

THIRD DIVISION

[G.R. No. 170532, April 24, 2009]

**THE PROVINCIAL ASSESSOR OF MARINDUQUE, PETITIONER, VS.
THE HONORABLE COURT OF APPEALS AND MARCOPPER MINING
CORPORATION, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

The Provincial Assessor of the Province of Marinduque (petitioner) assails by Petition for *Certiorari* under Rule 65 of the Rules of Court the May 30, 2005 Decision^[1] of the Court of Appeals (CA) which declared the Siltation Dam and Decant System of Marcopper Mining Corporation (respondent) exempt from real property tax; and the September 29, 2005 CA Resolution^[2] which denied petitioner's motion for reconsideration.

Petitioner issued against respondent an Assessment Notice,^[3] dated March 28, 1994, for real property taxes due on the latter's real properties, including its Siltation Dam and Decant System (subject property) at *Barangay Lamese*, Sta. Cruz, Marinduque. The subject property is covered by Tax Declaration No. 05-35697 dated November 17, 1993, and has a market value of Php36,360,996.19.^[4]

Respondent paid the tax demanded,^[5] but appealed the assessment before the Local Board of Assessment Appeals (LBAA) on the ground that the subject property is exempt from real property taxation under Section 234(e) of Republic Act (R.A.) No. 7160^[6] or the Local Government Code of 1991, which provides:

Sec. 234. *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:

x x x

(e) ***Machinery and equipment used for pollution control and environmental protection.***

x x x x (Emphasis supplied)

Attached to its appeal is an Affidavit issued by its Chief Mining Engineer Ricardo Esquieres, Jr. (Esquieres), stating that the subject property was constructed to comply with the condition imposed by the Department of Environment and Natural Resources (DENR) that respondent prevent run-offs and silt materials from contaminating the Mogpog and Boac Rivers; and describing the subject property as a specialized combination of essential impervious earth materials with a special provision for a spillway and a diversion canal. Esquieres explains that the subject property is intended for the purpose of pollution control, sediment control, domestic

and agricultural water supply and flood control.^[7]

Respondent also submitted a May 24, 1994 Certification issued by DENR Regional Technical Director Carlos J. Magno that the subject property is a "Siltation

Dam **structure** intended primarily for pollution control of silted materials x x x."^[8]

In a Decision^[9] dated November 10, 1995, the LBAA dismissed respondent's appeal for having been filed out of time. It further held that the subject property is taxable as an improvement on the principal real property, citing the ruling of the Court in *Benguet Corporation v. Central Board of Assessment Appeals*^[10] that a tailings dam is a permanent improvement not exempt from real property taxation.

Respondent appealed^[11] to the Central Board of Assessment Appeals (CBAA) which, in a Decision^[12] dated December 21, 1998, held that respondent's appeal with the LBAA is timely, but the same lacked legal basis because the subject property was neither a machinery nor an equipment but a permanent improvement, and therefore not tax exempt under Sec. 234(e) of R.A. No. 7160. Citing the definition of machinery under Sec. 199 of R.A. No. 7160, viz.:

Sec. 199. Definition of Terms. - When used in this Title, the term:

x x x x

(o) Machinery embraces machines, equipment, mechanical contrivances, instruments, appliances or apparatus which may or may not be attached, permanently or temporarily, to the real property. It includes the physical facilities for production, the installations and appurtenant service facilities, those which are mobile, self-powered or self-propelled, and those not permanently attached to the real property which are actually, directly, and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes."

the CBAA held that to be considered a "machinery," the subject property must either be a physical facility for production; or a service facility; or one that is actually, directly and exclusively used to meet the needs of the particular industry, business, or activity; and which by its very nature and purpose is designed for, or necessary to a manufacturing, mining, logging, commercial, industrial or agricultural purpose. The subject property does not produce anything nor operate as auxiliary to a production process; thus, it is neither a physical facility for production nor a service facility. It is not even necessary to the mining activity of respondent, because its purpose is merely to contain silt and sediments.^[13]

Moreover, the CBAA noted that based on an ocular inspection it conducted, the subject property had not been actually used for pollution control, for it had been out of operation since 1993.^[14]

Respondent filed a Petition/Motion for Partial Reconsideration,^[15] but the CBAA

denied the same in its July 27, 2000 Resolution.^[16]

Respondent appealed^[17] to the CA on the sole issue of whether the subject property was tax exempt under Sec. 234(e) of R.A. No. 7160.^[18]

The CA reversed the LBAA and CBAA in its Decision dated May 30, 2005 herein assailed, the dispositive portion of which reads:

THE FOREGOING DISQUISITIONS CONSIDERED, the instant petition for review is hereby GRANTED, the assailed Decision and Resolution of the Central Board of Assessment Appeals, dated December 21, 1998 and July 27, 2000, respectively are REVERSED and SET ASIDE. The petitioner's siltation dam and decant system being exempt from real property tax as it is hereby determined, the Municipal Treasurer of Sta. Cruz, Marinduque, is hereby directed to refund the tax payments made by petitioner under protest, or in lieu thereof, to credit said payments in favor of petitioner for any taxes it will be required to pay in the future.

SO ORDERED.^[19]

The CA held that the concept of machinery under Section 199 of R.A. No. 7160 is broad enough to include a "machinery, instrument, apparatus or device consisting of parts which, functioning together, allows a person to perform a task more efficiently," such as the subject property. Not only does it function as a machinery, but it is also actually and directly used for the mining business of petitioner. The CA noted that it was constructed in compliance with a DENR requirement; thus, it "is part and parcel of [respondent's] mining operations to protect the environment within which it operates xxx [i]t is a device used for cleaning up after production, in order to clean the water which must necessarily flow into the Mogpog and Boac Rivers."^[20]

Thus, the CA held that the subject property was exempt from real property taxation under Section 91 of R.A. No. 7942 or the Philippine Mining Act of 1995,^[21] viz.:

Sec. 91. *Incentives for Pollution Control Devices.* - **Pollution control devices acquired, constructed or installed by contractors shall not be considered as improvements on the land or building where they are placed, and shall not be subject to real property and other taxes or assessments:** Provided, however, That payment of mine wastes and tailings fees is not exempted. (Emphasis supplied)

It qualifies as a pollution control device defined under DENR Administrative Order No. 95-23 as an "**infrastructure**, machinery, equipment, and/or improvement used for impounding, treating or neutralizing, precipitating, filtering, conveying and cleansing mine industrial waste and tailing, as well as eliminating and reducing hazardous effects of solid particles, chemicals, liquids or other harmful by-products and gases emitted from any facility utilized in mining operations for their disposal."

^[22] The definition "extends to all kinds of pollution control devices acquired, constructed, or installed on the land or buildings of the mining corporation."^[23]

Finally, the CA ruled that, contrary to the view of the CBAA, the non-operational

state of the subject property "does not remove it from the purview of the clear provisions of R.A. No. 7160 x x x and R.A. No. 7942 x x x [i]n the absence of clear and convincing evidence that the siltation dam and decant system was inutile to achieve its purpose prior to being damaged, and continued to be so x x x."^[24]

Petitioner filed a Motion for Reconsideration,^[25] but the CA denied it in a Resolution^[26] dated September 29, 2005.

Hence, the present petition, raising two main issues:

I. The propriety of the present action for certiorari under Rule 65 of the Rules of Court:

- i. Whether or not there is available to Petitioner, the remedy of appeal or other plain, speedy and adequate remedy in the ordinary course of law;
- ii. Whether or not a petition for review on certiorari under Rule 45 of the Rules of Court is the appropriate remedy;
- iii. Whether or not, if available to the Petitioner, the remedy of appeal or other plain, speedy and adequate remedy in the ordinary course of law were lost through the fault of the Petitioner.

II. Whether or not the Respondent court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the Decision and its subsequent Resolution, exempting the siltation dam and decant system of Respondent Marcopper from the real property tax imposed by the Provincial Government of Marinduque.

- i. Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of *jurisdiction when it whimsically, arbitrarily and capriciously disregarded by treating as though non-existent, the established and undisputed fact that the Siltation Dam Decant System of Respondent Marcopper was damaged and has not been in operation since 1993 up to, at the very least, the ocular inspection conducted by the CBAA in November 1996, if not up to the present, given the failure of Respondent Marcopper to claim otherwise;*
- ii. *Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it whimsically, arbitrarily and capriciously disregarded, by treating as though non-existent, the established and undisputed fact that Respondent Marcopper does not have a certificate of tax exemption from the DENR under the provisions of the Philippine Mining Act of 1995 so as to entitle it to exemption from the realty tax imposed by the local*

government of Marinduque.

- iii. *Respondent Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when, in spite of the non-operation during the relevant years of the Siltation Dam and Decant System, the lack of certificate of tax exemption therefor and the clear and unambiguous provisions of the Local Government Code and the Philippine Mining Act of 1995, it declared the aforesaid real property as a machinery and equipment or a pollution control device that is exempt from realty tax.*^[27] (Emphasis supplied)

Petitioner posits that the CA committed not only a reversible error in holding that the subject property is tax exempt under Sec. 234(e) of R.A. No. 7160, but also a grave abuse of discretion in discarding key factual findings of both the LBAA and the CBAA regarding the nature of the subject property -- which factual findings respondent did not even controvert. Petitioner points out that the CBAA found that the subject property had not been used for pollution control because it had been out of operation since 1993;^[28] and respondent admitted this in its Petition for Review before the CA where it categorically stated that "[w]hat is not denied, however, which even the *barangay* resolutions state was that the siltation dam was damaged in 1993 when a typhoon hit Marinduque. This naturally affected the environment in the area for which reason Marcopper specifically wanted to repair the dam."^[29] Yet, petitioner argues, the CA completely ignored such undisputed fact by holding that there is "absence of clear and convincing evidence that the siltation dam and decant system was inutile to achieve its purpose prior to being damaged, and continued to be so x x x."^[30]

Petitioner further cites the finding of the CBAA that respondent did not obtain from the DENR a certification of the tax exempt classification of the subject properties. This CBAA finding was not controverted by respondent in its pleadings before the CA; yet, said court completely glossed over this matter and declared the subject properties tax exempt.^[31]

On the other hand, respondent contends that petitioner's mode of appeal from the CA Decision should have been a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed within fifteen (15) days from October 13, 2005, the day petitioner received notice of the CA Resolution denying its motion for reconsideration. That petitioner filed instead a Petition for *Certiorari* on December 12, 2005 -- the 60th day from receipt of the CA Resolution -- indicates that it resorted to a special civil action for *certiorari* as a substitute for the appeal it had lost;^[32] worse, petitioner raised factual issues which the Court cannot resolve for it is no trier of facts.^[33]

The petition has merit.

On the proper mode of appeal

Previously, under Section 36 of Presidential Decree (P.D.) No. 464 or the Real Property Tax Code, the proper mode of appeal from a decision rendered by the