REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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

CTA AC NO. 217

Members:

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

- versus -

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

Promulgated:

JUN 3 0 2021

3:50 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court is petitioner's **Motion for Partial Reconsideration (of the Decision dated 13 July 2020)** filed through registered mail on September 14, 2020 and received by the Court on September 30, 2020, *sans* respondent's comment.

For easy reference, the dispositive portion of the assailed portion reads as follows:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**, and the Decision of the Lower Court dated August 17, 2018 is **PARTIALLY REVERSED AND SET ASIDE**. Accordingly, the Local Business Tax Assessment in the amount of Four Million One Hundred Sixty Nine Thousand Six Hundred Ninety Seven and 36/100 (P4,169,697.36) is **CANCELLED**.
>
> **SO ORDERED.**"[1]

In the instant motion, petitioner asserts that: (1) it has no branch office, sales office or even a project office within the Municipality of Guiguinto, Bulacan; and (2) This Court has jurisdiction to rule on the imposition of mayor's permit, business license and miscellaneous fees.

After careful consideration of petitioner's assertions, the Court finds the same unmeritorious.

Petitioner's Sta. Rita and Tabang offices are branch or sales office. The Municipality of Labrador case is inapplicable in the instant case

Petitioner argues that the Sta. Rita office is not a branch or sales office because its purpose is "to provide operations and maintenance services to Manila North Tollways Corporation ('MNTC'), with respect to the operations and maintenance of the North Luzon Expressway." Further, "the Sta. Rita and Tabang Control Offices merely serve as stations for certain vehicles in order to facilitate the speedy response to any roadway incidents or in cases of emergency. Being mere support facilities, they do not generate any income or profit whatsoever. As such, they cannot be considered as branch or sales offices liable for LBT."[2]

The Court disagrees. ge

[1] Docket, Decision, p. 173.
[2] Docket, Motion for Partial Reconsideration, p. 184.

Petitioner itself admitted in the Petition for Review that the core of its business is to provide operations and maintenance services to its clients. Thus:

> "As previously stated, the core of Petitioner's business is to provide operations and maintenance services to its clients, specifically MNTC, with respect to the operations and maintenance of the NLEX. These services contemplate a multitude of activities which include planning, organizing, training, outsourcing, coordinating, employment and deployment of necessary personnel, collection of tolls, and procurement of materials for the repair and maintenance of roads, among others. Due to the complexity and variety of the activities comprising Petitioner's business, its operations are centralized in its principal office."[3]

As a corporation primarily engaged in the business of providing operations and maintenance services for NLEX, it is amusing how petitioner's Sta. Rita and Tabang offices, which are likewise used for the same purpose, would not be considered as branch or sales offices of petitioner. Simply put, petitioner's Sta. Rita and Tabang offices are precisely utilized as extensions of its principal office, so it can similarly provide operations and maintenance services for the relevant portion of NLEX.

Hence, since the Sta. Rita and Tabang Offices are being used to perform the core functions of the corporation relative to the relevant portion of the NLEX, they are considered as branch or sales offices subject to Local Business Tax (LBT).

On the other hand, petitioner also argues that "the Labrador case determined that the maintenance and operation of the substations, in itself, is not sufficient to recognize the same as 'branches' or 'sales offices.'"[4]

Petitioner's reliance on the pronouncement of the Court in the *Labrador* case[5] is misplaced. gr

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[3] Petition for Review, Docket, par. 26, p. 13.
[4] Docket, Motion for Partial Reconsideration, p. 179.
[5] Penned by Retired Associate Justice Cielito N. Mindaro-Grulla, CTA AC No. 120, November 3, 2015.

In *Labrador*, the Court found that the substations are maintained simply to monitor the transmission assets and equipment. In other words, said substations are utilized merely to connect the main source of electricity, *i.e.*, power plant, to the transmission lines. The maintenance of the substations is only an incidental aspect of TRANSCO's business for the effective transmission of electricity from one place to another.

Here, providing operations and maintenance services are the principal business functions of petitioner. Without performing these functions in their Sta. Rita and Tabang offices, no income would be generated for petitioner, and it may even expose itself to civil liabilities for violation of its relevant contracts, *i.e.*, Supplemental Toll Operation Agreement and Operations and Management Contract.

Thus, the Sta. Rita and Tabang offices are necessarily branch or sales offices of petitioner because:

(1) They are fixed places located at respondent's locality;

(2) Petitioner conducts operations of its business in the said offices, *i.e.*, operations and maintenance services, in respondent's locality; and

(3) Petitioner's core business is to provide operations and maintenance services to its clients, which are the same services provided by petitioner in respondent's locality.

The findings of the Bureau of Local Government and Finance (BLGF) are not binding to the Court

In this regard, petitioner asserts that the BLGF confirmed that petitioner has no branch or sales office in respondent's locality.

However, said findings of the BLGF are not binding to this Court, which are contrary to the findings in the immediately preceding discussion. *qr*

In *The City of Makati v. The Municipality of Bakun and Luzon Hydro Corporation*,[6] the Supreme Court held that:

> "To be sure, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts. The authorities cited by petitioner pertain to the Court of Tax Appeals, a highly specialized court which performs judicial functions as it was created for the review of tax cases. In contrast, the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others."

Considering the foregoing, the Court finds petitioner's assertions untenable.

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

Finally, petitioner insists that the Court has jurisdiction to rule with respect to its liability to pay mayor's permit, business license and miscellaneous fees.

To reiterate, these fees are regulatory in nature and not revenue-raising. As it was previously held in the assailed Decision:

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

[6] G.R. No. 225226, July 7, 2020.

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.

We accordingly say that the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee. The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. Thus, '[w]hen no police inspection, supervision, or regulation is provided, nor any standard set for the applicant to establish, or that he agrees to attain or maintain, but any and all persons engaged in the business designated, without qualification or hindrance, may come, and a license

> on payment of the stipulated sum will issue, to do business, subject to no prescribed rule of conduct and under no guardian eye, but according to the unrestrained judgment or fancy of the applicant and licensee, the presumption is strong that the power of taxation, and not the police power, is being exercised."

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

Meanwhile, the Court has exclusive appellate jurisdiction to review by appeal the decisions, orders or resolutions of the RTC in local tax cases originally decided or resolved by the RTC in the exercise of its original or appellate jurisdiction.[7] Considering that the impositions involved are regulatory fees, the Court has no jurisdiction over to rule upon the same."[8]

To end, petitioner failed to raise meritorious arguments in support of its motion. Hence, the denial thereof is in order.

WHEREFORE, the instant Motion for Partial Reconsideration (of the Decision dated 13 July 2020) is **DENIED**, for lack of merit.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[7] Section 7(3) of Republic Act No. 9282.
[8] Docket, Decision, pp. 171- 172.