REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SAGITTARIUS MINES, INC. *Petitioners,*	**CTA CASE NO. SCA-0003** (formerly: CTA No. AC-274)
- versus -	*Members*:
HON. GERARDO C. BRAGANZA, in his capacity as Presiding Judge of the Regional Trial Court, Branch 43, Koronadal City, South Cotabato, MUNICIPALITY OF TAMPAKAN, SOUTH COTABATO, and OFFICE OF THE MUNICIPAL TREASURER OF TAMPAKAN, SOUTH COTABATO, *Respondents.*	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, JJ. Promulgated: AUG 10 2023 4:30 p.m.

x - x

DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Certiorari with Urgent Motion for the Issuance of a Suspension Order (With Prayer for Issuance of Preliminary Injunction and/or Immediate Issuance of Temporary Restraining Order)*[1] filed by petitioner Sagittarius Mines, Inc. (petitioner or SMI) under Rule 65 of the Revised Rules of Court, seeking for the Court to annul the Order dated October 14, 2022 (assailed Order)[2] and to reinstate the

---

[1] Division Docket (Docket) – Vol. I, pp. 5-79.

[2] Annex "P-1" of Petition for *Certiorari* with Urgent Motion for the Issuance of a Suspension Order (With Prayer for Issuance of Preliminary Injunction and/or Immediate Issuance of Temporary Restraining Order) (Petition), Docket – Vol. I, pp. 92-102.

directives in the Resolution dated September 29, 2022,[3] which are both issued by the Regional Trial Court (RTC) Branch 43, Koronadal City, South Cotabato in Civil Case No. 2417-43, entitled *Sagittarius Mines, Inc. v. Municipality of Tampakan, South Cotabato, and Office of the Municipal Treasurer of Tampakan, South Cotabato*, the dispositive portions of which read:

Assailed Order dated October 14, 2022:

> **WHEREFORE**, premises considered, the prayer for the issuance for Writ Preliminary Injunction is hereby **DENIED**.
>
> The Order of the court dated September 29, 2022 directing the respondent to issue business permit in favor of petitioner as manufacturer including the show cause order for violating the status quo ante order is hereby reversed and set aside.
>
> SO ORDERED.

Resolution dated September 29, 2022:

> **WHEREFORE**, as prayed for by the petitioner, a **TEMPORARY RESTRAINING ORDER** effective for a period of Twenty (20) days from its issuance less the 72 hours is hereby issued upon posting of a bond within five (5) days from receipts in the amount of One Million Pesos (₱1,000,000.00) enjoining the respondents and/or any other person/s acting for on their behalf from implementing the assessments amounting to ₱397,697,014.93 against the petitioner Sagittarius Mines, Inc.
>
> Furthermore, respondents are directed to issue a business permit to respondent [*sic*] as a manufacturer which will either be modified, revoked or otherwise, depending on the resolution of the injunction applied for.
>
> For violating the Status Quo Ante Order issued by the Court, the respondents are directed to cease and desist from implementing the closure order issued by the respondents and they are likewise directed to remove all the padlocks placed on the gates of the petitioner as well as the notices being posted within its premises. Similarly, the respondents are ordered to hold in abeyance the documents and issuances in relation to the closure order.

[3] RTC *rollo*, Vol. XIII, pp. 3358-3361.

Respondents are likewise directed to show cause why they should not be held in contempt of court for violating the status quo ante order.

The parties are hereby directed thereof to submit their respective Memorandum within a period of five (5) days from receipt of this Resolution.

Finally, set the hearing on the application for the issuance of the Writ of Preliminary Injunction on ***October 12, 2022*** at ***2:00 o'clock in the afternoon***.

SO ORDERED.

THE PARTIES[4]

Petitioner Sagittarius Mines, Inc. is a domestic corporation organized and existing under Philippine laws, with registered office address at Liberty Core Farm, Barangay Liberty, Tampakan, South Cotabato. It may be served with pleadings, notices, and other legal processes through its counsel at its given address.

Respondent Judge Gerardo C. Braganza, the incumbent Presiding Judge of the RTC Branch 43, Koronadal City, South Cotabato, is the public officer who issued the assailed Order. He may be served with notices and judicial processes through the RTC Branch 43, Koronadal City, South Cotabato.

Respondent Municipality of Tampakan, South Cotabato, is a local government unit empowered under the Local Government Code to assess and collect local taxes, fees, and charges through respondent Office of the Municipal Treasurer of Tampakan, South Cotabato (collectively referred to as "municipal respondents"). They may be served with notices and judicial processes at Tampakan Municipal Hall, Poblacion, Tampakan, South Cotabato.

Municipal respondents may also be served with notices and judicial processes through their counsel of record in Civil Case No. 2417-43, Atty. Nena A. Santos, with address at Doors 2 and 3, 2nd Floor, SAY Building, Gensan Drive, Brgy. Zone IV, Koronadal City, South Cotabato.

[4] Petition, *id.*, pp. 7-8.

THE FACTS AND THE PROCEEDINGS

On March 22, 1995, the Philippine Government entered into a Financial and Technical Assistance Agreement (FTAA) denominated as FTAA No. 02-95-XI[5] with WMC (Philippines), Inc.[6] (WMCPI) for the exploration, development, and commercial exploitation of mineral deposits in South Cotabato, Sultan Kudarat, Davao del Sur and North Cotabato under the Tampakan Copper-Gold Project (Tampakan Project).[7]

On February 20, 1998, the Office of the Provincial Legal Officer of Koronadal, South Cotabato, issued a letter[8] addressed to WMCPI in response to the latter's query regarding the tax limitations of the municipal government in relation to the Municipal Principal Agreement that WMCPI and the Municipality of Tampakan entered into. The Provincial Legal Officer confirmed that WMCPI falls in the category of manufacturers under Section 143 (a) of the LGC.

On December 18, 2001, the Department of Environment and Natural Resources (DENR) approved the application for the transfer of FTAA No. 02-95-XI from WMCPI to petitioner. Accordingly, FTAA No. 02-95-XI was registered in the petitioner's name.[9]

Under the FTAA, petitioner will undergo two phases of its operation: (1) exploration and (2) development or operating periods.[10] Petitioner stated that it had undergone the exploration period from 2010 to 2021 and is still in the development period, as confirmed by the DENR-Mines and Geosciences Bureau (MGB) on September 16, 2022.[11]

Sometime in 2004, municipal respondents classified petitioner as a "general engineering contractor" when it first applied for a mayor's permit and business license.[12]

---

[5] Exhibit "P-7", Compliance folder.
[6] Exhibit "P-8", Order issued by the Department of Environment and Natural Resources (DENR), Compliance folder.
[7] Par. 2, Petition, Docket – Vol. I, p. 10.
[8] Exhibit "P-10", Compliance folder.
[9] Exhibit "P-8", Order issued by the Department of Environment and Natural Resources, Compliance folder.
[10] Exhibit "P-7", Compliance folder, pp. 11-12.
[11] Par. 3, Annex "P-1", Order, Docket – Vol. I, p. 93.
[12] *Id.*; par. 3, Petition, Docket – Vol. I, p. 12, *vis-à-vis* TSN dated September 13, 2022, RTC *rollo* – Vol. XIII, pp. 3351-3353.

On February 2, 2011, petitioner sought its reclassification as "manufacturer" for local business tax (LBT) purposes.[13] Petitioner formally requested municipal respondents to change its classification from "general engineering contractor" to "manufacturer." In support of its request, petitioner submitted a copy of the opinion letter dated February 20, 1998, issued by the Office of the Provincial Legal Officer of South Cotabato, Atty. Nena A. Santos, confirming the classification of its predecessor-in-interest, WMCPI, as a manufacturer.[14]

On May 20, 2011, petitioner paid municipal respondents the amount of ₱194,944.51,[15] representing deficiency taxes for 2004-2011 based on the municipal respondents' computation of petitioner's classification as a manufacturer.[16]

On February 22, 2012, the Bureau of Local Government Finance (BLGF) of the Department of Finance (DOF) rendered an opinion[17] stating that petitioner is a manufacturer of any article of commerce for LBT purposes and that its LBT is computed based on gross sales or receipts for the preceding calendar year.

On March 19, 2012, municipal respondents enacted Municipal Ordinance No. 66, otherwise known as "The Tax Code of 2012", which then Municipal Mayor Leonardo V. Escobillo approved,[18] defining "contractor" and "manufacturer"[19] under Chapter II, Article D, Section 6 (l) and (q), respectively.

On September 18, 2012, the following provisions of Municipal Ordinance No. 66 were repealed through Resolution No. 207,[20] which partly reads:

... ...

[13] Exhibit "P-9", Compliance folder; Resolution dated September 29, 2022, RTC *rollo* – Vol. XII, p. 3358.
[14] Exhibit "P-10", Compliance folder.
[15] Exhibit "P-25", Compliance folder.
[16] Exhibit "P-23", Schedule of Business Tax Computation for the Years 2004-2011, Compliance folder.
[17] Exhibit "P-12", Compliance folder; Resolution dated September 29, 2022, RTC *rollo* – Vol. XIII, p. 3359.
[18] Exhibit "P-21", Compliance folder.
[19] Annex "P-1", Order, Docket – Vol. I, p. 93.
[20] Exhibit "P-58", ENACTING MUNICPAL ORDINANCE NO. 67 re: AN ORDINANCE AMENDING SECTIONS 33, 181, 217 AND REPEALING SECTIONS 45 (2)(e)(1) LINES (1.2) AND (1.3) PARTICULARLY (1.3.1)(1.3.2), 182, 183, 184, 185, 186 AND 187 OF MUNICIPAL ORDINANCE NO. 66 OF THE MUNICIPALITY OF TAMPAKAN, SOUTH COTABATO, OTHERWISE KNOWN AS THE TAX CODE OF 2012, Compliance folder.

WHEREAS, to afford the Sangguniang Bayan and the Local Chief Executive sufficient time to further review 'The Tax Code of 2012' and in order not to prejudice affected taxpayers during the review process, the repeal of certain provisions therein is warranted under the circumstances.

NOW, THEREFORE, after due consideration, on motion of Councilor Benedicto G. Barroso simultaneously seconded by Councilor Charlotte D. Uy, Councilor Eduardo A. Pinggoy, Sr. and Councilor Juan A. Yñiguez, be it

RESOLVE [*sic*], as it is hereby **RESOLVED**, that this August Body hereby pass and approve resolution **ENACTING MUNICIPAL ORDINANCE NO. 67 re:** ***AN ORDINANCE AMENDING SECTIONS 33, 181, 217 AND REPEALING SECTIONS 45(2)(e)(1) LINES (1.2) AND (1.3) PARTICULARLY (1.3.1)(1.3.2), 182, 183, 184, 185, 186 AND 187 OF MUNICIPAL ORDINANCE NO. 66 OF THE MUNICIPALITY OF TAMPAKAN, SOUTH COTABATO, OTHERWISE KNOWN AS "THE TAX CODE OF 2012;"***

RESOLVED FINALLY, that copies of the resolution be furnished to all concerned for their information and guidance.

I HEREBY CERTIFY to the correctness of the foregoing resolution duly approved by the Sangguniang Bayan on September 18, 2012.

(Sgd.) **RELLY A. LEYSA, MPA**
Municipal Vice Mayor/
Presiding Officer

Attested:
(Sgd.) **MARIA GRACE ABERCA-BARROSO**
Sanggunian Secretary

Approved:
(Sgd.) **LEONARDO V. ESCOBILLO, ME**
Municipal Mayor

Accordingly, Municipal Ordinance No. 67[21] was enacted expressly repealing Chapter III, Article K, Section 45(2)(e)(1)(1.3.2) of Municipal Ordinance No. 66, effective January 1, 2013.

---

[21] Exhibit "P-59", Compliance folder.

Meanwhile, municipal respondents assessed petitioner as a manufacturer for TYs 2012,[22] 2013,[23] 2015,[24] 2016,[25] 2017,[26] 2018,[27] 2019,[28] 2020,[29] 2021,[30] and 2022.[31]

Municipal respondents received LBT payments from petitioner, as manufacturer, without any qualification or reservation and issued business permits to petitioner from taxable year (TY) 2012 until the first quarter of 2022.[32]

On March 9, 2022, petitioner received a Letter of Authority No. 2022-001[33] issued by municipal respondents on February 8, 2022, authorizing the examination of petitioner's books of accounts and other records for 2019 to 2021.[34]

On July 14, 2022, a Letter of Assessment (First Notice)[35] was issued by municipal respondents to petitioner assessing the latter in the amount of ₱2,696.53, representing deficiency LBT as a contractor for 2020 to 2022, and ₱397,694,318.40 for mayor's permit fee and other regulatory fees as a contractor that are due since 2012.

On July 19, 2022, petitioner protested the deficiency assessment through a letter,[36] which was denied by municipal respondents with the issuance of a Letter of Assessment (Second Notice)[37] on August 9, 2022, demanding petitioner to pay the deficiency amount or petitioner's mayor's permit shall be cancelled, and collection through distraint and levy or by judicial action shall be effected.

---

[22] Exhibit "P-13", Tax Due Worksheet with Control No. 201200185, Compliance folder.
[23] Exhibit "P-13-a", Tax Due Worksheet with Control No. 201300373, *id.*
[24] Exhibit "P-13-b", Tax Due Worksheet with Control No. 201500294, *id.*
[25] Exhibit "P-13-c", Tax Due Worksheet with Control No. 201600297, *id.*
[26] Exhibit "P-13-d", Tax Due Worksheet with Control No. 201700193, *id.*
[27] Exhibit "P-13-e", Tax Due Worksheet with Control No. 201800250, *id.*
[28] Exhibit "P-13-f", Tax Due Worksheet with Control No. 201900323, *id.*
[29] Exhibit "P-13-g", Tax Due Worksheet with Control No. 202000265, *id.*
[30] Exhibit "P-13-h", Tax Due Worksheet with Control No. 202100276, *id.*
[31] Exhibit "P-13-i", Tax Due Worksheet with Control No. 202200202, *id.*
[32] Exhibits "P-15" to "P-15-j", Business Permits from 2012 to 2022, *id.*; Resolution dated September 29, 2022, RTC *rollo* – Vol. XIII, p. 3359.
[33] Exhibit "P-17", Compliance folder.
[34] *Id.*, *vis-à-vis* Annex "P-1", Order, Docket – Vol. I, p. 94.
[35] Exhibit "P-1", Compliance folder.
[36] Exhibit "P-4", Compliance folder.
[37] Exhibit "P-2", Compliance folder.

On August 23, 2022, a Letter of Assessment (Final Notice)[38] was issued by municipal respondents to warn petitioner that the deficiency assessments issued against the latter had become final and executory.[39]

On August 25, 2022, petitioner filed with municipal respondents a request for cancellation and withdrawal of deficiency assessments;[40] but municipal respondents failed to act on it.[41]

On September 7, 2022, petitioner filed with the RTC Koronadal City a Petition for Review[42] protesting the deficiency assessments for business tax for TYs 2020 to 2022, mayor's permit fees and other regulatory fees for TYs 2013 to 2022 with an Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction with the RTC of Koronadal City, which was raffled to respondent Judge of RTC Branch 43.[43]

On September 8, 2022, Acting Vice Executive Judge Felix F. Mesa issued a 72-hour TRO stating that the requisites for its issuance were present.[44]

Subsequently, respondent Judge conducted hearings on the TRO on September 12[45] and 13, 2022,[46] and issued a status *quo ante* order to give the parties enough time to submit their respective memoranda and to provide the Court with proper determination as to the propriety of issuing a writ of preliminary injunction.[47]

However, despite the issuance of the status *quo ante* order, Municipal Mayor Leonard T. Escobillo issued a letter dated September 15, 2022, revoking petitioner's mayor's permit, alleging fraud and misrepresentation when it applied as a manufacturer instead of a general engineering contractor.[48] As

---

[38] Exhibit "P-3", Compliance folder.
[39] Resolution dated September 29, 2022, RTC *rollo* – Vol. XIII, p. 3359, *vis-à-vis* Annex "P-1", Order, Docket – Vol. I, p. 95.
[40] Exhibit "P-5", Compliance folder.
[41] Annex "P-1", Order, Docket – Vol. I, p. 95.
[42] RTC *rollo* – Vol. I, pp. 5-67.
[43] Resolution dated September 29, 2022, RTC *rollo* – Vol. XIII, p. 3358.
[44] *Id.*; RTC *rollo* – Vol. X, pp. 2443-2444.
[45] Order, RTC *rollo* – Vol. XIII, pp. 3270-3271.
[46] Order, RTC *rollo* – Vol. XIII, pp. 3325-3327.
[47] Resolution dated September 29, 2022, RTC *rollo* – Vol. XIII, p. 3359.
[48] Resolution dated September 29, 2022, RTC *rollo* – Vol. XIII, p. 3360.

a result, the gates of petitioner's office were padlocked, and a notice of its closure and revocation of its mayor's permit was posted on the premises.[49]

On September 29, 2022, respondent Judge promulgated a Resolution (On the Application for Temporary Restraining Order).[50]

On October 12[51] and 13, 2022,[52] the lower court conducted hearings on petitioner's application for the issuance of a writ of preliminary injunction.

On October 14, 2022, respondent Judge issued the assailed Order[53] denying petitioner's application for a writ of preliminary injunction and reversing and setting aside its directives for the municipal respondents to issue petitioner's business permit to operate as a manufacturer and to show cause why they should not be cited in contempt of court for violating the lower court's status *quo ante* order.

On October 21, 2022, petitioner filed a *Petition for Certiorari*[54] before this Court.

On November 7, 2022, the Court issued a Resolution[55] ordering petitioner to submit the hard copies of the assailed Order dated October 14, 2022. Municipal respondents were also directed to file a comment on the *Petition*, not a motion to dismiss, and comment/opposition to petitioner's *Urgent Motion for the Issuance of a Suspension Order* (Urgent Motion) embodied in the *Petition for Certiorari*.

On November 24, 2022, the Court treated petitioner's Urgent Motion as a motion for suspension of collection of taxes.[56] Thereafter, petitioner presented the testimony of its witnesses, Evangeline A. Torralba and Joanna Kim A. Ong, who testified on direct examination through their respective Judicial Affidavits. Their testimonies were completed and terminated

---

[49] *Id.*
[50] RTC *rollo*, Vol. XIII, pp. 3358-3361.
[51] Order, RTC *rollo* – Vol. XVII, pp. 4774-4775.
[52] Order, RTC *rollo* – Vol. XVII, pp. 4815-4816.
[53] *Supra*, note 2.
[54] *Supra*, note 1.
[55] Docket – Vol. I, pp. 84-86.
[56] Order, Docket – Vol. II, pp. 353-355.

after the respective cross-examinations. The Court also issued a status *quo ante* order enjoining municipal respondents from enforcing the letter dated November 11, 2022, pending resolution of the Urgent Motion. Both counsels agreed to adopt the testimonies of municipal respondents' witnesses Ninja H. Reyes and Evelyn M. Manuel, given in the RTC. The Court also noted the manifestation that petitioner is willing to post bond.

On November 28, 2022, petitioner filed its *Formal Offer of Documentary Evidence (Re: Urgent Motion for the Issuance of a Suspension Order).*[57]

On December 9, 2022, the Court received municipal respondents' *Comment/Opposition on the Formal Offer of Documentary Evidence*[58] and *Comment (to the Petition for Certiorari with Urgent Motion for the Issuance of a Suspension Order),*[59] both posted through courier.

On December 13, 2022, the Court received the 1st Indorsement[60] dated November 23, 2022, issued by Atty. Pauline Mae S. Sereñina, Acting Branch Clerk of Court of the RTC Branch 43, Koronadal City, filed through registered mail, transmitting the entire records of Civil Case No. 2417-43 in 18 brown envelopes consisting of 4,865 pages.

On January 20, 2023, the Court issued a Resolution[61] giving petitioner five days from notice to submit the duly marked exhibits that petitioner supposedly formally offered but were not submitted to the Court.

On January 25, 2023, petitioner filed its Compliance[62] submitting the hard copies of its exhibits.

On January 27, 2023, petitioner filed an *Urgent Omnibus Motion (1) To Direct Municipal Respondents to Comply with the Honorable Court's Status Quo Ante Order and (2) For the Issuance of Show Cause Orders* (Urgent Omnibus Motion).[63] On February 7, 2023, the Court ordered municipal respondents to

---

[57] Docket – Vol. II, pp. 699-729.
[58] *Id.*, pp. 745-768.
[59] *Id.*, pp. 772-813.
[60] Docket – Vol. III, pp. 1136-1147.
[61] *Id.*, pp. 1148-1149.
[62] *Id.*, pp. 1150-1153.
[63] *Id.*, pp. 1154-1168, with annexes.

comment on petitioner's Urgent Omnibus Motion within five days from notice.[64]

On February 9, 2023, the Court resolved petitioner's *Formal Offer of Documentary Evidence (Re: Urgent Motion for the Issuance of a Suspension Order)* and admitted all its exhibits.[65]

On February 10, 2023, the Court, in its Resolution,[66] granted petitioner's *Urgent Motion for the Issuance of a Suspension Order (With Prayer for Issuance of Preliminary Injunction and/or Immediate Issuance of Temporary Restraining Order)*. Accordingly, the collection of the subject deficiency business taxes, in the amount of ₱401,454,015.12, against petitioner was suspended, dispensed with the posting of the bond, and enjoined the enforcement of any assessment based on Municipal Ordinance No. 66, pending resolution of the present *Petition for Certiorari* or until further order from this Court.

On February 17, 2023, the Court received municipal respondents' *Comment/Opposition to the Urgent Omnibus Motion (1) To Direct the Municipal Treasurer to Comply with the Honorable Court's Status Quo Ante Order and (2) For the Issuance of Show-Cause Orders*[67] filed *via* courier and found the same to be insufficient in copies; and so, the Court directed municipal respondents to submit an additional copy of its comment within ten days from notice.[68]

On March 13, 2023, the Court received the municipal respondents' Submission[69] filed *via* courier, which the Court noted on March 16, 2023.[70]

On May 19, 2023, the Court declared moot petitioner's *Urgent Omnibus Motion (1) To Direct Municipal Respondents to Comply with the Honorable Court's Status Quo Ante Order and (2) For the Issuance of Show Cause Orders* given the Resolution

[64] Resolution, *id.*, pp. 1170-1171.
[65] Resolution, *id.*, pp. 1173-1175.
[66] *Id.*, pp. 1177-1195.
[67] *Id.*, pp. 1198-1202.
[68] Minute Resolution, *id.*, p. 1196.
[69] *Id.*, pp. 1285-1367, with annexes.
[70] Resolution, *id.*, p. 1371.

dated February 10, 2023. The Court also submitted the case for decision.[71]

THE ISSUES

Petitioner puts forth the following grounds for the *Petition*,[72] to wit:

A

The lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in concluding that the paramount issue in resolving SMI's application for the issuance of a writ of preliminary injunction is whether the municipal respondents correctly classified and taxed petitioner as a contractor under Municipal Ordinance No. 66.

B

The lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in prejudging the merits of the case by ruling that the municipal respondents correctly classified and taxed petitioner as a contractor under Municipal Ordinance No. 66.

C

The lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in allowing the municipal respondents to collaterally attack the validity and enforceability of Municipal Ordinance No. 67.

D

The lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in invalidating Municipal Ordinance No. 67 without a full-blown trial.

E

The lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in totally disregarding the evidence on record and denying SMI's application for the issuance of a writ of preliminary injunction enjoining the municipal respondents and their representatives from collecting the alleged deficiency taxes under, and from further taking action on, the Letters Of Assessment and on all other documents and issuances in relation to, resulting from, or in connection with, the Letters of Assessment, and from taking any action that will prevent, obstruct, impede, or interfere with the regular and normal

---

[71] Resolution, *id.*, pp. 1372-1376.
[72] Grounds for the Petition, Petition, Docket – Vol. I, pp. 34-35.

operation of SMI's business and offices prior to the final adjudication of Civil Case No. 2417-43.

F

The lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing and setting aside its directive for the municipal respondents to immediately process and issue petitioner's business permit to operate as a manufacturer effective April 1, 2022 until December 31, 2022.

G

The lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in reversing and setting aside its directive for the municipal respondents to show cause why they should not be held in contempt of court for their unjustified failure and refusal to abide by, and violation of, the status *quo ante* order in Civil Case No. 2417-43.

The above grounds may be summed up in one issue:

Whether or not the lower court acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, when it denied petitioner's application for the issuance of a writ of preliminary injunction enjoining the municipal respondents and their representatives from collecting the alleged deficiency taxes.

Petitioner's arguments[73]

Petitioner argues that:

a. The lower court gravely abused its discretion in disregarding the requisites for the issuance of a writ of preliminary injunction in the assailed Order;

b. The lower court prejudged the merits of the case by ruling that the municipal respondents correctly classified and taxed petitioner as a contractor under Municipal Ordinance No. 66;

c. The lower court allowed the municipal respondents to collaterally attack the validity and enforceability of Municipal Ordinance No. 67;

[73] Pars. 26-143, Petition, Docket – Vol. I, pp. 36-65.

d. The lower court invalidated Municipal Ordinance No. 67 without a full-blown trial;

e. The lower court disregarded the evidence on record and denied petitioner's application for the issuance of a writ of preliminary injunction enjoining the municipal respondents and their representatives from collecting the alleged deficiency taxes under and from further taking action on the Letters of Assessment and

f. on all other documents and issuances in relation to, resulting from, or in connection with, the Letters of Assessment, and from taking any action that will prevent, obstruct, impede, or interfere with the regular and normal operation of petitioner's business and offices, prior to the final adjudication of Civil Case No. 2417-43;

g. The lower court reversed and set aside its directive for the municipal respondents to immediately process and issue petitioner's business permit to operate as a manufacturer effective April 1, 2022 until December 31, 2022; and,

h. The lower court reversed and set aside its directive for the municipal respondents to show cause why they should not be held in contempt of court for their unjustified failure and refusal to abide by, and for violation of, the status *quo ante* order in Civil Case No. 2417-43.

Respondents' arguments[74]

Municipal respondents contend that:

a. Since petitioner is not engaged in manufacturing activities, it should not be taxed as a manufacturer. Thus, municipal respondents were correct in computing petitioner's assessed fees, charges, surcharges, and interest as a general engineering contractor categorized in large-scale mining in accordance with Municipal Ordinance No. 66;

b. The lower court did not err in ruling on whether the assessment made by municipal respondents was proper and whether petitioner is a manufacturer with gross sales from operation, in determining if petitioner is entitled to a writ of preliminary injunction;

---

[74] Pars. 9-57, Comment (to the Petition for *Certiorari* with Urgent Motion for the Issuance of a Suspension Order) (Comment), Docket – Vol. II, pp. 779-791.

c. Municipal respondents discovered that Municipal Ordinance No. 67 was not completely published in a newspaper of general circulation as alleged by petitioner. In contrast, Municipal Ordinance No. 66 was fully published in a newspaper of general circulation, as evidenced by a Certificate of Publication;

d. Municipal respondents' assessments against petitioner have basis in law and documentary evidence presented in court;

e. The issue on the revocation of petitioner's business permit is not related to their petition to review the tax assessment. The cancellation of mayor's permit was based on fraud and misrepresentation under Section 48(b) of the Municipal Tax Code of Tampakan;

f. Petitioner's insistence on being a manufacturer during the audit period will result in zero business permit fees for the Municipality of Tampakan, South Cotabato; and

g. Petitioner failed to file a motion for reconsideration before filing this case with the Court.

THE RULING OF THE COURT

The CTA has jurisdiction over a petition for certiorari under Rule 65 of the Revised Rules of Court.

We shall first discuss the basis of the CTA's *certiorari* power under Rule 65 of the Revised Rules of Court.

The CTA has the authority to issue auxiliary writs of *certiorari* as ruled in the case of *The City of Manila, et al. v. Hon. Grecia-Cuerdo et al.* (*Grecia-Cuerdo*):[75]

> ... Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of *certiorari*, prohibition and *mandamus*. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives the appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of *certiorari*, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of *certiorari*, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.

[75] G.R. No. 175723, February 4, 2014.

> ... [While] there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that **judicial power includes the duty of the courts of justice** to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**.
>
> On the strength of the above constitutional provisions, it can be fairly interpreted that **the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court.** It, thus, follows that **the CTA,** by constitutional mandate, **is vested with jurisdiction to issue writs of certiorari** in these cases.
>
> Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that **the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction**. There is no perceivable reason why the transfer should only be considered as partial, not total.
>
> ... ...
>
> Furthermore, **Section 6, Rule 135** of the present Rules of Court **provides that when by law, jurisdiction is conferred on a court** or judicial officer, **all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court** or officer. (*Emphasis supplied*)

Indeed, the CTA has jurisdiction to determine whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within its exclusive appellate jurisdiction.

The jurisdiction of the CTA over decisions, orders, or resolutions of RTCs in "local tax cases" is provided under Section 7(a)(3) of RA No. 1125, as amended by Republic Act (RA) Nos. 9282 and 9503, *viz.*:

> **SEC. 7. *Jurisdiction. — The CTA shall exercise:***
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> ... ...
>
> (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. ([*Emphasis supplied*)

Similarly, Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, states:

> **SEC.3. *Cases within the jurisdiction of the Court in Division.* -**
>
> The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> ... ...
>
> (3) Decisions, resolutions or orders of the **Regional Trial Courts in local tax cases** decided or resolved by them in the exercise of their original jurisdiction. (Emphasis supplied)

In *Mactel Corporation v. The City Government of Makati et al.,*[76] the Supreme Court defines what a "local tax case" is in relation to the CTA's special jurisdiction, *viz.*:

> **[A] local tax case** is understood to mean as a dispute between the local government unit (LGU) and a taxpayer involving the imposition of the LGU's power to levy tax, fees, or charges against the property or business of the taxpayer concerned. A local tax case **may involve** the legality or validity of the real property tax assessment, **protests of assessments, disputed assessments, surcharges or penalties; the validity of a tax ordinance**; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments. (*Emphasis supplied*)

---

[76] G.R. No. 244602, July 14, 2021, in reference to *Herarc Realty Corp. v. Provincial Treasurer of Batangas*, G.R. No. 210736, September 5, 2018.

Considering that this case involves protests of assessments, disputed assessments, surcharges, and penalties and a question on the validity of tax ordinances, it is a "local tax case" within the purview of the CTA's jurisdiction.

Given the foregoing, this Court has jurisdiction over the instant *Petition for Certiorari* assailing an interlocutory order issued by the Presiding Judge of the RTC Branch 43, Koronadal City, in a "local tax case."[77]

Before We discuss the propriety of filing the instant *Petition for Certiorari,* We shall first determine the timeliness of the *Petition.*

The instant Petition for Certiorari was timely filed.

Section 4, Rule 65 of the Revised Rules of Court reads:

> SEC. 4. *When and where petition filed.* — **The petition shall be filed not later than <u>sixty (60) days</u> from notice of the judgment, order, or resolution.** In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. (*Emphasis supplied*)

Here, petitioner received a copy of the assailed Order on October 14, 2022. Counting 60 days from October 14, 2022, it had until December 13, 2022, to file a petition for *certiorari.* Petitioner filed the present *Petition* on October 21, 2022, within the reglementary period.

Having settled that the *Petition for Certiorari* has been timely filed, We now turn to the propriety of the *Petition.*

---

[77] *CE Casecnan Water and Energy Company, Inc. v. National Irrigation Administration, et al.* (*CE Casecnan*), G.R. No. 196278, June 17, 2015; See also *Mactel Corporation v. The City of Government of Makati*, G.R. No. 244602, July 14, 2021, where the Supreme Court explained that in *CE Casecnan*, there was a previous disputed assessment with the LGU that is cognizable by the CTA.

Petitioner correctly resorted to certiorari.

Section 1, Rule 65 of the Revised Rules of Court states:

> SEC. 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> ... ...

For certiorari to prosper, petitioner must establish the concurrence of the following requisites, namely:

1. The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions;

2. Such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and

3. There is no appeal or any plain speedy, and adequate remedy in the ordinary course of law.[78]

***First* and *third* requisites:**

<u>Respondent is exercising a judicial function, and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.</u>

Here, respondent Judge exercised judicial function when he issued the assailed Order. Hence, the *first* requisite has been satisfied.

---

[78] *Yusay v. Court of Appeals*, G.R. No. 156684, April 6, 2011, cited in *Aquino v. Municipality of Malay, Aklan*, G.R. No. 211356, September 29, 2014.

Aside from the first requisite, We likewise hold that the *third* requisite, *i.e.*, the unavailability of a plain, speedy, or adequate remedy, is also present.

In a litany of cases, the Supreme Court held that it is inadequacy, not the mere absence of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of *certiorari*. A remedy is plain, speedy, and adequate if it promptly relieves petitioner from the injurious effects of the lower court or agency's judgment, order, or resolution. It is understood, then, that a litigant need not mark time by resorting to the less speedy remedy of appeal in order to have an order annulled and set aside for being patently void for failure of the trial court to comply with the Rules of Court.[79]

Petitioner admits, in its *Petition*, that it did not file a motion for reconsideration in the RTC before filing the *Petition* with this Court and explained its omission for doing so by citing that it is covered by the following exceptions: where the order is a patent nullity, as where the court *a quo* had no jurisdiction; where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or the petitioner; where, under the circumstances, a motion for reconsideration would be useless; where petitioner was deprived of due process, and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; and, where the issue raised is one purely of law or where public interest is involved.[80]

The Court is not precluded from taking cognizance of the instant *Petition for Certiorari* as the requirement that there must be *no appeal or any plain or adequate remedy* in the ordinary course of law under Section 1, Rule 65 of the Rules of Court admits exceptions.

W

---

[79] *Aquino v. Municipality of Malay, Aklan*, G.R. No. 211356, September 29, 2014, citing *Heirs of Spouses Reterta, et al.*, G.R. No. 159941, August 17, 2011, citing *Jaca v. Davao Lumber Company*, G.R. No. L-25771, March 29, 1982, *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, and *Lu Ym v. Nabua*, G.R. No. 161309, February 23, 2005.
[80] Pars. 26-143, Petition, Docket – Vol. I, pp. 36-65.

In *Francisco Motors Corporation v. Court of Appeals*,[81] the Supreme Court underscored the exceptions to the rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*, such as: (a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate, and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency.

Here, petitioner's averments in the *Petition* that there is an *urgent* and paramount necessity for the writ of preliminary injunction to prevent *serious and irreparable damage* that would be caused by municipal respondents' enforcement and collection of the subject deficiency assessment in the amount of ₱401,454,015.1 pending final determination of the case, fall under the *first* and *last* exceptions, among others.

The Court finds that it is necessary to address the issues presented here because of their implications on the activities in the Tampakan Project pursuant to the FTAA executed by and between the Philippine government and petitioner, which will expire on March 22, 2038.[82]

Evidently, petitioner correctly saw the urgent need for judicial intervention *via* a special civil action for *certiorari*.

In light of the foregoing, We now determine the existence of the *second* requisite of *certiorari* — whether or not there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent Judge.

---

[81] G.R. Nos. 117622-23, October 23, 2006; *Republic v. Bayao, et al.*, G.R. No. 179492, June 5, 2013.
[82] Exhibit "P-54", DENR Order dated June 14, 2022, Compliance folder; A23-24, Judicial Affidavit of Ms. Nimpa H. Reyes dated October 7, 2022, Docket – Vol. II, p. 734.

***Second* requisite:**

Respondent has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner sought relief from this Court to remedy respondent Judge's assailed Order denying petitioner's application for a writ of preliminary injunction.

Undoubtedly, the issuance of an injunctive writ rests upon the sound discretion of the court that took cognizance of the case;[83] as such, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, *except* when there is grave abuse of discretion.[84]

Grave abuse of discretion refers to the capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. In *Yu v. Reyes-Carpio,*[85] the Supreme Court explained that:

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void."

Petitioner identified the acts constituting respondent Judge's manifestly grave abuse of discretion amounting to lack or excess of jurisdiction, to wit:

---

[83] *St. James College of Parañaque v. Equitable PCI Bank,* G.R. No. 179441, August 9, 2010.
[84] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia Batangas Province,* G.R. No. 183367, March 14, 2012, citing *Medina v. City Sheriff of Manila,* G.R. No. 113235 (Resolution), July 24, 1997; *Barbieto v. The Honorable Court of Appeals, et al.*, G.R. No. 184645, October 30, 2009, citing *Cortez-Estrada v. Heirs of Samut,* G.R. No. 154407, February 14, 2005.
[85] G.R. No. 189207, June 15, 2011.

> (a) The denial of the writ of preliminary injunction did not make any reference to the requirements imposed by Rule 58 of the Rules of Court and is contrary to pertinent jurisprudence;[86]
>
> (b) Despite the issue in resolving the preliminary injunction is not petitioner's classification as a contractor or manufacturer but whether the essential requisites for the issuance of the writ are present, respondent Judge prejudged the merits of the case by declaring petitioner's status as a contractor in the assailed Order;[87]
>
> (c) Respondent Judge allowed municipal respondents to collaterally attack the validity of Municipal Ordinance No. 67 without a full-blown trial;[88]
>
> (d) Respondent Judge denied the writ of preliminary injunction despite evidence that petitioner has a clear legal right to be issued a business permit to operate as a manufacturer effective April 1, 2022 until December 31, 2022 as it has fully paid its mayor's permit fees and other regulatory fees as manufacturer as assessed by municipal respondents.[89]

The sole question, therefore, is whether respondent Judge committed grave abuse of discretion in denying the writ of preliminary injunction or acted in a manner that was practically bereft of or violative of legally acceptable standards.[90]

Section 3, Rule 58, of the Revised Rules of Court provides the grounds for issuance of preliminary injunction, *viz.*:

> SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually;

---

[86] Pars. 30-36, Petition, pp. 37-38.
[87] Pars. 36-39 & 70-72, Petition, pp. 38-39 & 47-48, respectively.
[88] Pars. 76-99, Petition, pp. 49-55.
[89] Pars. 122-125, Petition, p. 61.
[90] See *Department of Public Works and Highways (DPWH), v. City Advertising Ventures Corporation*, G.R. No. 182944, November 9, 2016.

> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Likewise, jurisprudence has established that before a writ of preliminary injunction, whether mandatory or prohibitory, may be issued, the following requisites must be proven:

> (1) There exists a clear and unmistakable right to be protected;
> (2) This right is directly threatened by an act sought to be enjoined;
> (3) The invasion of the right is material and substantial; and
> (4) There is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[91]

To satisfy these requisites, the parties applying for a writ of preliminary injunction need not set out their claims by complete and conclusive evidence as only *prima facie* evidence suffices: [92]

> ...[T]o establish the essential requisites for a preliminary injunction, the evidence to be submitted by the plaintiff need not be conclusive and complete. The plaintiffs are only required to show that they have an ostensible right to the final relief prayed for in their complaint. A writ of preliminary injunction is generally based solely on initial or incomplete evidence. Such evidence need only be a sampling intended merely to give the court an evidence of justification for a preliminary injunction pending the decision on the merits of the case, and is not conclusive of the principal action which has yet to be decided.[93]

---

[91] *Bicol Medical Center v. Botor*, G.R. No. 214073, October 4, 2017; *Tom v. Rodriguez*, G.R. No. 215764, July 6, 2015; *Australian Professional Realty, Inc. v. Municipality of Padre Garcia Batangas Province*, G.R. No. 183367, March 14, 2012, citing *Medina v. City Sheriff of Manila*, G.R. No. 113235 (Resolution), July 24, 1997.
[92] *DPWH v. City Advertising Ventures Corporation*, G.R. No. 182944, November 9, 2016, citing *Republic v. Evangelista*, G.R. No. 156015, August 11, 2005.
[93] *DPWH v. City Advertising Ventures Corporation*, G.R. No. 182944, November 9, 2016, citing *Spouses Nisce v. Equitable PCI Bank*, G.R. No. 167434, February 19, 2007.

In the instant case, without prejudging the merits of the Petition for Review[94] before the RTC Branch 43, Koronadal City, the Court finds that petitioner met the standards for the issuance of a writ of preliminary injunction.

The requisites for the issuance of a writ of preliminary injunction were met.

In its Petition for Review before the RTC, petitioner seeks the annulment of the Letter of Authority dated February 8, 2022, deficiency assessments for TYs 2013 to 2022 under the letters of assessment, and other actions, documents, and issuances of municipal respondents in relation to the letters of assessment.[95] It prays that a TRO be issued enjoining municipal respondents or any of their representatives from collecting the alleged deficiency taxes and from taking further action on the Letters of Assessment that will prevent, obstruct, impede, or interfere with the regular and normal operation of petitioner's business and offices.[96] It asserts that should the municipal respondents enforce collection despite the alleged invalidity of the deficiency assessments, surcharges, and interests imposed, petitioner would not just be irreparably damaged but crippled before it could begin its operations.[97] Said allegation is supported by petitioner's Audited Financial Statements for 2021.[98]

On the other hand, municipal respondents claim that they conducted a random audit, and petitioner was one of those audited in 2021 and 2022. They insist that they correctly classified petitioner as a contractor because the latter does not fall under the definition of Section 6 (q) of Municipal Ordinance No. 66.[99] They further allege that petitioner has not extracted a single ore for production to make them a manufacturing concern,[100] there are no existing processing plants, equipment, or machinery that would process/extract minerals in the mining area of petitioner, and upon review of the application of

[94] RTC *rollo* – Vol. I, pp. 5-67.
[95] RTC *rollo* – Vol. I, pp. 5-67.
[96] *Id.*
[97] A127, Judicial Affidavit of Ms. Nimpa H. Reyes dated September 7, 2022, Docket – Vol. I, p. 129.
[98] Exhibit "P-22", Compliance folder.
[99] Comment, Docket – Vol. II, p. 780.
[100] *Id.*

petitioner's business permit as a manufacturer *vis-à-vis* the provision of Section 45 of Municipal Ordinance No. 66, they discovered that there is fraud in its application due to the sudden change of petitioner's nature of business from general engineering contractor to manufacturer in 2012.[101]

Municipal respondents also objected to the issuance of the writ on the ground that the Letters of Assessment that were issued to petitioner have legal bases because Municipal Ordinance No. 67 cannot amend nor repeal Municipal Ordinance No. 66 for lack of review and approval by the Sangguniang Panlalawigan.[102] Municipal respondents assailed the validity of Municipal Ordinance No. 67 as it is not a duly enacted law, for it did not undergo a public hearing and was not published in a newspaper of general circulation.[103] As such, their deficiency assessment against petitioner is based on Chapter III, Article K, Section 45(2)(e)(1)(1.3.2)[104] of Municipal Ordinance No. 66.

In the assailed Order, respondent Judge denied the writ of a preliminary injunction because it found that municipal respondents properly classified petitioner as a contractor under Republic Act (RA) No. 7942[105] and that Municipal Ordinance No. 67 did not repeal Municipal Ordinance No. 66 as the former was not published.[106]

---

[101] Pars. 31-34, Comment, Docket – Vol. II, p. 785.
[102] *Supra*, note 2, p. 96.
[103] Comment, Docket – Vol. II, pp. 775, 783-784.
[104] Annex "1", Comment, Docket – Vol. II, p. 831. Chapter III, Article K, Section 45(2)(e)(1)(1.3.2) provides:
e. On contractors or business establishment principally rendering or offering/renders services.

PARTICULARS	MPF	ESPF	SF	RMF
1. General Engineering Contractors, Building, Road, etcetera	...	...	...	...
...	...	...	...	...
1.3. Mining Tenement Area				
...	...	...	...	...
1.3.2. Large Scale	2,000.00/ Hectare	120.00/ Hectare	40.00/ Hectare	40.00/ Hectare

[105] Philippine Mining Act of 1995, March 3, 1995.
[106] Order, Docket – Vol. I, pp. 101-102.

The function of the writ of preliminary injunction was not to determine the merits of the case,[107] or to decide controverted facts,[108] because an interlocutory injunction was but a preliminary and preparatory order that still looked to a future final hearing, and, although contemplating what the result of that hearing would be, it should not settle what the result should be.[109] Its sole objective is to preserve the status *quo* until the merits can be heard.[110]

In this case, the status *quo* that is sought to be preserved is petitioner's status as a manufacturer for business tax purposes and the continuation of its operations as such, pending the determination of whether it is correctly classified as a general contractor by municipal respondents and, consequently, whether the assessment notices which resulted to an assessment of deficiency business taxes against petitioner should be upheld.

It is settled that a writ of preliminary injunction is issued "*before* [the parties'] claims can be thoroughly studied and adjudicated."[111] This is, however, without prejudice to a more thorough examination of the prevailing laws, ordinances, and pertinent regulations, which may later establish the proper classification of petitioner but not through a summary hearing on the issuance of injunctive writ.[112]

As found by this Court in its Resolution dated February 10, 2023,[113] petitioner has a clear and unmistakable right to be protected; such invasion of the right is material, and there is an urgency for the writ to prevent serious and irreparable damage, *viz.*:

---

[107] *The City of Iloilo v. Hon. Honrado, et al.*, G.R. No. 160399, December 9, 2015, citing *B. W. Photo Utilities v. Republic Molding Corporation*, C. A. Cal., 280 F. 2d 806; *Duckworth v. James*, C. A. Va. 267 F. 2d 224; *Westinghouse Electric Corporation v. Free Sewing Machine, Co*, C. A III 256 F 2d 806.
[108] *Id.*, citing *Lonergan v. Crucible Steel Co. of America*, 229 N. E. 2d 536, 37 III. 2d 599; *Compton v. Paul K. Harding Realty Co.*, 231 N. E. 2d 267, 87 III. App. 2d 219.
[109] *Id.*, citing *Milton Frank Allen Publications, Inc. v. Georgia Association of Petroleum Retailers, Inc.*, 158 S. E. 2d 248, 223 Ga. 784; *Parker v. West View Cemetery Association*, 24 S. E. 2d 29, 195 Ga. 237.
[110] *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, G.R. No. 207938, October 11, 2017, citing *Rodulfa v. Alfonso*, G.R. No. L-144, February 28, 1946.
[111] *Tayag v. Lacson*, GR. No. 134971, March 25, 2004; *First Global Realty and Development Corporation v. San Agustin*, G.R. No. 144499, February 19, 2002.
[112] *DPWH v. City Advertising Ventures Corporation*, G.R. No. 182944, November 9, 2016.
[113] Resolution dated February 10, 2023, Docket – Vol. III, pp. 1188-1193.

<u>Petitioner has a clear and unmistakable right to be protected, which is directly threatened by an act sought to be enjoined.</u>

In the Letter of Assessment dated August 9, 2022, it states that additional business tax, Mayor's Permit Fees, including surcharge and penalties covering the period from CY 2013-2022 amounts to ₱397,697,014.93. Moreover, the failure to settle the subject amount would constrain the municipal respondents to ***cancel*** petitioner's Mayor's Permit or enforce the collection through distraint and levy or by judicial action.

In the Letter of Assessment dated August 23, 2022, municipal respondents reiterated the demand for immediate settlement of the subject assessment, otherwise, petitioner's Mayor Permit would be ***canceled*** and the collection of taxes through distraint and levy or judicial action will be commenced.

Based on the foregoing, it is clear that cancellation and non-renewal of the Mayor's Permit is based ***solely*** on the non-payment of the alleged subject deficiency assessment contained in the Letters of Assessment.

As earlier discussed, however, the evidence presented by the parties support a ***preliminary finding*** that the subject deficiency assessment was made in violation of petitioner's right to substantive and procedural due process. To reiterate, the assessment was made pursuant to the provisions of Municipal Ordinance No. 66, which has been repealed by Municipal Ordinance No. 67. Moreover, the Court has noted patent errors in the issuance of the Letter of Authority, in violation of petitioner's right to due process.

Despite the presence of circumstances which cast doubt on the validity of the subject assessment, municipal respondents not only seek to enforce collection of the alleged deficiency assessment, it also intends to cancel petitioner's existing Mayor's Permit, and threatens the non-renewal thereof. Hence, there is no question that petitioner has a clear and unmistakable right to be protected from the action or inaction of the municipal respondents, on petitioner's application for business permits, pending the final determination of the validity of the subject deficiency assessment anchored on Municipal Ordinance No. 66.

The invasion of the right is material and substantial.

According to the petitioner, if the application of Chapter III, Article K, Section 45(2)(e)(1)(1.3.2) of Municipal Ordinance No. 66 is not enjoined, municipal respondents will continue assessing petitioner Mayor's Permit Fees and other regulatory fees as a contractor, based on the repealed provision of Municipal Ordinance No. 66.

As testified to by Nimpa H. Reyes, municipal respondents served upon petitioner, LTOM Form No. 10 – Final Notice Before Issuance of Warrant of Distraint and Levy dated November 11, 2022. In the subject letter, municipal respondents demand that petitioner settle Mayor's Permit Fees, including surcharges and penalties amounting to ₱401,454,015.12, and were threatened with the denial of its Mayor's Permit for 2023, if they fail to pay within five (5) days from notice.

In fact, Nimpa H. Reyes testified that as early as August 17, 2022, municipal respondents have already stated that if petitioners protest the subject assessment and wins the case, they will file an appeal. Thereafter, during the pendency of the case, and petitioner still fails to pay taxes as a contractor, they will padlock petitioner for lack of business permit.

Clearly, the foregoing shows that the issuance of business permits in favor of petitioner is being withheld solely on the basis of non-payment of deficiency assessments, which is in turn anchored on the repealed provisions of Municipal Ordinance No. 66.

There is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.

According to petitioner, without a writ of preliminary injunction, it will not be issued a business permit, despite the pendency of the case questioning the validity of the subject assessment. As a result, the regular and normal operation of its business and offices, for the performance and accomplishment of its undertakings for the Tampakan Project will be prevented, obstructed, and impeded in the same manner as when the Municipality of Tampakan padlocked and closed down petitioner's premises on September 15, 2022, despite the status quo ante order of Branch 43 of the

RTC of Koronadal City, South Cotabato, where the case is pending.

The business permit is needed so that petitioner will be able to perform its regularly scheduled activities under its DENR-approved Three-Year Development/Utilization Work Program 2021-2023 for the Tampakan Project pursuant to its Financial and Technical Assistance Agreement (FTAA) with the Philippine Government, which will expire on March 22, 2038. This is particularly important considering the lifting of the ban on open pit mining for copper and gold on December 2021.

Petitioner stresses that the delay in the performance of petitioner's 2021-2023 Three-Year Development/Utilization Work Program would gravely jeopardize the Tampakan Project not only to the damage and prejudice of petitioner, but also the Philippine Government and the local communities.

In addition, petitioner asserts that if the revocation or non-issuance of business permits as a manufacturer is not enjoined pending the final resolution of petitioner's appeal in Civil Case No. 2417-43, there would be a cloud over its reputation, goodwill, and credibility to follow through with its undertakings for the Tampakan Copper-Gold Project, and petitioner would be perceived as untrustworthy by its investors and other stakeholders. Worse, such damage would be difficult, if not impossible to repair, even if the courts finally rule in petitioner's favor.

Moreover, petitioner's Tenements and Permitting Superintendent, Evangeline B. Toralba, avers that municipal respondents' refusal to issue a business permit, prevents petitioner from being able to provide benefits to the ICCs/IPs, which were agreed upon in the duly executed Free Prior and Informed Consent – Memorandum of Agreement, in relation to the ICCs/IPs consent for the development and operation of the Tampakan Project within their ancestral domain lands. In turn, this will undermine the trust and relationship that petitioner has forged with the indigenous communities that took several years to establish. Moreover, this will damage petitioner's business reputation in the business community and the general public.

Finally, according to petitioner's Contracts and Legal Supervisor, Joanna Kim A. Ong, the revocation or non-issuance of petitioner's business permit as a manufacturer, pending the final resolution of the Petition for Certiorari in CTA AC No. 274, would result in the cessation of petitioner's scheduled activities for the Tampakan Copper-Gold Project,

> thereby affecting its commercial contracts with various service providers.
>
> To the mind of this Court, the foregoing considerations sufficiently show that serious and irreparable damage will be caused by the municipal respondents' withholding of a business permit, pending final determination of the case. There being an urgent and paramount necessity to enjoin the application of Chapter III, Article K, Section 45(2)(e)(1)(1.3.2) of Municipal Ordinance No. 66, a writ of preliminary injunction against the respondents is warranted, pending final determination of the case on the merits. (*Emphasis on the original*)

Petitioner will stand to suffer irreparable injury through the enforcement of collection to be done by municipal respondents by virtue of a repealed Municipal Ordinance No. 66. Petitioner was also able to show that it was re-classified and was assessed business taxes as a manufacturer, as evidenced by Tax Due Worksheets for 2012 to 2022,[114] and was issued business permits as a manufacturer from 2012 to 2023.[115]

Petitioner cannot be deprived of its right without due process. Municipal respondents applied retroactively the repealed provisions of Municipal Ordinance No. 66 by disregarding the procedure for assessment. Petitioner also alleges that the examination of its books was for multiple taxable periods contrary to Article 259 (c)[116] of Administrative Order No. 270,[117] and it was assessed beyond the five-year prescriptive period under Section 194[118] of the LGC. Municipal respondents failed to refute said allegations.

---

[114] Exhibits "P-13" to "P-13-I", Compliance folder.

[115] Exhibits "P-15" to "P-15-J", Business Permits dated July 2, 2012, valid up to March 31, 2022, Compliance folder.

[116] ARTICLE 259. *Examination of Books of Accounts and Pertinent Records of Businessmen.* — …

(c) The examination shall be made during regular business hours not oftener than once a year for every tax period, which shall be the year immediately preceding the examination, and shall be certified by the examining official. Such certification shall be made of record in the books of accounts of the taxpayer examined.

[117] Administrative Order No. 270 – Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991.

[118] SEC. 194. *Periods of Assessment and Collection.* - (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: Provided, That. taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.

(b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.

Be as it may, the glaring situation is that petitioner was reclassified and confirmed as a manufacturer by municipal respondents for ten years. A sudden 360-degree turn made by municipal respondents without regard to the due process safeguards, changing their position after a decade, will result in deficiency assessments in substantial amounts that are prejudicial and detrimental to petitioner, as can be seen in this case.

As previously found by the Court, the collection of the alleged deficiency assessments would cause undue injury to petitioner. It is not disputed that petitioner entered into an FTAA with the government enabling the former to explore, develop, and commercially exploit the mineral deposits under the Tampakan Project and that petitioner obtained business permits from municipal respondents since 2008 to perform said activities.

Also, it was established that the operations of the Tampakan Project under the FTAA were already ongoing at the time of the respondent Judge's denial of the writ of preliminary injunction. Furthermore, any damage that petitioner could sustain from the collection of business permits is not purely economic and is incapable of pecuniary estimation.[119]

All things considered, petitioner has shown that revoking its business permit would result in grave damage as it could lead to its closure, depriving petitioner and the government mining revenues under the FTAA. As we have stated above, the validity of the deficiency assessment notices is still subject to determination in the lower court. More, there is no question that petitioner has been operating the Tampakan Project and was classified as a manufacturer since 2012, with municipal respondents' assent, before and during the institution of the *Petition*. Revoking petitioner's business permit now due to a reclassification of its status after ten years of assenting to its "manufacturer" classification would alter the status *quo* to petitioner's detriment.[120]

---

[119] A30, Judicial Affidavit of Ms. Nimpa H. Reyes dated November 17, 2022, Docket – Vol. I, pp. 109-110.
[120] See *First Global Realty and Development Corporation v. San Agustin*, G.R. No. 144499, February 19, 2002.

The Court finds that the denial of the writ of preliminary injunction amounted to the prejudgment of the merits of the case, which the RTC cannot do in a hearing for a preliminary injunction. In declaring that Municipal Ordinance No. 67 is invalid, respondent Judge went beyond the issue of whether a writ of preliminary injunction may be issued. Said declaration touched on the merits of the main case, which remains to be decided after proper presentation and admission of evidence. In our view, it was premature for respondent Judge to declare that Municipal Ordinance No. 67 was invalid as this matter should be decided after appropriate proceedings.

Moreover, the Court is guided by the well-entrenched rule that the courts accord the presumption of constitutionality[121] and validity[122] to legislative enactments, including municipal ordinances;[123] hence, it cannot be collaterally attacked.[124] This presumption may be set aside only when the invalidity or unreasonableness appears on the face of the ordinance or is established by proper evidence. The burden to prove the municipal ordinance's invalidity rests upon the party or parties challenging the same, [125] which are the municipal respondents in this case.

In *Executive Secretary v. Forerunner Multi Resources, Inc.*,[126] the Supreme Court explained that a clear legal right that would entitle the applicant to an injunctive writ contemplates a right "clearly founded in or granted by law."

Here, petitioner had in its favor a certified true copy of Municipal Ordinance No. 67[127] repealing the sections of Municipal Ordinance No. 66 that municipal respondents used as a basis in petitioner's deficiency assessments.

---

[121] *Municipality of San Mateo, Isabela, et al. v. Smart Communications, Inc.*, G.R. No. 219506, June 23, 2021.
[122] *Bernardez, Jr. v. The City Government of Baguio, et al.*, G.R. No. 197559, March 21, 2022, citing *Palencia v. People*, G.R. No. 219560, July 1, 2020.
[123] *Municipality of San Mateo, Isabela, et al. v. Smart Communications, Inc.*, G.R. No. 219506, June 23, 2021.
[124] *Bernardez, Jr. v. The City Government of Baguio, et al.*, G.R. No. 197559, March 21, 2022; *San Miguel Brewery, Inc. v. Magno*, G.R. No. L-21879, September 29, 1967.
[125] *Id.*
[126] G.R. No. 199324, January 7, 2013.
[127] Exhibit "P-59", Compliance folder.

In the absence of any irregularities on its face or the presentation of proper evidence made by municipal respondents to assail the validity of Municipal Ordinance No. 67, the Court will sustain the validity of the said ordinance without prejudice to the final determination of the case.

When respondent Judge was confronted with petitioner's prayer for injunctive relief, all that petitioner needed to prove was a right ostensibly in existence.[128] This right has existed for over a decade under Municipal Ordinance No. 67, which petitioner relied on until municipal respondents collaterally attacked its validity during the hearing for preliminary injunction in the main case.

Petitioner has demonstrated a clear right threatened by the enforcement of the collection of deficiency assessment. Petitioner has shown, to the satisfaction of this Court, that it would be severely damaged once the collection is pursued and that any action under the assessment in question will force it to close down its operations to its detriment and the government's.

This, to us, is sufficient to entitle petitioner to a preliminary injunction to enjoin municipal respondents from collecting the deficiency taxes under the letters of assessment during the pendency of the main petition.

All told, the Court finds merit in the petition and holds that respondent Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Order denying petitioner's application for the writ of preliminary injunction.

WHEREFORE, the *Petition for Certiorari* is **PARTIALLY GRANTED**. The Order dated October 14, 2022, issued by the Regional Trial Court (RTC), Branch 43, Koronadal City, South Cotabato, in Civil Case No. 2417-43, is **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion.

---

[128] *DPWH v. City Advertising Ventures Corporation*, G.R. No. 182944, November 9, 2016.

On the other hand, the Resolution dated September 29, 2022, issued by the RTC, is **REINSTATED** insofar as it enjoined the municipal respondents, their representatives, agents, and/or any other persons acting on their behalf from implementing the assessment against petitioner amounting to ₱397,697,014.93, subject to the posting of the appropriate bond to be determined by the RTC, until the *Petition for Review* in Civil Case No. 2417-43 shall have been resolved with finality.

Accordingly, the municipal respondents, their representatives, agents, and/or any other persons acting on their behalf are **ORDERED** to issue petitioner with the necessary business permit to operate as a manufacturer effective April 1, 2022 until December 31, 2022.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

(With Separate Opinion)
JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Special Second Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

SAGITTARIUS MINES, INC.,
Petitioner,

- versus -

HON. GERARDO C. BRAGANZA, in his capacity as Presiding Judge of the Regional Trial Court, Branch 43, Koronadal City, South Cotabato, MUNICIPALITY OF TAMPAKAN, SOUTH COTABATO, and OFFICE OF THE MUNICIPAL TREASURER OF TAMPAKAN, SOUTH COTABATO,
Respondents.

CTA Case No. SCA-0003
(formerly: CTA No. AC-274)

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
AUG 10 2023
4:30 p.m.

x - x

SEPARATE OPINION

BACORRO-VILLENA, J.:

I concur with the *ponencia* of my esteemed colleague Associate Justice Lanee S. Cui-David in ruling that this Court has jurisdiction over the instant petition for *certiorari* under Rule 65 of the Rules of Court, as amended[1], but on a slightly different ground after taking into consideration that respondent Judge Gerardo C. Braganza's (**Judge Braganza**'s) assailed Order dated 14 October 2022 (**assailed Order**) involves both "**local taxes**" and "**regulatory fees**" and there is a need to distinguish between these impositions of the local government of respondent Municipality of Tampakan, South Cotabato, since the Court of Tax Appeals (**CTA**) is a court of special and limited jurisdiction.

[1] A.M. No. 19-10-20-SC or the 2019 Amendments to the 1997 Rules of Civil Procedure.

With due respect, I wish to point out that respondent Judge Braganza's assailed Order ostensibly covers **two (2) different exactions** of respondent Municipality of Tampakan, South Cotabato, particularly: (1) **local tax** (*i.e.*, deficiency local business tax [**LBT**] of ₱2,696.53 for the taxable years [**TYs**] 2020 to 2022); and, (2) **regulatory fees** (*i.e.*, deficiency Mayor's Permit fees and other regulatory fees of ₱397,694,318.40 for TYs 2013 to 2022).

It bears stressing that the CTA's *certiorari* power to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Regional Trial Court (**RTC**) in issuing an interlocutory order, such as the assailed Order in this case, is limited only to those cases falling within its exclusive appellate jurisdiction. Relevantly, as held in *Teresa R. Ignacio v. Office of the City Treasurer of Quezon City, et al.*[2], the appellate jurisdiction of the CTA over decisions, orders, or resolutions of the RTC, as provided in Section 7(a)(3)[3] of Republic Act (**RA**) No. 1125[4], as amended, becomes operative when the latter has ruled on a local tax case, *i.e.*, one which is in the nature of a tax case or which primarily involves a tax issue.

In this case, to ascertain whether this Court has the authority to determine whether there has been grave abuse of discretion on the part of respondent Judge Braganza in denying petitioner's application for a writ of preliminary injunction (**WPI**) which, in effect, prejudged the merits of petitioner's Petition for Review against municipal respondents' deficiency assessments for LBT, Mayor's Permit fees and other regulatory fees, it is first necessary to distinguish 'taxes' and 'business permits and other regulatory fees' from one another.

In the recent case of *Bases Conversion and Development Authority and John Hay Management Corporation v. City Government of Baguio City*[5] (**BCDA**), citing *Manila Electric Company v. El Auditor General y La Comision de Servicios Publicos*[6], the Supreme Court defined "taxes" as an enforced contribution of money or other property assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state, on

---

[2] G.R. No. 221620, 11 September 2017.

[3] SEC. 7. *Jurisdiction*. — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
...
(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[.] (Emphasis supplied)

[4] AN ACT CREATING THE COURT OF TAX APPEALS.

[5] G.R. No. 192694, 22 February 2023.

[6] G.R. No. 47368, 25 August 1941.

persons or property within its jurisdiction, for the purpose of defraying the public expenses or a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or state, burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes. Meanwhile, it defined "fees" as a reward or compensation allowed by law to an officer for specific services performed by him in the discharge of his official duties, a sum certain given for a particular service, the sum prescribed by law as charge for services rendered by public officers.

In *City of Progressive Development Corporation vs. Quezon City*[7], the Supreme Court distinguished 'tax' from a 'license or permit fee' in this wise:

> ...
>
> **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.**
>
> 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.
>
> ...

7 G.R. No. 36081, 24 April 1989; Italics in the original text and emphasis supplied.

In *City of Cagayan De Oro v. Cagayan Electric & Light Co., Inc. (CEPALCO)*[8], the Supreme Court affirmed the foregoing distinction between 'taxes' and 'fees', *viz*:

> ...
>
> The term 'taxes' has been defined by case law as 'the enforced proportional contributions from persons and property levied by the state for the support of government and for all public needs.' While, under the Local Government Code, a 'fee' is defined as 'any charge fixed by law or ordinance for the regulation or inspection of a business or activity.'
>
> From the foregoing jurisprudential and statutory definitions, it can be gleaned that **the purpose of an imposition will determine its nature as either a tax or a fee. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. Stated otherwise, if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.**
>
> ...

Further, in *BCDA*, the Supreme Court ruled that the test to determine if an exaction is a 'fee' or a 'tax' is the purpose of its collection vis-à-vis the cost of regulation, to wit:

> ...
>
> **Therefore, as a test to determine if an exaction is a fee or a tax, one must look into the purpose of its collection.** If the exaction is made to raise revenue for the government to discharge its principal functions, the exaction is a tax. **If the exaction is primarily regulatory, it is a fee, even if it incidentally raises revenue, as long as the revenue generated does not exceed the cost of regulation. If the revenue exceeds the regulatory costs, it is a tax.**[9]
>
> ...

Based on the foregoing, it can be deduced that the purpose of an imposition will determine its nature as either a tax or a fee. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though

---

8 G.R. No. 224825, 17 October 2018; Emphasis supplied.
9 Emphasis supplied.

revenue is incidentally generated. However, if such incidental revenue exceeds the regulatory costs, it may be treated as a tax.

It is settled that the CTA, being a court of special and limited jurisdiction, can only take cognizance of matters which are clearly within its jurisdiction. Since the CTA's appellate jurisdiction over decisions, orders, or resolutions of the RTC only covers local tax cases, which clearly does not include regulatory fees based on the above-noted distinctions, it is without jurisdiction to rule on the validity of an assessment of regulatory fees, unless the same may be treated as taxes.

In this case, the deficiency Mayor's Permit fees and other regulatory fees of **₱397,694,318.40**[10], which accounts for 99.9993% of the entire deficiency assessment of ₱397,697,014.93, consists of the following fees fixed under Section 45(2)(e), Article K of Municipal Ordinance No. 66[11], otherwise known as "The Tax Code of 2012", for a contractor or business establishment principally rendering or offering services in a large scale mining tenement area: (1) Mayor's Permit Fee (**MPF**) at ₱2,000.00/ha; (2) Educational Support Program Fee (**ESPF**) at ₱120.00/ha, Security Fee (**SF**) at ₱40.00/ha; and, (4) Road Maintenance Fee (**RMF**) at ₱40.00/ha, detailed and re-computed as follows:

Year	Land Area (ha)	MPF ₱2,000.00/ha	ESPF ₱120.00/ha	SF ₱40.00/ha	RMF ₱40.00/ha	Fees & Other Charges Due	Amount Paid	Deficiency Fees & Other Charges Due	Surcharge 25%	Interest 2% per mo. (Max. of 72%)	Total Amount Due
		[a]	[b]	[c]	[d]	[e] = Sum of [a] to [d]	[f]	[g] = [e] - [f]	[h]	[i]	[j] = Sum of [g] to [i]
2013	9,494.70	₱18,989,400.00	₱1,139,364.00	₱379,788.00	₱379,788.00	₱20,888,340.00	₱640.00	₱20,887,700.00	₱5,221,925.00	₱15,039,144.00	₱41,148,769.00
2014	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	640.00	20,887,700.00	5,221,925.00	15,039,144.00	41,148,769.00
2015	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	1,136.00	20,887,204.00	5,221,801.00	15,038,786.88	41,147,791.88
2016	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	1,136.00	20,887,204.00	5,221,801.00	15,038,786.88	41,147,791.88
2017	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	1,136.00	20,887,204.00	5,221,801.00	15,038,786.88	41,147,791.88
2018	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	1,136.00	20,887,204.00	5,221,801.00	15,038,786.88	41,147,791.88
2019	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	1,136.00	20,887,204.00	5,221,801.00	15,038,786.88	41,147,791.88
2020	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	1,136.00	20,887,204.00	5,221,801.00	15,038,786.88	41,147,791.88
2021	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	1,136.00	20,887,204.00	5,221,801.00	15,038,786.88	41,147,791.88
2022	9,494.70	18,989,400.00	1,139,364.00	379,788.00	379,788.00	20,888,340.00	1,136.00	20,887,204.00	5,221,801.00	1,253,232.24	27,362,237.24
Total		₱189,894,000.00	₱11,393,640.00	₱3,797,880.00	₱3,797,880.00	₱208,883,400.00	₱10,368.00	₱208,873,032.00	₱52,218,258.00	₱136,603,028.40	₱397,694,318.40

As regards the purpose of the above-mentioned fees, respondent Municipality of Tampakan, South Cotabato, imposed the same in the exercise of police power primarily for purposes of regulation or inspection of a business or activity. Based solely on the purpose of the imposition, these

10 *See* Tax Data and Assessment Form for Mayor's Permit attached to the Letter of Assessment (First Notice), Exhibit "P-1", Compliance Folder.
11 Exhibit "P-21", Compliance Folder.

fees are *not* in the nature of local taxes and, instead, should be properly categorized as regulatory fees.

However, considering the method in which the above-mentioned fees are computed, *i.e.*, at a fixed amount *per* land area, and the resulting amount of the fees relative to the cost of regulation, inspection and licensing, it appears that the amount of fees and other charges sought to be collected is disproportionate to and, in fact, far exceeds the regulatory costs. On this score, the subject "fees" may be treated as taxes.

Having established that the deficiency Mayor's Permit fees and other regulatory fees of **₱397,694,318.40** may be properly classified as "taxes" and since the remainder of the deficiency assessment pertains to deficiency LBT of **₱2,696.53**[12], which is clearly a local tax, the instant petition for *certiorari* assailing respondent Judge Braganza's interlocutory order is properly classified as a "local tax case" within the purview of the CTA's jurisdiction.

A contrary ruling wherein the subject "fees" are to be categorized strictly as regulatory fees will result in a split-jurisdiction situation (*i.e.*, the LBT component is filed with the CTA and the regulatory fees component with the Court of Appeals [**CA**]), which is denounced for being inimical to the effective and efficient functioning of the courts, and will frustrate the ends of justice as the period to file a separate petition for *certiorari* (as to the regulatory fees component) before the CA has already lapsed at this point and this Court has already issued a suspension order in favor of petitioner.

All told, I vote to **PARTIALLY GRANT** petitioner Sagittarius Mines, Inc.'s Petition for *Certiorari*, **ANNUL** and **SET ASIDE** respondent Judge Braganza's assailed Order, **ENJOIN** municipal respondents from implementing the deficiency assessment until the final resolution of the Petition for Review before the lower court, and **ORDER** municipal respondents to issue petitioner's business permit to operate as a "manufacturer" effective 01 April 2022 to 31 December 2022.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[12] *See* Tax Data and Assessment Form for Business Permit attached to the Letter of Assessment (First Notice), Exhibit "P-1", Compliance Folder.