

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DOLE PHILIPPINES, INC. –
STANFILCO DIVISION,

Petitioner,

CTA EB NO. 2722
(CTA AC No. 242)

Present:

Del Rosario, P.J.,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David,
Ferrer-Flores, and
Angeles, II.

- versus -

THE SANGGUNIANG PANLUNGSOD
OF THE CITY OF DAVAO, and the HON.
SARA Z. DUTERTE-CARPIO and HON.
ERWIN P. ALPARAQUE, in their
respective capacities as Mayor and
Treasurer of the City of Davao,

Respondents.

Promulgated:

DEC 01 2023

3:50 p.m.

X-----

DECISION

RINGPIS-LIBAN, J.:

This is a Petition for Review¹ filed on December 22, 2022 under Section 18 of Republic Act (RA) No. 1125, as amended, in relation to Sections 3 and 4, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), challenging the Decision² dated July 4, 2022 (“Assailed Decision”) and the Resolution³ dated November 22, 2022 (“Assailed Resolution”) both promulgated by the Court of Tax Appeals - First Division (Court in Division) in CTA AC No. 242.

¹ Court *En Banc* Docket, pp. 1-42.

² *Id.*, pp. 49-64.

³ *Id.*, pp. 66-68.

The respective dispositive portions of the Assailed Decision and Assailed Resolution are quoted hereunder:

Assailed Decision:

“**WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED** for lack of jurisdiction.

SO ORDERED.”

Assailed Resolution:

“**WHEREFORE**, petitioner’s **Motion for Reconsideration (of the Decision dated 04 July 2022)** is **DENIED** for lack of merit.

SO ORDERED.”

THE FACTS

As narrated by the Court in Division in the Assailed Decision, the undisputed facts of the case are as follows:⁴

“Petitioner is engaged in the business of planting, growing, cultivating, harvesting and exporting fresh bananas and other high-value agricultural crops out of its offices in several zones in the different areas of Mindanao, including Davao City.

Respondent Sangguniang Panlungsod enacted Ordinance No. 0310-07 or the ‘Watershed Code’ on January 23, 2007, which was approved by the City Mayor on February 23, 2007. It took effect within fifteen (15) days after completion of its publication in a newspaper of general circulation.

On December 21, 2018, petitioner received a Tax Order of Payment from respondents pertaining to the ‘Environmental Tax’ levied under Ordinance No. 0310-07 in the total amount of ₱3,324,825.00.

On January 17, 2019, petitioner paid the amount of ₱3,324,825.00 under protest, as evidenced by Official Receipt Nos. 1924640C, 1924641C, 1924642C, and 1924643C.

⁴ *Id.*, pp. 50-53 (Citations omitted).

Petitioner filed its written Protest with the City Treasurer on February 11, 2019, which the latter denied on February 27, 2019.

On April 11, 2019, petitioner filed an Appeal before the RTC.

The RTC issued an Order dated May 27, 2019, ordering respondents to file comment on the Appeal within ten (10) days from notice.

On June 17, 2019, counsels for respondents filed their Formal Entry of Appearance with Motion for Extension of Time to File Answer. The RTC issued an Order on even date granting the said Motion.

Respondents filed their Answer/Comment on June 27, 2019.

In an Order dated August 6, 2019, the RTC granted the parties thirty (30) days from said date to file their respective memoranda. Thereafter, with or without memoranda, the case will be submitted for decision.

On September 24, 2019, petitioner filed a Motion for Substitution to substitute respondent Hon. Erwin P. Alparaque with Hon. Villa V. Dureza as Acting Treasurer of the City of Davao, which the RTC granted in its Order dated September 9, 2019.

Respondents filed their Memorandum on September 5, 2019, while petitioner filed its Memorandum on September 24, 2019. Thus, in an Order dated January 20, 2020, the case was submitted for decision.

In the assailed Decision dated June 2, 2020, the RTC denied petitioner's Appeal for lack of merit.

Undaunted, petitioner filed a Motion for Reconsideration on August 28, 2020.

The RTC issued an Order dated July 16, 2020 granting respondents a period of ten (10) days from receipt thereof within which to file their comment on petitioner's Motion for Reconsideration.

In the assailed Order dated August 3, 2020, the RTC denied petitioner's Motion for Reconsideration finding no cogent reason to reverse the assailed Decision.



Petitioner filed with this Court the instant Petition for Review on October 1, 2020.

In a Resolution dated October 20, 2020, the Court ordered respondents to file comment on the Petition for Review within ten (10) days from receipt thereof.

In another Resolution dated December 14, 2020, the Court directed the Branch Clerk of Court of the RTC of Davao City, Branch 16, to elevate the entire original records of Civil Case No. R-DVO-19-01510-CV.

Respondents filed their Comments/Opposition to the Petition for Review via registered mail on December 17, 2020, and received by the Court on January 26, 2021.

In a Resolution dated February 11, 2021, the Court noted respondent's Comments/Opposition to the Petition for Review, but held in abeyance the case's resolution pending the transmittal by the RTC of the original records of the case.

In a Transmittal Letter posted on April 7, 2021 and received by the Court on May 14, 2021, the Branch Clerk of Court of the RTC of Davao City, Branch 16, elevated the entire original records of this case.

In a Resolution dated June 14, 2021, the Court noted the Transmittal Letter of the Branch Clerk of Court of the RTC of Davao City, Branch 16, and submitted the case for decision."

On July 4, 2022, the Court in Division dismissed the Petition for Review for lack of jurisdiction.

On July 26, 2022, petitioner filed its Motion for Reconsideration (of the Decision dated 04 July 2022) which the Court in Division denied in the Assailed Resolution.

Aggrieved, petitioner filed the present Petition for Review on December 22, 2022.

In a Resolution dated February 13, 2023,⁵ the Court *En Banc* directed the respondent to file their Comment on the present Petition for Review within ten (10) days from notice.

⁵ Court *En Banc* Docket, pp. 382-383.

On April 3, 2023, respondents filed their Comment/Opposition to the Petition for Review (Filed on 22 December 2022).⁶

In a Minute Resolution dated July 26, 2023,⁷ the Court *En Banc* submitted the present Petition for Review for decision.

THE ISSUES

In its Petition for Review, petitioner has raised the following issues for the Court *En Banc*'s decision, to wit:⁸

“ISSUES FOR RESOLUTION

I.

Whether the First Division erred in ruling that it has no jurisdiction over the Petition.

A.

The Court erred in holding that the Environmental Tax imposed by Section 17 of Davao City Ordinance No. 0310-07 entitled ‘Watershed Protection, Conservation and Management Ordinance’ or the Watershed Code, is a regulatory fee and not a tax.

B.

The Court erred in failing to appreciate that the Court of Appeals would also reject the petition as a local tax case beyond its jurisdiction given that Stanfilco shall pursue the argument that the Watershed Code is a tax ordinance and revenue-raising measure.

II.

Whether the Honorable Court erred in not considering the other substantive issues raised by Stanfilco.

A. Whether the Watershed Code is unfair and oppressive.

B. Whether the Watershed Code is partial and discriminatory and restricts trade.



⁶ *Id.*, pp. 388-394.

⁷ *Id.*, p. 420.

⁸ *Id.* pp. 8-9.

C. Whether Respondents correctly computed the amount of Environmental Tax due.

D. Whether Respondents complied with the publication requirements of a valid ordinance.

III.

Whether the Honorable Court erred in not declaring that the Watershed Code exceeds the cost of regulation.”

PETITIONER’S ARGUMENTS

Citing the case of *International Container Terminal Services, Inc. (ICTSI) v. City of Manila*,⁹ petitioner asserts in its Petition for Review that the nature of the action is determined by the allegations in the complaint and the character of the relief sought.¹⁰ Petitioner thus contends that the present case is a local tax case because the nature of the action and the relief sought involve local tax issues.¹¹ It claims that its Petition for Review contains a tax issue as it involves an appeal to the denial of the protest, a disputed assessment of an annual environmental tax which petitioner had paid under protest and thereafter claimed as tax refund. Petitioner also stresses that the court’s eventual determination of the character of the ordinance does not detract from the nature of the proceedings as a local tax case.¹² It likewise surmises that to bifurcate the appellate courts’ jurisdiction over local tax cases into those involving deficiency taxes and those involving fees and charges creates unnecessary confusion and uncertainty in judicial precedents.

Petitioner likewise maintains that the Court in Division erred in holding that the environmental tax imposed by Section 17 of Davao City Ordinance No. 0310-07 entitled “Watershed Protection, Conservation and Management Ordinance” or the Watershed Code is a regulatory fee and not a tax. It also postulates that the Court of Appeals would also reject its petition as a local tax case beyond its jurisdiction given that petitioner shall pursue the argument that the Watershed Code is a tax ordinance and a revenue-raising measure.¹³

Finally, petitioner argues that the Court in Division erred in not considering the other substantive issues it raised.¹⁴

THE COURT *EN BANC*’S RULING

After thorough evaluation of the factual antecedents of the present case, the arguments presented, as well as the relevant laws and jurisprudence on the

⁹ G.R. No. 185622, October 17, 2018.

¹⁰ Court *En Banc* Docket, p. 10.

¹¹ *Id.* pp. 11-15.

¹² *Id.*

¹³ *Id.* pp. 16-23.

¹⁴ *Id.* pp. 23-40.

matter, the Court *En Banc* finds that the present Petition for Review must be denied for lack of merit. The Court *En Banc* finds no compelling reason to disturb the Court in Division's findings in the Assailed Decision and Resolution that this Court has no jurisdiction over the present case.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.¹⁵ It is conferred by law.¹⁶ It is the prime duty of the courts to consider the question of jurisdiction before they look into other matters involved in the case, whether or not such question is raised by the parties.¹⁷ Any act that they perform without jurisdiction shall be null and void and without any binding legal effect.¹⁸ Lack of jurisdiction is one of those excepted grounds where the court may dismiss a claim or a case at any time when it appears from the pleadings or the evidence on record that any of those grounds exists, even if they were not raised in the answer or in a motion to dismiss.¹⁹ If the court has no jurisdiction over the nature of an action, it has no other option but to dismiss the case.²⁰

Republic Act (RA) No. 1125, as amended,²¹ delineates the *special and limited* jurisdiction of the Court of Tax Appeals (CTA), in part, as follows:

“Sec. 7. Jurisdiction. — The CTA shall exercise:

- a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x

x x x

x x x

3. **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;**

x x x

x x x

x x x

As a specialized court, the CTA can take cognizance only of matters which are *clearly and specifically mentioned in the law conferring its jurisdiction* such as the decisions, orders, or resolutions of the Regional Trial Courts (RTC) in *local tax cases* originally decided or resolved by them in the exercise of either their original or appellate jurisdiction. Crucial to the CTA's valid cognizance of these cases is the full and proper appreciation of what constitute the term “*local tax cases*” given

¹⁵ *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division and Citysuper, Incorporated*, G.R. No. 239464, May 10, 2021.

¹⁶ *Victoria Manufacturing Corporation Employees Union v. Victoria Manufacturing Corporation*, G.R. No. 234446, July 24, 2019.

¹⁷ *Bureau of Customs v. Devanadera*, G.R. No. 193253, September 8, 2015, 770 SCRA 24.

¹⁸ *Bilag v. Ay-Ay*, G.R. No. 189950, April 24, 2017.

¹⁹ Section 1, Rule 9 of the Rules of Court; *Heirs of Jose Fernando v. De Belen*, G.R. No. 186366, July 3, 2013, 700 SCRA 562; *Geonzon Vda. De Barrera v. Heirs of Vicente Legaspi*, G.R. No. 174346, September 12, 2008, 565 SCRA 192, 198.

²⁰ *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, G.R. No. 209830, June 17, 2015.

²¹ As amended by RA 9282 and RA 9503.

that the jurisdiction of the CTA over decisions, orders, or resolutions of the RTC becomes operative only when the latter has ruled on a local tax case.

In *Ignacio v. Office of the City Treasurer of Quezon City*,²² the Supreme Court held that before the case can be raised on appeal to the CTA, the action before the RTC must be in the nature of a tax case, **or one which primarily involves a tax issue.**

Accordingly, in *CE Casecan Water and Energy Company, Inc. v. The Province of Nueva Ecija, et al.*,²³ the Supreme Court had treated an injunction suit as a local tax case. The Supreme Court held that the prayer to restrain the collection of real property tax (RPT) amounts to an implicit challenge to the propriety of the RPT assessment because in ruling as to whether to restrain the collection, the RTC must first necessarily rule on the propriety of the assessment.

Moreover, in *Municipality of Villanueva, Misamis Oriental v. Steag State Power, Inc. and Municipality of Tagoloan, Misamis Oriental*,²⁴ the Supreme Court treated as a local tax case an appeal questioning the ruling of the RTC in resolving the correct tax base for the local business taxes (LBT) to be imposed against the private respondent as well as in ordering the refund of excess LBT.

In *The City of Makati v. The Municipality of Bakun and Luzon Hydro Corporation*,²⁵ the Supreme Court also treated as a local tax case a special civil action for interpleader involving the application of the rules on situs on the payment of LBT. That the case was in the mode of a special civil action for interpleader does not detract from its nature as a local tax case.

On the other hand, in *City of Iloilo v. Philippine Ports Authority*,²⁶ the Supreme Court refused to characterize as a local tax case an appeal of the RTC decision dismissing a complaint for declaration of nullity of the notice of garnishment issued for the collection of RPT and LBT liabilities considering that the complaint did not challenge the validity or correctness of the tax liabilities *per se* but merely questions the propriety of the remedy adopted for the collection thereof.

It must be emphasized that in all of its rulings where the Supreme Court had characterized an action as a local tax case, the imposition or exaction involved are clearly in the nature of a *tax*, whether it be LBT,²⁷ local franchise

²² G.R. No. 221620, September 11, 2017.

²³ G.R. No. 196278, June 17, 2015.

²⁴ G.R. No. 214260, May 3, 2021.

²⁵ G.R. No. 225226, July 7, 2020.

²⁶ G.R. No. 233861, January 12, 2021.

²⁷ *The City of Makati v. The Municipality of Bakun and Luzon Hydro Corporation*, G.R. No. 225226, July 7, 2020.

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tax,²⁸ or RPT.²⁹ Logically, therefore, that if the action before the RTC involves an exaction or imposition not in the nature of a tax, the same cannot be treated as a local tax case. Such was, in fact, the Supreme Court's holding in *Smart Communications, Inc. v. Municipality of Malvar, Batangas*,³⁰ where it upheld the CTA's dismissal of Smart's Petition for Review for lack of jurisdiction. The Supreme Court found that the action before the RTC did not involve a local tax case and, as such, it did not fall within the ambit of CTA's appellate jurisdiction. In arriving at the said conclusion, the Supreme Court had determined that the "fees" imposed thereon are not taxes.

"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), sub-paragraph (3) 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*, 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

²⁸ *National Power Corporation v. Provincial Government of Bataan, et. al.*, G.R. No. 180654, March 6, 2017.

²⁹ *City of Lapu-Lapu v. Philippine Economic Zone Authority*, G.R. No. 184203, November 26, 2014; *CE Casecan Water and Energy Company, Inc. v. The Province of Nueva Ecija, et al.*, G.R. No. 196278, June 17, 2015; *Philippine Ports Authority v. The City of Davao, et. al.*, G.R. No. 190324, June 6, 2018; *Herarc Realty Corporation v. The Provincial Treasurer of Batangas, et. al.*, G.R. No. 210736, September 5, 2018.

³⁰ G.R. No. 204429, February 18, 2014.

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 while Section 147 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.'

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].' It was also envisioned to address the foreseen 'environmental depredation' to be brought about by these 'special projects' to the Municipality. 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.

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.

Considering that the fees in Ordinance No. 18 are not in the nature of local taxes, and Smart is questioning the constitutionality of the ordinance, the CTA correctly dismissed the petition for lack of jurisdiction. Likewise, Section 187 of the LGC, which outlines the procedure for questioning the constitutionality of a tax ordinance, is inapplicable, rendering unnecessary the resolution of the issue on non-exhaustion of administrative remedies.” (*Emphasis supplied and citations omitted*)

On the basis of the foregoing, the Court *En Banc* agrees with the Court in Division in dismissing the present case for lack of jurisdiction upon finding that the exaction involved in the present case is in the nature of a regulatory fee and not a tax. In this regard, the Court *En Banc* quotes with approval and adopts as its own the Court in Division’s relevant disquisition relative to its ruling that the “environmental tax” imposed by the Watershed Code is a form of regulatory fee, to wit:³¹

“Taxes are the ‘enforced proportional contributions from persons and property levied by the state by virtue of its sovereignty for the support of government and for all public needs’, while fee means ‘a charge fixed by law or ordinance for the regulation or inspection of a business or activity.’

The determinative factor in distinguishing between a tax and a regulatory fee is the **purpose** of its imposition. As the Supreme Court elucidated in *City of Cagayan de Oro vs. Cagayan Electric Power & Light Co., Inc.*:

‘From the foregoing jurisprudential and statutory definitions, it can be gleaned that **the purpose of an imposition will determine its nature as either a tax or a fee**. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. Stated otherwise, **if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.**’ (*Boldfacing supplied*)

Article 17 of Davao City Ordinance No. 0310-07 reads:

‘ARTICLE 17. ENVIRONMENTAL FUND. - **For the purpose of implementing the provisions of this Code**, an annual Environmental Tax shall be imposed on all agricultural and other economic undertakings in the Agro-forestry/Non-Tillage Areas and Prime Agricultural Areas of not less than 50 hectares at the rate of Twenty Five Centavos (P0.25) per square meter, provided that:

³¹ Court *En Banc*’s Docket, pp. 56-63 (Citations omitted).

- (i) The Environmental Tax shall also be imposed on corporate entities and persons engaged in agricultural and other economic undertakings on lands covered by growership contracts and other agreements;
- (ii) The Environmental Tax collected shall accrue to the General Fund and shall be appropriated in the Annual Budget **solely for the purpose of the implementation of this Code, the operational expenses of the Watershed Management Council and all its instrumentalities and for watershed protection, conservation and management programs and projects,** subject to the approval of the Davao City Council.’ *(Boldfacing supplied)*

A textual reading of the provision evidently shows that the sole purpose for the collection of the ‘Environmental Tax’ is **not for the generation of revenue** but for the ‘implementation of [the Watershed] Code, the operational expenses of the Watershed Management Council and all its instrumentalities and for watershed protection, conservation and management programs and projects.’

Similar to *Cherron Philippines, Inc. (Formerly Caltex Philippines, Inc.) vs. Bases Conversion Development Authority and Clark Development Corporation*, the Court looks into the ‘Declaration of Policy’ to determine the intendment of the exaction. Articles 2, 3, and 4 of the subject Ordinance pertaining to ‘Declaration of Policy’, ‘Underlying Principles’, and ‘Objectives’, respectively, do not in any way show that the purpose thereof is to raise revenues. In fact, all that is enumerated therein pertain to the protection of the watershed areas delineated by the said Ordinance.

In *Progressive Development Corporation vs. Quezon City*, the Supreme Court enumerated the requisites for an imposition to be considered a regulatory fee, viz.:

‘To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well. When an activity, occupation or profession is of such a character that inspection or supervision by public officials is reasonably necessary for the safeguarding and furtherance of public health, morals and safety, or the general welfare, the legislature may provide that such inspection or supervision or other form of regulation shall be carried out at the expense of the persons engaged in such occupation or performing such activity, and that no one shall engage in the occupation or carry out the activity until a fee or charge sufficient to cover the cost of the inspection or



supervision has been paid. Accordingly, a charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power.’ (*Boldfacing supplied*)

An imposition must satisfy these two (2) requisites to be considered a regulatory fee, namely:

- (1) The imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; and,
- (2) The imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well. The subject Ordinance satisfies the said requirements.

The subject Ordinance satisfies the said requirements.

First, the imposition relates to an activity that so engages the public interest in health, morals, safety and development. Article 17 of the subject Ordinance covers ‘agricultural and other economic undertakings in the Agro-forestry/Non-Tillage Areas and Prime Agricultural Areas’. Clearly, the imposition involves an economic activity within the areas designated for environmental protection.

As provided in Section 458(a)(1)(vi) of the Local Government Code, as amended, the Sangguniang Panlungsod or City Council is tasked to enact ordinances for the protection of the environment, viz.:

‘Section 458. *Powers, Duties, Functions and Compensation.*

- (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:
 - (1) Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall:

xxx

xxx

xxx

- (vi) **Protect the environment and impose appropriate penalties for acts which endanger the environment**, such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products and of endangered species of flora and fauna, slash and burn farming, and such other

activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance;

xxx xxx xxx'
(*Boldfacing supplied*)

Moreover, Section 16 of the same Code empowers local government units (LGUs) to promote the general welfare of their constituents, including the protection of the environment, thus:

‘Section 16. *General Welfare*. - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. **Within their respective territorial jurisdictions, local government units shall** ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, **enhance the right of the people to a balanced ecology**, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.’ (*Boldfacing supplied*)

In furtherance of the State’s policy to foster genuine and local autonomy, the National Government delegated the police power of the State to LGUs. Section 16, as afore-quoted, is the National Government’s delegation of police power to LGUs.

Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order, safety, and general welfare of the people. It is within respondent Sanggunian’s power to enact the questioned Ordinance in view of its function of protecting the environment for the promotion of the general welfare.

Second, the imposition bears a reasonable relation to the probable expenses of regulation. Article 13(d)(vil) of the subject Ordinance empowers the Watershed Management Council (WMC), the primary body tasked with implementing Davao City Ordinance No. 0310-07, to exercise ‘police and visitorial powers in the implementation of the provisions of the Watershed Code necessary for the discharge of its functions.’ The Watershed Multipartite Monitoring Team (WMMT) and Barangay Watershed Management Councils (BWMCs), as the assisting bodies of the WMC, were likewise empowered to exercise police and visitorial powers.

As aforestated, the subject imposition is collected for the purpose of supporting the operations of the WMC and its assisting bodies. Clearly, it is a regulatory fee necessary for the inspection, supervision and regulation of agricultural and other economic activities within the designated watershed areas.



Although the name 'Environmental Tax' is used in Article 17 of the questioned Ordinance, the nature and purpose of such exaction remains to be a regulatory fee. As held by the Supreme Court in *Victorias Milling Co., Inc. vs. The Municipality of Victorias, Province of Negros Occidental* (*Victorias Milling*):

'We accordingly say that **the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee.** The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. x x x'
(*Boldfacing supplied*)

There is a view that since no 'rules of conduct' or 'standards' are imposed by the subject Ordinance that business entities covered therein should follow or observe, then the imposition is a tax and not a fee.

A review of the entire Ordinance shows that such rules or standards exist for entities engaged in agricultural or other economic activities within the watershed areas. Article 9 thereof provides for the prohibited acts in the aforementioned areas of the watershed, to wit:

'ARTICLE 9. PROHIBITED ACTS. - To ensure the health and sustainability of the Watershed Areas, the following shall be prohibited acts in the Environmentally Critical Areas, immediately upon effectivity of this Code:

(a) CONSERVATION AREAS –

- (i) Land conversion to whatever classification;
- (ii) Commercial tree farming except those related to reforestation;
- (iii) Water drilling except for household use;
- (iv) Hunting, destroying, disturbing or mere possession of any plant or animal or products derived therefrom without permit from the Watershed Management Council;
- (v) Dumping or disposing of any waste products detrimental to plants and animals and inhabitants thereon;
- (vi) Use of motorized equipment without permit from the Watershed Management Council;
- (vii) Mutilating, defacing or destroying objects of natural beauty, burial grounds, religious sites, artifacts or other objects belonging to cultural communities;
- (viii) Damaging or destroying roads and trails;
- (ix) Squatting, mineral exploration illegal occupation;
- (x) Constructing or maintaining the any kind of structure, fence or enclosure and conducting any business enterprise;
- (xi) Altering, removing, destroying or defacing boundary marks or signs;

✓

- (xii) Exploitation of quarry resources and commercial sand and gravel resources
- (b) AGRO-FORESTRY AREAS/AGRICULTURAL NON-TILLAGE AREAS –
 - (i) Land conversion to whatever classification;
 - (ii) Agri-business and other industrial undertaking without Environmental Compliance Certificate (ECC) as provided in Presidential Decree No. 1586 establishing the Environmental Impact Assessment System and Proclamation No. 2146;
 - (iii) Water drilling for industrial use except those issued with an ECC pursuant to Presidential Decree No. 1586 and Proclamation No. 2146 and the Davao City Water Resources Management Ordinance;
 - (iv) Construction of any vertical structures for commercial, industrial, institutional, religious purposes without an ECC except for research and scientific studies, educational purposes and community chapels and churches;
 - (v) Exploitation of quarry resources and commercial sand and gravel resources;
 - (vi) Monocrop agriculture activities, including but not limited to, banana and pineapple plantations, xxx;
 - (vii) Aerial spray application of all kinds of farm production inputs and crop protection agents;
 - (viii) Use of any kind of inorganic fertilizer, pesticide, herbicide and other farm production inputs and crop protection agents.’ (*Boldfacing supplied*)

Perusal of the above-quoted provision shows that the acts enumerated therein affect persons or entities engaged in agricultural or other economic activities within the designated watershed areas. Notwithstanding that the ‘rules of conduct’ or ‘standards’ are couched as prohibitions, **they nonetheless provide for legal obligations that must be observed on the part of such persons or entities.**”

It is true that the nature of the action as well as the question of which court has jurisdiction over it is determined by the material allegations in the complaint and the character of the relief sought.³² In consonance with the foregoing dictum, the Court *En Banc* has carefully examined the material allegations in the Petition for Review filed before the Court in Division, the same being the initiatory pleading that first invoked the jurisdiction of this Court relative to the present case. The material allegations therein readily contradicts petitioner’s position. Note that the RTC denied petitioner’s appeal upon finding that the environmental tax imposed by respondent is in the nature of a regulatory fee and not a tax. Therefore, in elevating its appeal before this Court, one of the main issues expressly raised by petitioner itself in its Petition for Review was the question of “*Whether the RTC erred in holding that the Environmental Tax imposed by*

³² *Hilario v. Salvador*, G.R. No. 160384, April 29, 2005; *Padlan v. Dinglasan*, G.R. No. 180321, March 20, 2013; *North Greenhills Association, Inc. v. Atty. Morales*, G.R. No. 222821, August 9, 2017; *Malabanan v. Republic*, G.R. No. 201821, September 19, 2018.

*Section 17 of Davao City Ordinance No. 0310-07 entitled "Watershed Protection, Conservation and Management Ordinance" or the Watershed Code, is not a tax but a regulatory fee.*³³ The Petition for Review also raised the following corollary issues for resolution of the Court in Division:³⁴

"III.

Granting that the Watershed Code is not a tax ordinance but rather a regulatory fee, whether the RTC erred in not declaring the same invalid for imposing a fee in excess of the cost of regulation.

IV.

Whether the RTC erred in holding that the publication requirements are complied with.

a.

Ordinance No. 0310-07 should have been published within 10 days after approval and for three (3) consecutive days in a local newspaper.

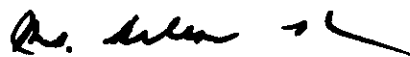
b.

Granting that the Watershed Code is not a tax ordinance but rather a regulatory fee, it should be declared invalid for imposing a fee in excess of the cost of regulation."

To be sure, petitioner also raised the same issues in the present Petition for Review. Accordingly, the Court in Division cannot be faulted for making an inquiry as to the nature of the exaction imposed by the Watershed Code and in ultimately ruling that it lacked jurisdiction over the case.

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

³³ Division Docket, p. 15.

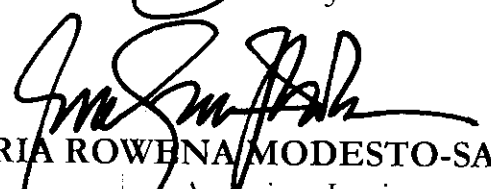
³⁴ *Id.*, pp. 15-16.

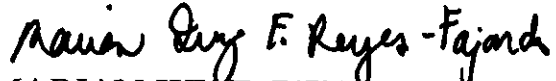
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in 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