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EN BANC

[G.R. No. 203754. October 15, 2019]

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, *petitioner, vs.* **COLON HERITAGE REALTY CORPORATION, Operator of Oriente Group of Theaters, represented by ISIDORO A. CANIZARES,** *respondent.*

[G.R. No. 204418. October 15, 2019]

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, *petitioner, vs.* **CITY OF CEBU and SM PRIME HOLDINGS, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATUTORY CONSTRUCTION; LAW DECLARED AS UNCONSTITUTIONAL AND THE DOCTRINE OF OPERATIVE FACT; IN APPLYING THE DOCTRINE, COURTS OUGHT TO EXAMINE WITH PARTICULARITY THE EFFECTS OF THE ALREADY ACCOMPLISHED ACTS ARISING FROM THE UNCONSTITUTIONAL STATUTE, AND DETERMINE, ON THE BASIS OF EQUITY AND FAIR PLAY, IF SUCH EFFECTS SHOULD BE ALLOWED TO STAND. — The operative fact doctrine recognizes the existence and validity of a legal provision prior to its being declared as unconstitutional and hence, legitimizes otherwise invalid acts done pursuant thereto because of considerations of practicality and fairness. In this regard, certain acts done pursuant to a legal provision which was just recently declared as unconstitutional by the Court cannot be anymore undone because not only would it be highly impractical to do so, but more so, unfair to those who have relied on the said legal provision prior to the time it was struck down. However, in the fairly recent case of *Mandanas v. Ochoa, Jr.*, citing *Araullo v. Aquino III*, the Court stated that the doctrine of operative fact "applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application." The doctrine of operative fact "nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a

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determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law." x x x Therefore, **in applying the doctrine of operative fact, courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of equity and fair play, if such effects should be allowed to stand.** It should not operate to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law.

2. ID.; ID.; ID.; ID.; CASE AT BAR. — In the Main Decision, the Court, in applying the doctrine of operative fact, held that FDCP and the producers of graded films need not return the amounts already received from LGUs because they merely complied with the provisions of RA 9167 which were in effect at that time. Clearly, this disposition squarely hews with the practicality and fairness thrust of the operative fact doctrine because, as observed by the Court, to command the return of the amounts received pursuant to Sections 13 and 14 of RA 9167 which were then existing "would certainly impose a heavy, and possibly crippling, financial burden upon them who merely, and presumably in good faith, complied with the legislative fiat subject of this case." Accordingly, contrary to Cebu City's position, the Court's holding on this score must stand. Similarly, the same rationale must apply to the Court's directive ordering cinema proprietors and operators to remit to FDCP any amusement taxes they have retained prior to Sections 13 and 14 of RA 9167 being declared unconstitutional. x x x The operative fact doctrine equally applies to the **non-remittance** by said proprietors since the law produced legal effects prior to the declaration of the nullity of [Sections] 13 and 14 [of RA 9167] in these instant petitions."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Tequillo Suson Manuales & Associates for respondent in G.R. No. 203754.

Josefina Wan-Remollo for respondent SM Prime Holding, Inc.

Cebu City Legal Office for respondent City of Cebu.

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R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For resolution are: *(a)* the motion for reconsideration[1] filed by petitioner Film Development Council of the Philippines (FDCP); *(b)* the motion for partial reconsideration[2] filed by respondent Colon Heritage Realty Corporation (CHRC); and *(c)* the motion for partial reconsideration[3] filed by respondent City of Cebu (Cebu City), all relative to the Court's Decision[4] dated June 16, 2015 (Main Decision). In the Main Decision, the Court affirmed with modification the Judgment[5] of the Regional Trial Court (RTC) of Cebu City, Branch 5 in Civil Case No. CEB-35601 dated September 25, 2012, and the Decision[6] of the RTC of Cebu City, Branch 14 in Civil Case No. CEB-35529 dated October 24, 2012, and thereby, declared Sections 13 and 14 of Republic Act No. (RA) 9167[7] invalid and unconstitutional.

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[1] Dated August 5, 2015. *Rollo* (G.R. No. 203754), pp. 287-299.

[2] Captioned as "Manifestation (with a Motion for Partial Reconsideration or Motion to Remand Trial Proceedings to determine Respondent's Full Payment and Compliance with the Decision)" dated August 24, 2015; *id*. at 300-306.

[3] Captioned as "Motion for Partial Reconsideration (To the Decision of this Honorable Court promulgated on June 16, 2015) for Respondent City of Cebu" dated September 16, 2015; *id*. at 314-334.

[4] *Id*. at 255-281. See *FDCP v. CHRC*, 760 Phil. 519 (2015).

[5] *Rollo* (G.R. No. 203754), pp. 48-53. Penned by Judge Douglas A.C. Marigomen.

[6] *Rollo* (G.R. No. 204418), pp. 58-70. Penned by Presiding Judge Raphael B. Yrastorza, Sr.

[7] Entitled "AN ACT CREATING THE FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

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The Facts

Sometime in 1993, respondent Cebu City passed City Ordinance No. LXIX, otherwise known as the "Revised Omnibus Tax Ordinance of the City of Cebu."[8] Sections 42[9] and 43,[10] Chapter XI of the Ordinance required proprietors, lessees or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement to pay amusement tax equivalent to thirty percent (30%) of the gross receipts of the admission fees to the Office of the City Treasurer of Cebu City.

On June 7, 2002, Congress passed RA 9167, creating petitioner FDCP. Sections 13[11] and 14[12] thereof provide that **the amusement**

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[8] See *rollo* (G.R. No. 204418), p. 21.

[9] Section 42. Rate of Tax. — There shall be paid to the Office of the City Treasurer by the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia and other places of amusement, an amusement tax at the rate of thirty percent (30%) of the gross receipts from admission fees.

To note, the rate was later reduced to ten percent (10%) pursuant to an amendatory ordinance. (See *rollo* [G.R. No. 203754], p. 257.)

[10] Section 43. Manner of Payment. — In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the city treasurer before the gross receipts are divided between said proprietor, lessees, operators, and the distributors of the cinematographic films. (See *id*.)

[11] Section 13. *Privileges of Graded Films.* — Films which have obtained an "A" or "B" grading from the Council pursuant to Sections 11 and 12 of this Act shall be entitled to the following privileges:

a. Amusement tax reward. — A grade "A" or "B" film shall entitle its producer to an incentive equivalent to the amusement tax imposed and collected on the graded films by cities and municipalities in Metro Manila and other highly urbanized and independent component cities in the Philippines pursuant to Sections 140 and 151 of Republic Act No. 7160 at the following rates:
   1. For grade "A" films — 100% of the amusement tax collected on such films; and
   2. For grade "B" films — 65% of the amusement tax collected on such films. The remaining thirty-five (35%) shall accrue to the funds of the Council.

[12] Section 14. *Amusement Tax Deduction and Remittances.* — All revenue from the amusement tax on the graded film which may otherwise accrue to the

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tax on certain graded films which would otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines during the period the graded film is exhibited, **should be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted to the FDCP**, which shall reward the same to the producers of the graded films.

According to FDCP, since the effectivity of RA 9167, all cities and municipalities in Metro Manila, as well as highly urbanized and independent component cities, have complied with the mandate of the said law, with the sole exception of Cebu City[13] which adamantly insisted on its entitlement to the amusement taxes and hence, prompted cinema proprietors and operators within the city to remit the same to it.[14] Consequently, FDCP sent demand letters for unpaid amusement taxes with surcharge to these proprietors and operators, including respondents CHRC and SM Prime Holdings, Inc. (SMPHI).[15]

As a result of the demand letters, Cebu City filed a Petition for Declaratory Relief[16] before the RTC of Cebu City, Branch 14,

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cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of Republic Act No. 7160 during the period the graded film is exhibited, shall be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted within thirty (30) days from the termination of the exhibition to the Council which shall reward the corresponding amusement tax to the producers of the graded film within fifteen (15) days from receipt thereof.

Proprietors, operators and lessees of theaters or cinemas who fail to remit the amusement tax proceeds within the prescribed period shall be liable to a surcharge equivalent to five percent (5%) of the amount due for each month of delinquency which shall be paid to the Council.

[13] See *rollo* (G.R. No. 203754), pp. 8 and 258.

[14] See *id*. at 258-259.

[15] See *id*. at 258. In the proceedings before the trial court, SMPHI entered as Intervenor in Civil Case No. CEB-33529 (see *rollo* [G.R. No. 204418] p. 58).

[16] Under Rule 63 With Application for a Writ of Preliminary Injunction dated May 18, 2009. *Rollo* (G.R. No. 204418), pp. 71-88. It appears from

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docketed as Civil Case No. CEB-35529, and respondent CHRC filed a similar petition[17] before the RTC of Cebu City, Branch 5, docketed as Civil Case No. CEB-35601. Both petitions sought to declare Sections 13 and 14 of RA 9167 invalid and unconstitutional. On August 13, 2010, SMPHI moved to intervene[18] in Civil Case No. CEB-35529.

On September 25, 2012, the RTC of Cebu City, Branch 5 issued a Judgment[19] in Civil Case No. CEB-35601 which declared Sections 13 and 14 of RA 9167 as invalid and unconstitutional.[20] On October 24, 2012, the RTC of Cebu City, Branch 14 rendered a similar Decision[21] in Civil Case No. CEB-35529 also ruling against the constitutionality of Sections 13 and 14 of RA 9167.[22]

Aggrieved, FDCP filed two (2) separate petitions for review on *certiorari*[23] before the Court, presenting the singular issue as to whether or not the RTCs of Cebu City gravely erred in declaring Sections 13 and 14 of RA 9167 unconstitutional. The petitions were later consolidated in the Court's Resolution[24] dated March 4, 2013.

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the records that the said petition was erroneously docketed as "Civil Case No. CEB-85529" (see *id.* at 71).

[17] For Declaratory Relief, Prohibition, & Permanent Injunction with Prayer for a Temporary Restraining Order and a Writ of Preliminary Injunction dated June 2, 2009. *Rollo* (G.R. No. 203754), pp. 54-69.

[18] See Motion for Leave to File and Admit Attached Comment-In-Intervention dated August 13, 2010; *rollo* (G.R. No. 204418), pp. 153-160.

[19] *Rollo* (G.R. No. 203754), pp. 48-53.

[20] *Id.* at 52.

[21] *Rollo* (G.R. No. 204418), pp. 58-70.

[22] *Id.* at 69.

[23] *Rollo* (G.R. No. 203754), pp. 2-45; and *rollo* (G.R. No. 204418), pp. 13-55.

[24] *Id.* at 335-336. See also Court's Resolution dated April 11, 2013; *rollo* (G.R. No. 203754), pp. 210-211.

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The Proceedings and Issues Before the Court

On June 16, 2015, the Court rendered the Main Decision[25] in this case, affirming the assailed RTC Decisions and thereby, declaring Sections 13 and 14 of RA 9167 invalid and unconstitutional. It ruled that these provisions violated the principle of local fiscal autonomy because they authorized FDCP to earmark, and hence, effectively confiscate the amusement taxes which should have otherwise inured to the benefit of the local government units (LGUs).[26] In this relation, the Court further found that the grant of amusement tax reward does not partake the nature of a tax exemption since the burden and incidence of the tax still fall on the cinema proprietors.[27]

However, as a matter of equity and fair play, the Court applied the doctrine of operative fact and rendered, among others, the following dispositions which are subject of the present motions:

Disposition 1: FDCP and the producers of graded films need not return the amounts already received from LGUs because they merely complied with the provisions of RA 9167 which were in effect at that time;[28]

Disposition 2: Any amounts retained by cinema proprietors and operators due to FDCP at that time should be remitted to the latter since Sections 13 and 14 of RA 9167 produced legal effects prior to their being declared unconstitutional;[29] in this regard, Cebu City was ordered to turn over to FDCP the amount of ₱76,836,807.08, which represented the amount that should have been remitted by SMPHI to FDCP at that time;[30] and

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[25] See *FDCP v. CHRC, supra* note 4.

[26] See *id*. at 541-548.

[27] See *id*. at 548-549.

[28] See *id*. at 552-555.

[29] *Id*. at 555-556.

[30] See *id*. at 557.

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Disposition 3: Cinema proprietors and operators within Cebu City should not be held liable for any surcharge since they did not know whether or not it was proper for them to remit the amusement taxes to either FDCP or Cebu City at that time.[31]

Dissatisfied, FDCP, CHRC, and Cebu City filed their respective motions for reconsideration[32] before the Court. The issues in the motions are summarized as follows:

(a) In reference to the Court's **Disposition 3 above, FDCP**, in its motion, seeks the imposition of surcharges to the delinquent taxpayers who failed to remit the proper taxes at the time Sections 13 and 14 of RA 9167 were not yet declared unconstitutional. In this accord, FDCP argues that in applying the operative fact doctrine, "all parts of the questioned provisions including the payment of surcharges should be given effect prior to [their] being declared unconstitutional."[33]

(b) For its part, **CHRC**, in reference to the Court's **Disposition 2 above**, admits, in its motion, that it did not "withhold" the remittance of amusement taxes on graded films to FDCP. However, it claims that notwithstanding the effectivity of Sections 13 and 14 of RA 9167 at that time, it had already "paid and remitted **all** due taxes to the right authority: the City of Cebu."[34] Hence, it should not remit any more taxes in favor of FDCP because to do so would amount to double taxation. In this regard, CHRC prays that it be declared relieved from any obligation to remit amusement taxes to FDCP. In the alternative, CHRC manifests that it is willing to go through a factual determination before the trial court to prove that it had indeed fully paid and fully remitted said taxes to Cebu City and as such, fully complied with its tax obligations under the law; hence, it asks the Court to remand the case for such purpose.[35]

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[31] See *id*. at 557-558.

[32] *Rollo* (G.R. No. 203754), pp. 287-299, 300-306, and 314-334.

[33] *Id*. at 290.

[34] *Id*. at 301; emphasis supplied.

[35] See *id*. at 302.

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(c) And lastly, **Cebu City,** in reference to the Court's **Dispositions 1 and 2 above,** argues, in its motion, against the application of the operative fact doctrine in the present case. Accordingly, it claims that Sections 13 and 14 of RA 9167 should not have produced any legal effects in favor of FDCP because they have been declared unconstitutional and hence, null and void.[36] In any event, Cebu City posits that, assuming that the operative fact doctrine is applicable, it should not be asked to remit the ₱76,836,807.08 it received from SMPHI to FDCP as it would be violative of equity and fair play.[37] It reasons that it had already utilized the same for public services, and to order it to pay the same would involve disbursement of public funds which must be met with the proper procedural requirements.[38]

The Court's Ruling

At the center of all three (3) motions is the proper application of the doctrine of operative fact in relation to the Court's declaration of Sections 13 and 14 of RA 9167 as unconstitutional. In the Main Decision, the Court observed that:

> It is a well-settled rule that an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. Applying this principle, the logical conclusion would be to order the return of all the amounts remitted to FDCP and given to the producers of graded films, by all of the covered cities, which actually amounts to hundreds of millions, if not billions. In fact, just for Cebu City, the aggregate deficiency claimed by FDCP is ONE HUNDRED [FIFTY-NINE] MILLION THREE HUNDRED [SEVENTY-SEVEN] THOUSAND NINE HUNDRED EIGHTY-EIGHT PESOS AND [FIFTY-FOUR] CENTAVOS (₱159,377,988.54). Again, this amount represents the unpaid amounts to FDCP by eight cinema operators or proprietors in only one covered city.

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[36] See *id*. at 323-326.

[37] See *id*. at 326.

[38] See *id*. at 326-331.

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An exception to the above rule, however, is the doctrine of operative fact, which applies as a matter of equity and fair play. This doctrine nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. **It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law**.[39] (Emphases supplied)

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[40] citing *Serrano de Agbayani v. Philippine National Bank*,[41] the Court had the opportunity to extensively discuss the operative fact doctrine, explaining the "realistic" consequences whenever an act of Congress is declared as unconstitutional by the proper court. Furthermore, the operative fact doctrine has been discussed within the context of fair play such that "[i]t would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to [its] adjudication [by the Court as unconstitutional],"[42] *viz.*:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so,

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[39] *FDCP v. CHRC, supra* note 4, at 552-553.

[40] 719 Phil. 137 (2013).

[41] 148 Phil. 443 (1971).

[42] *Commissioner of Internal Revenue (CIR) v. San Roque Power Corporation, supra* note 40, at 158, citing *Serrano de Agbayani v. Philippine National Bank, id.* at 448.

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the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. **It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with.** This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. **It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with.** This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. **It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**

In the language of an American Supreme Court decision: "**The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored.** The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." x x x.

x x x x x x x x x[43] (Emphases supplied)

The operative fact doctrine recognizes the existence and validity of a legal provision prior to its being declared as unconstitutional and hence, legitimizes otherwise invalid acts done pursuant thereto because of considerations of practicality and fairness. In this regard, certain acts done pursuant to a legal provision which was just

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[43] *CIR v. San Roque Power Corporation, id.* at 157-158, citing *Serrano de Agbayani v. Philippine National Bank, id.* at 447-448.

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recently declared as unconstitutional by the Court cannot be anymore undone because not only would it be highly impractical to do so, but more so, unfair to those who have relied on the said legal provision prior to the time it was struck down.

However, in the fairly recent case of *Mandanas v. Ochoa, Jr.*,[44] citing *Araullo v. Aquino III*,[45] the Court stated that the doctrine of operative fact "applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application."[46] The doctrine of operative fact "nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law."[47] To reiterate the Court's pronouncement, "[i]t would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication."[48]

Therefore, **in applying the doctrine of operative fact, courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of equity and fair play, if such effects should be allowed to stand**.[49] It should not operate to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law.

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[44] See G.R. Nos. 199802 and 208488, July 3, 2018.

[45] 737 Phil. 457 (2014).

[46] See *Mandanas v. Ochoa, Jr.*, *supra* note 44, citing *Araullo v. Aquino III*, *id*. at 621.

[47] See *Mandanas v. Ochoa, Jr.*, *id*.

[48] *CIR v. San Roque Power Corporation, supra* note 40, at 158, citing *Serrano de Agbayani v. Philippine National Bank*, *supra* note 41, at 448.

[49] See *The Municipality of Malabang v. Benito*, 137 Phil. 358, (1969), citing *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374 (1940).

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In the Main Decision, the Court, in applying the doctrine of operative fact, held that FDCP and the producers of graded films need not return the amounts already received from LGUs because they merely complied with the provisions of RA 9167 which were in effect at that time[50] (Disposition 1 above). Clearly, this disposition squarely hews with the practicality and fairness thrust of the operative fact doctrine because, as observed by the Court, to command the return of the amounts received pursuant to Sections 13 and 14 of RA 9167 which were then existing "would certainly impose a heavy, and possibly crippling, financial burden upon them who merely, and presumably in good faith, complied with the legislative fiat subject of this case."[51] Accordingly, contrary to Cebu City's position,[52] the Court's holding on this score must stand.

Similarly, the same rationale must apply to the Court's directive ordering cinema proprietors and operators to remit to FDCP any amusement taxes they have retained prior to Sections 13 and 14 of RA 9167 being declared unconstitutional. As enunciated in the Main Decision, prior to the striking down of the said provisions, FDCP has a right to receive the amusement taxes withheld by the cinema proprietors and operators during such time.[53] This right to receive the amusement taxes accrued the moment the taxes were deemed payable under the provisions of the Omnibus Tax Ordinance of Cebu City. Taxes, once due, must be paid without delay to the taxing authority; as the Court has repeatedly stated, "taxes are the lifeblood of Government and their **prompt** and **certain** availability is an **[imperious] need**."[54] This flows from the truism that **"[w]ithout taxes, the government would be paralyzed for lack of the motive power to activate and operate it.** Hence, despite the natural reluctance to surrender part of one's hard-earned income to

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[50] See *FDCP v. CHRC, supra* note 4, at 555-556.

[51] *Id.* at 555.

[52] See motion for partial reconsideration of Cebu City; *rollo* (G.R. No. 203754), pp. 323-331.

[53] *FDCP v. CHRC, supra* note 4, at 555.

[54] *CIR v. Pineda,* 128 Phil. 146, 150 (1967); emphases supplied.

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the taxing authorities, every person who is able to must contribute his share in the running of the government."[55] Consequently, the prompt payment of taxes to the then recognized rightful authority, which in this case is FDCP, cannot be left to the whims of taxpayers. To rule otherwise would be to acquiesce to the norm allowing taxpayers to reject payment of taxes under the supposition that the law imposing the same is illegal or unconstitutional. This would unduly hamper government operations. As the Court held in the Main Decision, **"[o]beisance to the rule of law must always be protected and preserved at all times and the unjustified refusal of said proprietors cannot be tolerated.** The operative fact doctrine equally applies to the **non-remittance** by said proprietors since the law produced legal effects prior to the declaration of the nullity of [Sections] 13 and 14 [of RA 9167] in these instant petitions."[56]

Accordingly, Cebu City's motion seeking the non-application of the operative fact doctrine in favor of FDCP to retain the subject amusement taxes it had withheld, as well as to collect payments accruing to it **during the covered period within which Sections 13 and 14 of RA 9167 had yet to be declared unconstitutional, *i.e.*, from the effectivity of RA 9167 up until the finality of the Main Decision,**[57] is denied. In this regard, the Court's directive (Disposition 2 above) to Cebu City to turn over to FDCP the amount of ₱76,836,807.08, which represented the amount that should have been remitted by SMPHI to FDCP at that time, remains. To be sure, the operative fact doctrine cannot be used to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law. Consequently, Cebu City cannot be allowed to retain the amusement taxes it received during the period when Sections 13 and 14 of RA 9167 were operative. The Court cannot condone Cebu City's apparent disregard for what was, at that time, a valid legislative mandate, regardless

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[55] *CIR v. Algue, Inc.*, 241 Phil. 829, 836 (1988); emphasis supplied.

[56] *FDCP v. CHRC, supra* note 4, at 555; emphases supplied.

[57] See *rollo* (G.R. No. 203754), pp. 323-326.

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of the fact that its position on the unconstitutionality of said provisions is ultimately correct. Respect for a presumably valid tax provision prior to its being declared unconstitutional must be observed; otherwise, not only would unscrupulous taxpayers be emboldened to undercut the ability of the State to timely collect taxes needed for important public services based on theoretical suppositions anent their legal status, it would likewise run afoul of the principle of separation of powers which accords laws enacted by Congress the presumption of constitutionality up until they are declared otherwise by the Court.

However, in relation to CHRC's motion, the Court clarifies that cinema proprietors and operators who had already remitted the withheld amusement taxes to LGUs (such as Cebu City) for the covered period, should no longer have to pay the same amount to FDCP, **provided that they are able to prove the fact of due payment.** As such, they need not make another remittance for the same tax liability to FDCP. This must necessarily so since the obligation under the law, *i.e.*, the Local Government Code, and the corresponding provision in Cebu City's Ordinance No. LXIX, is singular: the payment of amusement taxes for the covered period. Otherwise, to have these cinema proprietors and operators once more pay FDCP the same amount of taxes they had paid to the LGUs would, as CHRC points out, clearly amount to double taxation.[58]

Accordingly, the Court grants CHRC's motion insofar as it seeks the remand of the case to the trial court, with the participation of Cebu City, in order to determine the fact of payment of amusement taxes to the latter during the covered period within which Sections 13 and 14 of RA 9167 were yet to be declared unconstitutional. Should it be determined that it did indeed pay the correct taxes to Cebu City, the said LGU must remit to FDCP these amusement taxes accruing to the latter during the covered period. On the other hand, should CHRC fail to prove payment, any deficiency must be paid by it to FDCP, without prejudice to any valid defenses, if any.

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[58] See *id*. at 303.

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And finally, in response to FDCP's motion, the Court's holding regarding the unconstitutionality of Sections 13 and 14 of RA 9167, as well as the non-payment of surcharges, remains. On the constitutionality issue, FDCP's arguments in its motion are a mere rehash of its position in the main and hence, cannot be sustained. Meanwhile, anent the payment of surcharges, it must be borne in mind that surcharges are generally paid when the taxpayer is in bad faith.[59] This situation, because of the confusion as regards the proper payee of taxes, does not obtain in this case. Accordingly, the motion of FDCP is denied for these reasons.

WHEREFORE, the motion for reconsideration dated August 5, 2015 of petitioner Film Development Council of the Philippines and the motion for partial reconsideration dated September 16, 2015 of respondent City of Cebu are **DENIED with FINALITY** for lack of merit.

On the other hand, the Manifestation (with a Motion for Partial Reconsideration or Motion to Remand Trial Proceedings to determine Respondent's Full Payment and Compliance with the Decision) dated August 24, 2015 of respondent Colon Heritage Realty Corporation (CHRC) is **PARTLY GRANTED**. Accordingly, Civil Case No. CEB-35601 is hereby **REMANDED** to the Regional Trial Court of Cebu City, Branch 5 to determine whether the amusement taxes for the covered period have been paid by CHRC in accordance with this Resolution.

SO ORDERED.

Bersamin, C.J., Carpio, S.A.J., Peralta, Leonen, Caguioa, Reyes, A. Jr., Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

Reyes, J. Jr., J., on leave.

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[59] It is settled that surcharges, in the context of tax laws, is in the nature of a penalty which may be mitigated or dispensed with by the taxpayer's "good faith and honest belief that [it] is not subject to tax xxx." See *CIR v. St. Luke's Medical Center, Inc.*, 695 Phil. 867, 895 (2012). See also *Quimpo v. Mendoza*, 194 Phil. 66 (1981); *Imus Electric Co., Inc. v. Court of Tax Appeals*, 125 Phil. 1024 (1967); and *Gutierrez v. Court of Tax Appeals*, 101 Phil. 713 (1957).