

SECOND DIVISION

[G.R. No. 180639, June 29, 2010]

**LEPANTO CONSOLIDATED MINING COMPANY, PETITIONER, VS.
HON. MAURICIO B. AMBANLOC, IN HIS CAPACITY AS THE
PROVINCIAL TREASURER OF BENGUET, RESPONDENT.**

DECISION

ABAD, J.:

This case is about the liability of a mining corporation for taxes imposed by a province for the extraction of sand and gravel from areas covered by its mining lease with the national government and used exclusively in its mining operations.

The Facts and the Case

The national government issued to petitioner Lepanto Consolidated Mining Company (Lepanto) a mining lease contract covering, among others, its "TIKEM" leased mining claim at Sitio Nayak, Barrio Palasan (Suyoc), Municipality of Mankayan, Benguet. The contract granted Lepanto the right to extract and use for its purposes all mineral deposits within the boundary lines of its mining claim. Upon inquiry, the Mines and Geo-sciences Bureau of the Department of Environment and Natural Resources (DENR) advised Lepanto that, under its contract, it did not have to get a permit to extract and use sand and gravel from within the mining claim for its operational and infrastructure needs. Based on this advice, Lepanto proceeded to extract and remove sand, gravel, and other earth materials from the mining site.

Lepanto used the quarried materials to back-fill stopes--portions of the earth excavated as a result of mining--replacing what had been mined to maintain the integrity of the ground. It also used sand and gravel to construct and maintain concrete structures needed in its mining operation, such as a tailings dam, access roads, and offices. Its use of quarry resources, readily available within its mining claim, was more practical and cheaper than having to outsource them.

Respondent Mauricio Ambanloc, the provincial treasurer of Benguet, sent a demand letter to Lepanto, asking it to pay the province P1,901,893.22 as sand and gravel tax, for the quarry materials that it extracted from its mining site from 1997 to 2000. Lepanto sent a letter-protest to the provincial treasurer, but the latter denied the same, insisting on payment.

Lepanto filed a petition with the Regional Trial Court (RTC) of Benguet to question the assessment.^[1] The RTC ruled that Lepanto was liable for the amount assessed, with interest at the rate of 2 percent per month from the time the tax should have been paid. Lepanto appealed the RTC decision to the Court of Tax Appeals (CTA) where it was raffled to its Second Division.^[2] The Second Division affirmed the ruling of the RTC with the modification that the interest of 2 percent per month shall not exceed 36 months.^[3]

Lepanto appealed the decision of the Second Division to the CTA *En Banc*.^[4] Three justices of the CTA voted to affirm the decision but three justices dissented. Because the needed vote of four members could not be obtained, the *En Banc* dismissed the appeal, resulting in the affirmance of the decision of the Second Division. Lepanto's motion for reconsideration met the same fate, hence, this appeal.

The Issue Presented

The sole issue presented in this case is whether or not Lepanto is liable for the tax imposed by the Province of Benguet on the sand and gravel that it extracted from within the area of its mining claim and used exclusively in its mining operations.

The Court's Rulings

One. Lepanto claims that the tax on sand and gravel applied only to commercial extractions. In its case, it extracted these materials for use solely in its mining operations. Lepanto did not supply other users for some profit. Thus, its extractions were not commercial and should not be subject to provincial tax.

The CTA's Second Division held, however, that sand and gravel taxes may be imposed even on non-commercial extractions. Since Section 138 of the Local Government Code (Republic Act 7160) authorized provinces to impose a tax on the extraction of sand and gravel from public lands, without distinguishing between personal and commercial uses, then the tax should be deemed to cover extractions for both purposes. The provision reads:

Sec. 138. Tax on Sand, Gravel and Other Quarry Resources. - The province may levy and collect not more than ten percent (10%) fair market value in the locality per cubic meter of ordinary stones, sand gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.

But the CTA Second Division ruling overlooks the fact that Republic Act 7160 is not the

provincial government's basis for taxing Lepanto's extraction. It is but the general law that delegates to provinces the power to impose taxes on the extraction of quarry resources. As it happens, the scope and validity of such delegation is not the issue in this case. The question of Lepanto's liability for tax should be determined based on the revenue measure itself, which in this case, was the Revised Benguet Revenue Code (the revenue code).^[5] The relevant provisions of this provincial revenue code reads:

Article D. Tax on Sand, Gravel and Other Quarry Resources.

x x x x

SECTION 3. *Imposition of Tax.* There shall be levied a tax of ten (10) percent of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, x x x applied for and expected to be extracted or removed from public lands x x x within the territorial jurisdiction of Benguet Province.

This provision may not apply in case of gratuitous permits for government projects within Benguet Province.

SECTION 4. *Conditions for the Issuance of Permit.*

x x x x

(g) The permittee shall within ten (10) days after the end of each month submit to the Provincial Treasurer, the Municipal Treasurer and Barangay Treasurer where the materials are extracted, copies of sworn statement stating the quantity in terms of cubic meter and kind of materials extracted or removed by him; the amount of tax or fees paid; the quantity and kind of materials sold or disposed of during the period covered by said report; the selling price per cubic meter; the names and addresses of the buyers; and the quantity and kind of materials left in stock.

x x x x

SECTION 5. *Mode, Time and Place of Payment.* The tax shall be paid to the Provincial Treasurer or his duly authorized representative before the approval by the Provincial Governor of the permit to extract or remove the materials applied for and before the said materials are extracted or removed. x x x

SECTION 6. *Surcharges and Interests.* Failure to pay the tax as provided herein shall subject the permittee to a surcharge of Twenty-five (25%) percent of the original amount of tax due plus Two (2%) percent per month

of the unpaid amount including the surcharges until such amount is fully paid, but in no case shall the total amount or portion thereof exceed thirty-six (36) months. x x x

Lepanto insists that the subject tax intended to cover only commercial extractions since the provincial revenue code referred to "fair market value of the resources," "quantity sold or disposed," "amount left in stock," "selling price," and "buyers' information."

Not necessarily. The provincial revenue code provides that the subject tax had to be paid prior to the issuance of the permit to extract sand and gravel. Its Article D, Section 2, enumerates four kinds of permits: commercial, industrial, special, and gratuitous. Special permits covered only personal use of the extracted materials and did not allow the permittees to sell materials coming from his concession.^[6] Among applicants for permits, however, only gratuitous permits were exempt from the sand and gravel tax. It follows that persons who applied for special permits needed to pay the tax, even though they did not extract materials for commercial purposes. Thus, the tax needed to be paid regardless of the applicability of the administrative and reportorial requirements of that revenue code.

Two. Lepanto claims that the tax can only be levied against extractions by persons or entities required to apply for permits to remove quarry resources. Since the mining lease contract with the national government granted it the right to extract and utilize all mineral deposits from within its mining claim, Lepanto claims that it did not need to apply for a separate permit from the local government. Paragraph 9 of its Mining Lease Contract provides that:

This Lease hereby grants unto the LESSEE, his successors or assigns, the right to extract and utilize for their own benefit all mineral deposits within the boundary lines of the mining claim/s covered by this Lease continued vertically downward.

But this merely declares that Lepanto's extraction and use of mineral deposits bears the consent of the national government, in line with the principle that exploration of natural resources can only be done under the control and supervision of the State. The contract makes no mention of any exemption from securing government permits.

Lepanto invokes the Bureau of Mines and Geo-Sciences' view that the mining company did not require it to get any of the permits that Mines Administrative Order MRD-27 might require.^[7] But that Bureau's view applied only to permits under MRD-27. The Bureau has no authority to determine the applicability of local ordinances. Besides, even the Bureau itself states that the exemption from MRD-27 is not absolute as it shall not apply if the sand and gravel were to be disposed of commercially. An exemption from the requirements of the provincial government should have a clear basis, whether in law, ordinance, or even

from the contract itself. Unfortunately for Lepanto, it failed to show its entitlement to such exemption.

Three. Lepanto relies on the principle that when a company is taxed on its main business, it is no longer taxable for engaging in an activity that is but a part of, incidental to, and necessary to such main business. Lepanto points out that, since it did not extract and use sand and gravel as independent activities but as integral parts of its mining operations, it should not be subjected to a separate tax on the same.

But in the cases where this principle has been applied, the taxes which were stricken down were in the nature of business taxes. The reasoning behind those cases was that the incidental activity could not be treated as a business separate and distinct from the main business of the taxpayer. Here the tax is an excise tax imposed on the privilege of extracting sand and gravel. And it is settled that provincial governments can levy excise taxes on quarry resources independently from the national government.^[8]

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the decision of the Court of Tax Appeals *En Banc* in CTA EB 201 dated May 17, 2007.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] Docketed as Civil Case 01-CV-1652.

[2] Docketed as CTA AC 13.

[3] In a Decision dated February 27, 2006, penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy.

[4] Docketed as CTA EB 201.

[5] Provincial Ordinance No. 01, Series of 1993.

[6] Provincial Ordinance No. 01, Series of 1993, Article D, Section 9. *Penal Clause.*

(d) Any person issued gratuitous permit or special permit for personal use, who sells sand, gravel and other quarry resources extracted from his concession.

[7] *Rollo*, pp. 201-203.

[8] *Province of Bulacan v. Court of Appeals*, 359 Phil. 779, 793 (1998).

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