

## THIRD DIVISION

[ G.R. No. 187631, July 08, 2015 ]

**BATANGAS CITY, MARIA TERESA GERON, IN HER CAPACITY AS  
CITY TREASURER OF BATANGAS CITY AND TEODULFO A.  
DEGUITO, IN HIS CAPACITY AS CITY LEGAL OFFICER OF  
BATANGAS CITY, PETITIONERS, VS. PILIPINAS SHELL  
PETROLEUM CORPORATION, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> dated January 22, 2009 and Resolution<sup>[2]</sup> dated April 13, 2009 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 350 which *affirmed in toto* the Amended Decision<sup>[3]</sup> dated July 31, 2007 and Resolution<sup>[4]</sup> dated November 21, 2007 of the CTA Second Division in CTA AC Case No. 10.

The facts follow.

Petitioner Batangas City is a local government unit (LGU) with the capacity to sue and be sued under its Charter and Section 22(a)(2) of the Local Government Code (LGC) of 1991. Petitioners Teodulfo A. Deguito and Benjamin E. Pargas are the City Legal Officer and City Treasurer, respectively, of Batangas City.

Respondent Pilipinas Shell Petroleum Corporation operates an oil refinery and depot in Tabagao, Batangas City, which manufactures and produces petroleum products that are distributed nationwide.

In 2002, respondent was only paying the amount of P98,964.71 for fees and other charges which include the amount of P1,180.34 as Mayor's Permit. However, on February 20, 2001, petitioner Batangas City, through its City Legal Officer, sent a notice of assessment to respondent demanding the payment of P92,373,720.50 and P312,656,253.04 as business taxes for its manufacture and distribution of petroleum products. In addition, respondent was also required and assessed to pay the amount of P4,299,851.00 as Mayor's Permit Fee based on the gross sales of its Tabagao Refinery. The assessment was allegedly pursuant of Section 134 of the LGC of 1991 and Section 23 of its Batangas City Tax Code of 2002.

In response, respondent filed a protest on April 17, 2002 contending among others that it is not liable for the payment of the local business tax either as a manufacturer or distributor of petroleum products. It further argued that the Mayor's Permit Fees are exorbitant, confiscatory, arbitrary, unreasonable and not commensurable with the cost of issuing a license.

On May 13, 2002, petitioners denied respondent's protest and declared that under

Section 14 of the Batangas City Tax Code of 2002, they are empowered to withhold the issuance of the Mayor's Permit for failure of respondent to pay the business taxes on its manufacture and distribution of petroleum products.

On June 17, 2002, respondent filed a Petition for Review pursuant to Section 195 of the LGC of 1991 before the Regional Trial Court (RTC) of Batangas City.

In its petition, respondent maintained that petitioners have no authority to impose the said taxes and fees, and argued that the levy of local business taxes on the business of manufacturing and distributing gasoline and other petroleum products is contrary to law and against national policy. It further contended that the Mayor's Permit Fee levied by petitioners were unreasonable and confiscatory.

In its Answer, petitioners contended that the City of Batangas can legally impose taxes on the business of manufacturing and distribution of petroleum products, including the Mayor's Permit Fees upon respondent.

Trial thereafter ensued.

In the interim, respondent paid under protest the Mayor's Permit Fees for the year 2003 amounting to P774,840.50 as manufacturer and P3,525,010.50 as distributor. When respondent applied for the issuance of the Mayor's Permit in 2004, it offered the amount of P150,000.00 as compromise Mayor's Permit Fee without prejudice to the outcome of the case then pending, which was rejected by petitioners.

On October 29, 2004, the RTC of Batangas City rendered a Decision<sup>[5]</sup> sustaining the imposition of business taxes by petitioners upon the manufacture and distribution of petroleum products by respondent. However, the RTC withheld the imposition of Mayor's Permit Fee in deference to the provisions of Section 147 of the LGC, in relation to Section 143(h) of the same Code, which imposed a limit to the power of petitioners to collect the said business taxes. The *fallo* of said decision reads:

WHEREFORE, in view of the foregoing premises, this Court hereby renders judgment as follows:

1. The taxes on the privilege of engaging in the business of manufacturing, distribution or dealing in petroleum products in the amount of P92,373,750.50 and P312,656,253.04, respectively, imposed by Batangas City on Pilipinas Shell, is VALID.
2. Declaring the Mayor's Permit Fee in the amount of P4,299,851.00 based on gross receipts/sales as grossly excessive and unreasonable considering the aforesaid business taxes.

ACCORDINGLY, THE PETITIONER, PILIPINAS SHELL PETROLEUM CORPORATION (PSPC), IS HEREBY ORDERED TO PAY THE AMOUNT OF PHP405,030,003.54 AS TAX ON ITS BUSINESS OF ENGAGING IN THE MANUFACTURE AND DISTRIBUTION OF PETROLEUM PRODUCTS, WHILE THE ASSESSMENT OF PHP4,299,851.00 AS MAYOR'S PERMIT FEE IS

HEREBY ORDERED REVOKED WITHOUT PREJUDICE TO ITS MODIFICATION BY THE RESPONDENTS, BATANGAS CITY, ET AL.

SO ORDERED.<sup>[6]</sup>

Unsatisfied, respondent filed a "Motion for Partial Reconsideration."

In an Order<sup>[7]</sup> dated February 28, 2005, the RTC denied respondent's motion for lack of merit.

Hence, respondent filed a Petition for Review with Extremely Urgent Application for a Temporary Restraining Order and/or a Writ of Preliminary Injunction with the CTA Second Division on April 27, 2005.

Considering the urgency of the resolution of respondent's Application for the Issuance of a Writ of Preliminary Injunction, the CTA Second Division granted the said application and ordered petitioners to hold in abeyance the collection of the questioned manufacturer and distributor's taxes, conditioned upon the filing of respondent of a surety bond in the amount of P500,000,000.00.

In a Decision dated June 21, 2007, the CTA Second Division granted respondent's petition. It held that respondent is not subject to the business taxes on the manufacture and distribution of petroleum products because of the express limitation provided under Section 133(h) of the LGC. The dispositive portion of said Decision reads:

WHEREFORE, premises considered, the judgment/order of the RTC Branch II of Batangas City is hereby MODIFIED. As to the business taxes on the manufacture and distribution of petroleum products, We find the [respondent] not liable for the same. As to the Mayor's permit, We find that it is excessive. Accordingly, the [petitioner] is hereby (a) declared legally proscribed from imposing business taxes on the manufacture and distribution of petroleum products and (b) to refund in the form of tax credit the excessive mayor's permit in the amount of THREE MILLION FIVE HUDNRED TWENTY-FIVE THOUSAND TEN PESOS and FIFTY CENTAVOS (P3,525,010.50)

SO ORDERED.<sup>[8]</sup>

On July 13, 2007, respondent filed a "Motion for Clarification" on the exact amount to be refunded by petitioners as regards the Mayor's Permit Fees. After a perusal of the "Motion for Clarification," the CTA Second Division found the motion partly meritorious. Thus:

Indeed, there is a discrepancy in the amount to be refunded and to clarify, the amount should be P3,870,860.00 as written in the body of the decisions as follows:

Since [petitioners] failed to modify the computation of the mayor's permit fee and based on justice and equity, [respondent] should be refunded with the mayor's permit fees ordered revoked by the court a quo.

The details of the additional amount of P4,299,851.00 mayor's permit fees are as follows:

	Manufacturer	Distributor
<b>Mayor's Permit Fee</b>	<b>P704,305.00</b>	<b>P3,166,555.00</b>
License Fee	70,535.50	
Prof. Fee		1,000.00
Res/Bus		
25,000.00 Fire		
Insp. Fee		
Occ./Prof.Tax		12,000.00
San Permit &		
San Insp. Fee		
Fire Code Fee		320,455.00
<b>Total Amount</b>	<b>P774,840.50</b>	<b>P3,525,010.50</b>

The amount to be refunded is not the full amount of P4,299,851.00 but the excessive mayor's permit for manufacturing and distributing in the amount of P704,305.00 and P3,166,555.00, respectively, or in the total amount of P3,870,860.00.

To conform to this aforequoted pronouncement, the dispositive portion of the assailed decision should be amended so that the exact amount of the Mayor's Permit Fees to be refunded be changed from P3,525,010.50 to P3,870.860.00.

Section 2, Rule 36 of the Rules of Court reads as follows:

*SEC. 2. Entry of Judgments and final orders.*- If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry.

In this case, PSPC received the Decision on June 28, 2007 and it filed its motion for clarification (treated as a motion for reconsideration) on July 13, 2007 which is within the period allowed by law. In effect, our Decision has not yet become final and executory. Hence, our Decision may be amended.

Moreover, pursuant to Section 5(g), Rule 135 of the Revised Rules of Court that every court shall have the power to amend or control its process and orders so as to make them conformable to law and justice, the Second Division of this Court resolves to amend its Decision dated June 21, 2007 by making the necessary corrections.

WHEREFORE, in view of the foregoing, [respondent] 's Motion for Clarification is partly GRANTED. Accordingly, the dispositive portion of this Court's Decision dated June 21, 2007 is hereby AMENDED as follows:

WHEREFORE, premises considered, the judgment/order of the RTC Branch II of Batangas City is hereby MODIFIED. As to the business taxes on the manufacture and distribution of petroleum products, We find the [respondent] not liable for the same. As to the mayor's permit, We find that it is excessive. Accordingly, the [petitioner] is hereby (a) declared legally proscribed from imposing business taxes on the manufacture and distribution of petroleum products and (b) to refund in the form of tax credit the excessive mayor's permit in the amount of THREE MILLION EIGHT HUNDRED SEVENTY THOUSAND EIGHT HUDNRED SIXTY PESOS (P3,870,860.00)

SO ORDERED.

SO ORDERED.<sup>[9]</sup>

Petitioners filed a motion for reconsideration against said decision but the same was denied by the CTA Second Division in a Resolution dated November 21, 2007.

Not satisfied, petitioners filed a Petition for Review praying for the reversal of the Amended Decision and Resolution of the CTA Second Division.

On January 22, 2009, the CTA *En Banc* promulgated a Decision affirming *in toto* the Amended Decision of the CTA Second Division. The CTA *En Banc* found no cogent reason to disturb the findings and conclusions of the CTA Second Division. The dispositive portion of said Decision reads:

WHEREFORE, the instant Petition for Review is hereby DENIED DUE COURSE and DISMISSED for lack of merit. Accordingly, the July 31, 2007 Amended Decision and November 21, 2007 Resolution of the CTA Second Division in CTA AC Case No. 10 entitled, "PILIPINAS SFIELL PETROLEUM CORPORATION, petitioner vs. BATANGAS CITY, BENJAMIN E. PARGAS in his capacity as CITY TREASURER and TEODULFO A. DEGUITO in his capacity as CITY LEGAL OFFICER OF BATANGAS CITY, [petitioners]," are hereby AFFIRMED *in toto*.

SO ORDERED.<sup>[10]</sup>

Unfazed, petitioners filed a motion for reconsideration.

In a Resolution dated April 13, 2009, the CTA *En Bane* denied petitioners' motion for reconsideration for lace of merit.

Hence, this petition.

Petitioner raises the following assignment of errors:

1. THE COURT OF TAX APPEALS EN BANC ERRED IN NOT RULING THAT THE POWER OF LOCAL GOVERNMENT UNITS TO TAX BUSINESS IS SOLELY GOVERNED BY SEC. 143 AND 143(h) OF THE LOCAL GOVERNMENT CODE OF 1991.