine whether or not the Sanguniang Bayan of respondent had kept itself within the limits of the Constitution and the law in the enactment of Ordinance No 18 upon which the assessment was based. But does the Court have the competence to declare Ordinance No.18 invalid?

The jurisdiction of the Court is clearly laid down in Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282, the pertinent portion of which provides:

> SEC. 7. *Jurisdiction*. – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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> (3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction; xxx

In *British American Tobacco vs. Jose Isidro N. Camacho, et al.,*[8] the Supreme Court held that **while the above statute**

[8] G.R. No. 163583, August 20, 2008.

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confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. **Clearly, jurisdiction over cases questioning the constitutionality or validity of a law is not among the mandates of this Court**.

Be that as it may, the Court subscribes to the RTC's finding that petitioner cannot collaterally attack the validity of Ordinance No. 18 without infringing the rules and established jurisprudence on the matter. There is also a well-settled principle that all reasonable doubts should be resolved in favor of the constitutionality of a statute for which reason, it will not be set aside as violative of the Constitution except in "clear cases".[9] In other words, the grounds for nullity must be clear and beyond reasonable doubt[10]

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[9] People v. Vera, 65, Phil. 56.
[10] Peralta v. Comelec, 82 SCRA 30.

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Assuming that there was a valid cause which warranted a review of the Ordinance, the same should have been brought before Secretary of Justice pursuant to Section 187 of the LGC. Under the said provision, the Secretary of Justice is authorized to review the constitutionality or legality of the tax or ordinance and, if warranted, to revoke it on either or both grounds.[11] Thus, a taxpayer who assails the validity of an ordinance enacted by a local government unit has thirty (30) days from its effectivity to appeal to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal. The remedy is laid down as follows:

> SEC. 187. PROCEDURE FOR APPROVAL AND EFFECTIVITY OF TAX ORDINANCES AND REVENUE MEASURES; MANDATORY PUBLIC HEARINGS. – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided,* That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further,* That <u>any question on the constitutionality or legality or tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal:</u> *Provided, however,* That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee or charge levied therein: *Provided, finally,* That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting

[11] Law of Basic Taxation in the Philippines, Revised Edition, Benjamin B. Aban, p. 422.

> upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.*{Art. 275, IRR}*

By failing to avail of the prescribed remedy, petitioner failed to exhaust all the administrative remedies under the law to protect its interest rendering its course of action infirmed if not erroneous. No resort to the courts is allowed unless the administrative action has been completed and there is nothing which can be done within the administrative structure. This doctrine of exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded complete chance to pass upon the matter, will decide correctly. The Supreme Court explained the reason behind the dogma in this wise:

> Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to maters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly.[12]

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[12] Hon. Carale v. Hon. Abarintos, et. al., 269 SCRA 132 (1997).

Verily, petitioner had an administrative remedy of appeal to the Secretary of Justice which should have been resorted to and pursued to its appropriate conclusion before seeking judicial intervention. It would have prevented the unnecessary and premature resort to the court which is time and again considered obnoxious to the orderly administration of justice. The doctrine of exhaustion of administrative remedies is deeply engrained in our legal system hence it commands adherence and not breach by the parties concerned.[13]

More importantly, since the remedy of appeal was available to petitioner, certiorari and prohibition would not lie. In a myriad of cases, the Supreme Court has emphasized that a special civil action for certiorari under rule 65 lies only when "there is no appeal [;] nor any plain, speedy and adequate remedy in the ordinary course of law."[14] That action is not a substitute for a lost of appeal; in general, it is not allowed when a party to a case fails to appeal a judgment to a proper forum.[15]

Anent respondent' authority to impose the fees prescribed under Ordinance No. 18, note that the LGC is replete with

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[13] Balais v. Velasco, 252 SCRA 707.
[14] Hanjin Engineering v. CA, GR No. 165910, April 10, 2006; Madrigal Transport, Inc. v. Lapanday Holdings Corp., 436 SCRA 123, August 11, 2004; Land Bank of the Philippines v. CA. 409 SCRA 455, August 25, 2003. This is also provided under the1997 RULES OF COURT, Rule 65, Sec. 1.
[15] See Del Mar v. Court of Appeals, 429 Phil. 19, March 13, 2002; Almuete v. Andres, 421 Phil. 522, November 20, 2001; Republic v. Court of Appeals, 379 Phil. 92, January 18, 2000.

provisions on the matter. Section 129 confers on each local government unit a general and broad power to create its own sources of revenue and impose pecuniary burden on its subjects within its territorial limits, excepting only those provided in the Code, thus:

> Sec.129. POWER TO CREATE SOURCES OF REVENUE.—Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local government units.

This power of the local government units to create sources of revenues has long been declared valid and constitutional by no less than the Supreme Court, subject only to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy.[16] Section 5, Article X of Constitution empowering the local government units to raise revenue for its continued existence is explicit, thus:

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[16] (Tatel v. Municipality of Virac, Catanduanes, 207 SCRA, Solicitor General v. Metropolitan Manila Authority, 204 SCRA 837, Villanueva v. City of Iloilo, L-26521, December 28, 1968).

> Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

Relevantly, Section 142 of the same Code specifically authorizes municipalities, such as respondent, **to levy taxes, fees and charges on businesses** which are not otherwise levied by provinces, thus:

> SEC. 142. Scope of Taxing Powers.- Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.

Indeed, it is specious to say that the impositions in the assailed Ordinance do not fall under the enumeration in Section 143, Book II, Title One, Chapter 2, Article 2 of the LGC. The assailed exactions, as ruled by the RTC, are not taxes but fees imposed to regulate and control the operation of specific businesses within respondent's territorial limits.

Even assuming that the assailed fees were not included in the enumeration, under the residual taxing powers of local government units, respondent can still impose taxes, fees and charges which do not fall within the scope of taxes enumerated under the LGC, as well as those which are levied on subjects or bases which are not taxed under the NIRC or other applicable law. Section 186 of the LGC expressly provides:

> Section 186, *Power To Levy Other Taxes, Fees or Charges.*—Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided,* That the taxes, fees or charges shall not be unjust excessive, oppressive, confiscatory or contrary to declared national policy:
>
> *Provided further,* That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

Moreover, Section 147 of the Code empowers local government units to impose and collect such reasonable **fees and charges on business and occupation and**, except in the case of the professional tax, which only provinces and cities may levy, **on the practice of any business,** profession or calling **commensurate with the cost of regulation, inspection and licensing before any person may engage in such business or occupation or practice of such profession or calling**.

Plainly, doing business within the territorial responsibility of respondent is all that is required to be subject of such pecuniary burden. It is not necessary that the office, branch or any structure built within respondent's territorial jurisdiction - such as antenna, cellsites, and relay station - be revenue generating as it is the availment of municipal basic services and facilities and enjoyment of protection and privileges appurtenant to or associated in the operation of the business that count.

Evidently, Ordinance No. 18 was enacted in the exercise of respondent's police power instead of taxing power as ruled by the RTC in the assailed Decision dated December 2, 2008, the pertinent portion of which reads:

> In the case at bar, Smart holds a franchise by virtue of R.A. No. 7294. However, what is contained in the franchise of Smart is an '*in lieu of all taxes'* clause, which includes only immunity from other taxes. In this case, Ordinance No. 18 series of 2003 of respondent speaks of fees and not taxes. It is essential to determine the difference between a fee and a tax, for a fee is imposed for the regulation of a lawful business or occupation in the exercise of police power, while a tax is imposed in the exercise of the power of taxation. After a careful judicious review of the Ordinance in question, it appears that what are being collected are fees. ***Section 7*** **of the assailed Ordinance speaks of fees for clearance, certification and approval which are indicative of the intent of the local government unit to impose fees and not**

> **taxes. Moreover, this is an *indicia* that the Ordinance is pursuant to the exercise of police power. Therefore, respondent may lawfully collect fees within their territory.** xxx" (*Emphasis supplied*)

Police power is the inherent authority of the government to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. Persons and property could thus be subjected to all kinds of restraint and burdens in order to secure the general comfort, health and prosperity of the government.[17] Like the taxing power and eminent domain, police power is inborn in the very fact of statehood and sovereignty. This fundamental attribute enables the government to perform the most vital function of governance. Succinctly put, it is the power of the State to govern its citizens.[18] As defined, it consists of (1) an imposition or restraint upon liberty or property, (2) in order to foster the common good.[19]

Hence, under the police power, a local government unit not only has the right but the duty to enact ordinances and prescribe corresponding rules and regulation for the good and welfare of the municipality and its constituents. It is precisely to advance public

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[17] Edu v. Ericta, 35 SCRA 484.
[18] Basco v. Phil. Amusement and Gambling Corporation, 17 SCRA 610.
[19] Philipine Associatioh of Service Exporters, Inc. v. Drilon, 163 SCRA 391.

good that Ordinance No. 18 was enacted by the Sangunian Bayan of respondent. It has for its object the improvement of the general welfare of respondent's constituents with a view of bringing about the greatest good to the greatest number of people.

The Supreme Court in *Acebedo Optical Company, Inc. vs. The Honorable Court of Appeals, et. Al.*,[20] explained the nature and the parameters of the exercise of police power in this fashion:

> "Police power as an inherent attribute of sovereignty is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. The State, through the legislature, has delegated the exercise of police power to local government units, as agencies of the State, in order to effectively accomplish and carry out the declared objects of their creation. This delegation of police power is embodied in the general welfare clause of the Local Government Code which provides:
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>> *Sec. 16. General Welfare.* — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[20] G.R. No. 100152, March 31, 2000.

> The scope of police power has been held to be so comprehensive as to encompass almost all matters affecting the health, safety, peace, order, morals, comfort and convenience of the community. Police power is essentially regulatory in nature and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power.
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> xxx xxx xxx
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> (T)he issuance of business licenses and permits by a municipality or city is essentially regulatory in nature. The authority, which devolved upon local government units to issue or grant such licenses or permits, is essentially in the exercise of the police power of the State within the contemplation of the general welfare clause of the Local Government Code."

Additionally, the High Tribunal in *Progressive Development Corporation vs. Quezon City*[21], distinguished tax from a license or permit fee in the following manner:

> The term 'tax' frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although *license fee* is a legal concept distinguishable from *tax*: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax.

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[21] G.R. No. 36081, April 24, 1989.

> To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well. When an activity, occupation or profession is of such a character that inspection or supervision by public officials is reasonably necessary for the safeguarding and furtherance of public health, morals and safety, or the general welfare, the legislature may provide that such inspection or supervision or other form of regulation shall be carried out at the expense of the persons engaged in such occupation or performing such activity, and that no one shall engage in the occupation or carry out the activity until a fee or charge sufficient to cover the cost of the inspection or supervision has been paid.

To be sure, the designation of "fees" in the Ordinance indicates that it is a regulatory measure rather than a revenue measure enacted in the exercise of respondent's taxing power. The regulatory purpose for which the Ordinance was enacted is unequivocally manifested in the "whereas clause", thereof particularly the following:

> WHEREAS, the same law also empower the local legislative council to regulate the placing, stringing, attaching installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and provide for the correction, condemnation or removal of the

same when found to be dangerous defective or otherwise hazardous to the welfare of the inhabitant.

It is likewise evident from the requirements enumerated in Sections 5 and 6 thereof, to wit:

"**SECTION 5. Requirements and Procedures in Securing Preliminary Development Permit.**

The following documents shall be submitted to the SB Secretary in triplicate:

a). zoning clearance
b). Vicinity Map
c). Site Plan
d). Evidence of ownership
e). **Certificate true copy of NTC Provisional Authority in case of Cellsites, telephone or telegraph line, ERB in case of gasoline station, power plant, and other concerned national agencies.**
f). Conversion order from DAR is located within agricultural zone.
g). Radiation Protection Evaluation.
h). Written consent from subdivision association or the residence of the area concerned if the special projects is located within the residential zone.
i). Barangay Council Resolution endorsing the special projects.

SECTION 6. Requirement for Final Development Permit – Upon the expiration of 180 days and the proponents of special projects shall apply for final and they are require to submit the following.

a). **evaluation from the committee where the Vice Mayor refers the special project.**
b). Certification that all local fees have been paid." (*Emphasis supplied*)

Ordinance No. 18, Series of 2003, entitled "An Ordinance Regulating the Establishment of Special Projects" passed on July 30, 2003, categorically provides that it shall be applicable to **all special projects** within the Municipality of Malvar, including those in contracting phase.[22]

The term "special projects" includes **cellsites**, dumpsite, gasoline stations, oil depot, independent waste treatment plant, electric generating plant, petroleum natural gas pipeline, electric transmission lines, gas mains, telegraph and telephone lines, and other similar apparatus.[23]

The assailed assessment was based on Section 8 of the Ordinance, which provides as follows:

> "**SECTION 8 – MAYOR'S PERMIT** – The established special projects shall pay the following corresponding permit annually;
>
> **a). Cellsites – 1% of project cost**
> b). Dumpsites – P50,000.00
> c). Oil Depot – P25,000.00
> d). Independent Waste Treatment Plant – P50,000.00
> e). Electric Generating plant – P25,000.00
> f). Telegraph and Telephone Lines – P10,000.00
> g). Other Similar Project – It shall be charged according to its similarity." (*Emphasis supplied*)

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[22] Section 4, Ordinance No. 18, docket, p. 43.
[23] Section 3(a), Ordinance No. 18, docket, p. 42.

Contrary to petitioner's claim, respondent, through its municipal mayor, has the authority to implement the assailed Ordinance. Section 444 of the LGC, provides:

> "SEC. 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* – (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.
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> (b) for efficient, effective and economic governance the purpose of hich is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:
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> xxx xxx xxx
>
> (3) xxx
>
> (iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance;"

Clearly, the implementation of Ordinance No. 18 is vested on the municipal mayor of respondent who is the chief executive of the municipality. He is not only empowered but also duty bound to implement Ordinance No. 18 enacted by the local legislative body not otherwise declared null and void by the proper court. The implementation of such Ordinance is ministerial on his part as the chief executive of the municipal government.

All told, the dismissal of the instant petition is therefore inevitable.

WHEREFORE, the Petition for Review is hereby **DENIED,** for lack of merit. Accordingly, the assailed Decision dated December 2, 2008 and the Order dated May 21, 2009 of Branch 6 of the Regional Trial Court of Tanauan City, Batangas in SP. Civil Case No. 04-11-1920 entitled "Smart Communications, Inc. vs. Municipality of Malvar, Batangas" are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice