REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SEMIRARA MINING CORPORATION,
Petitioner,

- versus-

MUNICIPALITY OF CALACA BATANGAS and **MILAGROS V. TENORIO** in her capacity as **MUNICIPAL TREASURER**,
Respondent.

CTA AC CASE NO. 121

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

NOV 24 2015

3:20 p.m.

x- x

D E C I S I O N

COTANGCO-MANALASTAS, *J.:*

This is an appeal by way of a Petition for Review[1], filed by petitioner Semirara Mining Corporation from the Decision[2] dated May 28, 2014, rendered by Branch 148 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 07-180 entitled *Semirara Mining Corporation vs. Municipality of Calaca, Batangas and Milagros V. Tenorio in her Capacity as Municipal Treasurer of Calaca.*

The facts as found in the records of the case are as follows:

Petitioner is a duly organized and existing domestic corporation engaged in the coal mining business, with principal office in Makati City.[3]

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[1] Petition for Review (Appeal from a Decision of the Regional Trial Court), docket, pp. 5-56.
[2] RTC Records, pp. 1298-1314.
[3] Exhibit "A", RTC Records, pp. 744-756.

Respondent Municipality of Calaca, Batangas is a local government unit created under the law, with the capacity to sue and be sued; while respondent Milagros V. Tenorio ("Municipal Treasurer" for brevity) is impleaded in her official capacity as Municipal Treasurer of Calaca, Batangas.

On April 7, 1980, Vulcan Industrial and Mining Corporation, Sulu Sea Oil Development Corporation, and Seafront Petroleum and Mineral Resources, Inc., assigned their rights, interests and participation under the Coal Operating Contract[4] they executed on July 11, 1977 with then Energy Development Board (EDB) to petitioner.[5] The Coal Operating Contract provided for incentives to operators, including exemption from all taxes except income tax.

On May 19, 1995, petitioner and the National Power Corporation (NPC) entered into a Coal Supply Agreement[6] for the supply of coal for NPC's two 300-megawatt coal-fired power plants located in Calaca, Batangas. Meanwhile, on September 9, 2003, petitioner and NPC executed a Supplemental Agreement (To The Coal Supply Agreement)[7], or Coal Handling Agreement, wherein NPC contracted petitioner's services for coal unloading and handling, repair maintenance and coal handling facilities, stevedoring services, support activities and coal yard management, among others.

From October 2003 up to 2005, petitioner performed coal handling and other allied services for the NPC. By virtue of its Supplemental Agreement with the NPC, petitioner derived revenues from said activity.[8] During the years 2004 up to 2005, petitioner paid its corresponding business tax liability for its coal handling service to respondent.[9] Petitioner maintains a site office in the compound of NPC's Batangas Coal-Fired Thermal Power Plant ("BCFTPP" for brevity), in accordance with its Supplemental Agreement with NPC.[10]

On September 5, 2006, Councilor Roberto R. Salazar, Chairman on Legal Matters and Ways and Means of the

[4] Exhibits "B" to "B-20", RTC Records, pp. 757-777.
[5] Exhibits "C" to "C-3", RTC Records, pp. 779-782.
[6] Exhibits "E" to "E-24", RTC Records, pp. 784-808.
[7] Exhibits "F" to "F-7", RTC Records, pp. 809-816.
[8] Pre-Trial Order, RTC Records, p. 585.
[9] Pre-Trial Order, RTC Records, p. 585.
[10] Pre-Trial Order, RTC Records, p. 585.

Sangguniang Bayan of the Municipality of Calaca, wrote to petitioner regarding its purported business tax deficiency amounting to Sixty-Six Million Six Hundred Eighty-Five Thousand One Hundred Eighty-Nine and 90/100 Pesos (P66,685,189.90) for the years 2003 to 2005 for alleged coal sales from its Coal Handling Agreement. According to him, any tax-exempt privileges that petitioner previously enjoyed had been withdrawn, as Section 16[11] of Presidential Decree (PD) No. 972 has already been repealed by Section 534(e) (Repealing Clause) of Republic Act (RA) No. 7160, or the Local Government Code (LGC).[12]

Petitioner responded to the letter on September 19, 2006, arguing that it is tax-exempt. It maintained that the existing Coal Operating Contract was entered into prior to the effectivity of the LGC and that the contract, which provided for incentives under Section 16 of PD No. 972, or the Coal Development Act, was effective until 2012. Moreover, it contended that the repeal by the LGC of PD No. 972 is not absolute but is subject to the non-impairment of contract clause under the 1987 Constitution.[13] It also argued that it has no satellite office in Calaca, Batangas for the purpose of transacting sale of coal to NPC as the existing business of the Corporation thereat is limited to coal handling operations for NPC. Petitioner added that all billings and/or invoices emanates from its office in Antique.

On October 2, 2006, Councilor Salazar wrote again to petitioner, disagreeing with its position and further declaring that if no favorable reply would be received by them within fifteen (15) days from receipt of the letter, respondent will formally serve a Notice of Delinquency to petitioner.[14]

In a letter to petitioner dated November 21, 2006, respondent Municipal Treasurer Milagros V. Tenorio cited the previous position papers sent by Councilor Salazar and demanded that the amount of P66,685,189.90 for delinquent business tax for the years 2003, 2004, and 2005 be settled. According to her, failure to settle the liabilities within fifteen (15) days from receipt thereof will be enough to commence the institution of civil remedies under Section 175(a) of RA No.

[11] Pre-Trial Order, RTC Records, p. 585.
[12] Exhibits "G" to "G-1", RTC Records, pp. 817-818.
[13] Exhibits "G-3" to "G-4", RTC Records, pp. 820-821.
[14] Exhibits "I" to "I-6" and "3" to "3-f", RTC Records, pp. 837-843.

7160 and under the Municipal Tax Code of Calaca, Batangas.[15]

On December 12, 2006, petitioner filed a letter dated December 6, 2006 with the Municipality of Calaca, protesting the assessment.[16]

Respondents failed to resolve petitioner's protest within the sixty-day period provided under Section 195[17] of the LGC of 1991, thus, petitioner filed a Complaint[18] with the RTC on February 26, 2007, which was docketed as Civil Case No. 07-180. In the said Complaint, petitioner prayed that the Notice of Assessment issued by respondents be nullified and set aside,[19] considering that it is tax-exempt and that Calaca, Batangas is not the situs of taxation.

On May 10, 2007, respondents filed their Answer with Counterclaims[20] stating, among others, that Calaca, Batangas is the proper situs of taxation as petitioner maintains a branch or sales office therein and is conducting business operations within its locality. Moreover, respondents argue that plaintiff corporation is not exempt from local taxation because tax exemptions from local taxation other than those specifically mentioned in Section 193 of the LGC of 1991 have already been withdrawn. Respondents further posit that there is no impairment of contract.

On June 4, 2007, petitioner filed its Reply with Answer to Counterclaim[21], refuting respondents' allegations in their Answer and praying that the Notice of Assessment issued by

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[15] Exhibits "J" to "J-1" and "4" to "4-a", RTC Records, pp. 844- 845.
[16] Exhibits "K" to "K-10", RTC Records, pp. 846- 856.
[17] SEC. 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that the correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable.
[18] Complaint, RTC Records, pp. 1-19.
[19] Prayer, Complaint, RTC Records, p. 16.
[20] RTC Records, pp. 149-171.
[21] RTC Records, pp. 176-179.

respondents be nullified and set aside and that respondents' counterclaim be dismissed for lack of merit.

Pursuant to the parties' manifestation that they want the case to be referred to mediation, the parties underwent mediation proceedings; thus, holding pre-trial in abeyance.[22] However, the parties failed to settle amicably before the Philippine Mediation Center.[23] The case was then set for Judicial Dispute Resolution proceedings, which is mandatory, and when no amicable settlement was reached, the case was raffled to Branch 142 of the RTC for pre-trial. On February 12, 2010, a preliminary conference was held for purposes of marking petitioner's and respondent's exhibits or documentary evidence.[24]

The case was later re-raffled to Branch 148 of the RTC upon voluntary inhibition of the Court.[25] The RTC set the pre-trial of the case on April 5, 2013,[26] which was reset to May 24, 2013.[27] The trial was then held on July 19, 2013,[28] August 23, 2013,[29] and September 9, 2013.[30]

On October 3, 2013, petitioner filed its Formal Offer of Documentary Exhibits.[31] Meanwhile, on February 24, 2014, respondents manifested that they would not be presenting any testimonial evidence and would be adopting several common exhibits.[32] Respondents were then given five (5) days to file their Manifestation and offer of common exhibits. However, respondents failed to submit their documentary evidence and thus, the oral offer of documentary exhibits by respondents was set on April 28, 2014.[33] Petitioner and respondents filed their respective Memoranda on May 8, 2014[34] and on May 9, 2014[35].

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[22] Order, RTC Records, p. 200.
[23] Order, RTC Records, p. 220.
[24] Minutes of the February 12, 2010 Preliminary Conference, RTC Records, pp. 246-250.
[25] Order, RTC Records, pp. 292-294; Order, RTC Records, p. 299.
[26] Order, RTC Records, p. 304.
[27] Minutes of the April 5, 2013 Proceedings, RTC Records, p. 580.
[28] Minutes of the July 19, 2013 Proceedings, RTC Records, p. 603.
[29] Minutes of the August 23, 2013 Proceedings, RTC Records, p. 652.
[30] Minutes of the September 9, 2013 Proceedings, RTC Records, p. 690.
[31] RTC Records, pp. 727-743.
[32] Order, RTC Records, p. 1237.
[33] Order, RTC Records, p. 1239.
[34] Memorandum of Authorities for the Plaintiff, RTC Records, pp. 1242-1283.
[35] Memorandum (for the Defendants), RTC Records, pp. 1284-1297.

The RTC rendered the assailed Decision[36] on May 28, 2014, dismissing petitioner's appeal. The dispositive portion of the assailed Decision is quoted hereunder:

> "**WHEREFORE**, premises considered, the instant Appeal is **DENIED**. Semirara is liable for business tax for the portion of its coal sales consummated at Calaca, Batangas.
>
> However, the Municipality of Calaca is directed to make the re-assessment to conform with the proper sales allocation in accordance With Article 243 (b) of the IRR of the Local Government Code and its assessment should only be based on the portion of the coal sales which were consummated in Calaca, Batangas.
>
> **SO ORDERED**."

Petitioner filed the instant Petition for Review[37] on August 7, 2014 and prayed that after due consideration, an order be issued by this Court setting aside the Decision of the RTC dated May 28, 2014 and setting aside and annulling the Notice of Assessment dated November 21, 2006 issued by respondents Municipality of Calaca, Batangas and Municipal Treasurer Milagros V. Tenorio.

In a Resolution[38] dated August 18, 2014, without necessarily giving due course to the Petition for Review, this Court ordered respondents to file their Comment within ten (10) days from notice and stated that petitioner may file its Reply thereto within five (5) days from receipt of respondents' Comment.

Respondents filed their Comment (to the Petition for Review of Semirara Mining Corporation)[39] through registered mail on September 26, 2014, which was received by the Court on October 8, 2014. They argued that the instant Petition for Review presented no new matters to warrant the reversal or modification of the assailed RTC Decision.

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[36] RTC Records, pp. 1298-1314.
[37] Petition for Review (Appeal from a Decision of the Regional Trial Court), docket, pp. 5-56.
[38] Docket, p. 496.
[39] Docket, pp. 500-501.

In a Resolution[40] dated October 7, 2014, the Court gave both parties a period of thirty (30) days from notice within which to file their respective Memoranda.

In view of the filing of petitioner's Memorandum[41] on November 10, 2014 and respondents' failure to file their Memorandum,[42] the case was submitted for decision on December 15, 2014.[43]

STATEMENT OF ISSUES

In the instant Petition for Review, petitioner raised the following issues[44] for this Court's resolution:

1. Whether or not petitioner is liable for the business tax despite its tax exemption granted by law and contract; and

2. Whether or not the situs of the subject business tax being imposed on petitioner is in Calaca, Batangas.

DISCUSSION

Before addressing the issues raised by petitioner, the Court shall first discuss whether or not it has jurisdiction to take cognizance of the case.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law and not by consent of the parties. To inquire into the existence of jurisdiction over the subject matter is the primary concern of a court, for thereon would depend the ability of its entire proceedings.[45]

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[40] Docket, p. 499.
[41] Docket, pp. 511-559.
[42] Records Verification dated December 12, 2014, docket, p. 561.
[43] Resolution dated December 15, 2014, docket, p. 562.
[44] Statement of the Issues, Petition for Review, docket, p. 31.
[45] *Commissioner of Internal Revenue vs. Leonardo S. Villa and The Court of Appeals*, G.R. No. L-23988, January 2, 1968.

As a court of special or limited jurisdiction, the CTA can only take cognizance of matters that are within its jurisdiction as conferred by RA No. 1125, as amended by RA No. 9282,[46] which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;
>
> xxx xxx xxx"

Furthermore, Section 3(a)(3) of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the CTA in Division has exclusive appellate jurisdiction to review decisions, resolutions or orders of the RTC in local taxation cases originally decided or resolved by them in the exercise of their original jurisdiction.

In the instant Petition for Review, the subject of the appeal to this Court is the Decision involving a local tax rendered by the RTC in the exercise of its original jurisdiction. Therefore, this Court in Division clearly has jurisdiction over the same as it falls within its exclusive appellate jurisdiction under Section 7(a)(3) of RA No. 1125, as amended, and Section 3(a)(3) of Rule 4 of the RRCTA.

This Court shall now proceed to resolve the issue of whether or not the RTC committed an error when it dismissed the Complaint filed by petitioner.

In disputing the Decision of the RTC as regards the validity of respondents' Notice of Assessment assessing petitioner for business tax for taxable years 2003 to 2005, petitioner argues that it is not liable for subject business tax because of its tax exemption granted by law and contract. Petitioner contends that according to its Coal Operating

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[46] *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

Contract, which was entered into pursuant to PD No. 972, petitioner, as operator, is entitled to exemption from all taxes except income tax. It posits that the contractual provision on tax exemption under the Coal Operating Contract and PD No. 972 cannot be impaired by Section 193 of the LGC, which can only have prospective effect. Petitioner asserts that since the Coal Operating Contract was effective until 2012, assuming there is a sale in Calaca, Batangas, no tax can be imposed by respondents on its coal sales for the years 2003, 2004, and 2005.

Petitioner also maintains that Calaca, Batangas is not the situs of the tax, and thus, respondent cannot validly assess and impose the subject business tax upon petitioner. According to petitioner, its sale of coal to NPC was consummated in Caluya, Antique, and not in Calaca, Batangas. It argues that the title over the coal passed onto NPC at the port, based on the Coal Supply Agreement, and thus, upon loading on the ship in Caluya, Antique, the coal is considered delivered and owned by NPC. Moreover, it avers that what happened in Calaca, Batangas was merely the physical activity made by NPC in transporting the coal it already owns under an already consummated sale. Petitioner further claims that it does not have a project office in Calaca, Batangas, and that contrary to the findings of the RTC, its activities in Calaca, Batangas are not sales activities.

As correctly held by the RTC in its Decision, petitioner is not exempt from local taxes.

Here, petitioner relies on the Coal Operating Contract executed pursuant to PD No. 972, which exempts operators from all taxes except income tax. According to the Supreme Court in the case of *National Power Corporation vs. City of Cabanatuan*[48], Section 193 of the LGC withdrew the tax exemptions previously enjoyed by corporations, subject to limited exceptions. In ruling that NPC, which previously enjoyed tax exemptions conferred by law, no longer enjoys such incentive, the High Court held:

> "xxx However, section 193 of the LGC withdrew, subject to limited exceptions, the sweeping tax privileges previously enjoyed by private and public corporations.

[48] G.R. No. 149110, April 9, 2003.

> Contrary to the contention of petitioner, section 193 of the LGC is an express, albeit general, repeal of all statutes granting tax exemptions from local taxes. It reads:
>
> > 'Sec. 193. *Withdrawal of Tax Exemption Privileges*. – **Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations**, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.' *(emphases supplied)*
>
> It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. Not being a local water district, a cooperative registered under R.A. No. 6938, or a non-stock and non-profit hospital or educational institution, petitioner clearly does not belong to the exception. It is therefore incumbent upon the petitioner to point to some provisions of the LGC that expressly grant it exemption from local taxes."

Moreover, the LGC itself provides that municipalities may impose business taxes, as they may levy taxes, fees, and charges not otherwise levied by provinces. Sections 142 and 143 of the LGC provide:

> "SEC. 142. *Scope of Taxing Powers*. – Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.
>
> SEC. 143. *Tax on Business*. – The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided*, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein."

In the case of *City Government of San Pablo, Laguna, et al. vs. Reyes, et al.*[49], the Supreme Court ruled that the company is liable to the government for franchise taxes despite any exemption it enjoys under special laws, to wit:

> "It is our view that petitioners correctly rely on provisions of Sections 137 and 193 of the LGC to support their position that MERALCO's tax exemption has been withdrawn. The explicit language of Section 137 which authorizes the province to impose franchise tax 'notwithstanding any exemption granted by any law or other special law' is all-encompassing and clear. The franchise tax is imposable despite any exemption enjoyed under special laws.
>
> Section 193 buttresses the withdrawal of extant tax exemption privileges. By stating that unless otherwise provided in this Code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations except (1) local water districts, (2) cooperatives duly registered under R.A. 6938, (3) non-stock and non-profit hospitals and educational institutions, are withdrawn upon the effectivity of this code, the obvious import is to limit the exemptions to the three enumerated entities. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. In the absence of any provision of the Code to the contrary, and we find no other provision in point, any existing tax exemption or incentive enjoyed by MERALCO under existing law was clearly intended to be withdrawn.
>
> Reading together Sections 137 and 193 of the LGC, we conclude that under the LGC the local government unit may now impose a local tax at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar year based on the incoming receipts realized within its territorial jurisdiction. The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used in Sections 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be not only tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges,

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[49] G.R. No. 127708, March 25, 1999.

> the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used."

Moreover, it is noteworthy that Section 192 of the LGC empowers the LGUs, through ordinances duly approved, to grant tax exemptions, initiatives or reliefs. Nevertheless, there is no showing that respondent municipal government intended to exempt petitioner from the coverage thereof.

Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. They can only be given force when the grant is clear and categorical.[51]

Petitioner likewise argues that respondents' reliance on the LGC is misplaced because its repeal is not all-encompassing and excludes exemptions granted in contracts entered into by the government, given the constitutionally protected right against impairment of contractual obligations.

This Court agrees with the RTC's finding as explained in the assailed Decision quoted below:

> "While it is true that under the Coal Operating Contract (COC), the operators shall be exempt from all taxes except income tax, it must be noted that Coal Operations or Operations was defined in the original COC as:
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> a) The examination and investigation of lands supposed to contain coal by detailed surface geologic mapping, core drilling, trenching, test pitting and other appropriate means, for the purpose of probing the presence of coal deposits and the extent thereof;
>
> b) Steps necessary to reach the coal deposit so that it can be mined, including but not limited to shaft sinking and tunneling; and
>
> c) The execution and utilization of coal.
>
> Nowhere in the said COC was coal sales or supply of coal included as part of the coal operations or services to be provided by the operators under the original COC. Hence, even if the COC's effectivity was really extended up to 2012

[51] *Smart Communications, Inc. vs. The City of Davao, et al.*, G.R. No. 155491, September 16, 2008.

> or even up to 2027, the Court is of the view that the Coal Supply Agreement and the Supplemental Agreement entered into by the NPC and Semirara for the supply and sales of coal to Calaca including the coal handling operations are a separate and different agreement from the Coal Operating Contract which was assigned to Semirara in 1980 for the purpose of accelerating the exploration, development, exploitation, production and utilization of the country's coal resources.
>
> A perusal of the Coal Supply Agreement dated May 18, 1995 and Supplemental Agreement entered in 2003 likewise does not specifically and clearly state that the supply, sale or delivery of coals, as well as the handling and other operations or services covered by the aforesaid two agreements are tax exempt. There is no statement that the terms thereof shall be in accordance with the original terms of the old COC or to the first Coal Supply Agreement entered into by the parties in 1980. As stated above, tax exemptions cannot be presumed or assumed, it must be clear and unequivocal. There can be no room for doubt and in case of doubt, the doubt must be ruled in favor of the taxing power of the government."

By reading Sections 142, 143, 192, and 193 of the LGC, the Coal Operating Contract, the Coal Handling Agreement, and the Supplemental Agreement, petitioner is clearly not anymore exempt from the imposition by respondent municipality of business taxes.

With regard to the issue of whether or not Calaca, Batangas is the proper situs of taxation, Section 150 of the LGC provides:

> "SEC. 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.

(b) The following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business:

(1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located; and

(2) Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or city or municipality where the factory, project office, plant or plantation is located.

(c) In case of a plantation located at a place other than the place where the factory is located, said seventy percent (70%) mentioned in subparagraph (b) of subsection (2) above shall be divided as follows:

(1) Sixty percent (60%) to the city or municipality where the factory is located; and

(2) Forty percent (40%) to the city or municipality where the plantation is located.

(d) In cases where a manufacturer, assembler, producer, exporter or contractor has two (2) or more factories, project offices, plants, or plantations located in different localities, the seventy percent (70%) sales allocation mentioned in subparagraph (b) of subsection (2) above shall be prorated among the localities where the factories, project offices, plants, and plantations are located in proportion to their respective volumes of production during the period for which the tax is due.

(e) The foregoing sales allocation shall be applied irrespective of whether or not sales are made in the locality where the factory, project office, plant, or plantation is located." *(Emphasis supplied)*

From the foregoing, it is clear that when a taxable entity has a branch or sales office, the tax shall be paid to the municipality where such branch or sales office is located.

Under Article 243 of the Implementing Rules and Regulations (IRR) of the LGC, a branch or sales office is defined as a fixed place in a locality which conducts operations of the business as an extension of the principal office. The IRR also provides that a warehouse which accepts orders and/or issues sales invoices independent of a branch with sales office shall be considered as a sales office but offices used only as display areas of the products where no stocks or items are stored for sale are not branch or sales offices, even though orders for the products may be received thereat.

The Coal Supply Agreement provides that the title or ownership of coal shall pass to NPC from the moment the same crosses the ship's rail at the Semirara pier, to wit:

> "5.4.1 For quantities of coal, excluding quantities of coal specified in Section 5.4.2, which NPC takes delivery of during each calendar month pursuant to Section 5.1, **title or ownership of coal** under this Agreement, **as well as the risk of loss or destruction thereof, shall pass to NPC from the moment the same crosses the ship's rail at the Semirara pier**." *(Emphasis supplied)*

Based on the foregoing, the coal sales were consummated at the Semirara pier in Caluya, Antique alone. As admitted by petitioner, it has a project/office site in Brgy. Semirara, Caluya, Antique, where its operations are conducted in accordance with the Coal Operating Contract. Moreover, as found by the RTC, the sales invoices and official receipts for the delivery and sale of coal were prepared at petitioner's office in Caluya, Antique. Such office also qualifies as a branch or sales office, as defined in the IRR of the LGC, since petitioner's activities conducted therein are operations of the business as an extension of the principal office.

Since petitioner has a branch or sales office in Caluya, Antique, the municipality where the sale of coal is consummated, Section 150(a) of the LGC applies. Therefore, the situs of taxation for the sale of coal by petitioner to NPC is in Caluya, Antique, and not in Calaca, Batangas.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision of the Regional Trial Court of Makati City, Branch 148 in Civil Case No. 07-180 is hereby **REVERSED** and **SET ASIDE**. The Notice of Assessment dated November 21, 2006, issued by the Municipal Treasurer of the Municipality of Calaca, Batangas, assessing petitioner for delinquent business tax for the years 2003, 2004, and 2005, in the sum of P66,685,189.90, is hereby **SET ASIDE** and **NULLIFIED** for lack of legal and factual bases.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(with Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SEMIRARA MINING CORPORATION, Petitioner,	**CTA AC CASE NO. 121**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS, *JJ.***
MUNICIPALITY OF CALACA BATANGAS and **MILAGROS V. TENORIO** in her capacity as **MUNICIPAL TREASURER,** Respondent.	Promulgated: NOV 2 4 2015 3:20 p.m.

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CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I agree with the *ponencia* in granting the Petition for Review, considering that the *situs* of the subject business taxation is in Caluya, Antique and not in Calaca, Batangas.

In addition, a careful review of the attendant circumstances reveals that the assessment process was initiated by a government arm not authorized to do so under the Local Government Code (LGC).

Pertinent provisions of the LGC state that:

> "**Section 171.** *Examination of Books of Accounts and Pertinent Records of Businessmen by Local Treasurer.* - **The provincial, city, municipal or barangay treasurer may, by himself or through any of his deputies duly authorized in writing, examine the books, accounts, and other pertinent**

records of any person, partnership, corporation, or association subject to local taxes, fees and charges in order to ascertain, **assess**, and collect the correct amount of the tax, fee, or charge. xxx xxx xxx"*(Emphasis supplied)*

"**Section 195.** *Protest of Assessment.* - **When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment** stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."*(Emphasis supplied)*

Section 447. *Powers, Duties, Functions and Compensation.* -

(a) The sangguniang bayan, as the **legislative body** of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:

xxx xxx xxx

(2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the municipality as provided for under Section 18 of this Code with particular attention to agro-industrial development and countryside growth and progress, and relative thereto, shall:

xxx xxx xxx

> (ii) Subject to the provisions of Book II of this Code and applicable laws and upon the majority vote of all the members of the sangguniang bayan, **enact ordinances levying taxes, fees and charges, prescribing the rates thereof for general and specific purposes, and granting tax exemptions, incentives or reliefs**;" *(Emphasis supplied)*

In the instant case, records show that the Municipal Licensing Officer of the Municipality of Calaca, Batangas endorsed petitioner's "business tax matters" to the Committees on Legal Matters and Ways and Means of the Sangguniang Bayan, chaired by Councilor Roberto R. Salazar. Consequently, Councilor Salazar wrote a letter to petitioner purporting to be a Notice of Assessment, which states that:

> "The matter concerning your 'business tax' liability has been endorsed by the Municipal Licensing Officer to these Committees for appropriate action and/or comment.
>
> An investigation of your tax liabilities prompted us to contact the offices of the City Treasurer of Makati City and the Municipality of Caluya, Antique, who both confirmed that they had not been recipients of any business tax payments from your company (SMC) or its subsidiaries and on a separate query with the Board of Investments (BOI), they confirmed that they have no registry issued in your favor that would cause the granting of tax exemption benefits to your concern.
>
> xxx xxx xxx
>
> In view of the foregoing amendment, you are therefore subject to 'business tax' under the Code and should immediately remit to the Municipality of Calaca, the sum of **SIXTY SIX MILLION SIX HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED EIGHTY NINE PESOS & 90/100 (P66,685,189.90)** representing the taxes due for the years 2003-2004-2005 respectively, which are detailed on the attached schedule (Annex "A"), in order to prevent the further escalation of penalties and interests and/or the enforcement of its collection through other legal remedies applicable."[1]

Thereafter, respondent Municipal Treasurer wrote a letter purporting to be a collection letter against petitioner, which states that: *ga*

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[1] Exhibits "G"to "G-1".

> "This refers to the position papers sent to your company earlier by the Chairman, SB Committee on Legal Matters and Ways and Means dated October 2, 2006, citing some provisions of the law in which your company is liable for the business tax imposition by this municipality.
>
> In view of the foregoing premise, you are hereby required to settle the hereto attached computation of Semirara Mining Corporation business tax and other charges liabilities to this municipality from the years 2003 to 2005 amounting to Php66,685,189.90. Your failure to settle the foregoing liabilities within fifteen (15) days from receipt of this demand letter will be enough basis on our part to commence the institution of civil remedies vested upon us by the law xxx"[2]

From the foregoing, it appears that it was the Sangguniang Bayan through Councilor Salazar, and not respondent Municipal Treasurer, who assessed and issued the notice of assessment against petitioner. Respondent Municipal Treasurer merely issued a collection letter on the basis of the notice of assessment issued by the Sangguniang Bayan.

However, it is clear that the Sangguniang Bayan, as a legislative body of a municipality under Section 447 of the LGC, is not empowered to make assessments, which power is vested upon the local treasurer as provided for under Sections 171 and 195 of the LGC. Hence, considering that the instant assessment was issued by a government arm with barren power or authority to do so, the same should be considered invalid. Thus, I **VOTE** to grant the instant Petition.

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

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[2] Exhibits "J" to "J-1" and "4"to "4-a".