REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NLEX CORPORATION (FORMERLY MANILA NORTH TOLLWAYS CORPORATION, AS THE SURVIVING CORPORATION AND HAS ABSORBED TOLLWAYS MANAGEMENT CORPORATION),
Petitioner,

CTA AC NO. 217

Members:

CASTAÑEDA, JR., Chairperson, *and*
BACORRO-VILLENA, *JJ.*

- versus -

MUNICIPALITY OF GUIGUINTO, BULACAN AND HON. GUILLERMA DL. GARRIDO, IN HER CAPACITY AS THE OIC-MUNICIPAL TREASURER OF GUIGUINTO, BULACAN,
Respondents.

Promulgated:

JUL 13 2020

4:20 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

In this Petition for Review, petitioner seeks to reverse and set aside the decision of the lower court and annul the local business tax imposed by respondent.

For easy reference, the dispositive portion of the assailed decision reads:

> "Wherefore, all premises considered, the complaint is hereby dismissed.
>
> Plaintiff is directed to pay defendant Municipality of Guiginto, Bulacan, local business taxes in the amount of P4,169,697.36 and mayor's permit and other regulatory fees in the sum of P72,262.35 for the year 2005 to 2007 as contained in the Notice of Assessment dated April 3, 2009 plus surcharged penalties until fully paid.
>
> SO ORDERED."[1]

THE FACTS

Petitioner alleges that it is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at NLEX Compound, Balintawak, Caloocan City.[2]

On the other hand, respondent Municipality of Guiguinto, Bulacan is a local government unit. Meanwhile, respondent Gullerma DL Garrido is impleaded in her capacity as the OIC-Municipal Treasurer of respondent municipality.[3]

Petitioner further alleges that in April 1998, the Manila North Tollways Corporation (MNTC), the Philippine National Construction Corporation and the Republic of the Philippines through the Toll Regulatory Board, entered into as Supplemental Toll Operation Agreement. Said Agreement granted MNTC the concession to finance, design, rehabilitate, expand, operate and maintain the North Luzon Expressway. Further, it granted MNTC the authority to appoint

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[1] Decision, Docket, p. 45.
[2] Par. 2, Parties, Petition for Review, Docket, p. 9.
[3] Pars. 3-4, Parties, Petition for Review, Docket, p. 9.

an Operation and Maintenance Contractor to undertake any aspect of defined operation and maintenance for a fixed service fee.[4]

Pursuant thereto, MNTC entered into an Operation and Management Agreement with Tollways Management Corporation (TMC).[5]

On April 3, 2009, TMC received the subject local business tax and regulatory fees assessments from respondents, requiring it to pay the total amount of Four Million One Hundred Sixty-Nine Thousand Six Hundred Ninety-Seven and 36/100 Pesos (P4,169,697.36), among others.[6]

On May 28, 2009,[7] TMC filed its written protest. On June 18, 2009,[8] plaintiff received the denial of its protest.

On July 29, 2009, TMC filed a complaint with the lower court. Meanwhile, on November 29, 2018, the SEC issued a Certificate of Filing of the Articles and Plan of Merger between petitioner NLEX Corporation and TMC.[9]

On January 8, 2019,[10] petitioner received the assailed Decision. Thus, on February 7, 2019, petitioner filed the instant Petition.

In their Comment on the Petition for Review,[11] respondents assert that petitioner is maintaining a branch, sales or a project office within the municipality. Further, they assert that their method of computation of petitioner's alleged liabilities has legal basis.

On April 1, 2019, petitioner filed its Reply.[12]

On April 3, 2019, the Court issued a Resolution[13] requiring the parties to submit their respective memoranda. On June 7, 2019,

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[4] Par. 8, Statement of Facts, Petition for Review, Docket, p. 10.
[5] Par. 10, Statement of Facts, Petition for Review, Docket, p. 10.
[6] Par. 11, Statement of Facts, Petition for Review, Docket, p. 10.
[7] Par. 12, Decision, Docket, p. 29.
[8] Par. 15, Decision, Docket, p. 30.
[9] Pars. 18-19, Statement of Facts, Petition for Review, Docket, p. 11.
[10] Docket, p. 28.
[11] Docket, pp. 84-93.
[12] Docket, pp. 101-112.
[13] Docket, pp. 115-116.

petitioner filed its Memorandum.[14] On the other hand, respondents failed to file the same.[15]

On July 15, 2019,[16] the Court issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUE

The core issue to be resolved by the Court is whether petitioner is liable for local business tax and regulatory fees.

THE RULING

The Court partially grants the petition.

Petitioner maintains a branch or sales office within the Municipality of Guiguinto, Bulacan

In ruling that petitioner maintains a branch or sales office within the Municipality of Guiguinto, Bulacan, the lower court found that:

> "1. Plaintiff's Operation and Maintenance Activities
>
> In paragraph 23 of its Complaint, plaintiff admitted that '(T)he core of Plaintiff's business is the provision of operation and maintenance services to the clients, including MNTC, with respect to the operation and maintenance of NLEX. These services include planning, organizing, training, outsourcing, coordinating, employment and deployment of necessary personnel, collection of tolls, and procurement of materials for the repair and maintenance of roads, among others. xxx'
>
> Certainly, since the NLEX passes through defendant municipality, it is therefore operating

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[14] Docket, pp. 125-148.
[15] Records Verification, Docket, p. 151.
[16] Docket, p. 152.

therein, in addition to engaging in related business activities which is its own words, it states as 'xxx with respect to the operation and maintenance of NLEX. These services contemplate a multitude and procurement of materials for the repair and maintenance of roads, among others. xxx'

2. Factual Indicators

xxx xxx xxx

On the other hand, the ocular inspection conducted by a team of Guiguinto, Bulacan officials at plaintiff's Sta. Rita office shows that 'plaintiff is the actual user of the buildings located in Sta. Rita as well as other property office equipment, air conditioning unit, CCTV system, communication system, submersible water pump, generator set, overhead crane worth three million (P3,000,000.00), car lifter worth one million two hundred thousand (P1,200,000.00), access control system,' in addition to the fact, 'that it has a Traffic Control District Office, Engineering and Maintenance District Office, Motor Pool and Toll Road Patrol and Team Garage, Toll Road Maintenance Operation Office with Emergency Clinic with more than one hundred personnel therein assigned are factual indicators that plaintiff is indeed conducting business through its Sta. Rita Office.

Moreover, the number of personnel therein proves that the operations being conducted in this cite are necessary and advantageous to plaintiff's business, showing that this is a branch office, despite contrary claims of the latter. xxx"[17]

The above-findings of the lower court clearly show that petitioner is maintaining a branch or sales office within the subject municipality.

In this regard, Section 150(a) of the Local Government Code (LGC) provides: Jr

[17] Decision, Docket, pp. 42-43.

"**Section 150.** *Situs of the Tax.* –

(a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, **maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located**. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality."*(Emphasis supplied)*

Meanwhile, a branch or sales office is defined under Article 243(a)(2) of the Implementing Rules and Regulations (IRR) of the LGC, as follows:

"Article 243. *Situs of the Tax.* (a) Definition of Terms –

xxx xxx xxx

(2) Branch or Sales Office – a fixed place in a locality which conducts operations of the business as an extension of the principal office. xxx"

Taking into consideration the factual findings of the lower court in relation to the above-quoted provisions, the Court holds that petitioner maintains a branch or sales office within the subject municipality. Hence, any sales of said branches or outlets shall be subject to local business tax (LBT) under Section 150 of the LGC.

Respondent wrongfully computed petitioner's LBT based on kilometrage

In computing petitioner's LBT, respondent's municipal treasurer explained that:

> "Relative to the manner of computation, our office has no other way of computing your local business tax liability except on the basis of kilometrage (i.e., TMC's income divided by the total number of kilometers covered by NLEX multiplied by the number of kilometers of toll roads within the jurisdiction of Guiguinto, Bulacan) xxx"[18]

In other words, respondents computed petitioner's LBT based on its income from the Operation and Management Contract divided by the number of kilometers covered by NLEX, multiplied by the number of kilometers of toll roads within the municipality.

Based on the said Operation and Management Contract, petitioner is clearly a contractor, as defined under Section 131(h) of the LGC, to wit:

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

As a contractor, petitioner's LBT should be based on gross sales or receipts, as provided for under Section 143(e) of the LGC. Thus:

> "**Section 143.** *Tax on Business.* - The municipality may impose taxes on the following businesses:
>
> (e) On contractors and other independent contractors, in accordance with the following schedule:

[18] Annex D of the Petition for Review, Docket, p. 55.

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum"

In *Ericsson Telecommunications, Inc. v. City of Pasig*,[19] the Supreme Court explained that the imposition of LBT based on petitioner's gross revenue will result in the constitutionally proscribed double taxation, as follows:

> "The imposition of local business tax based on petitioner's gross revenue will inevitably result in the constitutionally proscribed double taxation – taxing of the same person twice by the same jurisdiction for the same thing – inasmuch as petitioner's revenue or income for a taxable year will definitely include its gross receipts already reported during the previous year and for which local business tax has already been paid.
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> Thus, respondent committed a palpable error when it assessed petitioner's local business tax based on its gross revenue as reported in its audited financial statements, as Section 143 of the Local Government Code and Section 22(e) of the Pasig Revenue Code clearly provide that the tax should be computed based on *gross receipts*."

It is also noteworthy that in *Manila North Tollways Corporation v. The Municipality of Guiguinto, Bulacan and Hon. Lualhati Narciso in her capacity as Municipal Treasurer of Guiguinto, Bulacan*,[20] this Court already had the occasion to rule that in case of contractors, the LBT should be based on gross receipts and not on gross revenues.

Here, it is clear that respondent's April 3, 2009 LBT assessment was based on petitioner's gross revenues and not on its gross receipts. Hence, the subject LBT is invalid.

The Court has no jurisdiction to rule on the validity of the regulatory fees

[19] G.R. No. 176667, November 22, 2007.
[20] CTA AC No. 82, penned by Associate Justice Esperanza R. Fabon-Victorino of the then CTA First Division, with Retired Presiding Justice Ernesto D. Acosta and Associate Erlinda P. Uy concurring.

With regard to respondents' exaction of regulatory fees, petitioner asserts that it is not liable to pay mayor's permit, business license and miscellaneous fees.

In *Smart Communications, Inc. v. Municipality of Malvar, Batangas,*[21] the issue involved is whether the fees exacted under Ordinance No. 18 on construction activities involving cell sites or telecommunication towers are regulatory in nature and not revenue raising. In ruling against petitioner, the Supreme Court explained that:

> "As clearly stated in its whereas clauses, the primary purpose of Ordinance No. 18 is to regulate the 'placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus' listed therein, which included Smart's telecommunications tower. Clearly, the purpose of the assailed Ordinance is to regulate the enumerated activities particularly related to the construction and maintenance of various structures. The fees in Ordinance No. 18 are not impositions on the building or structure itself; rather, they are impositions on the activity subject of government regulation, such as the installation and construction of the structures.
>
> Since the main purpose of Ordinance No. 18 is to regulate certain construction activities of the identified special projects, which included 'cell sites' or telecommunications towers, the fees imposed in Ordinance No. 18 are ***primarily regulatory in nature, and not primarily revenue-raising***. While the fees may contribute to the revenues of the Municipality, this effect is merely incidental. Thus, the fees imposed in Ordinance No. 18 are not taxes.
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> In *Progressive Development Corporation v. Quezon City*, the Court declared that 'if the 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.' Je

[21] G.R. No. 204429, February 18, 2014.

> In *Victorias Milling Co., Inc. v. Municipality of Victorias*, the Court reiterated that the purpose and effect of the imposition determine whether it is a tax or a fee, and that the lack of any standards for such imposition gives the presumption that the same is a tax.
>
> We accordingly say that the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee. The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. Thus, '[w]hen no police inspection, supervision, or regulation is provided, nor any standard set for the applicant to establish, or that he agrees to attain or maintain, but any and all persons engaged in the business designated, without qualification or hindrance, may come, and a license on payment of the stipulated sum will issue, to do business, subject to no prescribed rule of conduct and under no guardian eye, but according to the unrestrained judgment or fancy of the applicant and licensee, the presumption is strong that the power of taxation, and not the police power, is being exercised.'"

In the instant case, the mayor's permit, business license and miscellaneous fees are primarily regulatory in nature, and not primarily revenue-raising. In other words, such exactions are within the ambit of police power and not of taxation.

Meanwhile, the Court has exclusive appellate jurisdiction to review by appeal the decisions, orders or resolutions of the RTC in local tax cases originally decided or resolved by the RTC in the exercise of its original or appellate jurisdiction.[22] Considering that the impositions involved are regulatory fees, the Court has no jurisdiction over to rule upon the same.

To conclude, petitioner failed to prove that it has no branch or sales office within the municipality. At any rate, since the April 3, 2009 LBT assessment is based on gross revenues and not gross receipts, the cancellation of the same is in order. On the other hand, the Court has no jurisdiction to rule upon the validity of the imposition of the regulatory fees pursuant to the exclusive appellate jurisdiction of this Court. gr

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[22] Section 7(3) of Republic Act No. 9282.

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**, and the Decision of the Lower Court dated August 17, 2018 is **PARTIALLY REVERSED AND SET ASIDE**. Accordingly, the Local Business Tax Assessment in the amount of Four Million One Hundred Sixty Nine Thousand Six Hundred Ninety Seven and 36/100 (P4,169,697.36) is **CANCELLED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice