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THIRD DIVISION

[G.R. No. 173863, September 15, 2010]

CHEVRON PHILIPPINES, INC. (FORMERLY CALTEX PHILIPPINES, INC.), PETITIONER, VS. BASES CONVERSION DEVELOPMENT AUTHORITY AND CLARK DEVELOPMENT CORPORATION, RESPONDENTS.

D E C I S I O N

VILLARAMA, JR., J.:

This petition for review on *certiorari* assails the Decision[1] dated November 30, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 87117, which affirmed the Resolution[2] dated August 2, 2004 and the Order[3] dated September 30, 2004 of the Office of the President in O.P. Case No. 04-D-170.

The facts follow.

On June 28, 2002, the Board of Directors of respondent Clark Development Corporation (CDC) issued and approved Policy Guidelines on the Movement of Petroleum Fuel to and from the Clark Special Economic Zone (CSEZ)[4] which provided, among others, for the following fees and charges:

> **1. Accreditation Fee**
>
> x x x x
>
> **2. Annual Inspection Fee**
>
> x x x x
>
> **3. Royalty Fees**
>
> Suppliers delivering fuel from outside sources shall be assessed the following royalty fees:
>
> - **Php0.50 per liter** - those delivering Coastal petroleum fuel to CSEZ locators not sanctioned by CDC
>
> - **Php1.00 per liter** - those bringing-in petroleum fuel (except Jet A-1) from outside sources
>
> x x x x
>
> **4. Gate Pass Fee**

x x x x[5]

The above policy guidelines were implemented effective July 27, 2002. On October 1, 2002, CDC sent a letter[6] to herein petitioner Chevron Philippines, Inc. (formerly Caltex Philippines, Inc.), a domestic corporation which has been supplying fuel to Nanox Philippines, a locator inside the CSEZ since 2001, informing the petitioner that a royalty fee of P0.50 per liter shall be assessed on its deliveries to Nanox Philippines effective August 1, 2002. Thereafter, on October 21, 2002 a Statement of Account[7] was sent by CDC billing the petitioner for royalty fees in the amount of P115,000.00 for its fuel sales from Coastal depot to Nanox Philippines from August 1-31 to September 3-21, 2002.

Claiming that nothing in the law authorizes CDC to impose royalty fees or any fees based on a per unit measurement of any commodity sold within the special economic zone, petitioner sent a letter[8] dated October 30, 2002 to the President and Chief Executive Officer of CDC, Mr. Emmanuel Y. Angeles, to protest the assessment for royalty fees. Petitioner nevertheless paid the said fees under protest on November 4, 2002.

On August 18, 2003, CDC again wrote a letter[9] to petitioner regarding the latter's unsettled royalty fees covering the period of December 2002 to July 2003. Petitioner responded through a letter[10] dated September 8, 2003 reiterating its continuing objection over the assessed royalty fees and requested a refund of the amount paid under protest on November 4, 2002. The letter also asked CDC to revoke the imposition of such royalty fees. The request was denied by CDC in a letter[11] dated September 29, 2003.

Petitioner elevated its protest before respondent Bases Conversion Development Authority (BCDA) arguing that the royalty fees imposed had no reasonable relation to the probable expenses of regulation and that the imposition on a per unit measurement of fuel sales was for a revenue generating purpose, thus, akin to a "tax". The protest was however denied by BCDA in a letter[12] dated March 3, 2004.

Petitioner appealed to the Office of the President which dismissed[13] the appeal for lack of merit on August 2, 2004 and denied[14] petitioner's motion for reconsideration thereof on September 30, 2004.

Aggrieved, petitioner elevated the case to the CA which likewise dismissed[15] the appeal for lack of merit on November 30, 2005 and denied[16] the motion for reconsideration on July 26, 2006.

The CA held that in imposing the challenged royalty fees, respondent CDC was exercising its right to regulate the flow of fuel into CSEZ, which is bolstered by the fact that it possesses exclusive right to distribute fuel within CSEZ pursuant to its Joint Venture Agreement (JVA)[17] with Subic Bay Metropolitan Authority (SBMA) and Coastal Subic Bay Terminal, Inc. (CSBTI) dated April 11, 1996. The appellate

court also found that royalty fees were assessed on fuel delivered, not on the sale, by petitioner and that the basis of such imposition was petitioner's delivery receipts to Nanox Philippines. The fact that revenue is incidentally also obtained does not make the imposition a tax as long as the primary purpose of such imposition is regulation.[18]

Petitioner filed a motion for reconsideration but the CA denied the same in its Resolution[19] dated July 26, 2006.

Hence, this petition raising the following grounds:

I. THE ISSUE RAISED BEFORE THE COURT A QUO IS A QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THE HONORABLE SUPREME COURT.

II. THE RULING OF THE COURT OF APPEALS THAT THE CDC HAS THE POWER TO IMPOSE THE QUESTIONED "ROYALTY FEES" IS CONTRARY TO LAW.

III. THE COURT OF APPEALS WAS MANIFESTLY MISTAKEN AND COMMITTED GRAVE ABUSE OF DISCRETION AND A CLEAR MISUNDERSTANDING OF FACTS WHEN IT RULED CONTRARY TO THE EVIDENCE THAT: (i) THE QUESTIONED "ROYALTY FEE" IS PRIMARILY FOR REGULATION; AND (ii) ANY REVENUE EARNED THEREFROM IS MERELY INCIDENTAL TO THE PURPOSE OF REGULATION.

IV. THE COURT OF APPEALS FAILED TO GIVE DUE WEIGHT AND CONSIDERATION TO THE EVIDENCE PRESENTED BY CPI SUCH AS THE LETTERS COMING FROM RESPONDENT CDC ITSELF PROVING THAT THE QUESTIONED ROYALTY FEES ARE IMPOSED ON THE BASIS OF FUEL SALES (NOT DELIVERY OF FUEL) AND NOT FOR REGULATION BUT PURELY FOR INCOME GENERATION, I.E. AS PRICE OR CONSIDERATION FOR THE RIGHT TO MARKET AND DISTRIBUTE FUEL INSIDE THE CSEZ.[20]

Petitioner argues that CDC does not have any power to impose royalty fees on sale of fuel inside the CSEZ on the basis of purely income generating functions and its exclusive right to market and distribute goods inside the CSEZ. Such imposition of royalty fees for revenue generating purposes would amount to a tax, which the respondents have no power to impose. Petitioner stresses that the royalty fee imposed by CDC is not regulatory in nature but a revenue generating measure to increase its profits and to further enhance its exclusive right to market and distribute fuel in CSEZ.[21]

Petitioner would also like this Court to note that the fees imposed, assuming *arguendo* they are regulatory in nature, are unreasonable and are grossly in excess of regulation costs. It adds that the amount of the fees should be presumed to be unreasonable and that the burden of proving that the fees are not unreasonable lies

with the respondents.[22]

On the part of the respondents, they argue that the purpose of the royalty fees is to regulate the flow of fuel to and from the CSEZ. Such being its main purpose, and revenue (if any) just an incidental product, the imposition cannot be considered a tax. It is their position that the regulation is a valid exercise of police power since it is aimed at promoting the general welfare of the public. They claim that being the administrator of the CSEZ, CDC is responsible for the safe distribution of fuel products inside the CSEZ.[23]

The petition has no merit.

In distinguishing tax and regulation as a form of police power, the determining factor is the purpose of the implemented measure. If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of the police power of the state, even though incidentally, revenue is generated. Thus, in *Gerochi v. Department of Energy*,[24] the Court stated:

> The conservative and pivotal distinction between these two (2) powers rests in the purpose for which the charge is made. If generation 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 revenue is incidentally raised does not make the imposition a tax.

In the case at bar, we hold that the subject royalty fee was imposed primarily for *regulatory* purposes, and not for the generation of income or profits as petitioner claims. The Policy Guidelines on the Movement of Petroleum Fuel to and from the Clark Special Economic Zone[25] provides:

> **DECLARATION OF POLICY**
>
> It is hereby declared the policy of CDC **to develop and maintain the Clark Special Economic Zone (CSEZ) as a highly secured zone** free from threats of any kind, which could possibly endanger the lives and properties of locators, would-be investors, visitors, and employees.
>
> It is also declared the policy of CDC to operate and manage the CSEZ as a separate customs territory **ensuring free flow or movement of goods and capital within, into and exported out of the CSEZ**.[26] (Emphasis supplied.)

From the foregoing, it can be gleaned that the Policy Guidelines was issued, first and foremost, to ensure the safety, security, and good condition of the petroleum fuel industry within the CSEZ. The questioned royalty fees form part of the regulatory framework to ensure "free flow or movement" of petroleum fuel to and from the CSEZ. The fact that respondents have the exclusive right to distribute and market