

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN MIGUEL FOODS, INC., CTA EB NO. 2474
Petitioner, (CTA AC No. 209)

Present:

- versus -

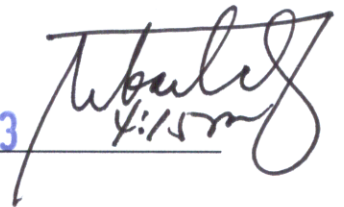
DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJRDO,
CUI-DAVID, *and*
FERRER-FLORES, JJ.

OFFICE OF THE CITY
TREASURER, CITY OF
DAVAO, represented by
BELLA LINDA N. TANJILI,
City Treasurer,

Promulgated:

Respondent.

JAN 31 2023



x ----- x

DECISION

RINGPIS-LIBAN, J.:

The Case

Before the Court *En Banc* is a Petition for Review¹ filed by petitioner San Miguel Foods, Inc. (SMFI) against respondent Office of the City Treasurer, City of Davao seeking to reverse or modify the May 29, 2020 Decision of the First Division together with its February 22, 2021 Resolution.

Specifically, petitioner prays for the:



¹ *Rollo*, pp. 1-24.

1. Cancellation or annulment of the eight (8) tax orders of payment assessing SMFI's Toril and Tugbok dressing plants a *Permit Fee to Slaughter*, and,
2. Order directing the Office of the City Treasurer, City of Davao to *refund* SMFI the Permit Fee to Slaughter for June to July 2016 and for June to September 2017 in the total amount of PhP625,023.30, which it paid under protest.

The dispositive portion of the May 20, 2020 Decision² of the First Division reads:

“Having established the lack of jurisdiction of this Court on the subject matter of this case, there is no further need to discuss the other issues raised by the petitioner.

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

SO ORDERED.”

As stated, SMFI likewise seeks to set aside the Resolution dated February 22, 2021³ of the Court *a quo* which denied its motion for reconsideration for lack of merit.

The Parties

Petitioner SMFI is a corporation organized and existing by virtue of Philippines laws, with principal office at The JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City. It has a branch in Davao City located at 3rd Floor Alpha Bldg., Lanang Business Park, Lanang, Davao City.⁴

Respondent Office of the City Treasurer, City of Davao, which is represented by City Treasurer Bella Linda N. Tanjili, is located at the Ground Floor of the Davao City Hall, City Hall Drive, Davao City.⁵

The Facts

Petitioner SMFI is engaged in poultry operations, livestock farming, processing and selling of meat products, manufacturing and marketing of feed products, selling and distribution of food products, and franchising operations.⁶

² *Rollo*, pp. 35-42.

³ *Rollo*, pp. 28-34.

⁴ Decision, *Rollo*, p. 35.

⁵ *Id.*, p. 36.

⁶ *Id.*

It operates two dressing plants in Davao City, namely, the Toril Dressing Plant and the Tugbok Dressing Plant, which are subject to the payment of local business taxes.⁷

In the course of its operations, live birds/poultry products are slaughtered in the dressing plants which are additionally subject to the payment of the necessary ante mortem and post mortem fees under Section 367 (d) of the Revenue Code of Davao City:

“SECTION 367. Imposition of Fees. — There shall be imposed the following:

xxx xxx xxx

(d) Ante-Mortem and Post-Mortem Fees. — There is hereby collected ante-mortem and post-mortem fees for the slaughter of animals in City operated slaughterhouses or those authorized by the City Government, as follows:

xxx xxx xxx”

Between July and August of 2016, petitioner was assessed by respondent with the corresponding permit fees on the slaughtering of live birds/poultry products in its two (2) dressing plants for the months of June and July 2016 amounting to PhP156,234.30.⁸

Petitioner, thus, filed a letter protest dated September 1, 2016.⁹

Respondent denied the protest through its letter dated December 29, 2016.

Proceedings Before the RTC

SMFI filed an appeal before RTC-Branch 16 docketed as R-DVO-17-00405-CV. However, the trial court through its Order dated September 15, 2017 subsequently *dismissed* the appeal.¹⁰

SMFI moved for reconsideration and prayed for a definitive interpretation of Section 367(a) of said Revenue Code¹¹ which provides:

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, pp. 36-37.

¹¹ Ordinance No. 158-05 (An Ordinance Approving the 2005 Revenue Code of the City of Davao, As Amended).

“SECTION 367. Imposition of Fees. — There shall be imposed the following:

(a) Slaughterhouse Fee. — There shall be collected fees for the slaughter of animals and the use of corrals in accordance with the provisions of this article at the slaughterhouse operated by the City Government.”

The motion was *denied* in the Order dated October 30, 2017 for failure to contain a notice of hearing in violation of Sections 4 and 5, Rule 15 of the Revised Rules of Court.¹²

On December 11, 2017 petitioner filed a Petition for Relief from the RTC’s Orders dated September 15, 2017 and October 30, 2017 which was docketed as R-DVO-17-05274-CV.¹³

While the case was on-going, petitioner continued to receive several assessments of permit fees for the slaughter of live birds/poultry products for the months of June, July, August and September 2017, which it duly protested. However, respondent failed to act on them. Thus, petitioner filed *another* appeal with RTC-Branch 16 and the cases were subsequently consolidated.¹⁴

Petitioner also *paid the assessments under protest* because its Mayor’s Permit would not be issued.¹⁵

On June 19, 2018, RTC-Branch 16 through the assailed Joint Decision dismissed the petition for relief and denied all appeal. Hence, petitioner moved for reconsideration, which the court denied anew under the assailed Order dated July 19, 2018. The latter Order was received by petitioner on July 25, 2018.¹⁶

Proceedings Before the Court of Tax Appeals (CTA) First Division

On August 23, 2018, petitioner SMFI filed a petition for review with the Court of Tax Appeals (CTA).¹⁷

On August 31, 2018, the Court *a quo* directed respondent Office of the City Treasurer, City of Davao to file its comment on the petition. Respondent filed its comment on September 28, 2018 through registered mail.¹⁸

Petitioner then filed a Reply on said Comment on October 3, 2018 through registered mail.¹⁹

¹² Decision, *Rollo*, p. 37.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*, pp. 37-38.

¹⁹ *Id.*, p. 38.

Giving due course to the petition, the Court *a quo* directed the parties to submit their respective memoranda.²⁰

Respondent filed its Memorandum on December 12, 2018 through registered mail while petitioner SMFI filed its Memorandum on December 19, 2018 through registered mail.²¹

On January 17, 2019, the case was held in abeyance because the records of the case in the RTC-Branch 16, Davao City were not yet transmitted. Said records of the case were eventually transmitted to this Court, hence, the case was deemed *submitted for resolution*.²²

On May 29, 2020, the Court *a quo* issued a decision which dismissed SMFI's petition for *lack of jurisdiction*.²³

On motion for reconsideration, the assailed decision was affirmed in a Resolution dated February 22, 2021.²⁴

Proceedings Before the CTA En Banc

On June 11, 2021 SMFI filed a petition with the CTA En Banc seeking to reverse or modify the May 29, 2020 Decision of the First Division together with its February 22, 2021 Resolution.²⁵ Specifically, SMFI prayed for the:

1. Cancellation or annulment of the eight (8) tax orders of payment assessing SMFI's Toril and Tugbok dressing plants a Permit Fee to Slaughter; and,
2. Order directing the City Treasurer to refund SMFI its payment made under protest for Permit Fee to Slaughter from June to July 2016 and June to September 2017, in the total amount of PhP625,023.30.

In a July 22, 2021 Resolution, the Court *noted and admitted* petitioner's submission of the original copies of the Verification and Certification Against Forum Shopping. In the same Resolution, the Court also required petitioner's counsel to provide a copy of the MCLE Compliance Certificate for the 6th Compliance Period and, finally, ordered respondent Office of the City Treasurer, City of Davao to file its comment within ten (10) days.²⁶

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Rollo*, p. 41.

²⁴ *Id.*, pp. 28-34.

²⁵ *Id.*, pp. 1-24.

²⁶ *Id.*, pp. 54-56.

On September 20, 2021, petitioner's counsel filed through registered mail a Compliance in connection with the July 22, 2021 Resolution and submitted a an MCLE compliance certificate for the 6th compliance period.²⁷

On November 5, 2021, respondent filed a Comment through registered mail.²⁸

In a Resolution dated February 2, 2022, the Court noted the *Compliance* of the petitioner's counsel as well as the *Comment* filed by respondent. The Resolution also submitted the case for decision.²⁹

The Issues

For the Court's resolution are the following issues raised by petitioner as grounds for its appeal before the Court *En Banc*:

1. The Honorable First Division had jurisdiction over regulatory fees, together with local taxes, imposed by the local government unit pursuant to its taxing authority under the Local Government Code;³⁰ and,
2. The issue in this petition does not involve the Constitutionality or legality of tax ordinances falling under the jurisdiction of the Secretary of Justice under Section 187 of the Local Government Code, but a mere interpretation of a provision in the Local Tax Code, which the Honorable First Division is empowered under the law to do.³¹

The Arguments of the Parties

Petitioner's Arguments

Petitioner argues that the Court *a quo* has jurisdiction over regulatory fees, together with local taxes, imposed by the local government unit, pursuant to its taxing authority under the Local Government Code.³² Specifically, it states that the CTA is a specialized court mandated by law to resolve disputes involving liability for payment of money to the government arising from the administration of laws relative to the exercise of taxation powers by the national or local

²⁷ *Id.*, pp. 58-59.

²⁸ *Id.*, pp. 65-67.

²⁹ *Id.*, pp. 70-71.

³⁰ *Rollo*, p. 8.

³¹ *Id.*

³² *Id.*

government.³³ Furthermore, it stresses that to constrict the scope of local tax cases and include only local revenue-raising measures is to defeat the purpose of Republic Act No. (RA) 1112, as amended because not only will it render absurd the judicial processes, it may also create a legal vacuum.³⁴ Finally, the holding in *Smart Communications Inc. v. Municipality of Malvar* is a mere *obiter*, which is not controlling in this case.³⁵

Respondent's Counter-Arguments

Respondent, as a counter-argument to the points raised by the petitioner, insists that the Court *a quo* correctly dismissed the case since it involves the imposition of a regulatory fee and not a local tax. It cites Rule 4 Section 2(a)(2) of the Revised Rules of the CTA in maintaining that it is no longer necessary for the CTA *En Banc* to give due course to the petition since it is clear from the rules that the case decided by the RTC was a local tax case.³⁶

The Ruling of the Court

Petitioner's arguments fail to persuade.

The Permit Fee to Slaughter amounting to PhP625,023.30, which petitioner SMFI paid under protest, and now seeks to refund from respondent is in the nature of a license fee and not a tax.

Before the Court *a quo*, petitioner SMFI argued that the Permit Fee to Slaughter is a fee for the regulation of the slaughter of the animals and, therefore, a direct duplication of the ante mortem and post mortem fees.³⁷ However, it contradicts this position on appeal before the Court by stating that this involves a "local tax case"³⁸ or the issue pertains to the exercise of the taxing powers of the local government over which the CTA has jurisdiction.

To begin with, a *fee* is defined as a charge fixed by law for the service of a public officer, while a *tax* is a forced contribution of wealth to the public needs of government. *Taxes* are imposed for the purpose of general revenue, while

³³ *Id.*, p.9.

³⁴ *Id.*, p.16.

³⁵ *Id.*, p.20.

³⁶ *Id.*, pp. 65-66.

³⁷ Petition for Review (AC-209), Docket, pp. 22-26; May 29, 2020 Decision, *Rollo*, p. 39.

³⁸ Petition for Review (EB 2474), *Rollo*, p. 15.

license fee and *other fees* are ordinarily imposed to cover cost and expense of supervision or regulation.³⁹

These definitions are consistent with the codal definition laid down by the Local Government Code in Section 131(l), thus:

“SEC. 131. *Definition of Terms.* - When used in this Title, the term:

xxx xxx xxx

(l) ‘Fee’ means a charge fixed by law or ordinance for the regulation or inspection of a business or activity;

xxx xxx xxx”

In *Progressive Development Corporation v. Quezon City*,⁴⁰ petitioner Progressive Development Corporation, owner and operator of a public market known as the *Farmers Market & Shopping Center* filed a Petition for Prohibition with Preliminary Injunction against respondent Quezon City before the then Court of First Instance of Rizal on the ground that the *supervision fee* or *license tax* imposed by the Quezon City ordinances is in reality a tax on income which respondent may not impose, the same being expressly prohibited by RA 2264, as amended. The issue resolved by the Supreme Court was whether the imposition on petitioner’s gross receipts of stall rentals is properly characterized as partaking of the nature of an *income tax* or, alternatively, of a *license fee*. The Supreme Court *denied* the petition for lack of merit and began its discussion with the distinction between *fees* and *taxes*, thus:

“Petitioner, however, insist that the ‘supervision fee’ collected from rentals, being a return from capital invested in the construction of the Farmers Market, practically operates as a tax on income, one of those expressly excepted from respondent’s taxing authority, and thus beyond the latter’s competence. xxx.

The term ‘tax’ frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although license fee is a legal concept distinguishable from tax: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if the generating 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 incidentally revenue is also obtained does not make the imposition a tax.

To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health,

³⁹ Word and Phrases, Permanent Edition, Vol. 16, p. 322.

⁴⁰ G.R. No. L-36081, April 24, 1989.

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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.

In the case at bar, the 'Farmers Market & Shopping Center' was built by virtue of Resolution No. 7350 passed on 30 January 1967 by respondents' local legislative body authorizing petitioner to establish and operate a market with a permit to sell fresh meat, fish, poultry and other foodstuffs. The same resolution imposed upon petitioner, as a condition for continuous operation, the obligation to 'abide by and comply with the ordinances, rules and regulations prescribed for the establishment, operation and maintenance of markets in Quezon City.'

The 'Farmers' Market and Shopping Center' being a public market in the sense of a market open to and inviting the patronage of the general public, even though privately owned, petitioner's operation thereof required a license issued by the respondent City, the issuance of which, applying the standards set forth above, was done principally in the exercise of the respondent's police power. The operation of a privately owned market is, as correctly noted by the Solicitor General, equivalent to or quite the same as the operation of a government-owned market; both are established for the rendition of service to the general public, which warrants close supervision and control by the respondent City, for the protection of the health of the public by insuring, e.g., the maintenance of sanitary and hygienic conditions in the market, compliance of all food stuffs sold therein with applicable food and drug and related standards, for the prevention of fraud and imposition upon the buying public, and so forth." (*Citations omitted and underscoring supplied*)

RTC-Branch 16, therefore, *correctly* concluded that the imposition of Davao City is in the nature of a *fee* for the purpose of regulating the business activity of SMFI. It arrived at this conclusion when it read and quoted Section 367(a) of Ordinance No. 158-05 (An Ordinance Approving the 2005 Revenue Code of the City of Davao, As Amended) *together with the other germane provisions in the city ordinance* to understand their purpose, which is clearly *to regulate or control the slaughter of animals intended for sale*:

"The disputed Ordinance is Ordinance No. 158-05 (**AN ORDINANCE APPROVING THE 2005 REVENUE CODE OF THE CITY OF DAVAO, AS AMENDED**) on the Slaughter Fees. Said provision is under the whole Article of 12 of Chapter V-City charges, which is hereto quoted for reference, to wit:



‘Article Twelve - Slaughter and Corral Fees

Section 367. Imposition of Fees. - There shall be imposed the following: following:

(a) Slaughterhouse Fee. - There shall be collected fees for the slaughter of animals and the use of corals in accordance with the provisions of this article at the slaughterhouse operated by the City Government.

Permit Fee to Slaughter. Before any animal is slaughtered, a permit therefore shall first be secured from the City Veterinarian or his duly authorized representative, xxx,

xxx xxx xxx

Section 368. Place of Slaughter. - **The slaughter of any kind of animal for sale to or consumption of the public shall be done only in the slaughterhouse unless otherwise authorized by the City Government.** The slaughter of animals intended for home consumption may be done elsewhere; provided that the animals slaughtered shall not be sold or offered for sale.

xxx xxx xxx

370. Administrative Provision.

(a) **The slaughter of any kind of animal intended for sale shall be done only in the city slaughterhouse designated as such by the Sangguniang Panlungsod.** The slaughter of animals intended for home consumption may be done elsewhere, except large cattle which shall be slaughtered only in the public slaughterhouse. The animal slaughtered for home consumption shall not be sold.

xxxx.
xxxx.

Section 371. Prohibition. - **It shall be unlawful for any person, natural or juridical, to sell or buy, for business or commerce, within the territorial jurisdiction of the City, unprocessed carcasses or meat or animals and fowls slaughtered in places other than the City operated slaughterhouses or those authorized by the National Meat Inspection Service (NMIS).**

xxxx.

Section 372. Confiscation: Other Penalty, - All such unprocessed carcasses or meat butchered at slaughterhouses other than the City operated slaughterhouse or those authorized by the National meat Inspection Service (NMIS), shall be confiscated or seized in favor of the government and shall be disposed of in accordance with law.

xxx xxx xxx'



From the foregoing provisions of the City Tax Code, it becomes abundantly clear that all slaughters of animals for sale, business and for commerce will be done ONLY in the city slaughterhouse designated as such by the Sangguniang Panlungsod or the City Government.

xxx xxx xxx

In the case at bar, the fee imposed by the City Government is for regulation or inspection of the business of the Petitioner. The fee if paid is considered as an authority to maintain a private slaughterhouse under the provision of the Davao City Tax Code that: - ‘unless otherwise authorized by the City Government.’ (Section 368). The generated revenue is only incidental on the primary purpose of regulation, inspection and supervision of Petitioner’s business.⁴¹ (*Underscoring supplied*)

From the foregoing excerpts of the RTC-Branch 16’s assailed decision, by reading Section 367 within the context of the other related provisions under Article 12 – Slaughter and Corral Fees, the trial court brought out and underscored the *general welfare* purpose of these provisions. To reiterate, the purpose of these provisions collectively and the imposition of the fee is to *regulate* the activities pertaining to the slaughter of animals, in general, and the slaughter of live birds/poultry, in particular.

Accordingly, the *Permit Fee to Slaughter* is *not a tax* but one imposed on SMFI in order for it to engage in a particular trade or business which is within the power of respondent to impose. The *Permit Fee to Slaughter* can be classified as a *fee* for the purpose of regulating a specific business activity imbued with public interest because the activity, *i.e.* the slaughter of live birds/poultry in its Toril and Tugbok dressing plants, can impact public health, hygiene and sanitation. Without doubt, such business activity by its nature warrants close supervision and control by the city in the exercise of *police power* under the general welfare clause of Section 16 of the Local Government Code:

“SECTION 16. *General Welfare.* - Every local government unit shall exercise the powers expressly granted, those necessarily implied there from, 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.”
(*Underscoring supplied*)

⁴¹ June 19, 2018 Joint Decision, Docket, pp. 38-40, 43.

It bears stressing that the police power delegated to the local government units under the general welfare provision of Section 16 of the Local Government Code subsumes the promotion of *health and safety* within their territory. Clearly, the regulation of the slaughter of live bird/poultry, which is the activity undertaken in SMFT's dressing plants, is covered within the standards of *health and safety* for the exercise of the city's regulatory powers.

All told, the Permit Fee to Slaughter amounting to PhP625,023.30, which petitioner SMFI paid under protest, and now seeks to refund from respondent is in the nature of a *license fee* and *not a tax*.

Under RA 1125, as amended, the CTA lacks jurisdiction to decide a case not involving a local tax case decided by the Regional Trial Court.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case.⁴² *It is conferred by law.*⁴³

Without a law that grants the power to hear, try, and decide a particular type of action, a court may not, regardless of what the parties do or fail to do, afford any sort of relief in any such action filed before it. It follows then that, in those cases, any judgment or order other than one of dismissal is void for lack of jurisdiction. This must be the rule since no less than the Constitution provides that it is a function of the Congress to define, prescribe, and apportion the jurisdiction of courts.⁴⁴

To be sure, RA 1125, as amended, delineates the *limited* jurisdiction of the CTA in the following manner:

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

- a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the

⁴² *Victoria Manufacturing Corporation Employees Union v. Victoria Manufacturing Corporation*, G.R. No. 234446, July 24, 2019.

⁴³ *MR Holdings, Inc. v. Rolando A. De Jesus*, G.R. No. 217837, September 4, 2019.

⁴⁴ *Victoria Manufacturing Corporation Employees Union v. Victoria Manufacturing Corporation*, G.R. No. 234446, July 24, 2019.

National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

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;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.” (*Underscoring supplied*)

The CTA, as a specialized court, enjoys jurisdiction *limited to those specifically mentioned in the law*. Noteworthy is that the exhaustive enumeration above *does not* include cases involving the imposition of *fees* by the local government units.

Stated otherwise, Section 7(a)(3) of RA 1125 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.”

This was the holding in *Teresa R. Ignacio v. Office of the City Treasurer of Quezon City*,⁴⁵ where the Supreme Court ruled that the CTA had no jurisdiction over a case decided by the RTC that did not “primarily involve a tax issue”. It further explained that the CTA’s *appellate jurisdiction* over decisions, orders, or resolutions of the RTCs becomes operative only when the RTC has ruled on a *local tax case*:

“On the issue of jurisdiction, public respondents argue that the RTC-Br. 85’s Resolution dismissing with prejudice the Annulment Case on the ground of *res judicata* has already become final, maintaining that Teresa should

⁴⁵ G.R. No. 221620, September 11, 2017.

have elevated the case to the Court of Tax Appeals (CTA), and not to the CA, pursuant to Section 7 (a) (3) of Republic Act (RA) No. 9282, *viz.*:

SEC. 7. *Jurisdiction.* - The CTA shall exercise:

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

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[.]

The Court disagrees, as the CA properly assumed jurisdiction over Teresa's appeal.


Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. Case law holds that jurisdiction is conferred by law and determined from the nature of action pleaded as appearing from the material averments in the complaint and the character of the relief sought. Once the nature of the action is determined, it remains the same even on appeal until a decision rendered thereon becomes final and executory.

Based on the above-cited provision of law, it is apparent that the CTA's appellate jurisdiction over decisions, orders, or resolutions of the RTCs becomes operative only when the RTC has ruled on a local tax case. Thus, 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. In *National Power Corporation v. Municipal Government of Navotas*:

Indeed, the CTA, sitting as Division, has jurisdiction to review by appeal the decisions, rulings and resolutions of the RTC over local tax cases, which includes real property taxes. This is evident from a perusal of the Local Government Code (LGC) which includes the matter of Real Property Taxation under one of its main chapters. Indubitably, the power to impose real property tax is in line with the power vested in the local governments to create their own revenue sources, within the limitations set forth by law. As such, the collection of real property taxes is conferred with the local treasurer rather than the Bureau of Internal Revenue.

Thus, cases decided by the RTC which involve issues relating to the power of the local government to impose real property taxes are considered as local tax cases, which fall under the appellate jurisdiction of the CTA. To note, these issues may, inter alia, involve the legality or validity of the real property tax assessment; protests of assessments; disputed assessments, surcharges, or penalties; legality or validity of a tax ordinance; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments.

In this case, a reading of the Annulment Complaint shows that Teresa's action before the RTC-Br. 85 is essentially one for recovery of ownership and possession of the property, with damages, which is not anchored on a tax issue, but on due process considerations. Particularly, she alleged that: (a) public



respondents sent the Notice of Delinquency in July 2008, and the corresponding Warrant of Levy in May 2009, to a wrong address; (b) they knew her correct address as early as March 2007, or before they sent the Notice and Warrant; (c) she had in fact already filed an action against them involving a different property, for likewise sending the notice to a wrong address; and (d) their willful violation of her right to notice of the levy and auction sale deprived her of her right to take the necessary steps and action to prevent the sale of the property, participate in the auction sale, or otherwise redeem the property from Sps. Dimalanta. In other words, the Annulment Complaint's allegations do not contest the tax assessment on the property, as Teresa only bewails the alleged lack of due process which deprived her of the opportunity to participate in the delinquency sale proceedings. As such, the RTC-Br. 85's ruling thereon could not be characterized as a local tax case over which the CTA could have properly assumed jurisdiction on appeal. In fine, the case was correctly elevated to the CA. (*Underscoring supplied; citations omitted*)

Finally, in *Smart Communications Inc. v. Municipality of Malvar, Batangas*,⁴⁶ no less than the Supreme Court *En Banc* has declared that the fees imposed under Ordinance No. 18 in question are *not taxes but fees*. The Supreme Court further clarified that the ordinance in question *regulate* the enumerated activities particularly related to the construction and maintenance of various structures. In other words, the fees in Ordinance No. 18 were *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. Accordingly, the Supreme Court concluded that the CTA correctly dismissed the taxpayer's petition for lack of jurisdiction since the purpose of the ordinance is to regulate and the fees imposed 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.

⁴⁶ G.R. No. 204429, February 18, 2014.

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 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.

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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.”
(Underscoring supplied and citations omitted)

Finally, petitioner contends that the holding in *Smart Communications Inc.* is a mere *obiter*, which is not controlling in this case.⁴⁷

An *obiter dictum* is “is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.”⁴⁸

The characterization of the imposition made by the local government, which was resolved in *Smart Communications Inc.*, was *not* a collateral issue at all. In fact, the Supreme Court *En Banc*, in dismissing the petition and upholding the dismissal of the case by the CTA *En Banc*, explicitly stated the importance of the issue of classifying the local imposition to determine the issue on 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.” The holding is, without a doubt, a binding precedent which is directly applicable to the adjudication of this case.

At the heart of the Supreme Court *En Banc*’s disposition in *Smart Communications Inc.* is the issue on how to classify an imposition: whether it should be considered local fees meant to regulate an activity or whether it should be considered local taxes meant to raise revenues. Petitioner, therefore, *incorrectly* states that this holding is a mere *obiter* and, thus, not a binding precedent.

All told, the Court *En Banc* finds no reason to modify or reverse the assailed Decision and assailed Resolution of the Court *a quo*.

⁴⁷ *Rollo*, p.20.

⁴⁸ *Jonathan Dee v. Harvest All Investment Limited, et al.*, G.R. No. 224834, March 15, 2017.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. The May 29, 2020 Decision of the First Division and its February 22, 2021 Resolution are **AFFIRMED**.


SO ORDERED.

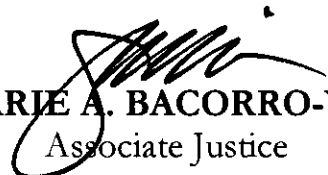

MA. BELEN M. RINGPIS-LIBAN
Associate Justice


WE CONCUR:

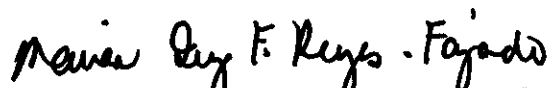

ROMAN G. DEL ROSARIO
Presiding Justice



ERLINDA P. UY
Associate Justice

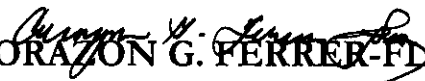

CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVYF. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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