REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

THE CITY OF MAKATI AND NELIA A. BARLIS, IN HER CAPACITY AS THE CITY TREASURER OF MAKATI CITY,
Petitioners,

- versus -

TRANS-ASIA POWER GENERATION CORPORATION,
Respondent.

CTA AC No. 144
(Civil Case No. 10-312)

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JUL 2 9 2016

10:10 a.m.

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DECISION

CASTAÑEDA, JR., *J.*:

STATEMENT OF THE CASE

Before the Court is a Petition for Review filed by the City of Makati pursuant to Section 3(a)(3) of Rule 4 of the Revised Rules of the Court of Tax Appeals, assailing the Decision[1] dated February 18, 2015 and the Order[2] dated June 9, 2015, both rendered by the Regional Trial Court (RTC) Branch 134 of Makati City in Civil Case No. 10-312 entitled "Trans-Asia Power Generation Corporation vs. The City of Makati and Nelia Barlis, in her capacity as the City Treasurer of Makati City."

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[1] Docket, pp. 34-41.
[2] Docket, p. 50.

STATEMENT OF FACTS

Petitioner City of Makati is a duly created and existing local government unit empowered under the Local Government Code to assess and collect local business taxes through petitioner City Treasurer of Makati City, Nelia Barlis.[3]

Respondent Trans-Asia Power Generation Corporation is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), with principal business address at Level 11, Phinma Plaza, 39 Plaza Drive, Rockwell Center, Makati City. It is primarily engaged in the business of building, constructing, erecting, owning, equipping, installing, operating, maintaining, selling, leasing power generation plants, facilities, machineries, equipment; selling any electricity generated by such power plants; and purchasing, importing, acquiring, owning, leasing or letting power generation, transmission, telecommunications, transportation and other kinds of equipment, materials and facilities.[4]

Petitioner originally classified respondent as a "Producer" from 1996 to the second (2nd) quarter of 2006 for purposes of Local Business Tax and respondent accordingly paid the corresponding business tax.[5]

In the order of payment dated June 14, 2006, petitioners reclassified respondent from "Producer" to "Services-Other Co".[6]

In the Notice of Assessment dated October 27, 2009, petitioners assessed respondent for alleged deficiency taxes, fees and charges covering the taxable years of 2005 to 2007 in the amount of ₱686,300.53.[7]

In the protest letter dated December 22, 2009, respondent contested the assessment made by petitioner for deficiency local business tax covering the period from January 2005 to December 2007 in the amount of ₱686,300.53.[8] Respondent requested that it should be classified as a "Manufacturer" or "Producer" for purposes

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[3] The Parties, Petition for Review, docket, p. 8.
[4] RTC Records, p. 109.
[5] RTC Records, p. 194.
[6] RTC Records, p. 121.
[7] RTC Records, p. 97.
[8] RTC Records, pp. 99-103.

of local business tax and that the subject assessment be cancelled and withdrawn.[9]

Due to the inaction of petitioners, respondent filed a Complaint or "Protest of Assessment of Business Tax" on March 29, 2010 before the RTC Branch 142 of Makati City. The case entitled "Trans-Asia Power Generation Corporation vs. The City of Makati and Nelia Barlis, in her capacity as the City Treasurer of Makati City" was docketed as Civil Case No. 10-312.[10] On July 27, 2012, the case was re-raffled and assigned to Branch 134 of the RTC of Makati City.[11]

After trial, the Court *a quo* rendered the assailed Decision on February 18, 2015 and ruled in the following manner:

> "**WHEREFORE**, in view of the foregoing, the tax protest filed by the plaintiff is hereby **GRANTED** and the Notice of Assessment dated October 27, 2009 in the amount of ₱686,300.53 is ordered **CANCELLED** and **WITHDRAWN**.
>
> **SO ORDERED.**"

Petitioner then filed a Motion for Reconsideration to pray for the reconsideration of the February 18, 2015 Decision of the lower court. In an Order dated June 9, 2015, the Court *a quo* denied petitioner's motion for reconsideration, the dispositive portion of which states as follows:[12]

> "**WHEREFORE**, premises considered, the defendant's Motion for Reconsideration is hereby **DENIED**.
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> **SO ORDERED**."

Unsatisfied with the Decision and the Order of the lower court, petitioner filed a Petition for Review[13] before this Court on July 8, 2015. *ge*

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[9] RTC Records, p. 102.
[10] RTC Records, p. 1.
[11] RTC Records, p. 78.
[12] RTC Records, p. 366.
[13] Docket, pp. 8-21.

In a Resolution[14] dated July 20, 2015, this Court ordered respondent to file a comment. In compliance thereof, respondent filed its Comment/Opposition[15] on August 5, 2015.

In a Resolution[16] dated August 25, 2015, this Court required the parties to file their respective memoranda.

The Court declared the case submitted for decision on October 5, 2015,[17] after respondent filed its Memorandum[18] on September 24, 2015 and petitioners filed their Memorandum[19] on September 28, 2015. Hence, this decision.

STATEMENT OF ISSUE

The pivotal issue presented before the Court is whether or not petitioners are justified in reclassifying respondent as "Services-Other Co and/or Contractor" instead of "Producer/Manufacturer" for purposes of local business tax.

DISCUSSION/RULING

Petitioners argue that the very fact that respondent undertakes all kinds of services for a fee is sufficient reason for it to be considered as a contractor under the law.[20] In support of their position, petitioners presented as evidence a letter issued by the Board of Investments (BOI) stating that respondent is registered with the BOI as a "New Operator of Power Generating Plant for Exclusive Supply to Hi-Cement Corporation"[21], and respondent's General Terms and Conditions, stating, among others, that respondent is directed by the BOI to report to the "Infrastructure and Service-Oriented Industries Department".[22]

The Court is not persuaded. yr

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[14] Docket, p. 66.
[15] Docket, pp. 72-82.
[16] Docket, p. 119.
[17] Docket, p. 163.
[18] Docket, pp. 126-146.
[19] Docket, pp. 148-160.
[20] Docket, p. 18.
[21] RTC Records, p. 265.
[22] RTC Records, p. 267.

Business is defined by Section 131(d) of the Local Government Code as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit".[23] As may be gleaned from the foregoing definition, a local business tax is a tax on the trade or commercial **activity regularly engaged** in as a means of livelihood or with a view to profit.

Petitioner's presentation of the letter issued by the BOI stating that respondent is registered with the BOI as a "New Operator of Power Generating Plant for Exclusive Supply to Hi-Cement Corporation"[24] and respondent's general terms and conditions, which state, *inter alia*, that respondent is directed by the BOI to report to the "Infrastructure and Service-Oriented Industries Department"[25] would only prove the fact of respondent's registration with the BOI; and that it is required to report to the said department of the BOI. These pieces of evidence failed to establish, much less show, the nature of respondent's business activities; which is the true test of whether one falls under the category of a "manufacturer/producer" or a "contractor" within the contemplation of existing laws.

To shed light on the proper classification of respondent's business, reference must be made to Sections 131(h) and (o) of the Local Government Code of 1991, and Sections 3A.01(t) and 3A.01(ll) of the Makati Revenue Code; which are all quoted hereunder for ready reference:

> "SEC. 131. *Definition of Terms*. – When used in this Title, the term:
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> xxx xxx xxx
>
> (h) 'Contractor' includes persons, natural or juridical, not subject to professional tax under Section 139 of this Code, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees. ~~

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[23] *Cagayan Electric Power and Light Co., Inc. vs. City of Cagayan de Oro,* G.R. No. 191761, November 14, 2012.
[24] RTC Records, p. 265.
[25] RTC Records, p. 267.

As used in this Section, the term 'contractor' shall include general engineering, general building and specialty contractors as defined under applicable laws; filling, demolition and salvage works contractors; proprietors or operators of mine drilling apparatus; proprietors or operators of dockyards; persons engaged in the installation of water system, and gas or electric light, heat, or power; proprietors or operators of smelting plants; engraving, plating, and plastic lamination establishments; proprietors or operators of establishments for repairing, repainting, upholstering, washing or greasing of vehicles, heavy equipment, vulcanizing, recapping and battery charging; proprietors or operators of furniture shops and establishments for planing or surfacing and recutting of lumber, and sawmills under contract to saw or cut logs belonging to others; proprietors or operators of dry-cleaning or dyeing establishments, steam laundries, and laundries using washing machines; proprietors or owners of shops for the repair of any kind of mechanical and electrical devices, instruments, apparatus, or furniture and shoe repairing by machine or any mechanical contrivance; proprietors or operators of establishments or lots for parking purposes; proprietors or operators of tailor shops, dress shops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna, Turkish and Swedish baths, slenderizing and building saloons and similar establishments; photographic studios; funeral parlors; proprietors or operators of hotels, motels, and lodging houses; proprietors or operators of arrastre and stevedoring, warehousing, or forwarding establishments; master plumbers; smiths, and house or sign painters; printers, bookbinders, lithographers; publishers except those engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication and advertisements; business agents, private detective or watchman agencies, commercial and immigration brokers, and cinematographic film owners, lessors and distributors.

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(o) 'Manufacturer' includes every person who, by physical or chemical process, alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any raw material or manufactured or partially manufactured products so as to reduce it to marketable shape or prepare it for any of the use of industry, or who by any such process, combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption."

"SECTION 3A.01. *Definitions.* – When used in this Article:

xxx xxx xxx

(t) Contractor – includes persons, natural or juridical, not subject to professional tax whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or his employees.

xxx xxx xxx

(ll) Manufacturer – includes every person who, for the purpose of sale or distribution to others and not for his own use or consumption, by physical or chemical process: (1) alters the exterior texture or form, or inner substance of any raw material or manufactured or

> partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition; (2) alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any use of industry; or (3) combines any raw material or manufactured or partially manufactured product with other materials or products of the same or different kind in such manner that the finished product of such process or manufacture can be put to a special use or uses to which such material, or manufactured or partially manufactured product in its original condition could not have been put."

In *Concrete Aggregates, Inc. vs. Court of Tax Appeals and Commissioner of Internal Revenue*[26], a case which involves the use of rock aggregates as raw material, converting it to concrete mixture as finished product by means of machinery, the High Court declared:

> "xxx petitioner was formed and organized primarily as a manufacturer; that it has an aggregate plant at Montalban, Rizal, which processes rock aggregates mined by it from private lands; it operates a concrete batching plant at Longos, Quezon City where the specified aggregates from its plant at Montalban are mixed with sand and cement, after which water is added and the concrete mixture is sold and delivered to customers; and at its plant site at Longos, Quezon City, petitioner has also an asphalt mixing machinery where bituminous asphalt mix is manufactured.
>
> We see no reason to disturb the findings of respondent court. Petitioner is a manufacturer as defined by Section 194(x), now Section 187(x), of the Tax Code.
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> > Sec. 194. *Words and phrases defined.* – In applying the provisions of this Title, words and phrases shall be taken in the sense and extension indicated below:
> >
> > x x x

[26] G.R. No. 55793, May 18, 1990.

> (x) 'Manufacturer' includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or different kinds and in such manner that the finished product of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products, in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption.

As aptly pointed out by the Solicitor General, petitioner's raw materials are processed under a prescribed formula and thereby changed by means of machinery into a finished product, altering their quality, transforming them into marketable state or preparing them for any of the specific uses of industry. Thus, the raw materials become a distinct class of merchandise or 'finished products for the purpose of their sales or distribution to others and not for his own use or consumption.' Evidently, without the above process, the raw materials or aggregates could not, in their original form, perform the uses of the finished product.

> In a case involving the making of ready-mixed concrete, it was held that concrete is a product resulting from a combination of sand or gravel or broken bits of limestones with water and cement; a combination which requires the use of skill and most generally of machinery. Concrete in forms designed for use and supplied to others for buildings, bridges and other structures is a distinct article of commerce and the making of them would be manufacturing by the corporation doing so."

Similarly, in *Bermejo vs. The Collector of Internal Revenue*[27], a case which involves the use of firewood as raw material to convert the same to charcoal by means of physical or chemical process, the Supreme Court explains:

> "The application of section 194 (x) to charcoal is more easily perceivable. The process is a chemical or physical process altering the exterior texture and inner substance of the firewood in such manner as to prepare it for special uses to which firewood may not be dedicated. Wherefore, in making charcoal for the market, plaintiff became a manufacturer within the meaning of the law."

Guided by the foregoing definitions and jurisprudence, we hold that respondent falls squarely within the coverage of the term "producer/manufacturer". A careful perusal of the records would show that respondent accumulates bunker fuel as its raw material;[28] that the said bunker fuel is fed into the diesel engine and is ignited by activating the diesel engine;[29] that by activating the engine, the bunker fuel is converted into electricity by means of a chemical process referred to as combustion,[30] thereby preparing the electricity for any specific uses of industry; and that the electricity produced was sold to Holcim Philippines Inc. and the excess electricity was sold to the Wholesale Electricity Spot Market (WESM)[31], which certainly, is not for respondent's own use or consumption. Also, without the chemical process of combustion, the bunker fuel could not, in their original form, perform the uses of electricity. In making electricity for the market, respondent is clearly a "manufacturer/producer" in contemplation of the law. gr

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[27] G.R. No. L-3029, July 25, 1950.
[28] RTC Records, p. 226.
[29] *Ibid.*
[30] RTC Records, p. 227.
[31] RTC Records, pp. 225 and 227.

Moreover, using the principle of *ejusdem generis* and as correctly pointed out by the lower court in the assailed Decision:

> "A careful analysis of the nature of plaintiff's business in line with the abovestated definition of manufacturer/producer and contractor and the enumeration of persons and things that follows after each definition show that plaintiff's business operation falls within the scope of manufacturer/producer and while defendant pressed that plaintiff's business is covered and included under the word 'other co', the Court disagrees. Under the principle of ejusdem generis, where general words follow [the] enumeration of person or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned (PNOC Shipping and Transport Corporation vs. Court of Appeals, 297 SCRA, 402,422 citing Republic vs. Migrino 189 SCRA 289). Thus, in determining the meaning of the phrase 'other co.' one must refer to prior enumeration of what 'contractor' or kinds of services must it include. Going over the enumeration given under the term 'contractor', it is clear that plaintiff's business does not fall under such category but rather under the category of 'manufacturer/producer'."

Finally, it bears stressing that the same legal issue involving the same parties was previously raised and passed upon by the Court of Tax Appeals En Banc in the case entitled *THE CITY OF MAKATI represented in this case by its City Mayor, the HON. JEJOMAR C. BINAY, the OIC City Treasurer, NELIA A. BARLIS, and the OIC of the Business Tax Division, FELITO A. MANRIQUE vs. Trans-Asia Power Generation Corporation*[32], where the CTA En Banc ruled in the following manner:

> "[T]here is no reason to doubt that respondent's business operation falls within the purview of a 'manufacturer/producer'. To stress the obvious, the ruling of the RTC on this point is hereby quoted with approval, thus:

[32] CTA EB No. 1086, January 21, 2015.

> A careful analysis of the nature of plaintiff's business in line with the definition of 'manufacturer/producer' and 'contractor' and the enumeration of persons and things that follows after each definition show that plaintiff's business operation falls within the scope of manufacturer/producer and while defendant pressed that plaintiff's business is covered and included under the word 'other co.', the Court disagrees. Under the principle of *ejusdem generis*, where general words follow an enumeration of person and things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned (PNOC Shipping and Transport Corporation vs. Court of Appeals, 297 SCRA 402, 422 citing Republic vs. Migriño, 189 SCRA 289). Thus, in determining the meaning of the phrase 'other co.' one must refer to prior enumeration of what 'contractor' or kinds of services must it include. Going over the enumeration given under the name 'contactor', it is clear that plaintiff's business does not fall under such category but rather under the category of manufacturer/producer.' (Emphasis supplied)

Petitioner's assertion that a scrutiny of the ESA would show that respondent not only supplies electricity to Hi Cement but also manages, operates, maintains and even repairs the power plant/s of Hi Cement for a fee, hence, it fits the definition of 'contractor' under the law also failed to make much impression.

It was never disputed that respondent buys bunker fuel as its chief raw material and converts it through mechanical and chemical processes to electricity. Respondent subsequently sells this electricity to Hi Cement by virtue of the ESA. It is also erroneous to say Hi Cement owns the power plant. While Hi Cement initially owned the property where the Power Plant is located, it was later sold to respondent as provided under

Article 3.1 of the ESA. In fine, respondent owns the Power Plant where the electricity is generated. As the owner of the Power Plant, respondent needs to manage, operate, maintain, and repair its own Power Plant.

The Court as well agrees with respondent that the additional undertakings under the ESA are merely ancillary to and in aid of its primary function as a producer of electricity, and are not even services rendered to Hi Cement but rather are additional undertakings to ensure the safe and continuous delivery of the electricity sold."

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated February 18, 2015 and the Order dated June 9, 2015, both rendered by Branch 134 of the Regional Trial Court of Makati City in Civil Case No. 10-312 entitled "Trans-Asia Power Generation Corporation vs. The City of Makati and Nelia Barlis, in her capacity as the City Treasurer of Makati City", are hereby **AFFIRMED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice