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SECOND DIVISION

[G.R. No. 158881. April 16, 2008]

PETRON CORPORATION, *petitioner, vs.* **MAYOR TOBIAS M. TIANGCO, and MUNICIPAL TREASURER MANUEL T. ENRIQUEZ of the MUNICIPALITY OF NAVOTAS, METRO MANILA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; TAXING POWERS OF LOCAL GOVERNMENT UNITS; LIMITATIONS.— Section 133(h) of the LGC reads as follows: "**Sec. 133. Common Limitations on the Taxing Powers of Local Government Units.** - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following: xxx (h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;" Evidently, Section 133 prescribes the limitations on the capacity of local government units to exercise their taxing powers otherwise granted to them under the LGC. Apparently, paragraph (h) of the Section mentions two kinds of taxes which cannot be imposed by local government units, namely: "excise taxes on articles enumerated under the National Internal Revenue Code [(NIRC)], as amended"; and "taxes, fees or charges on petroleum products."

2. ID.; ID.; ID.; ID.; POWER OF A MUNICIPALITY TO IMPOSE BUSINESS TAXES; EXPLAINED.— The power of a municipality to impose business taxes is provided for in Section 143 of the LGC. Under the provision, a municipality is authorized to impose business taxes on a whole host of business activities. Suffice it to say, unless there is another provision of law which states otherwise, Section 143, broad in scope as it is, would undoubtedly cover the business of selling diesel fuels, or any other petroleum product for that matter. Nonetheless, Article 232 of the IRR defines with more particularity the capacity of a municipality to impose taxes on

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businesses. The enumeration that follows is generally a positive list of businesses which may be subjected to business taxes, and paragraph (h) of Article 232 does allow the imposition of local business taxes "[o]n any business not otherwise specified in the preceding paragraphs which the *sanggunian* concerned may deem proper to tax," but subject to this important qualification, thus: "xxx provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article.

3. TAXATION; EXCISE TAXES; KINDS.— [B]eginning with the National Internal Revenue Code of 1986, as amended, the term "excise taxes" was used and defined as applicable "to goods manufactured or produced in the Philippines… and to things imported." This definition was carried over into the present NIRC of 1997. Further, these two latest codes categorize two different kinds of excise taxes: "specific tax" which is imposed and based on weight or volume capacity or any other physical unit of measurement; and "*ad valorem* tax" which is imposed and based on the selling price or other specified value of the goods.

4. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; TAXING POWERS OF LOCAL GOVERNMENT UNITS; POWER OF A MUNICIPALITY TO IMPOSE BUSINESS OR OTHER LOCAL TAXES; BASIS.— The power of a municipality to impose business taxes derives from Section 143 of the Code that specifically enumerates several types of business on which it may impose taxes, including manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature; those engaged in the export or commerce of essential commodities; retailers; contractors and other independent contractors; banks and financial institutions; and peddlers engaged in the sale of any merchandise or article of commerce. This obviously broad power is further supplemented by paragraph (h) of Section 143 which authorizes the *sanggunian* to impose taxes on any other businesses not otherwise specified under Section 143 which the *sanggunian* concerned may deem proper to tax. This ability of local government units to impose business or other local taxes is ultimately rooted in the 1987 Constitution. Section 5,

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Article X assures that "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges," though the power is "subject to such guidelines and limitations as the Congress may provide." There is no doubt that following the 1987 Constitution and the LGC, the fiscal autonomy of local government units has received greater affirmation than ever. Previous decisions that have been skeptical of the viability, if not the wisdom of reposing fiscal autonomy to local government units have fallen by the wayside.

5. ID.; ID.; ID.; ID.; LOCAL GOVERNMENT UNITS ARE PROHIBITED TO IMPOSE ALL SORTS OF TAXES ON PETROLEUM PRODUCTS, INCLUDING BUSINESS TAXES.— [A] tax on a business is distinct from a tax on the article itself, or for that matter, that a business tax is distinct from an excise tax. However, such distinction is immaterial insofar as the latter part of Section 133(h) is concerned, for the phrase "taxes, fees or charges on petroleum products" does not qualify the kind of taxes, fees or charges that could withstand the absolute prohibition imposed by the provision. It would have been a different matter had Congress, in crafting Section 133(h), barred "excise taxes" or "direct taxes," or any category of taxes only, for then it would be understood that only such specified taxes on petroleum products could not be imposed under the prohibition. The absence of such a qualification leads to the conclusion that all sorts of taxes on petroleum products, including business taxes, are prohibited by Section 133(h). Where the law does not distinguish, we should not distinguish. The language of Section 133(h) makes plain that the prohibition with respect to petroleum products extends not only to excise taxes thereon, but all "taxes, fees and charges." The earlier reference in paragraph (h) to excise taxes comprehends a wider range of subjects of taxation: all articles already covered by excise taxation under the NIRC, such as alcohol products, tobacco products, mineral products, automobiles, and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports. In contrast, the later reference to "taxes, fees and charges" pertains only to one class of articles of the many subjects of excise taxes, specifically, "petroleum products". While local government units are authorized to burden all such other class of goods with "taxes, fees and charges," excepting

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excise taxes, a specific prohibition is imposed barring the levying of any other type of taxes with respect to petroleum products.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion and Lucila for petitioner.
Rodrigo C. Manio and *Municipal Legal Office (Mun. of Navotas)* for respondents.

D E C I S I O N

TINGA, *J.*:

The novel but important issue before us is whether a local government unit is empowered under the Local Government Code (the LGC) to impose business taxes on persons or entities engaged in the sale of petroleum products.

I.

The present Petition for Review on *Certiorari* under Rule 45 filed by petitioner Petron Corporation (Petron) directly assails the Decision of the Regional Trial Court (RTC) of Malabon, Branch 74, which dismissed petitioner's complaint for cancellation of assessment made by the then municipality (now City) of Navotas (Navotas) for deficiency taxes, and ordering the payment of ₱10,204,916.17 pesos in business taxes to Navotas. As the issues raised are pure questions of law, we need not dwell on the facts at length.

Petron maintains a depot or bulk plant at the Navotas Fishport Complex in Navotas. Through that depot, it has engaged in the selling of diesel fuels to vessels used in commercial fishing in and around Manila Bay.[1] On 1 March 2002, Petron received a letter from the office of Navotas Mayor, respondent Toby Tiangco, wherein the corporation was assessed taxes "relative to the figures covering sale of diesel declared by your Navotas Terminal from 1997 to 2001."[2] The stated total amount due

[1] *Rollo*, p. 60.

[2] *Id.* at 200.

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was ₱6,259,087.62, a figure derived from the gross sales of the depot during the years in question. The computation sheets[3] that were attached to the letter made reference to Ordinance 92-03, or the New Navotas Revenue Code (Navotas Revenue Code), though such enactment was not cited in the letter itself.

Petron duly filed with Navotas a letter-protest to the notice of assessment pursuant to Section 195 of the Code. It argued that it was exempt from local business taxes in view of Art. 232(h) of the Implementing Rules (IRR) of the Code, as well as a ruling of the Bureau of Local Government Finance of the Department of Finance dated 31 July 1995, the latter stating that sales of petroleum fuels are not subject to local taxation. The letter-protest was denied by the Navotas Municipal Treasurer, respondent Manuel T. Enriquez, in a letter dated 8 May 2002.[4] This was followed by a letter from the Mayor dated 15 May 2002, captioned "Final Demand to Pay," requiring that Petron pay the assessed amount within five (5) days from receipt thereof, with a threat of closure of Petron's operations within Navotas should there be no payment.[5] Petron, through counsel, replied to the Mayor by another letter posing objections to the threat of closure. The Mayor did not respond to this last letter.[6]

Thus, on 20 May 2002, Petron filed with the Malabon RTC a Complaint for Cancellation of Assessment for Deficiency Taxes with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction. The quested TRO was not issued by the Malabon RTC upon manifestation of respondents that they would not proceed with the closure of Petron's Navotas bulk plant until after the RTC shall have decided the case on the merits.[7] However, while the case was pending decision, respondents refused to issue a business permit to Petron, thus

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[3] *Id*. at 201-205.

[4] See *rollo*, p. 26.

[5] *Id*. at 210.

[6] *Id*. at 27.

[7] *Id*. at 19.

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prompting Petron to file a Supplemental Complaint with Prayer for Preliminary Mandatory Injunction against respondents.[8]

On 5 May 2003, the Malabon RTC rendered its Decision dismissing Petron's complaint and ordering the payment of the assessed amount.[9] Eleven days later, Petron received a Closure Order from the Mayor, directing Petron to cease and desist from operating the bulk plant. Petron sought a TRO from the Malabon RTC, but this was denied.[10] Petron also filed a motion for reconsideration of the order of denial, but this was likewise denied.[11]

On 4 August 2003, this Court issued a TRO, enjoining the respondents from closing Petron's Navotas bulk plant or otherwise interfering in its operations.[12]

II.

As earlier stated, Petron has opted to assail the RTC Decision directly before this Court since the matter at hand involves pure questions of law, a characterization conceded by the RTC Decision itself. Particularly, the controversy hinges on the correct interpretation of Section 133(h) of the LGC, and the applicability of Article 232 (h) of the IRR.

Section 133(h) of the LGC reads as follows:

Sec. 133. Common Limitations on the Taxing Powers of Local Government Units. - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following:

xxx xxx xxx

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

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[8] *Id*. at 158-164.

[9] *Id*. at 60-69.

[10] In an Order dated 19 June 2003.

[11] In an Order dated 2 July 2003.

[12] *Rollo*, pp. 213-215.

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Evidently, Section 133 prescribes the limitations on the capacity of local government units to exercise their taxing powers otherwise granted to them under the LGC. Apparently, paragraph (h) of the Section mentions two kinds of taxes which cannot be imposed by local government units, namely: "excise taxes on articles enumerated under the National Internal Revenue Code [(NIRC)], as amended"; and "taxes, fees or charges on petroleum products."

The power of a municipality to impose business taxes is provided for in Section 143 of the LGC. Under the provision, a municipality is authorized to impose business taxes on a whole host of business activities. Suffice it to say, unless there is another provision of law which states otherwise, Section 143, broad in scope as it is, would undoubtedly cover the business of selling diesel fuels, or any other petroleum product for that matter.

Nonetheless, Article 232 of the IRR defines with more particularity the capacity of a municipality to impose taxes on businesses. The enumeration that follows is generally a positive list of businesses which may be subjected to business taxes, and paragraph (h) of Article 232 does allow the imposition of local business taxes "[o]n any business not otherwise specified in the preceding paragraphs which the sanggunian concerned may deem proper to tax," but subject to this important qualification, thus:

> "xxx provided further, that in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article.

Notably, the Malabon RTC declared Art. 232(h) of the IRR void because the LGC purportedly does not contain a provision prohibiting the imposition of business taxes on petroleum products.[13] This submission warrants close examination as well.

With all the relevant provisions of law laid out, we address the core issues submitted by Petron, namely: first, is the challenged

[13] *Id*. at 66.

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tax on sale of the diesel fuels an excise tax on an article enumerated under the NIRC, thusly prohibited under Section 133(h) of the CGC?; second, is the challenged tax prohibited by Section 133(h) under the *proviso*, "taxes, fees or charges on petroleum products"? and; third, does Art. 232(h) of the IRR similarly prohibit the imposition of the challenged tax?

III

As earlier observed, Section 133(h) provides two kinds of taxes which cannot be imposed by local government units: "excise taxes on articles enumerated" under the NIRC, as amended; and "taxes, fees or charges on petroleum products." There is no doubt that among the excise taxes on articles enumerated under the NIRC are those levied on petroleum products, per Section 148 of the NIRC.

We first consider Petron's argument that the "business taxes" on its sale of diesel fuels partakes of an excise tax, which if true, could invalidate the challenged tax solely on the basis of the phrase "excise taxes on articles enumerated under the [NIRC]." To support this argument, it cites *Cordero v. Conda*,[14] *Allied Thread Co. Inc. v. City Mayor of Manila*,[15] and *Iloilo Bottlers, Inc. v. City of Iloilo*,[16] as having explained that "an excise tax is a tax upon the performance, carrying on, or the exercise of an activity."[17] Respondents, on the other hand, argue that what the provision prohibits is the imposition of excise taxes on petroleum products, but not the imposition of business taxes on the same. They cite *Philippine Petroleum Corporation v. Municipality of Pililia*,[18] where the Court had noted, "[a] tax on business is distinct from a tax on the article itself."[19]

Petron's argument is fraught with far-reaching implications, for if it were sustained, it would mean that local government

[14] 124 Phil. 926 (1966).

[15] 218 Phil. 308 (1984).

[16] G.R. No. 52019, 19 August 1988, 164 SCRA 607.

[17] *Rollo*, p. 31.

[18] G.R. No. 90776, 3 June 1991, 198 SCRA 82.

[19] *Id.*, at 89.

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units are barred from imposing business taxes on any of the articles subject to excise taxes under the NIRC. These would include alcohol products,[20] tobacco products,[21] mineral products[22] automobiles,[23] and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports.[24]

Admittedly, the proffered definition of an excise tax as "a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation" derives from the compendium *American Jurisprudence,* popularly referred to as *Am Jur,* [25] and has been cited in previous decisions of this Court, including those cited by Petron itself. Such a definition would not have been inconsistent with previous incarnations of our Tax Code, such as the NIRC of 1939,[26] as amended, or the NIRC of 1977[27] because in those laws the term "excise tax" was not used at all. In contrast, the nomenclature used in those prior laws in referring to taxes imposed on specific articles was "specific tax."[28] Yet beginning with the National Internal Revenue Code of 1986, as amended, the term "excise taxes" was used and defined as applicable "to goods manufactured or produced in the Philippines… and to things imported."[29] This definition was carried over into the present NIRC of 1997.[30]

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[20] See Sections 141-143, NIRC.

[21] See Sections 144-147, NIRC.

[22] See Section 151, NIRC.

[23] See Section 149, NIRC.

[24] See Section 150, NIRC.

[25] See Footnote No. 27, *Cordero v. Conda*, 124 Phil. 926, 937 (1966); citing 51 *Am. Jur*., pp. 1068-1069.

[26] COMMONWEALTH ACT NO. 466, as amended.

[27] Pres. Decree No. 1158.

[28] See Title IV, COMMONWEALTH ACT NO. 466; Title IV, Pres. Decree No. 1158.

[29] See Sec. 126, Pres. Decree No. 1994, establishing National Internal Revenue Code of 1986.

[30] See Sec. 129, National Internal Revenue Code of 1997.

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Further, these two latest codes categorize two different kinds of excise taxes: "specific tax" which is imposed and based on weight or volume capacity or any other physical unit of measurement; and "*ad valorem* tax" which is imposed and based on the selling price or other specified value of the goods. In other words, the meaning of "excise tax" has undergone a transformation, morphing from the *Am Jur* definition to its current signification which is a tax on certain specified goods or articles.

The change in perspective brought forth by the use of the term "excise tax" in a different connotation was not lost on the departed author Jose Nolledo as he accorded divergent treatments in his 1973 and 1994 commentaries on our tax laws. Writing in 1973, and essentially alluding to the *Am Jur* definition of "excise tax," Nolledo observed:

> Are specific taxes, taxes on property or excise taxes –
>
> In the case of *Meralco v. Trinidad* ([G.R.] 16738, (sic) 1925) it was held that specific taxes are property taxes, a ruling which seems to be erroneous. Specific taxes are truly excise taxes for the fact that the value of the property taxed is taken into account will not change the nature of the tax. It is correct to say that specific taxes are taxes on the privilege to import, manufacture and remove from storage certain articles specified by law.[31]

In contrast, after the tax code was amended to classify specific taxes as a subset of excise taxes, Nolledo, in his 1994 commentaries, wrote:

> 1. *Excise taxes*, as used in the Tax Code, refers to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines. They are either *specific* or *ad valorem*.
>
> 2. *Nature of excise taxes.* – They are imposed directly on certain specified goods. (*infra*) They are, therefore, taxes on property. (see *Medina vs. City of Baguio,* 91 Phil. 854.)

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[31] J. NOLLEDO, *NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES* (1973 ed.), at 678-679.

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A tax is not excise where it does not subject directly the produce or goods to tax but indirectly as an incident to, or in connection with, the business to be taxed.[32]

In their 2004 commentaries, De Leon and De Leon restate the *Am Jur* definition of excise tax, and observe that the term is "synonymous with 'privilege tax' and [both terms] are often used interchangeably."[33] At the same time, they offer a caveat that "[e]xcise tax, as [defined by *Am Jur*], is not to be confused with excise tax imposed [by the NIRC] on certain specified articles manufactured or produced in, or imported into, the Philippines, 'for domestic sale or consumption or for any other disposition.'"[34]

It is evident that *Am Jur* aside, the current definition of an excise tax is that of a tax levied on a specific article, rather than one "upon the performance, carrying on, or the exercise of an activity." This current definition was already in place when the LGC was enacted in 1991, and we can only presume that it was what the Congress had intended as it specified that local government units could not impose "excise taxes on articles enumerated under the [NIRC]." This prohibition must pertain to the same kind of excise taxes as imposed by the NIRC, and not those previously defined "excise taxes" which were not integrated or denominated as such in our present tax law.

It is quite apparent, therefore, that our current body of taxation law does not explicitly accommodate the traditional definition of excise tax offered by Petron. In fact, absent any statutory adoption of the traditional definition, it may be said that starting in 1986 excise taxes in this jurisdiction refer exclusively to specific or *ad valorem* taxes imposed under the NIRC. At the very least, it is this concept of excise tax which we can reasonably assume that Congress had in mind and actually adopted when it crafted the LGC. The palpable absurdity that ensues should

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[32] J. Nolledo, *THE NATIONAL INTERNAL REVENUE CODE ANNOTATED* (5th ed., 1994), at 471-472.

[33] H. DE LEON & H. DE LEON, JR., *THE FUNDAMENTALS OF TAXATION* (14th ed., 2004), at 12-13.

[34] *Id*. at 13.

the alternative interpretation prevail all but strengthens this position.

Thus, Petron's argument concerning excise taxes is founded not on what the NIRC or the LGC actually provides, but on a non-statutory definition sourced from a legal paradigm that is no longer applicable in this jurisdiction. That such definition was referred to again in our 1998 decision in *Province of Bulacan v. Court of Appeals*[35] is ultimately of little consequence, and so is Petron's reliance on such ruling. The Court therein had correctly nullified, on the basis of Section 133(h) of the LGC, a province-imposed tax "of 10% of the fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth and other quarry resources xxx extracted from public lands," because it noted that under Section 151 of the NIRC, all nonmetallic minerals and quarry resources were assessed with excise taxes of "two percent (2%) based on the actual market value of the gross output thereof at the time of removal, in case of those locally extracted or produced."[36] Additionally, the Court also observed that the case had emanated from an attempt to impose the said tax on quarry resources from private lands, despite the clear language of the tax ordinance limiting the tax to such resources extracted from public lands.[37] On that score alone, the case could have been correctly decided.

It is true that the Court had additionally reasoned in *Province of Bulacan* that "[t]he tax imposed by the Province of Bulacan is an excise tax, being a tax upon the performance, carrying on, or exercise of an activity." As earlier noted, such definition of excise tax however was not explicitly carried over into the NIRC and was even superseded beginning with the 1986 amendments thereto. To insist on utilizing this definition simply because it had been reiterated in *Province of Bulacan*, unnecessary as such reiteration may have been to the resolution of that case, would have the unfortunate effect of infusing life into a concept that is diametrically inconsistent with the present state of the law.

[35] 359 Phil. 779 (1998).

[36] *Id.* at 794-795.

[37] *Id.* at 795.

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We thus can assert with clear comfort that excise taxes, as imposed under the NIRC, do not pertain to "the performance, carrying on, or exercise of an activity," at least not to the extent of equating excise with business taxes.

IV.

We next consider whether the clause "taxes, fees or charges on petroleum products" in Section 133(h) precludes local government units from imposing business taxes based on the sale of petroleum products.

The power of a municipality to impose business taxes derives from Section 143 of the LGC that specifically enumerates several types of business on which it may impose taxes, including manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature;[38] those engaged in the export or commerce of essential commodities;[39] retailers;[40] contractors and other independent contractors;[41] banks and financial institutions;[42] and peddlers engaged in the sale of any merchandise or article of commerce.[43] This obviously broad power is further supplemented by paragraph (h) of Section 143 which authorizes the *sanggunian* to impose taxes on any other businesses not otherwise specified under Section 143 which the *sanggunian* concerned may deem proper to tax.[44]

This ability of local government units to impose business or other local taxes is ultimately rooted in the 1987 Constitution. Section 5, Article X assures that "[e]ach local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges," though the power is "subject

[38] See Section 143 (a) & (b), Local Government Code.

[39] See Section 143(c), Local Government Code.

[40] See Section 143(d), Local Government Code.

[41] See Section 143(e), Local Government Code.

[42] See Section 143(f), Local Government Code.

[43] See Section 143(g), Local Government Code.

[44] See *Yamane v. BA Lepanto,* G.R. No. 154993, 25 October 2005, 474 SCRA 258, 272-273.

to such guidelines and limitations as the Congress may provide." There is no doubt that following the 1987 Constitution and the LGC, the fiscal autonomy of local government units has received greater affirmation than ever. Previous decisions that have been skeptical of the viability, if not the wisdom of reposing fiscal autonomy to local government units have fallen by the wayside.

Respondents cite our declaration in *City Government of San Pablo v. Reyes*[45] that following the 1987 Constitution the rule thenceforth "in interpreting statutory provisions on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations."[46] Such policy is also echoed in Section 5(a) of the LGC, which states that "[a]ny provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit." But somewhat conversely, Section 5(b) then proceeds to assert that "[i]n case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer."[47] And this latter qualification has to be respected as a constitutionally authorized limitation which Congress has seen fit to provide. Evidently, local fiscal autonomy should not necessarily translate into abject deference to the power of local government units to impose taxes.

Congress has the constitutional authority to impose limitations on the power to tax of local government units, and Section 133 of the LGC is one such limitation. Indeed, the provision is the explicit statutory impediment to the enjoyment of absolute taxing power by local government units, not to mention the reality that such power is a delegated power. To cite one example,

[45] 364 Phil. 842 (1999).

[46] *Id.* at 857.

[47] Section 5(b) also provides, "Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it; xxx" This proviso should find no application to this case, since the tax exemption invoked by Petron was not granted or legislated by Navotas, but bestowed by the Congress through the Local Government Code.

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under Section 133(g), local government units are disallowed from levying business taxes on "business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and (4) four years, respectively from the date of registration."

Section 133(h) states that local government units "shall not extend to the levy of xxx taxes, fees or charges on petroleum products." Respondents assert that the phrase "taxes, fees or charges on petroleum products" pertains to the imposition of direct or excise taxes on petroleum products, and not business taxes. If the phrase actually pertains to excise taxes, then it would be an exercise in utter redundancy, since the preceding phrase already prohibits the imposition of excise taxes on articles already subject to such taxes under the NIRC, such as petroleum products. There would be no sense on the part of the legislature to twice emphasize in the same sentence that excise taxes on petroleum products are beyond the pale of local government taxation.

It appears that this argument of respondents was fashioned on the basis of the pronouncement of the Court in *Philippine Petroleum Corporation v. Municipality of Pililla*, thus:[48]

> xxx [W]hile Section 2 of P.D. 436 prohibits the imposition of local taxes on petroleum products, said decree did not amend Sections 19 and 19 (a) of P.D. 231 as amended by P.D. 426, wherein the municipality is granted the right to levy taxes on business of manufacturers, importers, producers of any article of commerce of whatever kind or nature. **A tax on business is distinct from a tax on the article itself.** Thus, if the imposition of tax on business of manufacturers, etc. in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436.

The *dicta* that "[a] tax on a business is distinct from a tax on the article itself" might at first blush somehow lend support to respondents' position, yet that *dicta* has not since been reprised by this Court. It is likewise worth observing that *Pililla* did involve a tax ordinance that imposed business taxes on an enterprise engaged in the manufacture and storage of petroleum products.

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[48] *Supra* note 18 at 89.

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Significantly, the legal milieu governing *Pililla* is vastly different from that existing at bar, to the extent that the earlier case could not be presently controlling.

At the time the taxes sought to be collected in *Pililla* were imposed, there was no national law in place similar to Section 133(h) of the LGC that barred local "taxes, fees or charges on petroleum products." There were circulars to that effect issued by the Finance Department, yet the Court could not validate such issuances since under the tax laws then in place "no exemptions were given to manufacturers, wholesalers, retailers, or dealers in petroleum products."[49] In fact, the Court tellingly observed that "if the imposition of tax on business of manufacturers, *etc*. in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436."[50] Such expression conspiciously missing in P.D. No. 436 is now found in Section 133(h).

In view of the difference in statutory paradigm between this case and *Pililla*, the latter case is severely diminished as applicable precedent at bar. The Court then was correct in observing that a mere administrative circular could not prohibit a local tax that is not otherwise barred under a national statute, yet in this case that conflict is not present since the LGC explicitly prohibits the imposition of several classes of local taxes, including those on petroleum products. The final and only straw *Pililla* provides that respondents can still grasp at is the bare statement that "[a] tax on a business is distinct from a tax on the article itself,"[51] a sentence which could have been omitted from that decision without any effect.

We can concede that a tax on a business is distinct from a tax on the article itself, or for that matter, that a business tax is distinct from an excise tax. However, such distinction is immaterial insofar as the latter part of Section 133(h) is concerned, for the phrase "taxes, fees or charges on petroleum products" does not qualify the kind of taxes, fees or charges that could

[49] *Id*. at 89.

[50] *Id*.

[51] *Supra* note 19.

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withstand the absolute prohibition imposed by the provision. It would have been a different matter had Congress, in crafting Section 133(h), barred "excise taxes" or "direct taxes," or any category of taxes only, for then it would be understood that only such specified taxes on petroleum products could not be imposed under the prohibition. The absence of such a qualification leads to the conclusion that all sorts of taxes on petroleum products, including business taxes, are prohibited by Section 133(h). Where the law does not distinguish, we should not distinguish.

The language of Section 133(h) makes plain that the prohibition with respect to petroleum products extends not only to excise taxes thereon, but all "taxes, fees and charges." The earlier reference in paragraph (h) to excise taxes comprehends a wider range of subjects of taxation: all articles already covered by excise taxation under the NIRC, such as alcohol products, tobacco products, mineral products, automobiles, and such non-essential goods as jewelry, goods made of precious metals, perfumes, and yachts and other vessels intended for pleasure or sports. In contrast, the later reference to "taxes, fees and charges" pertains only to one class of articles of the many subjects of excise taxes, specifically, "petroleum products." While local government units are authorized to burden all such other class of goods with "taxes, fees and charges," excepting excise taxes, a specific prohibition is imposed barring the levying of any other type of taxes with respect to petroleum products.

V.

We no longer need to dwell on the arguments centering on Article 232 of the IRR. As earlier stated, the provision explicitly stipulates that "in line with existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed on this article [on business taxes]." The RTC went as far as to declare Article 232 as "invalid" on the premise that the prohibition was not similarly warranted under the LGC.

Assuming that the LGC does not, in fact, prohibit the imposition of business taxes on petroleum products, we would agree that

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the IRR could not impose such a prohibition. With our ruling that Section 133(h) does indeed prohibit the imposition of local business taxes on petroleum products, however, the RTC declaration that Article 232 was invalid is, in turn, itself invalid. Even absent Article 232, local government units cannot impose business taxes on petroleum products. If anything, Article 232 merely reiterates what the LGC itself already provides, with the additional explanation that such prohibition was "in line with existing national policy."

VI.

We have said all that need be said for the resolution of this case, but there is one more line of argument raised by respondents that deserves a remark. Respondents argue, "assuming... that the Oversight Committee [that drafted the IRR] can legislate, that the "existing national policy" referred to in Article 232 had been superseded by Republic Act No. 8180, or the Oil Deregulation Law. Boiled down to its essence, the argument is that since the oil industry is presently deregulated the basis for exempting petroleum products from business taxes no longer exists.

Of course, the starting premise for this argument, that the IRR can establish a tax or an exemption, is false and has been flatly rejected by this Court before.[52] The LGC itself does not connect its prohibition on taxation of petroleum products with any existing or future national oil policy, so the change in such national policy with the regime of oil deregulation is ultimately of no moment. Still, we can divine the reasoning behind singling out petroleum products, among all other commodities, as beyond the power of local government units to levy local taxes.

Why the special concern over petroleum products? The answer is quite evident to all sentient persons. In this age where unfortunately dependence on petroleum as fuel has yet no equally feasible alternative, the cost of petroleum products, though fully controlled by private enterprise, remains an area of public concern. To be blunt about it, there is an inevitable link between the

[52] See *e.g., John Hay People's Alternative Coalition v. Lim*, 460 Phil. 530, 551 (2003).

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fluctuation of oil prices and the prices of every other commodity. The reality, indeed, is oil is a political commodity. Such fact has received recognition from this Court. "[O]il [is] a commodity whose supply and price affect the ebb and flow of the lifeblood of the nation. Its shortage of supply or a slight, upward spiral in its price shakes our economic foundation. Studies show that the areas most impacted by the movement of oil are food manufacture, land transport, trade, electricity and water."[53] "[T]he upswing and downswing of our economy materially depend on the oscillation of oil."[54] "Fluctuations in the supply and price of oil products have a dramatic effect on economic development and public welfare."[55]

It can be reasonably presumed that if municipalities, cities and provinces were authorized to impose business taxes on manufacturers and retailers of petroleum products, the resulting losses to these enterprises would be passed on to the consumers, triggering the chain of increases that normally accompany the increase in oil prices. No similarly massive trigger effect would ensue upon the imposition of business taxes on other commodities, including those already subject to excise taxation under the NIRC.

It may very well be that the policy of deregulation, which was not yet in effect at the time of the enactment of the LGC, has changed the complexion of the issue, for unlike before, oil companies are free at will to increase oil prices, thus mitigating the similarly arbitrary consequences that could develop if petroleum products were subject to local taxes. Still, it cannot be denied that subjecting petroleum products to business taxes apart from the taxes already imposed by Congress in this age of deregulation would lead to the same result had they been so taxed during the era of oil regulation – the increase of oil prices. We do not discount the authority of Congress to enact measures that facilitate the increase in oil prices; witness the Oil Deregulation Law and the most recent Expanded VAT Law. Yet these hard choices are presumably made by Congress with the expectation that the

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[53] *Tatad v. Secretary of Energy*, 346 Phil. 321, 379 (1997).

[54] *Id.* at 348.

[55] *Garcia v. Corona*, 378 Phil. 848, 859 (1999).

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negative effects of increased oil prices are offset by the other economic benefits promised by those new laws (*i.e.*, a more vibrant oil industry; increased government revenue).

The Court defers to the other branches of government in the formulation of oil policy, but when the choices are made through legislation, the Court expects that the choices are deliberate, considering that the stakes are virtually all-in. Herein, respondents may be bolstered by the constitutional and statutory policy favoring local fiscal autonomy, but it would be utter indolence to reflexively affirm such policy when the inevitable effect is an increase in oil prices. Any prudent adjudication should fully ascertain the mandate of local government units to impose taxes on petroleum products, and such mandate should be cast in so specific terms as to leave no dispute as to the legislative intendment to extend such power in the name of local autonomy. What we have found instead, from the plain letter of the law is an explicit disinclination on the part of the legislature to impart that particular taxing power to local government units.

While Section 133(h) does not generally bar the imposition of business taxes on articles burdened by excise taxes under the NIRC, it specifically prohibits local government units from extending the levy of any kind of "taxes, fees or charges on petroleum products." Accordingly, the subject tax assessment is *ultra vires* and void.

WHEREFORE, the Petition is *GRANTED*. The Decision of the Regional Trial Court of Malabon City in Civil Case No. 3380-MN is *REVERSED* and *SET ASIDE* and the subject assessment for deficiency taxes on petitioner is ordered *CANCELLED*. The Temporary Restraining Order dated 4 August 2003 is hereby made *PERMANENT*. No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.*, concur.