



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 10, 2021, which reads as follows:

G.R. No. 240732 (*The City of Makati and the City Treasurer of Makati City v. Trans-Asia Power Generation Corporation*). — For calendar year (CY) 1996 to the second quarter of CY 2006, the City of Makati and the City Treasurer of Makati City (petitioners) classified respondent Trans-Asia Power Generation Corporation (TAPGC) as a “Producer” for purposes of Local Business Tax (LBT). Accordingly, TAPGC paid the corresponding business tax based on its classification as a “Producer.”¹

On June 14, 2006, however, petitioners issued an order of payment and reclassified TAPGC from “Producer” to “Services-Other Co.” Subsequently, petitioners issued a Notice of Assessment dated October 27, 2009, assessing TAPGC for deficiency taxes, fees, and charges covering CYs 2005 to 2007 in the amount of ₱686,300.53.²

Dissatisfied with the Notice of Assessment, TAPGC filed a protest letter dated December 22, 2009, requesting that, for purposes of LBT, it be classified as a “manufacturer/producer” and that the assessment be consequently cancelled and withdrawn.³

For petitioners’ inaction, TAPGC filed a Complaint or Protest against the deficiency tax assessment before the Regional Trial Court (RTC).⁴

Ruling of the RTC

In a Decision dated February 18, 2015, the RTC ruled in favor of TAPGC, *viz.*:

WHEREFORE, in view of the foregoing, the tax protest filed by the plaintiff is hereby GRANTED and the Notice of Assessment dated

¹ *Rollo*, p. 20.

² *Id.* at 21.

³ *Id.*

⁴ *Id.*

October 27, 2009 in the amount of [P]686,300.53 is ordered CANCELLED and WITHDRAWN.

SO ORDERED.⁵

The RTC held that TAPGC is engaged in the business of transforming fuel into electricity and selling such electricity to the end user. Thus, TAPGC's business operation falls within the scope of "manufacturer/producer," and not under the term "contractor."⁶

Petitioners moved for reconsideration but the same was denied through the RTC's Order dated June 9, 2015.⁷

Undaunted, petitioners appealed to the Court of Tax Appeals (CTA) in Division, which was docketed as CTA AC No. 144.⁸

Ruling of the CTA Division

In a Decision dated July 29, 2016, the CTA Division affirmed the RTC's Decision dated February 18, 2015 and Order dated June 9, 2015, viz.:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated February 18, 2015 and the Order dated June 9, 2015, both rendered by Branch 134 of the Regional Trial Court of Makati City in Civil Case No. 10-312 entitled "Trans-Asia Power Generation Corporation vs. The City of Makati and Nelia Barlis, in her capacity as the City Treasurer of Makati City," are hereby **AFFIRMED**.

SO ORDERED.⁹

The CTA Division held that TAPGC falls squarely within the coverage of the term "manufacturer/producer" based on the activities it engages in.¹⁰

Petitioners moved for reconsideration but it was likewise denied through the CTA Division's Resolution dated December 2, 2016.¹¹

Aggrieved, it appealed to the CTA *En Banc*.

⁵ Id.

⁶ Id.

⁷ Id. at 21-22.

⁸ Id. at 22.

⁹ Id.

¹⁰ Id. at 23.

¹¹ Id.

Ruling of the CTA *En Banc*

In a Decision¹² dated March 21, 2018, the CTA *En Banc* affirmed the CTA Division's Decision dated July 29, 2016 and Resolution dated December 2, 2016, viz.:

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit. The Decision promulgated on July 29, 2016 and the Resolution promulgated on December 2, 2016 by the Second Division are hereby **AFFIRMED**.

SO ORDERED.¹³

It held that considering TAPGC alters bunk fuel through combustion to create electricity which is then sold to Holcim Philippines, Inc. and to Wholesale Electricity Spot Market, the CTA Division correctly classified TAPGC as a manufacturer. Petitioners' reclassification of TAPGC from "Producer" to "Service-Other Co." has no basis in law and in fact. Thus, petitioners' assessment for deficiency taxes, fees, and charges covering CYs 2005 to 2007 must fail.¹⁴

Petitioners moved for reconsideration, but the same was denied through the CTA *En Banc*'s Resolution dated June 13, 2018.¹⁵

Issue

Whether TAPGC should be reclassified from "Producer/Manufacturer" to "Service-Other Co. and/or Contractor" for purposes of imposing LBT.

Our Ruling

We deny the petition.

At the outset, We stress that the CTA has necessarily developed an expertise in the subject of taxation that this Court has recognized time and again. For this reason, the findings of fact of a division of the CTA, particularly when affirmed *En Banc*, are generally conclusive on this Court absent grave abuse of discretion or palpable error, which unfortunately are both absent in this case.¹⁶

Petitioners would like to have this Court rule that TAPGC is a "contractor" and not a "manufacturer/producer" for purposes of imposing

¹² Rendered by Associate Justice Lovell R. Bautista, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Gruña, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan, concurring; id. at 19-30.

¹³ Id. at 29.

¹⁴ Id. at 28-29.

¹⁵ Id. at 31-35.

¹⁶ *Metropolitan Bank and Trust Co. v. CIR*, 612 Phil. 544, 558 (2009).

LBT.

The subject reclassification of TAPGC from “Producer” to “Services-Other Co.” made by petitioners on June 14, 2006 is the same reclassification subject of the 2016 case entitled, “*The City of Makati, represented [in this case] by its City Mayor, the OIC City Treasurer, Ms. Amalia C. Santos, and the OIC of the Business Tax Division v. Trans-Asia Power Generation Corporation (2016 City of Makati case)*.”¹⁷

In the *2016 City of Makati case*, clearly involving the parties in the present case, this Court was confronted with the same question of *whether petitioner City of Makati correctly reclassified respondent as a “contractor” on June 14, 2006 for Local Business Tax purposes*. In the said case, this Court, by Resolution dated January 11, 2016, denied petitioner City of Makati’s petition for review on *certiorari* and affirmed the CTA *En Banc*’s Decision dated January 21, 2015 and Resolution dated August 18, 2015, in CTA EB No. 1086 (CTA AC Case No. 87). In the said *2016 City of Makati case*, petitioner City of Makati failed to sufficiently show that the CTA *En Banc* committed any reversible error when it ruled that TAPGC’s nature of business falls within the category of “manufacturer/producer” and not “contractor” of electricity.

As found by the CTA *En Banc* in that case, and affirmed by this Court, it was never disputed that TAPGC buys bunker fuel as its chief raw material and converts it through mechanical and chemical processes to electricity. TAPGC subsequently sells this electricity to Ili Cement. With respect to the Certificate of Registration issued by the Bureau of Investment (BOI), it was held that the classification given by the BOI on TAPGC under such Certificate of Registration is not definitive of its real business purpose. Moreover, there was nothing in the document that explains the classification.

In the present case, petitioners assail the CTA *En Banc*’s Decision dated March 21, 2018 and Resolution dated June 13, 2018, in CTA EB No. 1570 (CTA AC No. 144), which again ruled that TAPGC is a “manufacturer” and not a “contractor.” Petitioners argue that the classification given by the Board of Investments (BOI) on TAPGC as “operator of power-generating plant” and not a “power-producer” would mean that TAPGC is a contractor of services. They further alleged, without any supporting basis, that TAPGC undertakes services for a fee, thus, it should be considered as a contractor.

Clearly, petitioners merely rehashed or reintroduced arguments already passed upon and discussed in full by the CTA *En Banc* in CTA EB No. 1086 and affirmed by this Court through Resolution dated January 11, 2016, in the *2016 City of Makati Case*.

¹⁷ G.R. No. 220001, January 11, 2016 (Notice).

As again found by both the CTA Division and the CTA *En Banc*, in the present case, TAPGC alters bunk fuel through combustion to create electricity which is then sold to Holcim Philippines, Inc. and to Wholesale Electricity Spot Market. It was also reiterated that the Certificate of Registration issued by the BOI is not definitive of its real business purpose.

Verily, in the absence of any compelling reason, the Court cannot depart from its previous ruling or resolution in the 2016 *City of Makati case* affirming the CTA *En Banc*'s findings (CTA EB No. 1086) that TAPGC's nature of business falls within the category of "manufacturer/producer" and not "contractor" of electricity.¹⁸

WHEREFORE, the instant Petition is **DENIED**. The Decision dated March 21, 2018 and Resolution dated June 13, 2018 of the Court of Tax Appeals *En Banc* in CTA EB No. 1570 (CTA AC No. 144) are hereby **AFFIRMED**.

SO ORDERED.

By authority of the Court:

MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court

Atty. Anthony Zamora
Counsel for Petitioners
Office of the City Attorney
18/F Makati City Hall
1200 Makati City

COURT OF TAX APPEALS
Agham Road, Diliman
1101 Quezon City
(CTA EB No. 1570)

Atty. Allan Ascalon
Counsel for Respondent
3/F Phinma Bldg.
39 Plaza Drive, Rockwell Center
1200 Makati City

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¹⁸ Id.

¹⁸ Id.