REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

FERNANDEZ HOLDINGS, INC.,
Petitioner,

- *versus* -

CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City,
Respondents.

CTA AC NO. 162

Members:
Bautista, Chairperson,
Fabon-Victorino, and
Ringpis-Liban, *JJ.*

Promulgated:
APR 06 2017
3:45 p.m.

x---x

DECISION

BAUTISTA, J:

The Petition for Review[1] filed pursuant to *Section 3(a)(3), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[2] assails the Decision[3] promulgated on June 22, 2015 (the "Assailed Decision") and the Order[4] promulgated on September 11, 2015 (the "Assailed Order") by Branch 16 of the Regional Trial Court of Davao City (the "RTC") in the case entitled *Fernandez Holdings, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his Official Capacity as the City Treasurer of Davao City*[5], and prays for the refund or credit of erroneously and illegally

---

[1] *Records, CTA AC No. 162, Petition for Review ("PFR"),* pp. 8-144, with annexes.

[2] A.M. No. 05-11-07-CTA (2005). *Section 3(a)(2), Rule 4 of the RRCTA* provides:

> Sec. 3. *Cases within the jurisdiction of the Court in Divisions.* –
> The Court in Divisions shall exercise:
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
> xxx xxx xxx
> (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;

[3] *Records, PFR, Annex "P-1," RTC Decision,* pp. 32-41; penned by Presiding Judge Emmanuel C. Carpio.

[4] *Id., Annex "P-2," RTC Order,* p. 42.

[5] Docketed as Civil Case No. 34,851-13.

collected local business tax ("LBT") for the first and second quarters of 2011 in the amount of Php382,859.55, plus legal interest.[6]

The Parties

Petitioner Fernandez Holdings, Inc. is a corporation duly organized and existing under Philippine laws, with principal office address at Legaspi Oil Compound, Km. 9.5, Sasa, Davao City.[7]

Respondent City of Davao is a local government unit ("LGU") duly created by law, while respondent Hon. Rodrigo S. Riola is its City Treasurer.[8] Respondents' address is at City Hall Building, San Pedro Street, Davao City.[9]

The Facts

Since October 2009, petitioner has been the registered owner of 18,341,390 preferred shares of stock in San Miguel Corporation ("SMC") after the Supreme Court *En Banc* approved the conversion of petitioner's common shares to preferred shares. The dividends earned by petitioner from its preferred shares of stock were deposited in a trust account which earned interest from money market placements.[10]

In 2010, petitioner earned a total of Php139,221,650.65 from dividends on its SMC preferred shares and interest on its money market placements, computed as follows:

INCOME		**AMOUNT**
Dividends	Php	137,560,425.00
Interest		1,661,225.65
TOTAL	**PHP**	**139,221,650.65**[11]

For the first half of 2011, respondent City of Davao, through respondent Riola, demanded from petitioner payment for the 0.55% LBT on the dividends from petitioner's SMC preferred shares and on

[6] *Records, PFR,* p. 26.
[7] *Id.* at 11.
[8] *Id.*
[9] *Id.*
[10] *Id.* at 13.
[11] *Id.*

the interest from petitioner's money market placements in the aggregate amount of Php382,859.55.[12] Petitioner paid the same under protest,[13] broken down as follows:

PERIOD COVERED	DATE OF PAYMENT	OFFICIAL RECEIPT NO.	AMOUNT	
January to March 2011	January 18, 2011	5791186 A[14]	Php	191,429.78
April to June 2011	April 25, 2011	9884251 A[15]		191,429.77
TOTAL			**PHP**	**382,859.55**[16]

On September 13, 2012, petitioner filed its administrative claim[17] for refund or credit of erroneously and illegally collected LBT.[18]

Due to the alleged inaction of respondent on petitioner's administrative claim, petitioner filed a Petition[19] with the RTC on January 17, 2013.[20]

On June 22, 2015, the RTC promulgated the Assailed Decision denying the Petition. The dispositive portion of the Assailed Decision reads:

> **FOR REASONS STATED,** the instant "Petition for Tax Refund or Credit Under Section 156, R.A. 7160" filed by the Petitioner is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED.**[21]

In its Decision, the RTC held that petitioner's primary purpose, as indicated in its Amended Articles of Incorporation, is broad enough for petitioner to be considered as a financial intermediary. Considering the dividends and interests are the principal sources of income of petitioner, it should be categorized as a financial intermediary subject to tax under *Section 143(f) of the Local Government Code of 1991, as*

---

[12] *Records, PFR,* pp. 13-14.
[13] *Id.* at 14.
[14] *Records, PFR, Annex "P-3,"* p. 43.
[15] *Id., Annex "P-4,"* p. 44.
[16] *Records, PFR,* p. 9.
[17] *Id., Annex "P-5,"* pp. 45-54.
[18] *Records, PFR,* p. 14.
[19] *Id., Annex "P-6,"* pp. 55-71.
[20] *Records, PFR,* p. 14.
[21] *Id., Annex "P-1," RTC Decision,* p. 41.

amended (the "1991 LGC")[22].

Petitioner moved for the reconsideration of the Assailed Decision.[23] However, the RTC issued the Assailed Order dated September 11, 2015 denying petitioner's Motion for Reconsideration. The dispositive portion of the Assailed Order reads:

> As such, the "***Motion for Reconsideration***" filed by the Petitioner through counsel is hereby **DENIED**.
>
> **SO ORDERED.**[24]

Undaunted, on November 9, 2011, petitioner filed the present Petition for Review[25]. Respondents filed their Comment[26] by registered mail on January 7, 2016.

The Court resolved to give due course to the Petition for Review in a Resolution[27] dated January 28, 2016.

In view of the filing of petitioner's Memorandum[28] on March 3, 2016 and respondents' Memorandum[29] on April 1, 2016 - both by registered mail - the case was submitted for decision on June 8, 2016;[30] hence, this Decision.

The Issue[31]

WHETHER PETITIONER IS ENTITLED TO A REFUND OR CREDIT OF THE 0.55% LBT COLLECTED FOR THE FIRST AND SECOND QUARTERS OF 2011 ON THE DIVIDENDS FROM PETITIONER'S SMC PREFERRED SHARES AND ON THE INTEREST FROM PETITIONER'S MONEY MARKET PLACEMENTS FOR 2010.

---

[22] An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160 (1991).
[23] *Records, PFR, Annex "P-7,"* pp. 72-85.
[24] *Id., Annex "P-2," RTC Order*, p. 42.
[25] *Records, PFR*, pp. 8-144, with annexes.
[26] *Id., Comment*, pp. 166-181.
[27] *Id., Resolution*, pp. 185-186.
[28] *Id., Petitioner's Memorandum*, pp. 191-217.
[29] *Id., Respondents' Memorandum*, pp. 219-235.
[30] *See Records, Resolution*, p. 239.
[31] *Records, PFR*, p. 15.

Petitioner's Arguments[32]

Petitioner argues that it is entitled to a refund or credit of the LBT collected for the first and second quarters of 2011 on the dividends from its SMC preferred shares and on the interest from its money market placements for 2010. In support of its position, petitioner posits the following:

1. Under *Section 133(a) of the 1991 LGC*, it is erroneous and illegal for respondents to collect the 0.55% LBT on the dividends and interest earned by a taxpayer which is not a bank or a financial institution;

2. It is not a bank or a non-bank financial institution, and is not engaged in business that is subject to LBT under *Section 143 of the 1991 LGC*; and

3. Its income partakes of the nature of public funds, which cannot be subject to business tax.

Respondents' Counter-Arguments[33]

On the other hand, respondents argue that petitioner is liable for the 0.55% LBT imposed under *Section 143(f) of the 1991 LGC* as petitioner is a bank and other financial institution. Specifically, respondents allege the following:

1. Petitioner is deemed a bank and other financial institution, specifically, a non-bank financial intermediary or an investment company, by virtue of its investment and money placements in SMC;

2. Petitioner's business purpose, as indicated in its Amended Articles of Incorporation, is broad enough to catch all the descriptive functions of a non-bank financial intermediary as provided under *Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions ("MORNBFI")* issued by the *Bangko Sentral ng Pilipinas ("BSP")*;

---

[32] *Records, Petitioner's Memorandum*, pp. 196-213.
[33] *Id., Respondents' Memorandum*, pp. 224-232.

3. The proviso in petitioner's Amended Articles of Incorporation stating that petitioner shall not act as an investment company or securities broker or dealer is not conclusive proof that it is not a bank and other financial institution;

4. As a stock corporation, petitioner is presumed to have been organized to engage in business with the end in view of a profit, hence, subject to LBT;

5. The definition of gross sales/receipts under *Section 131(n) of the 1991 LGC* that does not include dividends and interest as a component of sales or receipts is a general definition of such term, and cannot defeat a specific and clear provision of taxability of dividends and interest income as provided by *Section 143(f) of the 1991 LGC;*

6. The opinion of the Bureau of Local Government Finance ("BLGF") that petitioner is exempt from LBT for not being a bank and other financial institution is not binding on the issue involved in the present case as BLGF is not an administrative agency whose findings on questions of fact and law are given weight and respect in the courts; and

7. Even assuming that petitioner's income partakes the nature of public funds as ruled by the Supreme Court in *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*[34], petitioner is not exempt from the payment of LBT on its dividends and interest pursuant to *Section 143(f) of the 1991 LGC.*

The Ruling of the Court

The Petition for Review is meritorious.

Petitioner complied with the procedural requirements for its claim for refund or tax credit.

At the outset, the Court must first discuss whether petitioner's

[34] G.R. Nos. 177857-58 & 178193, January 24, 2012, 663 SCRA 514.

claim for refund or tax credit was timely made.

Section 196[35] *of the 1991 LGC* provides the following procedural requirements which must be complied with before a claim for refund or tax credit of erroneously or illegally collected LBT can be granted:

1. A written claim for refund must first be filed with the local treasurer; and

2. The court proceeding must be filed within two (2) years from the date of payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

As applied to the present case, the relevant dates for the determination of the timeliness of petitioner's claim for refund or tax credit are summarized, as follows:

PERIOD COVERED BY PAYMENT	DATE OF PAYMENT	DATE OF FILING OF THE ADMINISTRATIVE CLAIM	DATE OF FILING OF THE JUDICIAL CLAIM	LAST DAY TO FILE THE JUDICIAL CLAIM
January to March 2011	January 18, 2011[36]	September 13, 2012	January 17, 2013	January 18, 2013
April to June 2011	April 25, 2011[37]	September 13, 2012	January 17, 2013	April 25, 2013

From the foregoing, it is clear that petitioner was able to comply with the procedural requirements. Having done so, the Court will now discuss petitioner's entitlement to the claim for refund or credit or erroneously or illegally collected LBT.

Petitioner is entitled to its claim for refund or credit of erroneously or illegally collected LBT.

The *1987 Philippine Constitution* empowers LGUs to create their

[35] *Section 196 of the 1991 LGC* provides:

> Sec. 196. *Claim for Refund or Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

[36] *Records, PFR, Annex "P-3,"* p. 43.

[37] *Id., Annex "P-4,"* p. 44.

own sources of revenues, and to levy taxes, fees, and charges - subject to guidelines and limitations Congress may provide - consistent with the basic policy of local autonomy.[38] To this end, the *1991 LGC* provides that, as a rule, LGUs have the power to create their own sources of revenue, and to levy, taxes, fees, and charges.[39]

Respondent claims that LBT should be imposed on petitioner as it is a bank or other financial institution whose income and receipts are taxable. However, the Court finds that respondents' argument fails on two fronts under the exceptions to the revenue raising power of LGUs. *First,* petitioner is not a bank or other financial institution. While the *1991 LGC* provides that LGUs cannot impose income tax on businesses within their jurisdiction, the imposition of LBT on banks and other financial institutions is the exception - *i.e.,* LGUs may impose LBT on the income of banks and other financial institutions. *Second,* petitioner's SMC preferred shares are outside the scope of the taxing power of respondents, the same being owned by the government. The dividends and interest from money market placements are fruits of the SMC preferred shares. These grounds shall be discussed in *seriatim.*

The imposition of LBT on banks and other financial institutions is embodied in *Section 143(f)*[40] *in relation to Section 151*[41] *of the 1991 LGC.* Under the aforementioned provisions, a city may impose business tax on banks and other financial institutions on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of

---

[38] PHIL. CONST. art. X, § 5.
[39] LOCAL GOVERNMENT CODE OF 1991, § 129.
[40] *Section 143(f) of the 1991 LGC* provides:

> Sec. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

[41] *Section 151 of the 1991 LGC* provides:

> Sec. 151. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> The rate of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

property, and insurance premium.

In the exercise of its local revenue raising power, the City of Davao enacted *Davao City Ordinance No. 158-05*[42] *(the "Davao Revenue Code"). Section 69(f) of the Davao Revenue Code* imposes business tax on banks and other financial institutions within its jurisdiction at the rate of 0.55% of the gross receipts of the preceding calendar year derived from, among others, interest and dividends. The relevant provision reads:

> Sec. 69. *Imposition of Tax.* - There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:
>
> xxx xxx xxx
>
> (f) *On Banks and Other Financial Institutions,* at the rate of fifty-five percent (55%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property, and profit from exchange or sale of property, insurance premium. All other income and receipts not herein enumerated shall be excluded in the computation of the tax.

In determining petitioner's entitlement to its claim for refund or credit of the 0.55% LBT collected for the first and second quarters of 2011 on the dividends from petitioner's SMC preferred shares and on the interest from petitioner's money market placements for 2010, it is imperative to first determine whether petitioner is indeed a bank or other financial institution - specifically, a non-bank financial intermediary - who is subject to the aforestated business tax as respondent claims.

The term "banks and other financial institutions" is defined in *Section 131(e) of the 1991 LGC,* as follows:

> Sec. 131. *Definition of Terms.* - When used in this Title, the term:

[42] An Ordinance Approving the 2005 Revenue Code of the City of Davao, as Amended [The 2005 Revenue Code of the City of Davao] (2005).

xxx xxx xxx

(e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;

Meanwhile, *Section 4101Q.1 of the MORNBFI* identifies entities which may be considered non-bank financial intermediaries in this wise:

§ 4101Q.1 *Financial intermediaries*

Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as investment house (IH), investment company, financing company, securities dealer/broker, lending investor (IH), pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association (NSSLA) and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) A person or entity performing any of the functions enumerated in Items "a" to "e" of this Subsection.[43]

From the foregoing definitions, it cannot be said that petitioner is a non-banking financial intermediary subject to the 0.55% LBT on the dividends from its SMC preferred shares and on the interest from its money market placements for 2010. The records are bereft of any showing that petitioner's principal activities will qualify it as a financial intermediary, or a non-banking financial intermediary to be specific. Petitioner has no secondary license, it does not hold itself out

[43] Underscoring ours.

as a financial intermediary, nor does it perform the functions of a financial intermediary on a regular and recurring basis. Further, petitioner's primary purpose, as outlined in its Amended Articles of Incorporation, shows that its principal activities cannot fall under the definition of a financial intermediary, thus:

> The primary purpose for which such Corporation is formed is:
>
> To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and <u>to do every act and thing covered generally by the denomination "holding corporation", and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.</u>[44]

Aside from the proviso in its primary purpose that petitioner "shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation," petitioner categorically stated that it is a holding company. The mere fact that petitioner is a holding company does not *ipso facto* lead to the conclusion that it is a non-bank financial intermediary. Absent any showing that petitioner is actually engaged in activities characteristic of a non-bank financial intermediary - especially considering the clause in petitioner's primary purpose that it shall not act as an investment company, securities broker and/or dealer, nor a trust corporation, which clause necessary limits the authorized activities of petitioner in this respect - respondent's claim that petitioner is a bank

[44] *Records, PFR, Annex "P-10,"* pp. 105-106; underscoring ours.

or other financial institution based on the broad wording of petitioner's primary purpose is erroneous.

Further, *Section 22(W)*[45] *of the 1997 National Internal Revenue Code*[46], *as amended ("1997 NIRC")* requires non-bank financial intermediaries to secure authorization from the BSP to perform quasi-banking activities. In the present case, however, respondent failed to present such BSP authorization.

Thus, based on the records, petitioner cannot be said to engage in activities characteristic of a non-bank financial intermediary. Accordingly, respondents erred in imposing the 0.55% LBT on petitioner's dividend and interest income.

Meanwhile, even assuming petitioner is subject to LBT as a non-bank financial intermediary, petitioner's dividend and interest income are still exempt from the imposition of LBT as the dividends and interest from the SMC preferred shares are considered government property which should not be subjected to LBT under *Section 133(o) of the 1991 LGC*[47].

In the *COCOFED case*, the Supreme Court categorically held that petitioner's SMC shares are government property, to wit:

> **V**
> **The CIIF Companies and the CIIF Block of SMC shares are public funds/assets**
>
> From the foregoing discussions, it is fairly established that the coconut levy funds are special public funds. Consequently, any property purchased by means of the

---

[45] *Section 22(W) of the 1997 NIRC* provides:

Sec. 22. *Definitions*. - When used in this Title:

xxx xxx xxx

(W) The term *'non-bank financial intermediary'* means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, authorized by the *Bangko Sentral ng Pilipinas* (BSP) to perform quasi-banking activities.

[46] *Republic Act No. 8424*, as amended (1997).

[47] *Section 133(o) of the 1991 LGC* provides:

Sec. 133. *Common Limitations on the Taxing Powers of Local Government Units*. - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

xxx xxx xxx

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property.

In this case, the 6 CIIF Oil Mills were acquired by the UCPB using coconut levy funds. On the other hand, the 14 CIIF holding companies are wholly owned subsidiaries of the CIIF Oil Mills. Conversely, these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator. The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78. And as the administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares. In fact, these companies were formed or organized solely for the purpose of holding the SMC shares. As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of P[hp]1.656 Billion.

Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds - funds, which have been established to be public in character - it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws.

It may be conceded hypothetically, as COCOFED *et al.* urge, that the 14 CIIF holding companies acquired the SMC shares in question using advances from the CIIF companies and from UCPB loans. But there can be no gainsaying that the same advances and UCPB loans are public in character, constituting as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. And these oil mills were organized, capitalized and/or financed using coconut levy funds. In net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry. In *Republic v. COCOFED,* the *en banc* Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: "*Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner.*" By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, belong to the government as, at the very least, their beneficial and true owner.

> We thus affirm the decision of the Sandiganbayan on this point. But as We have earlier discussed, reiterating our holding in *Republic v. COCOFED*, the State's avowed policy or purpose in creating the coconut levy fund is for the development of the entire coconut industry, which is one of the major industries that promotes sustained economic stability, and not merely the livelihood of a significant segment of the population. Accordingly, We sustain the ruling of the Sandiganbayan in CC No. 0033-F that <u>the CIIF companies and the CIIF block of SMC shares are public funds necessary owned by the Government</u>. We, however, modify the same in the following wise: These shares shall belong to the Government, which shall be used only for the benefit of the coconut farmers and for the development of the coconut industry.[48]

Considering the SMC preferred shares belong to the government, the fruits from such property (*i.e.*, dividends, interest from money market placements) likewise belong to the government.[49] Thus, respondent improperly imposed LBT on the same. Following *Section 133(o) of the 1991 LGC*, the exercise of the taxing power of respondent shall not extend to the levy of taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, and LGUs.

Having ruled that petitioner is not a bank or other financial institution, it cannot be said that the 0.55% LBT mandated by *Section 69(f) of the Davao Revenue Code* can be imposed on petitioner. Neither can the dividends and interest from the money market placements arising from the SMC preferred shares be subject to LBT as the same belongs to the government following the Supreme Court's pronouncements in *COCOFED v. Republic*. Accordingly, petitioner is entitled to the refund or credit of the erroneously or illegally collected LBT in the first and second quarters of 2011 on the dividends from petitioner's SMC preferred shares and on the interest from petitioner's money market placements for 2010.

WHEREFORE, the Petition for Review is **GRANTED**. Accordingly, the Assailed Decision dated June 22, 2015 and the Assailed Order dated September 11, 2015 of Branch 16 of the Regional

---

[48] *COCOFED v. Republic*, G.R. Nos. 177857-58, January 24, 2012, 663 SCRA 514, 622-624; underscoring ours.

[49] *See* An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 440 (1950).

Trial Court of Davao City in Civil Case No. 34,851-13 are **REVERSED** and **SET ASIDE**. Respondents are **ORDERED TO REFUND OR CREDIT** in favor of petitioner the amount of **THREE HUNDRED EIGHTY-TWO THOUSAND EIGHT HUNDRED FIFTY-NINE PESOS AND 55/100 (PHP382,859.55)**, representing the 0.55% local business tax petitioner paid under protest for the first and second quarters of 2011.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
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