REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

THE CITY GOVERNMENT OF CAGAYAN DE ORO,
Petitioner,

-*versus*-

CAGAYAN ELECTRIC POWER & LIGHT CO., INC. (CEPALCO),
Respondent.

CTA AC NO. 194

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 2 5 2020
10:46 a.m.

x --- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under ***Section 4(a), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***,[2] asking the Court to render judgment modifying the Decision of the Regional Trial Court ("RTC") of Misamis Oriental, Cagayan de Oro City ("CDO"), Branch 24, to declare its Assessment for Weights and Measures valid, to allow it to enforce its Assessment for Pole Rental Taxes, and to order the payment of the Assessment it issued for Mayor's Permit Fee, all against respondent.

The Parties

Petitioner City Government of Cagayan de Oro is a local government unit ("LGU") existing by virtue of Republic Act ("RA") No. 521, as amended by RA No. 7160. It may be served with summons, notices, and other processes at the City Legal Office, 1st Floor Executive Building, City Hall, Capistrano-Hayes Streets, CDO.

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[1] Appeal By Way of Petition for Review under RA 9282, Records, pp. 41-62.
[2] A.M. No. 05-11-07-CTA, 22 November 2005.

Respondent Cagayan Electric Power and Light Co., Inc. ("CEPALCO") is a domestic corporation duly organized by virtue of the laws of the Republic of the Philippines with principal office address at 44 Don Toribio Chaves Street, CDO.

Respondent is an electric distribution utility and a grantee of legislative franchise, the latest of which is RA No. 9284, a grantee of a Certificate of Public Convenience and Necessity ("CPCN") issued by the Energy Regulatory Commission ("ERC"). It operates as an electric distribution utility in CDO and Misamis Oriental, except for certain barangays and municipalities therein.

The Facts

On 16 January 2014, respondent received from the petitioner three (3) Notices of Assessment assessing it for deficiency taxes and fees, inclusive of surcharge and penalties, for the years 2003-2013, as follows:[3]

Weights and Measures	₱ 337,875,000.00
Pole Rental Tax	39,072,399.46
Mayor's Permit Fee	152,550,562.50
TOTAL	**₱ 529,497,961.96**

Aggrieved, respondent filed a Letter on 21 February 2014 protesting the aforementioned assessments pursuant to Section 195 of the Local Government Code ("LGC").[4]

Claiming inaction on the part of the petitioner,[5] respondent filed the original Petition with the RTC of Misamis Oriental, CDO on 22 May 2014.[6] Respondent prayed that the Notices of Assessment be declared null and void and for the RTC to order petitioner to pay the amount of ₱250,000.00 as reasonable attorney's fees with appearance fees of ₱3,000.00 for every hearing, ₱50,000.00 as and by way of exemplary damages, and ₱50,000.00 as litigation expenses.[7]

In its Petition, the respondent alleged that petitioner's assessment pertaining to Weights and Measures did not state or failed to state the Ordinance from which it is based. Hence it concluded that the assessment utterly lacks factual and legal bases and is thus invalid. It further alleged that,

[3] Par. 7 of respondent's Petition dated 22 May 2014, RTC Records, pp. 5-6 which was admitted by petitioner in par. 3 of the petitioner's Answer dated 30 June 2014, RTC Records, p. 25.
[4] Par. 8 of respondent's Petition dated 22 May 2014, RTC Records, p. 6 which was admitted by petitioner in par. 4 of the petitioner's Answer dated 30 June 2014, RTC Records, p.25.
[5] Par. 9 of respondent's Petition dated 22 May 2014, RTC Records, p. 6 which was admitted by petitioner in par. 5 of petitioner's Answer dated 30 June 2014, RTC Records, p. 25.
[6] Petition, RTC Records, pp. 4-23, with annexes.
[7] *Ibid.*

assuming that there is an existing Ordinance that applies to its weights and measures, which in the case of respondent is its electric or kilowatt meters, petitioner does not have the authority to impose such fees since it is not empowered to regulate, license, seal, test, or calibrate the said electric meters. Respondent also posited that the Notice of Assessment is defective because it is being assessed for a period of 11 years, which is contrary to Section 194 of the LGC, which limits the assessment of local fees, taxes, or charges for 5 years, counting from the date the amount became due. Lastly, it questioned the basis of petitioner in computing its supposed liability. Respondent explained that petitioner charged it fees on weights and measures for 150,000 electric meters, which is an inaccurate number since it only had 91,000 customers in 2003 and 124,000 customers in 2013.[8]

As for the assessment pertaining to the Pole Rental Tax, respondent argued that the basis of the assessment, City Ordinance No. 9503-2005, was already declared void by the Supreme Court in the case of ***CEPALCO v. City of Cagayan de Oro***.[9] Hence, the assessment is, likewise, void.[10]

Lastly, with respect to the assessment pertaining to the Mayor's Permit Fee, respondent alleged that the validity of the assessment is still under litigation with the Court of Appeals, in the case docketed as CA-G.R. CV No. 02771. Hence, the assessment against it is still premature.[11]

Subsequently, petitioner filed its Answer dated 30 June 2014. Petitioner argued that the Notice of Assessment pertaining to Weight and Measures is based on Article EE of City Council Ordinance No. 8847-2003 (hereinafter referred to as "CDO Revenue Code") and Section 148 of the LGC. It also argued that the inaccuracy in the estimate it used in the assessment does not render the same void. As for the assessment pertaining to the Pole Rental Tax, petitioner explained that the basis of the assessment is Section 58(h) of the CDO Revenue Code and not Ordinance No. 9504-2005. It explained that it only made a wrong citation in the assessment. Lastly, as for the Mayor's Permit Fee, petitioner explained that although the respondent is still contesting the validity of the assessment in the Court of Appeals, there is no legal impediment under the law for the petitioner to enforce the assessment against the respondent.[12]

Thereafter, petitioner and respondent filed their respective Pre-Trial Briefs, dated 29 August 2014 and 1 September 2014, respectively.

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[8] *Ibid.*
[9] G.R. No. 191761, 14 November 2012.
[10] Petition, RTC Records, pp. 4-23, with annexes.
[11] *Ibid.*
[12] Answer, RTC Records, pp. 24-41, with annexes.

On 4 September 2014, the RTC issued an Order referring the case to the Philippine Mediation Center ("PMC") for possible negotiation and amicable settlement of the case.[13] Since the parties failed to mediate, the case was set for Judicial Dispute Resolution ("JDR") Conference on 10 December 2014.[14]

Thereafter, on 30 January 2015, the Hall of Justice of CDO was engulfed by fire, destroying all records of the cases kept thereat, including the records of this case then before it.[15] Hence, the RTC, in a Notice dated 26 February 2015, ordered the parties to submit all pleadings in their possession for the reconstitution of the records of the case.[16]

On 22 May 2015, the preliminary conference for the reconstitution and reconstruction of all records pertinent to the case took place.[17] Subsequently, a clarificatory hearing was held on 5 August 2015, where both parties manifested that they do not have additional documents to submit.[18] Thereafter, the Application for Reconstitution was submitted by the RTC for resolution.[19]

On 6 October 2015, the RTC issued an Order granting the Application for Reconstitution.[20]

On 29 January 2016, Pre-Trial ensued where both parties agreed that only legal issues are involved in the case and proposed that it be submitted for decision.[21] Also in the said hearing, the parties admitted the following facts:

> "1. **<u>The 1st Assessment</u>**, consists of the fees assessed by the respondents [petitioner] on the kilowatt electric meters/units of the petitioner[respondent] (Weights and Measures), computed by the former on a per electric meter/unit per year basis, at P100/meter/unit, totaling to P337,875[,000].00 and retroactive, covering the periods 2003 up to 2013, as a regulatory fees for all public utility on energy. This is confirmed by Atty. Delegencia [counsel for petitioner].
>
> 2. **<u>The 2nd Assessment</u>**, also called Pole Rental Tax, imposed retroactively, for the periods 201[0]3-2013, in the total amount of P39,072,399.46, assessed on a per pole/year basis, set at 2% of the Gross Revenues per year of the petitioner [respondent], and that there was a similar assessment done by the City Government in a prior year but which was nullified by the Supreme [Supreme] Court (SC) in an appropriate case entitled CEPALCO vs. City of Cagayan de Oro City, as G.R. No. 191761, promulgated on November 14, 2012. This is also confirmed by Atty. Delegencia, but qualifying that the Ordinance that was nullified by the SC

[13] Order dated 4 September 2014, RTC Records, p. 55.
[14] Order dated 12 November 2014, RTC Records, p. 56.
[15] Decision dated 10 July 2017, RTC Records, pp. 247-268.
[16] Notice dated 26 February 2015, RTC Records, p. 59.
[17] Minutes of the Reconstitution/Reconstruction Proceedings, RTC Records, pp. 147-149.
[18] Minutes, RTC Records, p. 152.
[19] Order dated 5 August 2015, RTC Records, p. 153.
[20] Order dated 6 October 2015, RTC Records, pp. 156-156-a.
[21] Order dated 29 January 2016, RTC Records, pp. 169-170.

> was a different one (City Ordinance No. 9503, Series of 2005), that imposed a tax of 10% of the gross revenue per year of the petitioner, to which Atty. Khu [Kho] [counsel for respondent] has agreed, but gaining a reply from Atty. Delegencia that the subject Second Assessment is based on City Council Ordinance No. 8847, Series of 2003, particularly Section 58(b), Act. N[H], Chapter II thereof. However, Atty Khu [Kho] has added that petitioner is still questioning the Ordinance that served, as basis of this particular assessment;
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> 3. **<u>The Third Assessment</u>**, also identified as the Mayor's Permit Fee, imposing an exaction of P500/pole/per year, covering the periods 2003-2013, in the amount of P152,550,562.50, despite what Atty. Khu [Kho] claimed that Ordinance No. 9527 relied upon was enacted in 2005 only, but made retroactive to 2003, and despite of the pendency still of the case it instituted earlier, in the Court of Appeals (CA), from a Decision of Regional Trial Court, Branch 17, where it assailed the validity of the subject Resolution, which is admitted by Atty. Delegencia, but the qualification that there are actually two (2) Ordinances with similar features."[22]

In view of the Joint Motion of the parties to submit the case for decision, the RTC granted the parties a period of 30 days to submit their respective memoranda and an additional period of 15 days for the parties to submit their respective supplemental memoranda, if each will opt to do so.[23]

On 9 February 2016, the petitioner filed an Urgent Motion to Admit the Attached Application/Petition for Supplemental Reconstitution of Judicial Records[24] and Application/Petition for Supplemental Reconstitution of Judicial Records,[25] seeking for inclusion in the reconstituted records three additional documents.

However, in a hearing set on 8 April 2016, petitioner formally withdrew its Application/Petition for Supplemental Reconstitution of Judicial Records on the ground that the additional documents were already part of the reconstituted records.[26]

On 4 April 2016, petitioner filed its Memorandum.[27] Meanwhile, respondent filed its Memorandum on 4 May 2016.[28]

Thereafter, petitioner filed its Reply to Petitioner's[29] Memorandum on 19 May 2016.[30]

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[22] *Ibid.*
[23] *Ibid.*
[24] Urgent Motion to Admit the Attached Application/Petition for Supplemental Reconstitution of Judicial Records, RTC Records, pp. 178-180.
[25] Application/Petition for Supplemental Reconstitution of Judicial Records, RTC Records, pp. 181-187.
[26] Order dated 8 April 2016, RTC Records, p. 201.
[27] Memorandum of petitioner, RTC Records, pp. 189-199.
[28] Memorandum of respondent, RTC Records, pp. 206-215.
[29] Respondent in this case.
[30] Reply to Petitioner's Memorandum, RTC Records, pp. 216-227.

On 21 April 2017, the RTC issued an Order[31] directing the parties to file a Manifestation regarding the following interpretations made by the RTC, after which the case would be submitted for decision, to wit:

> "1. The records have already been reconstituted, as shown in the Order dated October 6, 2015, in re: Application for Reconstitution filed by the petitioner [respondent].
>
> 2. The subsequent filing by the respondents of an Application/Petition for Supplemental Reconstitution of Judicial Records dated February 9, 2016, seeking for the further reconstitution of three (3) more records therein specified, but which was later withdrawn at said respondents' instance, as contained in the Order dated April 8, 2016.
>
> 3. In the Order dated December 10, 2014, the parties' counsels' joint manifestation that the issues in this case are legal, is recorded.
>
> 4. and that Petitioner and the Respondents already submitted their Memorandums dated April 1, 2016 and May 4, 2016, respectively, followed by the respondents' Reply to Petitioner's Memorandum dated May 19, 2016."

On 29 May 2017, the RTC issued an Order,[32] directing the issuance of a Subpoena to petitioner and for it to submit clear and readable copies of the annexes attached to its Answer. The said Subpoena was issued on 30 May 2017.[33]

On 31 May 2017, petitioner filed its Manifestation to the Order of the RTC dated 21 April 2017.[34]

On 8 June 2017, the petitioner filed its Compliance with the Order of the RTC dated 29 May 2017.[35]

Thereafter, on 10 July 2017, the RTC issued the assailed Decision,[36] partially granting respondent's Petition, to wit:

> "WHEREFORE, this Court holds and finds, as follows:
>
> 1. The respondents' Notice of Assessment on the Petitioner for the payment of fees on electric kilowatt meters is declared invalid, for lack of supporting City Ordinance.
>
> 2. The respondents' Notice of Assessment on the Petitioner for the payment of Pole Rental Tax at the rate of two (2%) percent, based on its gross sales or receipts of the previous calendar year, as discussed-above, is

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[31] Order dated 21 April 2017, RTC Records, p. 228.
[32] Order dated 29 May 2017, RTC Records, p. 229.
[33] Subpoena dated 30 Mat 2017, RTC Records, p. 230.
[34] Manifestation, RTC Records, pp. 231-233.
[35] Compliance, RTC Records, pp. 234-246.
[36] Decision dated 10 July 2017, RTC Records, pp. 247-268.

> lawful and constitutional, but subject to further discussions for adjustment(s) of the amount assessed should the petitioner seek for it.
>
> 3. The respondents' Notice of Assessment for the Petitioner to pay Mayor's Permit Fee, is declared premature, due to the pendency of Petitioner's appeal of the Resolution of Branch 17 of this Court, above-stated, to the Court of Appeals, docketed as CA-G.R. No. 62771, questioning the legality and constitutionality of City Ordinance No. 9527-2005, the local measure that serves as basis for the subject assessment, and the perceived likely serious repercussions that may ensue should said appeal be sustained, and for non-compliance of the requirements of prior public hearings, appraisal and assessment, mandatorily required by the Local Government Code.
>
> 4. Lastly, the claims for Attorney's fees, exemplary damages and litigated expenses are ordered dismissed, for lack of merit.
>
> Let a copy each of this disposition be furnished to Attys. Armando Khu, and Donald Delegencia and Raymund Villablanca, counsels for the petitioner and respondents, respectively.
>
> SO ORDERED.

In its Decision, the RTC found that petitioner based his assessment on respondent's weights and measures, particularly its electric or kilowatt meters, on Article EE of the CDO Revenue Code. However, after a thorough review of the same, it ruled that the said Ordinance does not impose fees on electric or kilowatt meters. Further, the RTC explained that electric or kilowatt meters fall under the definition of "machinery" that can be the subject of real property tax after following the twin requirements of "appraisal" and "assessment".

As for the Notice of Assessment pertaining to the Pole Rental Tax, the RTC found that petitioner based the said assessment on Section 58(h) of the CDO Revenue Code. According to the RTC, the imposition of the said tax is legal considering that respondent, as a lessor, is engaged in the business of leasing electric poles to third persons.

As for the Notice of Assessment pertaining to the Mayor's Permit Fee, the RTC declared the assessment premature due to the pendency of a case questioning the legality and constitutionality of the ordinance to which the assessment is based.

Lastly, the RTC dismissed respondent's claims for Attorney's Fees and damages, for lack of merit.

Based on the aforementioned Decision, both parties filed their respective Motions for Partial Reconsideration on 4 September 2017.[37]

[37] Motion for Partial Reconsideration, RTC Records, pp. 269-278; Partial Motion for Reconsideration, RTC Records, pp. 279-283.

On 19 September 2017, petitioner filed its Comment on CEPALCO's Partial Motion for Reconsideration.[38]

Subsequently on 30 October 2017, the RTC issued the assailed Order denying both Motions for Partial Reconsideration for lack of merit.[39] The petitioner received his copy of the said Order on 23 November 2017.[40]

Undaunted, petitioner posted its Motion for Extension of Time [To: File Appeal by Way of Petition for Review under R.A. 9282], on 8 December 2017, asking this Court to grant it an additional period of 15 days from 08 December 2017 or until 26 December 2017, within which to file its appeal.[41] The Court granted the same on 9 January 2018, giving petitioner until 27 December 2017 to file its Petition for Review.[42]

On 14 February 2018, petitioner posted his Compliance to the letter of the Clerk of Court of the Court of Tax Appeals ("CTA") requiring the same to submit proof of payment of the docket fees. In its Compliance, the petitioner submitted a photocopy of the Postal Money Order Checks which it alleged to have been posted with its Motion for Extension of Time [To: File Appeal by Way of Petition for Review under R.A. 9282].[43]

On 28 March 2018, this Court issued a Resolution declaring the instant case closed and terminated for non-filing of the Petition for Review despite the extended period granted by the CTA.[44]

On 26 April 2018, this Court received petitioner's Omnibus Motion stating that it already complied with the payment of docket fees and, therefore, praying for its Petition for Review to be given due course.[45]

Subsequently, on 27 April 2018, petitioner posted its Amended Omnibus Motion stating that it filed its Appeal by Way of Petition for Review under R.A. 9282 on 27 December 2017 by registered mail which was acknowledged by the CTA in its Clerk of Court's Letter dated 22 January 2018. It, therefore, prayed for the Court to give due course to its Petition for Review.[46]

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[38] Comment on CEPALCO's Partial Motion for Reconsideration, RTC Records, pp. 285-295.
[39] Order dated 30 October 2017, RTC Records, pp. 300-301.
[40] Return Card attached to the Order dated 30 October 2017, RTC Records, p. 301.
[41] Motion for Extension of Time [To: File Appeal by Way of Petition for Review under R.A. 9282], Records, pp. 8-14.
[42] Resolution, Records, p. 16.
[43] Compliance, Records, pp. 18-22.
[44] Resolution, Records, p. 26.
[45] Omnibus Motion, Records, pp. 27-34.
[46] Amended Omnibus Motion, Records, pp. 35-64.

On 9 May 2018, this Court issued a Resolution, recalling its Resolution dated 28 Match 2018. The Court, likewise, ordered the respondent to file its comment.

On 15 May 2018, the petitioner filed a Motion for Reconsideration to the Resolution of this Court, dated 28 March 2018.[47]

The Court, in two Resolutions, dated 22 May 2018[48]and 1 June 2018,[49] respectively, ruled that the Amended Omnibus Motion and the Motion for Reconsideration filed by the petitioner are deemed moot, considering the Resolution issued by the Court dated 9 May 2018.

On 3 December 2018, the Court issued another Resolution, stating that respondent failed to file its comment within the time given. Likewise, it ordered the parties to file their respective memoranda, within 30 days from receipt of said Resolution.[50]

On 18 February 2019, the petitioner filed its Memorandum for Petitioner.[51]

Subsequently, this Court issued a Resolution dated 2 May 2019, giving respondent a fresh period of 30 days from notice to file its memorandum.[52]

On 11 July 2019, the RTC transmitted the entire records of the case[53] pursuant to the Resolution of the Court dated 26 June 2019.[54]

Considering that the respondent failed to file its memorandum despite the extended period granted by the Court, this Court issued a Resolution dated 8 October 2019, submitting the case for decision.[55] Hence this Decision.

The Issues

The petitioner submitted the following issues for this Court's consideration:

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47 Motion for Reconsideration, Records, pp. 68-76.
48 Resolution, Records, p. 78.
49 Resolution, Records, p. 80.
50 Resolution, Records, p. 95.
51 Memorandum for the Petitioner, Records, pp. 96-138.
52 Resolution, Records, pp. 144-145.
53 Transmittal from RTC, Records, pp. 149-151
54 Resolution, Records, p. 148.
55 Resolution, Records, p. 156.

WHETHER OR NOT THE RESPONDENT'S ELECTRIC METERS ARE SUBJECT TO FEES FOR SEALING AND LICENSING OF WEIGHTS AND MEASURES;

WHETHER OR NOT THE RESPONDENT IS LIABLE FOR POLE RENTAL TAX IN RELATION TO ITS ACT OF LEASING OUT ITS POLES/POSTS TO THIRD PERSONS, AND WHETHER OR NOT THE ASSESSMENT ISSUED BY THE PETITIONER AGAINST RESPONDENT IS ENFORCEABLE.

WHETHER OR NOT THE RESPONDENT IS LIABLE FOR MAYOR'S PERMIT FEES DESPITE A PENDING CASE QUESTIONING THE VALIDITY OF ITS IMPOSITION AGAINST RESPONDENT.[56]

Arguments of the Parties

Petitioner insists that its assessment pertaining to respondent's electric and kilowatt meters are authorized under Article EE of the CDO Revenue Code, which is enacted in accordance with Section 148 of the LGC. It explains that, contrary to the argument of the respondent, the LGC does not limit the imposition of fees on the sealing and licensing of weights and measures to "ordinary merchants engaged in the sale of products sold by weight." It points out that although respondent is regulated by the ERC, the LGU still has the authority to regulate respondent's electric meters. As for the argument of respondent that the basis of its assessment (number of respondent's electric meter) is incorrect, petitioner claims that it is up to respondent to provide it with the actual number of electric meters installed. It argues that considering that respondent failed to provide it with the said figures, the assessment should stand.

Likewise, petitioner questions the ruling of the RTC stating that the amount due in the Notice of Assessment on the Pole Rental Tax is still for further adjustment. It argues that the amount fixed in the Notice of Assessment should not be contingent upon respondent's submission of financial documents since it is authorized to assess and collect local taxes based on available information it has in cases when a taxpayer is reluctant to provide the necessary information.

Lastly, it argues that the RTC was in error when it ruled that the Notice of Assessment pertaining to the Mayor's Permit Fee was prematurely issued.

[56] Appeal by Way of Petition for Review under RA 9282, Records, pp. 41-64.

It contends that without an outstanding restraining order or injunctive relief, its Notice of Assessment is enforceable and demandable.

The Ruling of the Court

After going through the arguments raised by the Petitioner, this Court finds the same partially meritorious.

There is no legal basis to impose fees for sealing and licensing of weights and measures on respondent's electric meters.

Petitioner contends that the RTC erred in ruling that it has no legal basis to impose fees for sealing and licensing of weights and measures on respondent's electric meters. It insists that ***Article EE of the CDO Revenue Code*** empowers it to levy fees on the electric meters of respondent.

The pertinent provisions are hereby quoted, to wit:

> **"Article EE: Fee for Sealing and Licensing of Weights and Measures**
>
> **Section 123. Implementing Agency.** The City Treasurer shall strictly enforce the provisions of the Regulation of Practices Relative to Weights and Measures, as provided in Chapter II of the Consumer Act, Republic Act No. 7394.
>
> **Section 124. Sealing and Testing of Instruments of Weights and Measures.**- All instruments for determining weights and measures in all consumer and consumer related transactions shall be tested, calibrated and sealed every six (6) months by the official sealer who shall be the City Treasurer or his duly authorized representative upon payment of fees required under this Article: Provided, That all instruments of weights and measures shall continuously be inspected for compliance with the provisions of this Article.
>
> Trained personnel of the City Economic Enterprises Department (CEED) are likewise authorized to undertake the calibration and repair of weighing scales used in the public markets of the City and after payment by the vendor-owner thereof of the corresponding sealing and licensing fees levied hereunder.
>
> **Section 125. Imposition of Fees.** Every person before using instruments of weights and measures within this City shall first have them sealed and licensed annually and pay therefor to the City Treasurer the following fees:
>
> (a) For sealing linear metric measures:
>
> | | |
> |---|---|
> | Not over one (1) meter | 20.00 |
> | Measure over one (1) meter | 30.00 |

(b) For sealing metric measures of capacity
Not over ten (10) liters.. 20.00
Over ten (10) liters.. 50.00

(c) For sealing metric instruments of weights
With capacity of not more than 30kg.............................. 30.00
With capacity of more than 30 kg. but not more than 150kg..... 40.00
With capacity of more than 150 kg. but not more than 300 kg.. 50.00
With capacity of more than 300 kg. but not more than 3,000 kg. 60.00
With capacity of more than 3,000 kg................................100.00

(d) For sealing apothecary balances of precision
Over 3,000 kg... 80.00
Over 300 to 3,000 kg.. 60.00
Over 30 to 300 kg.. 40.00
Over 30 kg Or less... 20.00

(e) For sealing of gasoline/diesel pumps
Per Pump...100.00
Per Pump (Oil Dispenser)... 500.00
Caliberation for Gasoline/Diesel Pump...........................200.00
Caliberation for Weight & Measure............................... 200.00

(f) For each and every re-testing and re-sealing of weights and measures instruments including gasoline pumps outside the office upon request of the owner or operator, an additional service charge of one hundred pesos (P 100.00) for each instrument shall be collected."

After going through the cited provisions, this Court agrees with the RTC that the petitioner has no legal basis to impose the said fee against respondent's electric meters.

First, the imposition of the fee for sealing and licensing of weights and measures under ***Section 125, Article EE of the CDO Revenue Code*** is only limited to five (5) types of weights and measures, namely: linear metric measures, metric measures of capacity, metric instruments of weights, apothecary balances of precision, and measure for gasoline and diesel pumps.

Clearly, none of these weights and measures mentioned pertains to electric meters. Hence, the petitioner has no legal basis to charge or levy fees on the electric meters of respondent.

Basic is the rule in statutory construction that where the law enumerates the subject or condition upon which it applies, it is to be construed as excluding from its effects all those not expressly mentioned. *Expressio unius est exclusio alterius.* Anything that is not included in the enumeration is excluded therefrom, and a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein. The rule proceeds from the premise that the legislature would not have made specific enumerations in a statute if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned.[57]

*Second, **Sections 123 and 124 of Article EE of the CDO Revenue Code*** only refer to sealing and testing of weights and measures relating to consumer and consumer related transactions as those provided under ***Chapter II of the Consumer Act of the Philippines***.[58]

However, a close reading of the ***Consumer Act of the Philippines***[59] even further proves that ***Article EE of the CDO Revenue Code*** does not impose fees on electric meters since the said law only covers the regulation of food, drugs, cosmetics, and devices,[60] which, likewise, does not include electric meters.

Considering the above, this Court rules that the Notice of Assessment pertaining to Weights and Measures issued against respondent is void for lack of legal basis.

There is no legal basis to impose Pole Rental Tax on respondent.

As narrated by the parties in the Court *a quo*, the petitioner sent respondent a Notice of Assessment imposing payment for Pole Rental Tax at the rate of 2% citing as basis Ordinance No 9503-2005. However, during the proceedings in the RTC, the petitioner explained that it made a mistake in the citation of the basis of the assessment. It explained that its actual legal basis is ***Section 58(h), Article N, Chapter 2 of the CDO Revenue Code***, which is hereby quoted to wit:

> "Section 58. 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

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[57] San Pablo Manufacturing Corporation v. Commissioner of Internal Revenue, GR No. 147749, 22 June 2006.

[58] Consumer Act of the Philippines, Republic Act No. 7394, 13 April 1992.

[59] Consumer Act of the Philippines, Republic Act No. 7394, 13 April 1992.

[60] Devices refers to "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part or accessory which is (1) recognized in the official United States Pharmacopoeia-National Formulary (USP-NF) or any supplement to them, (2) intended for use in the diagnosis of disease or other condition or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or (3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes. See Article 4, Title 1 of the Consumer Act of the Philippines.

(h) Tax on **<u>Real Estate Lessors, Real Estate Dealers and Real Estate Developers</u>**:

Rate	-	2% of Gross Sales or Receipts
Basis	-	Gross Sales or Receipts of the preceding calendar year"[61]

Based on the aforementioned provision, petitioner's basis for imposing local business taxes on respondent is its being a real estate lessor, dealer or developer. Hence, for the Court to determine the validity of the assessment, it must first be satisfied that respondent is a real estate lessor, dealer, or developer within the purview of the CDO Revenue Code.

Tax ordinances are to be construed strictly against the local government, as provided under ***Section 5(b) of the LGC***, to wit:

> "SECTION 5. Rules of Interpretation- In the interpretation of the provisions of this Code, the following rules shall apply:
>
> xxx xxx xxx
>
> (b) **<u>In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer.</u>** Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it.[62]

This rule is echoed by this Court in the case of ***National Power Corp. v. Provincial Government of Bukidnon***,[63] to wit:

> "As a corollary, **it must be remembered that in construing a tax provision. <u>We should be guided instead by the principle that tax statutes are strictly construed against the taxing authority.</u>** This is because taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. **Hence, tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.**"

To prove the applicability of ***Section 58(h), Article N, Chapter 2 of the CDO Revenue Code*** to respondent, petitioner argues that electric poles are real property, citing the case of ***MERALCO v. City Assessor and City Treasurer of Lucena City (hereinafter referred to as "2015 MERALCO Case")***.[64] ~

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[61] Emphasis supplied.
[62] Emphasis supplied.
[63] CTA AC No. 57, 13 December 2010.
[64] G.R. 166102, 5 August 2015.

However, this Court is not convinced.

A close reading of the ***2015 MERALCO Case***[65] reveals that the interpretation that electric poles are real property is only applicable to real property tax, which is evident in the discussion of the Supreme Court in the Decision, to wit:

> The Court highlights that under Section 199(o) of the Local Government Code, machinery, to be deemed real property subject to real property tax, need no longer be annexed to the land or building as these "may or may not be attached, permanently or temporarily to the real property," and in fact, such machinery may even be "mobile." The same provision though requires that to be machinery subject to real property tax, the physical facilities for production, installations, and appurtenant service facilities, those which are mobile, self-powered or self-propelled, or not permanently attached to the real property (a) must be actually, directly, and exclusively used to meet the needs of the particular industry, business, or activity; and (2) by their very nature and purpose, are designed for, or necessary for manufacturing, mining, logging, commercial, industrial, or agricultural purposes. Thus, Article 290(o) of the Rules and Regulations Implementing the Local Government Code of 1991 recognizes the following exemption:
>
>> Machinery which are of general purpose use including but not limited to office equipment, typewriters, telephone equipment, breakable or easily damaged containers (glass or cartons), microcomputers, facsimile machines, telex machines, cash dispensers, furnitures and fixtures, freezers, refrigerators, display cases or racks, fruit juice or beverage automatic dispensing machines which are not directly and exclusively used to meet the needs of a particular industry, business or activity shall not be considered within the definition of machinery under this Rule.
>
> The 1964 MERALCO case was decided when The Assessment Law was still in effect and Section 3(f) of said law still required that the machinery be attached to the real property. Moreover, as the Court pointed out earlier, the ruling in the 1964 MERALCO case - that the electric poles (including the steel towers) of MERALCO are not subject to real property tax - was primarily based on the express exemption granted to MERALCO under its previous franchise. The reference in said case to the Civil Code definition of real property was only an alternative argument:
>
>> Granting for the purpose of argument that the steel supports or towers in question are not embraced within the term poles, the logical question posited is whether they constitute real properties, so that they can be subject to a real property tax. **<u>The tax law does not provide for a definition of real property; but Article 415 of the Civil Code does, by stating the following are immovable property</u>**:

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[65] *Ibid.*

> (1) Land, buildings, roads, and constructions of all kinds adhered to the soil;
>
> x x x x
>
> (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
>
> x x x x
>
> (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried in a building or on a piece of land, and which tends directly to meet the needs of the said industry or works;
>
> x x x x
>
> **The steel towers or supports in question, do not come within the objects mentioned in paragraph 1, because they do not constitute buildings or constructions adhered to the soil. They are not constructions analogous to buildings nor adhering to the soil. As per description, given by the lower court, they are removable and merely attached to a square metal frame by means of bolts, which when unscrewed could easily be dismantled and moved from place to place. They can not be included under paragraph 3, as they are not attached to an immovable in a fixed manner, and they can be separated without breaking the material or causing deterioration upon the object to which they are attached. Each of these steel towers or supports consists of steel bars or metal strips, joined together by means of bolts, which can be disassembled by unscrewing the bolts and reassembled by screwing the same. These steel towers or supports do not also fall under paragraph 5, for they are not machineries or receptacles, instruments or implements, and even if they were, they are not intended for industry or works on the land. Petitioner is not engaged in an industry or works on the land in which the steel supports or towers are constructed**.

The aforequoted conclusions of the Court in the 1964 MERALCO case do not hold true anymore under the Local Government Code. While the Local Government Code still does not provide for a specific definition of "real property," Sections 199(o) and 232 of the said Code, respectively, gives an extensive definition of what constitutes "machinery" and unequivocally subjects such machinery to real property tax. The Court reiterates that the **machinery subject to real property tax under the Local Government Code "may or may not be attached, permanently or temporarily to the real property;" and the physical facilities for production, installations, and appurtenant service**

<u>facilities, those which are mobile, self-powered or self-propelled, or are not permanently attached must (a) be actually, directly, and exclusively used to meet the needs of the particular industry, business, or activity; and (2) by their very nature and purpose, be designed for, or necessary for manufacturing, mining, logging, commercial, industrial, or agricultural purposes.</u>

Article 415, paragraph (1) of the Civil Code declares as immovables or real properties "[l]and, buildings, roads and constructions of all kinds adhered to the soil." The land, buildings, and roads are immovables by nature "which cannot be moved from place to place," whereas the constructions adhered to the soil are immovables by incorporation "which are essentially movables, but are attached to an immovable in such manner as to be an integral part thereof." Article 415, paragraph (3) of the Civil Code, referring to "[e]verything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object," are likewise immovables by incorporation. **In contrast, the Local Government Code considers as real property machinery which "may or may not be attached, permanently or temporarily to the real property," and even those which are "mobile."**

Article 415, paragraph (5) of the Civil Code considers as immovables or real properties "[machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works." The Civil Code, however, does not define "machinery."

The properties under Article 415, paragraph (5) of the Civil Code are immovables by destination, or "those which are essentially movables, but by the purpose for which they have been placed in an immovable, partake of the nature of the latter because of the added utility derived therefrom." These properties, including machinery, become immobilized if the following requisites concur: (a) they are placed in the tenement by the owner of such tenement; (b) they are destined for use in the industry or work in the tenement; and (c) they tend to directly meet the needs of said industry or works. **The first two requisites are not found anywhere in the Local Government Code.**

MERALCO insists on harmonizing the aforementioned provisions of the Civil Code and the Local Government Code. **The Court disagrees, however, for this would necessarily mean imposing additional requirements for classifying machinery as real property for real property tax purposes not provided for, or even in direct conflict with, the provisions of the Local Government Code.**

As between the Civil Code, a general law governing property and property relations, and the Local Government Code, a special law granting local government units the power to impose real property tax, then the latter shall prevail.

xxx xxx xxx

> **Therefore, for determining whether machinery is real property subject to real property tax, the definition and requirements under the Local Government Code are controlling.**"[66]

Based on the above-quoted portion of the Decision, it is clear that the Supreme Court did not make a blanket pronouncement that electric poles are real property. In ruling as such, it relied on the extended definition of "machinery" found under ***Section 199(o) of the LGC***, which is a provision only applicable to the interpretation of real property tax and not local business tax by virtue of ***Section 197 of the LGC***, to wit:

> "SEC. 197. Scope. - This Title shall govern the administration, appraisal, assessment, levy and collection of real property tax."[67]

In fact, it did not overturn that part of the Decision in ***Board of Assessment Appeals, et. al. v. Manila Electric Company (hereinafter referred to as the "1964 MERALCO Case")***,[68] where the Supreme Court previously found that an electric pole is not a real property under the Civil Code.

Hence, since electric poles are considered real properties for real property tax purposes only, the burden of proving that this interpretation holds the same for ***Section 58(h), Article N, Chapter 2 of the CDO Revenue Code*** lies on the petitioner, for in case of doubt, the tax ordinance shall be construed strictly against it. Unfortunately, petitioner failed to overcome the said burden. In fact, it is evident in the facts that the argument of the petitioner is a mere afterthought.

The Court notes that ***Section 58(h), Article N, Chapter 2 of the CDO Revenue Code*** was passed in 2003. Subsequently, on 10 January 2005 the Sangguniang Panglungsod of CDO passed Ordinance No. 9503-2005 which directly imposed tax on the lease or rental of electric and/or telecommunication posts, poles, or towers by pole owners to other pole users.[69] However, on 14 November 2012, this ordinance was struck down by the Supreme Court in the case of ***CEPALCO v. City of Cagayan de Oro***.[70] Of note is that said ordinance was also the basis indicated in the Notice of Assessment issued against respondent.

Thereafter, as admitted by the petitioner in its Memorandum,[71] the Sangguniang Panglungsod of CDO passed ***Ordinance No. 12860-2014***, also known as the ***"Cagayan de Oro City Revenue Code of 2015"*** which

[66] Emphasis supplied.
[67] Book II, Title II of the LGC is composed of Sections 197 to 283.
[68] G. R. No. L-15334, 31 January 1964
[69] Cagayan Electric Power and Light Co., Inc. v. City of Cagayan de Oro, G.R. No. 191761, 14 November 2012.
[70] *Ibid.*
[71] Memorandum for the Petitioner. Records. pp. 96-138.

reimposed taxes on the lease or rental of electric poles for the lower rate of 2.5%. This Court observes that even with the reimposition of the taxes on the lease or rental of electric poles, the business tax on real estate lessors was still retained in the new ordinance, to wit:

"ARTICLE M

Graduated Tax on Business

SECTION 51. Imposition of Business 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

H. Tax on Real Estate Lessors, Real Estate Dealers and Real Estate Developers:

Rate — 2% of Gross Sales or Receipts

Basis — Gross Sales or Receipts of the preceding calendar year

ARTICLE P

Tax on the Lease or Rental of Electric and/or Telecommunication Posts, Poles or Towers by Pole Owners to Other Pole Users

SECTION 58. Imposition of Tax. — There shall be imposed a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at the rate of two point five percent (2.5%) of the annual rental income derived therefrom.

SECTION 59. Permit Required. Pole owners herein defined engaged in the business of renting their posts, poles and/or towers shall secure a separate business permit therefor as provided for under this Ordinance."

Hence, based on the aforementioned, it is clear the ***Section 58(h), Article N, Chapter 2 of the CDO Revenue Code*** did not intend to cover lessors of electric poles within its ambit. The argument of the petitioner is a mere afterthought, which it admitted in its Memorandum,[72] to wit:

"On the other hand, it is worthy to note, that when the Supreme Court voided then City Ordinance No. 9503-2005 in the aforementioned case of ***Cagayan Electric Power & Light Co, Inc. v. City of Cagayan de Oro,*** it was done so without prejudice to the enactment of a tax ordinance that complies within the limits prescribed by law. Since the Petitioner City Government has an existing applicable ordinance, City Council Ordinance

[72] *Ibid.*

> No. 8847-2003, then it is only proper for the City Treasurer's Office to apply it upon assessment of the necessary taxes. **Section 58(h) of the City Council Ordinance No. 8847-2003** provides for the correct tax base for the assessment of pole rental tax, to wit: xxx"

Therefore, since the petitioner failed to prove that respondent is covered by ***Section 58(h), Article N, Chapter 2 of the CDO Revenue Code,*** the assessment should be struck down for lack of legal basis.

Furthermore, even assuming that ***Section 58(h), Article N, Chapter 2 of the CDO Revenue Code*** is applicable to electric pole lessors and that petitioner merely made a mistake on the legal basis cited in the assessment, this Court finds the said mistake fatal.

In the case of ***City Treasurer of Manila v. Philippine Beverage Partners, Inc.,***[73] the Supreme Court ruled that the issuance of a Notice of Assessment is a requirement of due process, where a taxpayer is made aware of the nature and amount of tax, fee, or charge imposed upon him, to wit:

> "As regards the second issue, Section 195 of the LGC provides that "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." Thus, suffice it to say that the issuance of a notice of assessment is mandatory before the local treasurer may collect deficiency taxes from the taxpayer. The notice of assessment is not only a requirement of due process but it also stands as the first instance the taxpayer is officially made aware of the pending tax liability. The local treasurer cannot simply collect deficiency taxes for a different taxing period by raising it as a defense in an action for refund of erroneously or illegally collected taxes."

Hence, considering that the Notice of Assessment is a vital element of due process, any mistake or infirmity on the assessment as to the nature or basis of the imposition will render the same void. This is explicit in our ruling in the case of ***The Municipal Treasurer of the Municipality of Claver v. Platinum Group Metals Corporation (PGMC),***[74] to wit:

> "In this case, however, it is undisputed that the Notice of Assessment, assessing respondent for deficiency local business taxes for the years 2015 and 2016, issued by petitioner was based on the 2014 and 2015 shipments of respondent. No further evidence is required to be presented in connection with the manner and bases by which the assessed amounts were computed. The assessments speak for themselves.
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> xxx xxx xxx

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[73] G.R. No. 233556, 11 September 2019.

[74] CTA AC No. 183, 16 April 2019.

Indeed, it is well within the power of this Court to rule on the validity of the Notice of Assessment taking into consideration the patent and undisputed fact that the Notice of Assessment, assessing respondent for deficiency local business taxes for the years 2015 and 2016, was based on respondent's shipments and not on its gross receipts for 2014 and 2015.

As the Notice of Assessment issued against respondent for 2015 and 2016 was not based on its 2014 and 2015 gross receipts, the same is void ab initio. The Notice of Assessment could not be a valid source of obligation to pay deficiency local business taxes for the years 2015 and 2016 on the part of respondent. Being a void assessment, the Notice of Assessment bears no fruit and should be slain at sight."[75]

In the aforementioned case, the CTA voided an assessment that was based on an incorrect tax base. In so ruling, the CTA did not consider any other evidence but the assessment itself. It further ruled that a Notice of Assessment could not be a valid source of obligation for being a void assessment.

Therefore, based on the grounds discussed, the Notice of Assessment assessing respondent Pole Rental Tax is, likewise, void for lack of legal basis.

Petitioner's assessment for Mayor's Permit Fee is enforceable.

Coming now to the third issue, petitioner issued a Notice of Assessment against respondent for Mayor's Permit Fee amounting to ₱500.00 per pole per year based on Ordinance No. 9527-2005, enacted on 24 January 2005, for the total amount of ₱152,550,562.50 for years 2003-2013.

During the proceedings in the RTC, respondent contended that the said Notice of Assessment is not enforceable since a case questioning the validity of the said ordinance is still pending with the Court of Appeals, and it was able to obtain a writ of preliminary injunction to enjoin the petitioner from enforcing the said ordinance. The RTC decided in favor of the respondent.

In this case, petitioner questions the Decision of the RTC. It argues that although the case questioning the validity of Ordinance No. 9527-2005 is still pending (currently in the Supreme Court), the assessment is enforceable since there is no outstanding restraining order against the said ordinance. It opines that the writ of preliminary injunction was deemed automatically lifted when the Trial Court issued its Resolution upholding the constitutionality of Ordinance No. 9527-2005.

We find the argument of the petitioner meritorious.

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[75] Emphasis supplied.

Section 187 of the LGC provides that a case questioning the validity or constitutionality of an ordinance will not affect the effectivity of the said ordinance, nor will it suspend the accrual or payment of the tax, fee, or charge imposed by it, to wit:

> Section 187. Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings. - The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: **Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein:** Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

An exception to this rule is when the taxpayer applies for a preliminary injunction to enjoin the collection of taxes.[76]

However, the availment of a preliminary injunction does not perpetually enjoin the collection of taxes. The Supreme Court explained in the case of ***Buyco v. Baraquia***[77] that the objective of a preliminary injunction is to preserve the status quo until the merits of the case has been heard. Hence, once the case has already been heard, the preliminary injunction is considered lifted, notwithstanding whether the case is appealed by any of the parties, to wit:

> "A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome. It is not a cause of action in itself. Being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case.
>
> The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.
>
> **It is well-settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard.** It is usually granted when it is made

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[76] Angeles City v. Angeles City Electric Corporation, et. al., G.R. No. 166134, 29 June 2010.
[77] G.R. No. 177486, 21 December 2009.

to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case.

Indubitably, in the case at bar, the writ of preliminary injunction was granted by the lower court upon respondent's showing that he and his poultry business would be injured by the closure of the subject road. After trial, however, the lower court found that respondent was not entitled to the easement of right of way prayed for, having failed to prove the essential requisites for such entitlement, hence, the writ was lifted.

The present case having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction is deemed lifted, its purpose as a provisional remedy having been served, the appeal therefrom notwithstanding.

Unionbank v. Court of Appeals enlightens:

> **"x x x a dismissal, discontinuance or non-suit of an action in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction," regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired. The rationale therefor is that even in cases where an appeal is taken from a judgment dismissing an action on the merits, the appeal does not suspend the judgment, hence the general rule applies that a temporary injunction terminates automatically on the dismissal of the action."**[78]

Hence, based on the aforementioned case, this Court finds the observation of the petitioner correct that the preliminary injunction issued by the trial court is already deemed lifted.

Considering that there is no outstanding preliminary injunction issued against the enforcement of the Mayor's Permit Fee, this Court rules that the Notice of Assessment pertaining to said fee is already enforceable and demandable, albeit only for years 2009-2013.

As observed by this Court, Ordinance No. 9527-2005 was enacted into law on 24 January 2005. Hence, petitioner has no legal basis to impose the Mayor's Permit Fee against respondent prior to the enactment of the said ordinance. To allow the petitioner to impose the Mayor's Permit Fee against respondent for years prior to 2005 constitutes a direct violation of the rule against non-retroactivity of laws.[79] Hence, the assessment for Mayor's Permit Fee for the years 2003-2004 is invalid.

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[78] Emphasis supplied.
[79] Article 4, Civil Code of the Philippines.

Likewise, petitioner is prohibited from assessing respondent for Mayor's Permit Fee starting 2005 up to 2008, since under ***Section 194 of the LGC,*** petitioner only has five years counting from the date the tax or fee became due to assess respondent, to wit:

> "SECTION 194. Periods of Assessment and Collection. - **(a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period:** Provided, That, taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due. xxx"[80]

In this case, ***Section 4 of Ordinance No. 9527-2005***[81] provides that the administration and implementation of the Mayor's Permit Fee is governed by the ***CDO Revenue Code***, which in turn requires the payment of the said fee within the first twenty (20) days of January of each year.[82]

Given this, the petitioner can only assess the respondent for the following periods:

MAYOR'S PERMIT FEE IMPOSED	PERIOD TO ASSESS	DATE RESPONDENT RECEIVED THE ASSESSMENT
2005	February 2010[83]	
2006	20 January 2011	
2007	20 January 2012	
2008	20 January 2013	
2009	20 January 2014	16 January 2014
2010	20 January 2015	
2011	20 January 2016	
2012	20 January 2017	
2013	20 January 2018	

Therefore, based on the foregoing, it is clear that for years 2005-2008, petitioner's right to assess respondent for the Mayor's Permit Fee has already prescribed. At this point, the Court finds that the Notice of Assessment issued against respondent for Mayor's Permit Fee is enforceable and demandable only for years 2009 to 2013.

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80 Emphasis supplied.

81 SECTION 4. The pertinent provisions of Ordinance No. 8847-2003, otherwise known as the 2003 Revenue Code, covering the imposition of Mayor's Permit Fee and other appropriate administrative provisions thereof shall apply in the imposition of the fee under this Ordinance.

82 CDO Revenue Code, as amended by CDO Ordinance No. 12860-14.

83 Ordinance No. 9527-2005 was enacted on 24 January 2005 and took effect 15 days after its publication in a local newspaper of general circulation.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assailed Decision dated 10 July 2017, and Order dated 30 October 2017 of the Regional Trial Court of Misamis Oriental, Cagayan de Oro, Branch 24 is hereby **PARTIALLY REVERSED AND SET ASIDE**, insofar as it finds 1) the Notice of Assessment on petitioner for the payment of Pole Rental Tax as lawful and constitutional; instead, the same is hereby **CANCELLED** for being without basis; and 2) the Notice of Assessment pertaining to the Mayor's Permit Fee to be premature; instead, the same is found to be **ENFORCEABLE AND DEMANDABLE** against respondent, but only for years 2009 to 2013.

The rest of the Decision is hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

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

ERLINDA P. UY
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