REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MARIETTA A. BONDAD, in her capacity as Municipal Treasurer of the Municipality of Mankayan, Benguet and DONALD DAGANOS, in his capacity as Municipal Assessor of the Municipality of Mankayan, Benguet,
Petitioners,

- versus -

LEPANTO CONSOLIDATED MINING COMPANY (LCMC),
Respondent.

CTA EB NO. 1316
(CTA AC No. 107)

Members:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:
JUL 25 2017 3:41 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioners' Motion for Reconsideration filed through registered mail on March 23, 2017, with respondent's Comment thereon filed on June 1, 2017.

Petitioners seek reconsideration of the Court *En Banc's* Decision promulgated on February 13, 2017, the dispositive portion of which states:

> "**WHEREFORE**, in view of the foregoing, the Petition for Review is **PARTIALLY GRANTED**. The case is **REMANDED** to the Regional Trial Court Branch 64 of Abatan, Buguias, Benguet for its proper disposition of the case, particularly to conduct further proceedings to give the parties an opportunity to litigate the factual issue of whether LCMC had made export sales and to eventually determine whether based on the evidence to be presented by the parties, LCMC is indeed entitled to the 50% preferential tax rate

prescribed under Section 143(c) of the LGC for taxable years 2011 and 2012.

SO ORDERED."

Petitioners' Arguments

In their Motion, petitioners assail the Court *En Banc's* pronouncement that the term *"exporter"* in Section 143(c) of the Local Government Code (LGC) is not limited by the phrase *"essential commodities"* and that the legislative intent is clear in giving preferential tax rate *"on exporters"* apart from *"manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities"*. Petitioners also question the order to remand the case to the Regional Trial Court (RTC) Branch 64 of Abatan, Buguias, Benguet for the conduct of further proceedings to give the parties an opportunity to litigate the factual issue of whether respondent had made export sales and to eventually determine whether based on the evidence to be presented by the parties, respondent is indeed entitled to the 50% preferential tax rate prescribed under Section 143(c) of the LGC for taxable years 2011 and 2012. Petitioners move that the *Court En Banc* make a declaration that respondent is not entitled to the 50% preferential tax rate on business tax prescribed under Section 143(c) of the LGC.

Petitioners contend that Section 143(c) of the LGC involves only one type of taxpayer and nowhere in said provision was there mentioned *"exporter of minerals"* to make respondent entitled to the 50% preferential tax rate. Petitioners requested the Court *En Banc* to consider the discussion in Ruben E. Agpalo's book Statutory Construction (6th Edition, 2009) where the word *"and"* is defined, among others, as a conjunction used to denote a joiner or union, and it does not mean *"or"*. As applied in this case, petitioners contend that the word *"or"* operates to disassociate *"on exporters"* on one hand from "*on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities"* on the other hand. Petitioners insist that the preferential tax rate contained in Section 143(c) of the LGC pertains to (1) Exporters of essential commodities", and (2) Manufacturers, millers, producers, wholesalers, distributors, dealers, or retailers of essential commodities.

Petitioners further argue that since respondent failed to prove its export sales for the years 2011 and 2012, respondent is not entitled to the 50% preferential tax rate on business tax. They assert that respondent had all the opportunity to prove that it exported gold, copper, and silver but failed to do so. Thus, respondent is deemed to have waived its right to present documentary evidence to prove its export sales for the years 2011 and 2012. In this regard, petitioners argue that remanding the case to the RTC will only delay the resolution of the case which is prejudicial to the Municipality of Mankayan as the latter will not be able to collect business tax from respondent during its pendency.

Respondent's Counter-Arguments

In its Comment, respondent counter-argues that it need not prove its export sales for 2011 and 2012 as the parties proceeded with the understanding that only a question of law is involved in this case. As a consequence, no trial occurred in the RTC which could have given them the opportunity to adduce evidence. Respondent asserts that by agreeing that only a question of law is involved in the case, petitioners are deemed to have admitted the factual allegations in its Petition before the RTC, including the export sales it made in 2011 and 2012, thus, petitioners are estopped to claim otherwise.

Respondent further contends that petitioners never disputed in all their pleadings the fact that it is an exporter, and their arguments revolved around the theory that respondent is not entitled to the preferential tax rate for not being an exporter of essential commodities.

Respondent also finds no merit in petitioners' arguments that the Court erred in concluding that the term "exporters" in Section 143(c) of the LGC contemplates all kinds of export sales and is not limited to exporters of essential commodities, and finds the Court rationalization on this point to be correct.

THE COURT EN BANC'S RULING

The Motion for Reconsideration must fail.

The arguments raised by petitioners in their Motion for Reconsideration relative to the correct construction or interpretation of Section 143(c) of the LGC are mere rehash or amplification of their previous arguments in their Petition for Review, which have been duly considered and adequately discussed on *pages 7 to 9* of the assailed Decision.

With respect to petitioners' contention that respondent is deemed to have waived its right to present documentary evidence to prove its export sales for the years 2011 and 2012 and as a consequence, respondent is not entitled to the 50% preferential tax rate on business tax, the same is bereft of merit.

Suffice it to say that respondent's right to present evidence may not be considered as "deemed waived" since both parties were in agreement during the pre-trial stage in the RTC level that the issue involves a mere question of law.[1] Had there been no such stipulation, the presentation by respondent of its evidence would have accordingly proceeded as its Trial Brief[2] clearly shows the intention to do so. Truth to tell, respondent has even indicated in its Pre-Trial Brief a reservation of its right to mark additional documents as may be necessary in the course of the trial.[3] While the RTC correctly construed Section 143(c) of the LGC, it nonetheless mistakenly concluded that respondent is entitled to the preferential tax rate of 50% prescribed under Section 143(c) of the LGC as an exporter of gold, copper and silver *sans* evidence to support a finding that respondent made an export sales including the amount of gross sales/receipts derived from such export sales for 2011 and 2012. The Court *En Banc* could not simply affirm the conclusion of the RTC without any evidence in support thereof; thus, the remand of the case to the RTC is warranted to litigate the factual issue of the case.

All told, the Court *En Banc* sees no cogent reason to disturb, much more to reverse, the assailed Decision.

WHEREFORE, petitioners' Motion for Reconsideration assailing the Court *En Banc's* February 13, 2017 Decision is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] Transcript Pre-trial Conference, October 24, 2012, RTC TSN folder, pp. 5-7.
[2] Pre-Trial Brief of Lepanto Consolidated Mining Company, RTC Records, pp. 77-80.
[3] *Id*, RTC Records, p. 79.

WE CONCUR:

I join the Concurring and Dissenting Opinion of Justice Mindaro-Grulla

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(I maintain my Concurring & Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice