REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Petitioner,

-*versus*-

MUNICIPALITY OF BAYOMBONG, NUEVA VIZCAYA, as represented by MA. CESELMA B. PARONG, in her capacity as MUNICIPAL TREASURER OF BAYOMBONG,
Respondent.

CTA EB NO. 2795
(RTC Civil Case Nos. 7616-7617)
(MTC Case Nos. 4046-4047)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

OCT 1 0 2024 11:18 am

x - x

DECISION

ANGELES, *J.*:

Before the Court *En Banc* is a *Petition for Review,* filed on August 24, 2023 by the National Grid Corporation of the Philippines (NGCP), pursuant to Section 2 (b), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal of the *Joint Decision* dated August 17, 2022, and the *Order* dated May 26, 2023, in Civil Case Nos. 7616 and 7617, both issued by the Regional Trial Court (RTC)-Branch 28 of Nueva Vizcaya, affirming the consolidated decision of the Municipal Trial Court (MTC) of Bayombong, dated March 2, 2022 in MTC Civil Case Nos. 4046 and 4047, in relation to the issue of whether NGCP is exempt from payment of Mayor's Permit Fee pursuant to Section 9 of Republic Act (RA) No. 9511[1].

---

[1] An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of

FACTS

Petitioner NGCP is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City. It may be served with notices and other processes through the Office of the General Counsel with address at NGCP Building, Bonaventure Plaza, Ortigas Avenue, San Juan City.[2]

Respondent Municipality of Bayombong, Nueva Vizcaya, a Local Government Unit, is represented by Ma. Ceselma B. Parong, in her official capacity as the Municipal Treasurer of Bayombong, Nueva Vizcaya. Respondent may be served with notices and processes at the Office of the Municipal Treasurer, Municipality of Bayombong, Nueva Vizcaya.[3]

By virtue of RA 9511, which became effective on December 20, 2008, NGCP was granted a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through the high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines.[4]

On January 15, 2009, NGCP took over the operation and maintenance of the electric power transmission business of National Transmission Corporation or TRANSCO, including the high voltage back-bone system of interconnected transmission lines and substations that are being used in the transmission of electric power nationwide.[5]

MTC Civil Case No. 4046

Respondent-Treasurer issued Assessment Record dated February 11, 2020, assessing and demanding payment for Regulatory Fees and Charges in the total amount of Php13,895.00 for calendar year 2020, which included Mayor's Permit Fee of Php2,000.00. The

---

Interconnected Transmission Lines, Substations and Related Facilities, and For Other Purposes, December 1, 2008.
[2] Petition for Review, EB Docket, p. 3
[3] *Id.*
[4] *Id.*
[5] *Id.*

Assessment Record was issued in connection with NGCP's power transmission business, specifically the operation and maintenance of its Bayombong Substation located in Purok 3, Barangay Busilac, Bayombong, Nueva Vizcaya.[6]

On April 5, 2021, NGCP filed a Written Protest against the Assessment Record. Thereafter, NGCP paid under protest the said amount of Php13,895.00, which included the Mayor's Permit Fee of Php2,000.00, as evidenced by Official Receipt No. 0903835, dated April 29, 2021 issued by the Municipal Treasurer's Office of Bayombong.[7]

On July 5, 2021, NGCP filed its Petition before the MTC in Bayombong, Nueva Vizcaya, protesting the assessment of Mayor's Permit Fee for calendar year 2020 in the amount of Php2,000.00 and claiming refund thereof based on Sections 195 and 196 of the Local Government Code of 1991 (LGC).[8]

MTC Civil Case No. 4047

Respondent-Treasurer issued Assessment Record dated April 29, 2021, assessing and demanding payment for Regulatory Fees and Charges in the total amount of Php14,847.50 for calendar year 2021, which included Mayor's Permit Fee of Php2,000.00. The Assessment Record was issued in connection with NGCP's power transmission business, specifically the operation and maintenance of its Bayombong Substation located in Purok 3, Barangay Busilac, Bayombong, Nueva Vizcaya.[9]

On April 30, 2021, NGCP paid under protest the amount of Php14,847.50, which included the Mayor's Permit Fee of Php2,000.00, as evidenced by the Official Receipt No. 0903949, dated April 30, 2021 issued by the Municipal Treasurer's Office of Bayombong, Nueva Vizcaya, and Letter, dated April 30, 2021, addressed to the latter requesting that the words "under protest" be annotated on the official receipt to be issued.[10]

---

[6] Petition for Review, EB Docket, p. 4.
[7] *Id.*
[8] Petition for Review, EB Docket, p. 5.
[9] Petition for Review, EB Docket, pp. 5-6.
[10] Petition for Review, EB Docket, p. 6.

r

On May 21, 2021, NGCP filed a Written Protest and Claim for Refund against the Assessment Record issued by the Respondent-Treasurer.[11]

On August 18, 2021, NGCP filed a Petition before the MTC in Bayombong, Nueva Vizcaya, protesting the assessment for Mayor's Permit Fee for calendar year 2021 in the amount of Php2,000.00 and claiming refund of the amount paid under protest based on Sections 195 and 196 of the LGC.[12]

On March 2, 2022, the MTC-Bayombong rendered its consolidated decision in MTC Case Nos. 4046-4047 finding that NGCP is not exempt from Mayor's Permit Fee, with the dispositive portion stating:

> WHEREFORE, judgment is hereby rendered declaring that the petitioner is [NOT] EXEMPT from the mayor's permit fee and consequently, the petitions are DISMISSED.
>
> SO ORDERED.[13]

On May 12, 2022, NGCP appealed the ruling of the MTC-Bayombong to the RTC Branch 28 – Bayombong, Nueva Vizcaya.[14]

On August 17, 2022, the assailed *Joint Decision* was rendered by the RTC, wherein it affirmed the MTC consolidated decision,[15] as follows:

> WHEREFORE, all premises considered, the Decision of Municipal Trial Court of Bayombong dated March 02, 2022 in MTC Civil Case No. 4046 and 4047 is hereby AFFIRMED in toto.
>
> SO ORDERED.[16]

On December 9, 2022, NGCP sought for the reconsideration of the *Joint Decision*. However, on May 26, 2023, the RTC issued the assailed *Order* denying NGCP's Motion for Reconsideration.[17]

---

[11] *Id.*
[12] Petition for Review, EB Docket, p. 7.
[13] RTC Joint Decision, EB Docket, p. 68.
[14] Petition for Review, EB Docket, p. 9.
[15] *Id.*
[16] Petition for Review, EB Docket, pp. 9-10; or see RTC Joint Decision, EB Docket, p. 72.
[17] Petition for Review, EB Docket, p. 11.

h

On August 24, 2023, NGCP filed the present *Petition for Review* praying for the grant of its petition, as follows:

1) Declaring that NGCP is exempt from the payment of Mayor's Permit Fee under Section 9 of RA 9511;

2) Directing the Respondent-Treasurer of Bayombong, Nueva Vizcaya to cancel the Assessment Records for Mayor's Permit Fee for calendar years 2020 and 2021 in the amount of Php2,000.00, respectively or a total of Php4,000.00; and

3) Directing the Respondent-Treasurer of Bayombong, Nueva Vizcaya to refund to NGCP the Mayor's Permit Fees for calendar years 2020 and 2021 in the amount of Php2,000.00, respectively or a total of Php4,000.00.[18]

On October 17, 2023, the Court received respondent's Comment, filed through registered mail on October 9, 2023.[19]

On November 20, 2023, the case was submitted for decision.

On December 6, 2023, petitioner filed a Motion (To admit Reply to the Respondent's Comment on NGCP's Petition for Review), which the Court granted in the Minute Resolution dated January 3, 2024.

ISSUES

Petitioner assigns the following errors to the RTC:

I. The RTC gravely erred when it held that NGCP is not exempt from paying Mayor's Permit Fee.

II. The RTC gravely erred when it held that the "in lieu of all taxes" clause in NGCP's Franchise (RA 9511) applies only to internal revenue taxes and does not apply to local taxation.

III. The RTC gravely erred when it held that NGCP is estopped from claiming exemption from Mayor's Permit Fee because it did not protest the other regulatory fees.[20]

---

[18] Petition for Review, EB Docket, p. 27.
[19] EB Docket, pp. 294-296.
[20] Petition for Review, EB Docket, p. 14.

r

Petitioner's arguments

NGCP argues that it is exempt from paying mayor's permit fee by virtue of Section 9 of RA 9511, which provides that NGCP's payment of franchise tax shall be "*in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national*"; that the said "in lieu of taxes" clause applies to national and local taxes; and, that the Mayor's Permit Fee is a tax imposed on its activities. NGCP also asserts that it specifically protested the Mayor's Permit Fee, thus, it is not estopped from claiming an exemption from the payment of the Mayor's Permit Fee.

In its Reply, NGCP also states that the instant petition involves a local tax case or tax collection case, which falls squarely within the jurisdiction of the CTA.

Respondent's counter-arguments

Respondent argues that the CTA has no jurisdiction since the cases before the MTC involved an action for declaratory relief and collection of sum of money, hence, not a local tax case. According to the respondent, what was called for before the lower court is the proper interpretation of the "in lieu of taxes" clauses in Section 9 of RA 9511.

RULING OF THE COURT

The *Petition for Review* is dismissed for lack of jurisdiction.

The CTA is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[21] Section 7(a)(3) of RA No. 1125, as amended by RA Nos. 9282 and 9503, provides for the CTA's jurisdiction on local tax cases, to wit:

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

[21] *Commissioner of Internal Revenue v. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

ʎ

resolved by them in the exercise of their original or appellate jurisdiction.

It is also true that in *NGCP v. Oliva,*[22] the Supreme Court declared that NGCP's "in lieu of all taxes" clause includes local taxes imposed by the local government:

> ...The "in lieu of all taxes" clause is strictly limited to the kind of taxes, taxing authority, and object of taxes specified in the law.
>
> Section 9 of RA 9511 states that NGCP's payment of franchise tax is in lieu of payment of "income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, **local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise." ... Section 9 of RA 9511 clearly stated that NGCP's "in lieu of all taxes" clause includes taxes imposed by the local government on properties used in connection with NGCP's franchise. *(emphasis in the original)*

At the outset, this Court needs to determine whether the subject of the instant case and NGCP's prayer for reliefs fall under the jurisdiction of the CTA. To recall, NGCP prays for the following:

1. Declaring that NGCP is exempt from the payment of **Mayor's Permit Fee** under Section 9 of RA 9511;

2. Directing the Respondent-Treasurer of Bayombong, Nueva Vizcaya to cancel the Assessment Records for **Mayor's Permit Fee** for calendar years 2020 and 2021 in the amount of Php2,000.00, respectively or a total of Php4,000.00; and

3. Directing the Respondent-Treasurer of Bayombong, Nueva Vizcaya to refund to NGCP the **Mayor's Permit Fees** for calendar years 2020 and 2021 in the amount of Php2,000.00, respectively or a total of Php4,000.00.

Thus, there is a need to determine whether **Mayor's Permit Fees** fall under "local tax cases".

Unfortunately, there is no specific definition of "local tax cases." However, in *Smart Communications, Inc. v. Municipality of Malvar, Batangas,*[23] the Supreme Court discussed what is **not** a local tax case

[22] G.R. Nos. 213157 and 213558, August 10, 2016.
[23] G.R. No. 204429, February 18, 2014.

ﾉ^

when it distinguished between a tax imposition and a regulatory imposition, as follows:

> Smart contends that the CTA erred in dismissing the case for lack of jurisdiction. Smart maintains that the CTA has jurisdiction over the present case considering the "unique" factual circumstances involved.
>
> The CTA refuses to take cognizance of this case since it challenges the constitutionality of Ordinance No. 18, which is outside the province of the CTA.
>
> Jurisdiction is conferred by law. Republic Act No. 1125, as amended by Republic Act No. 9282, created the Court of Tax Appeals. Section 7, paragraph (a), sub-paragraph (3) of the law vests the CTA with the exclusive appellate jurisdiction over "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."
>
> The question now is whether the trial court resolved a local tax case in order to fall within the ambit of the CTA's appellate jurisdiction. This question, in turn, depends ultimately on whether the fees imposed under Ordinance No. 18 are in fact taxes.
>
> Smart argues that the "fees" in Ordinance No. 18 are actually taxes since they are not regulatory, but revenue-raising. Citing Philippine Airlines, Inc. v. Edu, Smart contends that the designation of "fees" in Ordinance No. 18 is not controlling.
>
> The Court finds that the fees imposed under Ordinance No. 18 are not taxes.
>
> Section 5, Article X of the 1987 Constitution provides that "each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government."
>
> Consistent with this constitutional mandate, the LGC grants the taxing powers to each local government unit. Specifically, Section 142 of the LGC grants municipalities the power to levy taxes, fees, and charges not otherwise levied by provinces. Section 143 of the LGC provides for the scale of taxes on business that may be imposed by municipalities while Section 147 of the same law provides for the fees and charges that may be imposed by municipalities on business and occupation.
>
> The LGC defines the term "charges" as referring to the pecuniary liability, as rents or fees against persons or property, while **the term "fee" means "a charge fixed by law or ordinance for the regulation or inspection of a business or activity."**

In this case, the Municipality issued Ordinance No. 18, which is entitled "An Ordinance Regulating the Establishment of Special Projects," to regulate the "placing, stringing, attaching, installing, repair and construction of all gas mains, electric, telegraph and telephone wires, conduits, meters and other apparatus, and provide for the correction, condemnation or removal of the same when found to be dangerous, defective or otherwise hazardous to the welfare of the inhabitant[s]." It was also envisioned to address the foreseen "environmental depredation" to be brought about by these "special projects" to the Municipality. Pursuant to these objectives, the Municipality imposed fees on various structures, which included telecommunications towers.

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.

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."

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.

xxx

Considering that the fees in Ordinance No. 18 are not in the nature of local taxes, and Smart is questioning the constitutionality of the ordinance, the CTA correctly dismissed the petition for lack of jurisdiction. (*emphasis supplied*)

/\

The Supreme Court once again defined local taxes vis-à-vis regulatory fees in *Municipality of San Mateo, Isabela, represented by Municipal Mayor Crispina R. Agcaoili, M.D. and Atty. Alfredo S. Remigio, in his capacity as the Municipal Legal Officer v. Smart Communications, Inc.*,[24] as follows:

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

Finally, in *Bases Conversion and Development Authority and John Hay Management Corporation v. City Government of Baguio City, et al.*,[25] the Supreme Court extensively distinguished taxes, business permits, and license fees from another. The Supreme Court concluded that business permits are not local taxes in tax exemption statutes, to wit:

> **The payment of fees for the issuance of business permits is regulatory in nature under the local government unit's police power. It is not a tax for revenue generation. Tax-exempt entities, therefore, cannot claim to be exempted from paying fees for business permits.**
>
> xxx
>
> Not only can local government units levy local taxes, but they can also impose all other fees necessary to promote the general welfare.
>
> In this case, to resolve the issue of whether a tax-exempt entity can be statutorily exempt from paying business permits or license fees to the local government, it is first necessary to distinguish taxes, business permits, and license fees from one another.

---

[24] G.R. No. 219506, June 23, 2021.
[25] G.R. No. 192694, February 22, 2023.

ル

xxx

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

In this case, what is involved is the payment of a business permit issued by the city mayor. xxx

xxx

It may seem that local government units impose business taxes primarily to generate revenue, which means they would fall under the power of taxes. However, this Court has clarified that business taxes are regulatory in nature, since they are essentially fees paid for the exercise of a privilege. xxx

xxx

Business taxes, being a prerequisite to the issuance of a mayor's permit to conduct business, are only one aspect of the issuance. Nonpayment of business taxes will surely hinder the issuance of the mayor's permit xxx

xxx

Business "taxes", thus, are a species of license fees that may be imposed by the local government unit. While incidentally revenue-earning, **fees for a mayor-issued business permit are primarily regulatory**, since the local government is not precluded from imposing conditions other than the payment of business taxes before the permit is issued. **Issuance of business permits are in the exercise of police power**.

xxx

Since exactions levied by the local government unit under the power of taxation are of a different legal concept from those levied in the exercise of police power, they should also be treated differently when it comes to tax exemptions under any statute.

Thus, "local taxes" in the context of tax exemption statutes should only refer to those taxes levied by the local government unit primarily for revenue generation. Exactions made in the exercise of police power, that is, fees or "taxes" levied for a primarily regulatory purpose, are not included in the exemption, unless the statute categorically provides otherwise. **License fees and business permit fees, therefore, are not "local taxes" in tax exemption statutes**. (emphasis supplied)

Considering the declaration that business permit fees, such as the mayor's permit fee in this case, are not local taxes, the CTA has no jurisdiction and is precluded from ruling on NGCP's petition for exemption from the payment of mayor's permit fees, cancellation of the assessment for mayor's permit fees, and refund of the paid mayor's permit fees for calendar years 2020 and 2021.

It must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[26]

WHEREFORE, the instant *Petition for Review* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

---

[26] *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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