REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SAN MIGUEL OFFICERS CORPS, INC.,
Petitioner,

-versus-

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

CTA AC NO. 136

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 20 2017
3:02 p.m.

x- -x

RESOLUTION

***Fabon-Victorino, J.*:**

In its Motion for Reconsideration dated December 22, 2016, respondents pray to reverse and set aside the Decision dated November 22, 2016 which overturned the ruling of the Regional Trial Court (RTC), Branch 7 of Davao City and granted the instant Petition for Review filed by petitioner San Miguel Officers Corps, Inc.

Respondents contend that the Court erred in holding that the SMC shares held by petitioner are owned by the government, hence, the said shares as well as the dividends derived therefrom, are beyond the taxing power of respondents.

Respondents also believe that the authority cited by the Court is not applicable to the present case, thus, they cannot agree with the ruling that the subject SMC shares held by petitioner are government-owned. They claim that the ruling that the SMC shares are public in nature only means that they are not privately owned by petitioner. Besides, there is nothing in the cited case pertaining to the taxability of the said shares, or any pronouncement that they are not subject to tax.

In any event, only the dividends of the subject SMC shares and interest accruing therefrom are being subjected to tax and not the shares themselves. Respondents as well claim that the subject SMC shares continue to be in the name and possession of petitioner, a private entity. Further, the present case is handled by a private law firm and not by the Office of the Solicitor General (OSG) which handles government cases. All these are indicators that the subject shares are not government-owned, thus, not exempt from local taxes under the Local Government Code (LGC) of 1991. In the absence of a clear provision of law allowing the subject shares exemption from local business tax, the subject imposition must remain valid and must be paid by petitioner.

Respondents likewise maintain that respondent City has authority to impose the subject business tax on petitioner for being a financial intermediary, citing Section 143(f) of the LGC of 1991. Based on the main purpose of petitioner as stated in its Articles of Incorporation, it is a financial intermediary, making it subject to business tax pursuant to Section 143(f) of the LGC.

Petitioner despite notice, failed to file comment or opposition to respondents' Motion for Reconsideration.[1]

Respondents' insistence that the SMC shares held by petitioner are private in nature rather than government-owned will prove unavailing to its cause. The Final Arbiter had spoken. The subject SMC shares, having been acquired using government funds, belong to the government. This is clearly discussed in the assailed Decision of November 22, 2016.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other

[1] Records Verification dated February 2, 2017 of the Judicial Records Division of the Court.

courts should take their bearings.[2] Thus, the Court cannot rule on the matter in any other way.

For being government-owned, any dividends or any income derived from these SMC shares, are also government-owned, thereby falling under the prohibition under Section 133(o) of the LGC of 1991.

Likewise, respondents' insistence that petitioner is a financial intermediary subject to business tax under Section 143(f) of the LGC, based solely on petitioner's Articles of Incorporation, is bereft of merit. Without more, the mere statement of purposes for its creation does not automatically prove that petitioner is operating as a financial intermediary. As ruled by the Court[3], there is insufficient proof that petitioner is a financial intermediary/banks and other financial institutions subject to business tax per Section 143(f) of the LGC of 1991.

WHEREFORE, the Motion for Reconsideration dated December 22, 2016 filed by respondents is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[2] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003.
[3] Pages 14-19, Decision dated November 22, 2016.