

EN BANC

[G.R. No. 204429, February 18, 2014]

**SMART COMMUNICATIONS, INC., PETITIONER, VS.
MUNICIPALITY OF MALVAR, BATANGAS, RESPONDENT.**

DECISION

CARPIO, J.:

The Case

This petition for review^[1] challenges the 26 June 2012 Decision^[2] and 13 November 2012 Resolution^[3] of the Court of Tax Appeals (CTA) *En Banc*. The CTA *En Banc* affirmed the 17 December 2010 Decision^[4] and 7 April 2011 Resolution^[5] of the CTA First Division, which in turn affirmed the 2 December 2008^[6] Decision and 21 May 2009 Order^[7] of the Regional Trial Court of Tanauan City, Batangas, Branch 6. The trial court declared void the assessment imposed by respondent Municipality of Malvar, Batangas against petitioner Smart Communications, Inc. for its telecommunications tower for 2001 to July 2003 and directed respondent to assess petitioner only for the period starting 1 October 2003.

The Facts

Petitioner Smart Communications, Inc. (Smart) is a domestic corporation engaged in the business of providing telecommunications services to the general public while respondent Municipality of Malvar, Batangas (Municipality) is a local government unit created by law.

In the course of its business, Smart constructed a telecommunications tower within the territorial jurisdiction of the Municipality. The construction of the tower was for the purpose of receiving and transmitting cellular communications within the covered area.

On 30 July 2003, the Municipality passed Ordinance No. 18, series of 2003, entitled "An Ordinance Regulating the Establishment of Special Projects."

On 24 August 2004, Smart received from the Permit and Licensing Division of the Office of the Mayor of the Municipality an assessment letter with a schedule of payment for the total amount of P389,950.00 for Smart's telecommunications tower. The letter reads as follows:

This is to formally submit to your good office your schedule of payments in the Municipal Treasury of the Local Government Unit of Malvar, province of Batangas which corresponds to the tower of your company built in the premises of the municipality, to wit:

TOTAL

PHP

PROJECT COST:	11,000,000.00	
For the Year 2001-2003		
50% of 1% of the total project cost		Php55,000.00
Add: 45% surcharge	<u>24,750.00</u>	
		Php79,750.00
Multiply by 3 yrs. (2001, 2002, 2003)		Php239,250.00
For the year 2004		
1% of the total project cost		Php110,000.00
37% surcharge	<u>40,700.00</u>	
		<u>Php150,700.00</u>
TOTAL		<u>Php389,950.00</u>

Hoping that you will give this matter your preferential attention.^[8]

Due to the alleged arrears in the payment of the assessment, the Municipality also caused the posting of a closure notice on the telecommunications tower.

On 9 September 2004, Smart filed a protest, claiming lack of due process in the issuance of the assessment and closure notice. In the same protest, Smart challenged the validity of Ordinance No. 18 on which the assessment was based.

In a letter dated 28 September 2004, the Municipality denied Smart's protest.

On 17 November 2004, Smart filed with Regional Trial Court of Tanauan City, Batangas, Branch 6, an "Appeal/Petition" assailing the validity of Ordinance No. 18. The case was docketed as SP Civil Case No. 04-11-1920.

On 2 December 2008, the trial court rendered a Decision partly granting Smart's Appeal/Petition. The trial court confined its resolution of the case to the validity of

the assessment, and did not rule on the legality of Ordinance No. 18. The trial court held that the assessment covering the period from 2001 to July 2003 was void since Ordinance No. 18 was approved only on 30 July 2003. However, the trial court declared valid the assessment starting 1 October 2003, citing Article 4 of the Civil Code of the Philippines,^[9] in relation to the provisions of Ordinance No. 18 and Section 166 of Republic Act No. 7160 or the Local Government Code of 1991 (LGC).

^[10] The dispositive portion of the trial court's Decision reads:

WHEREFORE, in light of the foregoing, the Petition is partly GRANTED. The assessment dated August 24, 2004 against petitioner is hereby declared null and void insofar as the assessment made from year 2001 to July 2003 and respondent is hereby prohibited from assessing and collecting, from petitioner, fees during the said period and the Municipal Government of Malvar, Batangas is directed to assess Smart Communications, Inc. only for the period starting October 1, 2003.

No costs.

SO ORDERED.^[11]

The trial court denied the motion for reconsideration in its Order of 21 May 2009.

On 8 July 2009, Smart filed a petition for review with the CTA First Division, docketed as CTA AC No. 58.

On 17 December 2010, the CTA First Division denied the petition for review. The dispositive portion of the decision reads:

WHEREFORE, the Petition for Review is hereby DENIED, for lack of merit. Accordingly, the assailed Decision dated December 2, 2008 and the Order dated May 21, 2009 of Branch 6 of the Regional Trial Court of Tanauan City, Batangas in SP. Civil Case No. 04-11-1920 entitled "Smart Communications, Inc. vs. Municipality of Malvar, Batangas" are AFFIRMED.

SO ORDERED.^[12]

On 7 April 2011, the CTA First Division issued a Resolution denying the motion for reconsideration.

Smart filed a petition for review with the CTA *En Banc*, which affirmed the CTA First Division's decision and resolution. The dispositive portion of the CTA *En Banc*'s 26 June 2012 decision reads:

WHEREFORE, premises considered, the present Petition for Review is hereby DISMISSED for lack of merit.

Accordingly, the assailed Decision dated December 17, 2010 and Resolution dated April 7, 2011 are hereby AFFIRMED.

SO ORDERED.^[13]

The CTA *En Banc* denied the motion for reconsideration.

Hence, this petition.

The Ruling of the CTA *En Banc*

The CTA *En Banc* dismissed the petition on the ground of lack of jurisdiction. The CTA *En Banc* declared that it is a court of special jurisdiction and as such, it can take cognizance only of such matters as are clearly within its jurisdiction. Citing Section 7(a), paragraph 3, of Republic Act No. 9282, the CTA *En Banc* held that the CTA has exclusive appellate jurisdiction to review on appeal, decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally resolved by them in the exercise of their original or appellate jurisdiction. However, the same provision does not confer on the CTA jurisdiction to resolve cases where the constitutionality of a law or rule is challenged.

The Issues

The petition raises the following arguments:

1. The [CTA *En Banc* Decision and Resolution] should be reversed and set aside for being contrary to law and jurisprudence considering that the CTA *En Banc* should have exercised its jurisdiction and declared the Ordinance as illegal.
2. The [CTA *En Banc* Decision and Resolution] should be reversed and set aside for being contrary to law and jurisprudence considering that the doctrine of exhaustion of administrative remedies does not apply in [this case].
3. The [CTA *En Banc* Decision and Resolution] should be reversed and set aside for being contrary to law and jurisprudence considering that the respondent has no authority to impose the so-called “fees” on the basis of the void ordinance.^[14]

The Ruling of the Court

The Court denies the petition.

On whether the CTA has jurisdiction over the present case

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), subparagraph (3)^[15] 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*,^[16] 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 “[e]ach 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^[17] while Section 147^[18] 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 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.”^[19]

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].”^[20] It was also envisioned to address the foreseen “environmental depredation” to be brought about by these “special projects” to the Municipality.^[21] 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.^[22]

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.