Republic of the Philippines
Supreme Court
Manila

EN BANC

MINDANAO SHOPPING DESTINATION CORPORATION, ACE HARDWARE PHILS., INC., INTERNATIONAL TOYWORLD, INC., STAR APPLIANCE CENTER, INC., SURPLUS MARKETING CORPORATION, WATSONS PERSONAL CARE STORES (PHILS.), INC., and SUPERVALUE, INC., Petitioners, - *versus* - **HON. RODRIGO R. DUTERTE, in his capacity as Mayor of Davao City, HON. SARA DUTERTE, Vice-Mayor of Davao City, in her capacity as Presiding Officer of the Sangguniang Panlungsod, and THE SANGGUNIANG PANLUNGSOD (CITY COUNCIL) NG DAVAO,** Respondents.	**G.R. No. 211093** **Present:** SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, MENDOZA,* REYES, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, MARTIRES,** and TIJAM, *JJ.* **Promulgated:** June 6, 2017

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D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court seeking the reversal of the Decision[2] dated August 29, 2013

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* On official leave.

** On wellness leave.

1 *Rollo* pp. 3-33.

2 Penned by Court of Appeals Associate Justice Victoria Isabel A. Paredes, with Associate Justices Japar B. Dimaampao and Elihu A. Ybañez, concurring, *id.* at 45-61.

and Resolution[3] dated January 22, 2014 of the Court of Appeals in CA-G.R. SP No. 101482, which affirmed the Decision dated July 2, 2007 and Resolution dated October 31, 2007 of the Office of the President.

Petitioners Mindanao Shopping Destination Corporation, Ace Hardware Philippines, Inc., International Toyworld, Inc., Star Appliance Center, Inc., Surplus Marketing Corporation, Watsons Personal Care Stores (Philippines), Inc. and Supervalue, Inc. (collectively as petitioners) are corporations duly organized and existing under and by virtue of Philippine law and engaged in the retail business of selling general merchandise within the territorial jurisdiction of Davao City.[4]

The facts are as follows:

On November 16, 2005, respondent *Sangguniang Panglungsod* of Davao City (*Sanggunian*), after due notice and hearing, enacted the assailed Davao City Ordinance No. 158-05, Series of 2005, otherwise known as "*An Ordinance Approving the 2005 Revenue Code of the City of Davao, as Amended*"[5] attested to by Vice-Mayor Hon. Luis B. Bonguyan (respondent Vice-Mayor), as Presiding Officer of the *Sanggunian*, and approved by then City Mayor, Hon. Rodrigo R. Duterte, now the President of the Republic of the Philippines. The Ordinance took effect after the publication in the *Mindanao Mercury Times*, a newspaper of general circulation in Davao City, for three (3) consecutive days, December 23, 24 and 25, 2005.[6]

Petitioners' particular concern is Section 69 (d)[7] of the questioned Ordinance which provides:

> Section 69. *Imposition of Tax*. There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts prescribed:
>
> x x x x
>
> (d) On Retailers
>
> | Gross Sales/Receipts for the Preceding Year | Rates of Tax Per Annum |
> |---|---|
> | More than ₱50,000 but not over ₱400,000.00 | 2% |
> | In excess of ₱400,000.00 | 1 ½ % |

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3 *Rollo*, pp. 62-63.
4 *Id.* at 9.
5 *Id.* at 104.
6 *Id.*
7 *Id.* at 71.

> However, *barangays* shall have the exclusive power to levy taxes on stores where the gross sales or receipts of the preceding calendar year does not exceed Fifty Thousand Pesos (₱50,000) subject to existing laws and regulations.
>
> x x x

Petitioners claimed that they used to pay only 50% of 1% of the business tax rate under the old Davao City Ordinance No. 230, Series of 1990, but in the assailed new ordinance, it will require them to pay a tax rate of 1.5%, or an increase of 200% from the previous rate. Petitioners believe that the increase is not allowed under Republic Act (*RA*) No. 7160, *The Local Government Code* (*LGC*). Consequently, invoking the LGC, petitioners appealed to the DOJ, docketed as MTO-DOJ Case No. 02-2006, asserting the unconstitutionality and illegality of Section 69 (d), for being unjust, excessive, oppressive, confiscatory and contrary to the 1987 Constitution and the provisions of the LGC. Petitioners prayed that the questioned ordinance, particularly Section 69 (d) thereof be declared as null and void *ab initio*.

For lack of material time, the appeal was filed and served through registered mail. Unfortunately, when the appeal was mailed on January 24, 2006, the verification/certification of non-forum shopping and the postal money order, covering the payment of filing fees were not attached. The attachments were mailed the next day, January 25, 2006, together with a covering manifestation. Petitioners received respondents' Comment on the appeal on March 2, 2006; and, on June 27, 2006, petitioners received respondents' manifestation alleging that the appeal should be deemed filed out of time for failure to pay the filing fees within the prescribed period.

In a Resolution[8] dated July 12, 2006, the DOJ-OSec dismissed the appeal and denied petitioners' motion for reconsideration.[9]

Meanwhile, on September 26, 2006, Davao City Ordinance No. 0253, Series of 2006 (*Amended Ordinance*), amended Section 69 (d) of the questioned ordinance. In it, tax rate on retailers with gross receipts in excess of ₱400,000.00 was reduced from one and one-half percent (1½%) to one and one-fourth percent (1¼%); Section 69 (d), as amended, now reads:

> (d) On Retailers
>
> | Gross Sales/Receipts for the Preceding Year | Rates of Tax Per Annum |
> |---|---|
> | More than ₱50,000 but not over | 2% |

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8 *Id.* at 150-156.
9 *Id.* at 181-183.

₱400,000.00

In excess of ₱400,000.00 1 ¼ %

However, *barangays* shall have the exclusive power to levy taxes on stores where the gross sales or receipts of the preceding calendar year does not exceed Fifty Thousand Pesos (₱50,000) subject to existing laws and regulations.

With the above development, respondents maintained that the adjustment in the tax base no longer exceeds the limitation as set forth in Section 191 of the LGC considering that the current Davao City tax rate of 1.25% on retailers with gross receipts/sales of over ₱400,000.00 under the assailed ordinance is way below or 0.25% short of the maximum tax rates of 1.5% for cities sanctioned by the LGC. Respondents insist that there is thus no increase or adjustment to speak of under the premises which is violative of Section 191 of the LGC.

From the dismissal of the appeal and the denial of their motion for reconsideration, petitioners filed an appeal before the Office of the President (*OP*). On July 2, 2007, the OP, finding no merit on petitioners' appeal, dismissed the latter.[10] Petitioners moved for reconsideration, but was denied anew in a Resolution[11] dated October 31, 2007.

Unperturbed, petitioners filed a petition for review before the Court of Appeals.[12]

On August 29, 2013, in the disputed Decision of the appellate court, the latter dismissed the petition, to wit:

WHEREFORE, the Petition is **DISMISSED**. The Decision dated July 2, 2007 and the Resolution dated October 31, 2007 of the Office of the President in O.P. Case no. 06-L-425 are **AFFIRMED**.

SO ORDERED.[13]

Petitioners moved for reconsideration, but were denied in a Resolution[14] dated January 22, 2014. Thus, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following issues:

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10 *Id.* at 461-463.
11 *Id.* at 477-478.
12 *Id.* at 500-537.
13 *Id.* at 60. (Emphasis in the original)
14 *Id.* at 62-63.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS DESPITE THE PATENT ILLEGALITY AND UNCONSTITUTIONALITY, UPHELD THE VALIDITY OF THE ORDINANCE AS WELL AS THE LOCAL SANGGUNIAN'S ARBITRARY EXERCISE OF ITS POWER TO TAX

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT ADDRESSING THE MAIN ISSUE RAISED BY PETITIONERS AS A CONSTITUTIONAL ISSUE.

WHETHER THE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE SUBSTANTIAL COMPLIANCE OVER PROCEDURAL DEFICIENCIES

On the procedural issues, We find that at this stage of the proceeding, it is futile to belabor on the procedural deficiencies since the issue of timeliness of the appeal has become moot and academic considering that petitioners' appeal was given due course by the OP. In fact, both the OP and the appellate court decided the appeal on the merits and not merely on technicality. We will, thus, proceed with the substantive issues of the instant case.

Petitioners assert that although the maximum rate that may be imposed by cities on retailers with gross receipts exceeding ₱400,000.00 is 1.5% of the gross receipts, *the maximum adjustment which can be applied once every five (5) years, is only 0.15% or 10% of the maximum rate of 1.5% of the gross receipts in accordance with Section 191 of the LGC.* However, petitioners lamented that the assailed Ordinance increased the tax rate on them, as retailers, by more than the maximum allowable rate of 0.15%, from *50% of 1% (0.5%) of the gross receipts* to *1.5% (now, 1.25%) of the gross receipts,* thus, violating Section 191 in relation to Sections 143 and 151 of the Code.

A perusal of the assailed new ordinance, particularly Section 69 (a) and (b) of Davao City Ordinance No. 158-05, Series of 2005, provides:

> Section 69. *Imposition of Tax.* – There is hereby imposed on the following persons who establish, operates, conduct or maintain their respective business within the city a graduated tax in the amounts hereafter prescribed:
>
> x x x x
>
> (b) On **WHOLESALERS, DISTRIBUTORS, OR DEALERS,** in any article of commerce of whatever kind or nature in accordance with the following schedules:

Gross Sales/Receipts for the Preceding Calendar Year	Amount of Tax per Annum
x x x x	
In excess ₱2,000,00.00	**At a rate of fifty-five (55%) percent of one percent (1%)**

x x x x

(d) **On RETAILERS:**

Gross Sales/Receipts for the Preceding Calendar Year	Rate of Tax Per Annum
More than ₱50,000.00 but not over ₱400,000.00	2%
In excess of P400,000.00	**1 1/2%**

x x x[15]

Petitioners claim that the assailed tax ordinance is violative of the Local Government Code, specifically Section 191, in relation to Sections 143 and 151, to wit:

> **Section 191**. *Authority of Local Government Units to Adjust Rates of Tax Ordinances.* – **Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.**
>
> **Section 143 (d).** *Tax on Business.* – The municipality may impose taxes on the following businesses:
>
> x x x x
>
> (d) On retailers
>
With gross sales or receipts for the preceding calendar year in the amount of:	Rate of Tax Per Annum
₱400,000.00 or less	2.00%
More than ₱400,000.00	1.00%
>
> x x x x

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15 Emphasis ours.

> **Section 151.** *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> **The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.**[16]

We disagree.

Under the old tax ordinance of Davao City, *Ordinance No. 230, Series of 1990*, wholesalers and retailers were grouped as one, thus, the tax base and tax rate imposed upon retailers were the same as that imposed upon wholesalers. Subsequently, with the implementation of Republic Act No. 7160, otherwise known as the Local Government Code of the Philippines, the latter authorized a difference in the tax treatment between wholesale and retail businesses. Where before under the old tax ordinance, Davao City retailers only paid ½ of 1% of the gross sales/receipts exceeding ₱2,000,000.00, now under the new tax ordinance, retailers would have to pay 1.25% of the gross sales/receipts exceeding ₱400,000.00.

However, it must be emphasized that the assailed new tax ordinance is actually the initial implementation by the Davao City local government of the tax provisions of R.A 7160 (LGC) considering that the old tax ordinance of Davao City was enacted in 1990, or prior to the effectivity of the LGC on January 1, 1992. It then would explain why the old tax ordinance of Davao City lumped under one business tax and under the same set of tax rates these two business activities – *retail* and *wholesale*. There is no provision under Batas Pambansa Blg. 337,[17] the old LGC, which specifically define these business activities. Under Section 131 of R.A. 7160,[18] however, *wholesale* and *retail* are now defined, classified and taxed differently. It cannot be said then that Davao City, on its own, deliberately grouped these two business activities under one business tax. To reiterate, it is only with the implementation of R.A. 7160 that these two business activities, *i.e., wholesale* and *retail*, were specifically defined, classified in different

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16 Emphasis ours.

17 *An Act Enacting a Local Government Code; Approved: February 10, 1983.*

18 Section 131. *Definition of Terms.* – When used in this Title, the term:

x x x x

(w) "Retail" means a sale where the purchaser buys the commodity for his own consumption, irrespective of the quantity of the commodity sold;

x x x x

(z) "Wholesale" means a sale where the purchaser buys or imports the commodities for resale to persons other than the end user regardless of the quantity of the transaction.

categories, and, thus, taxed differently. Corollarily, it is only sound that by analogy, *wholesalers* and *retailers* should likewise be treated and classified differently to provide accuracy to the very meaning of its rootword and to give meaning to the intention of the law.

Thus, considering that *wholesale* and *retail* were defined and classified differently under the LGC, it is then logical that they are, likewise, given separate and distinct tax base. Article II, Sections 142 and 143 of the LGC provides:

> ARTICLE I
> Municipalities
>
> Section 142. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.
>
> Section 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:
>
> x x x x
>
> (b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
Less than ₱1,000.00	18
₱1,000.00 or more but less than 2,000.00	33.00
2,000.00 or more but less than 3,000.00	50.00
3,000.00 or more but less than 4,000.00	72.00
4,000.00 or more but less than 5,000.00	100.00
5,000.00 or more but less than 6,000.00	121.00
6,000.00 or more but less than 7,000.00	143.00
7,000.00 or more but less than 8,000.00	165.00
8,000.00 or more but less than 10,000.00	187.00
10,000.00 or more but less than 15,000.00	220.00

15,000.00 or more but less than 20,000.00	275.00
20,000.00 or more but less than 30,000.00	330.00
30,000.00 or more but less than 40,000.00	440.00
40,000.00 or more but less than 50,000.00	660.00
50,000.00 or more but less than 75,000.00	990.00
75,000.00 or more but less than 100,000.00	1,320.00
100,000.00 or more but less than 150,000.00	1,870.00
150,000.00 or more but less than 200,000.00	2,420.00
200,000.00 or more but less than 300,000.00	3,300.00
300,000.00 or more but less than 500,000.00	4,400.00
500,000.00 or more but less than 750,000.00	6,600.00
750,000.00 or more but less than 1,000,000.00	8,800.00
1,000,000.00 or more but less than 2,000,000.00	10,000.00
2,000,000.00 or more at a rate not exceeding fifty percent (50%) of one percent (1%).	

x x x x

(d) On retailers.

With gross sales or receipts for the preceding calendar year in the amount of:	Rate of Tax Per Annum
₱400,000.00 or less	2%
more than ₱400,000.00	**1%**

Provided, however, That *barangays* shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000.00) or less, in the case of municipalities.[19]

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19 Emphasis ours.

From the foregoing, it can be shown that the assailed ordinance does not violate the limitation imposed by Section 191 of the LGC on the adjustment of tax rate for the following reasons:

Firstly, Section 191 of the LGC presupposes that the following requirements are present for it to apply, to wit: (i) there is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and (ii) there is a second tax ordinance that made adjustment on the tax rate fixed by the first tax ordinance. In the instant case, both elements are not present.

As to the first requirement, it cannot be said that the old tax ordinance (first ordinance) was imposed in accordance with the provisions of the LGC. To reiterate, the old tax ordinance of Davao City was enacted before the LGC came into law. Thus, the assailed new ordinance, Davao City Ordinance No. 158-05, Series of 2005 was actually the first to impose the tax on retailers in accordance with the provisions of the LGC.

As to the second requirement, the new tax ordinance (second ordinance) imposed the new tax base and the new tax rate as provided by the LGC for retailers. It must be emphasized that a tax has two components, a tax base and a tax rate. However, Section 191 contemplates a situation where there is already an existing tax as authorized under the LGC and only a change in the tax rate would be effected. Again, the new ordinance Davao City provided, not only a tax rate, but also a tax base that were appropriate for retailers, following the parameters provided under the LGC. Suffice it to say, the second requirement is absent. Thus, given the absence of the above two requirements for the application of Section 191 of the LGC, there is no reason for the latter to cover a situation where the ordinance, as in this case, was an initial implementation of R.A. 7160.

Secondly, Section 191 of the LGC will not apply because with the assailed tax ordinance, there is no outright or unilateral increase of tax to speak of. The resulting increase in the tax rate for retailers was merely incidental. When Davao City enacted the assailed ordinance, it merely intended to rectify the glaring error in the classification of wholesaler and retailer in the old ordinance. Petitioners are retailers as contemplated by the LGC. Petitioners never disputed their classification as retailers.[20] Thus, being retailers, they are subject to the tax rate provided under Section 69 (d) and not under Section 69 (b) of the assailed ordinance. In effect, under the assailed ordinance as amended, petitioners as retailers are now assessed at the tax rate of one and one-fourth (1¼%) percent on their gross sales and not the fifty-five (55%) percent of one (1%) percent on their gross sales since

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20 *Rollo*, p. 7.

the latter tax rate is only applicable to wholesalers, distributors, or dealers. The assailed ordinance merely imposes and collects the proper and legal tax due to the local government pursuant to the LGC. While it may appear that there was indeed a significant adjustment on the tax rate of retailers which affected the petitioners, it must, however, be emphasized that the adjustment was not by virtue of a unilateral increase of the tax rate of petitioners as retailers, but again, merely incidental as a result of the correction of the classification of wholesalers and retailers and its corresponding tax rates in accordance with the provisions of the LGC.

Indeed, as correctly pointed out by the appellate court, Section 191 is a limitation upon the adjustment, specifically on the increase in the tax rates imposed by the local government units. We quote the appellate court's ruling with approval, to wit:

> x x x Section 191 has no bearing in the instant case because what actually took place in the questioned Ordinance was the correction of an erroneous classification, and not, an upward adjustment or increase of tax rates. The fact that there occurred an increase in payment due to the reclassification is of no moment, because: (1) reclassification is not prohibited; (2) reclassification was made to effect a correction; and (3) the taxes imposed upon the reclassified taxpayers, was not amended or increased from that stated in the Local Government Code. And, it is worthwhile to mention that petitioners have not denied that they are engaged in the retail business, hence, the reclassification was right, proper and legal.[21]

Couched in similar conclusion is the ruling of the Office of the President where in the same manner it agreed that the adjustment in the tax rate of petitioners did not violate the provisions of the LGC and the Constitution. The pertinent portion of the decision reads, thus:

> Secondly, the office *a quo* correctly ruled that the City Government of Davao merely reclassified taxpayers earlier treated as one class into separate classes thus subjecting them to different tax bases and tax rates such that "retailers" are no longer treated and taxed in the same way as "wholesalers" unlike in the old ordinance. Distinctly defined from each other, a different tax treatment for each class of taxpayer is reasonable. Such being the case, the maximum tax rate and tax base ceilings provided in Section 143, in relation to Section 151 of the Local Government Code, is not in point as the prohibition/limitation refers to an adjustment or increase in the tax rate or tax base for the same class of taxpayer. As held in PLDT, Inc. vs. City of Davao (399 SCRA 442), "statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the State."[22]

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21 *Id.* at 57-58.

22 *Id.* at 462-463.

Thirdly, it must be pointed out that the limitation under Section 191 of the LGC was provided to guard against possible abuse of the LGU's power to tax.[23] In this case, however, strictly speaking, the new tax rate for petitioners as retailers under the assailed ordinance is not a case where there was an imposition of a new tax rate, rather there is merely a rectification of an erroneous classification of taxpayers and tax rates, *i.e.*, of grouping retailers and wholesalers in one category, and their corresponding rates. The amendment of the old tax ordinance was not intended to abuse the LGU's taxing powers but merely sought to impose the rates as provided under the LGC as in fact the tax rate imposed was even lower than the rate authorized by the LGC. In effect, the assailed ordinance merely corrected the old ordinance so that it will be in accord with the LGC. To rule otherwise is tantamount to pronouncing that Davao City can no longer correct the apparent error in classifying wholesaler and retailer in the same category under its old tax ordinance. Such proposition runs counter to the well-entrenched principle that *estoppel* does not apply to the government, especially on matters of taxation. Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents.[24]

However, while Davao City may rectify and amend their old tax ordinance in order to give full implementation of the LGC, it, however, cannot impose a straight 1.25% at its initial implementation of the LGC in so far as retailers are concerned. Davao City should, at the very least, start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC. While Davao City cannot be faulted in failing to immediately implement the LGC, petitioners cannot likewise be unjustly prejudiced by its initial implementation of the LGC. It is but fair and reasonable that Davao City at its initial implementation of the LGC, impose the tax rates as provided in Section 143. It is only then that the imposition of the tax rate on retailers will not be considered as confiscatory or oppressive, considering that the reclassification of wholesaler and retailer and their corresponding tax rate being observed now is in accord with the LGC.

Furthermore, to clarify, the old ordinance, because it remained unchanged until the new tax ordinance was enacted in 2005, charged lower tax rates for retailers which resulted in lower revenues of Davao City. Corollarily, while there was an increase in the amount of taxes to be paid by petitioners as retailers, it should not be overlooked that the retailer has, in fact, benefited already for a long time under the old tax ordinance because it paid lower taxes due to Davao City's failure to immediately implement the LGC. Davao City has already foregone a substantial loss in revenues as a result of an unadjusted lower tax rate for retailers. Thus, dictated by justice and fairness, in its initial attempt to implement the LGC, Davao City should,

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23 Eric R. Recalde, *The Philippine Local Tax and Tariff & Customs Laws,* 163 (2011).

24 *Commissioner of Internal Revenue v. Petron Corporation*, 685 Phil. 118, 147 (2012).

at the very least, start with 1% (the minimum tax rate) as provided under Section 143 (d) of the LGC. Considering that 11 years had already elapsed from its implementing in 2006, Davao City could adjust its tax rate twice now which will make its adjusted tax rate for retailers pegged at 1.2%, in accordance with Section 191 of the LGC. To clarify, from 2006-2011 (first 5 years), the initial tax rate should start with 1%; from 2011-2016 (next 5 years) – 1.1%, thus, for the years 2017-2021, the tax adjustment is 1.21%. However, for this purpose, Davao City should pass an ordinance to give effect to the above-discussed tax adjustments.

Again, based on the foregoing, Davao City merely implemented the LGC, albeit it resulted in - an increase in retailer's tax liability - which nevertheless is not covered by Section 191 of the LGC. In any case, an ordinance based on reasonable classification does not violate the constitutional guaranty of the equal protection of the law. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. For the purpose of rectifying the erroneous classification of wholesaler and retailer in the old ordinance in order to conform to the classification and the tax rates as imposed by the LGC is neither invalid nor unreasonable. The differentiation of wholesaler and retailer conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the Constitution. It is inherent in the power to tax that a State is free to select the subjects of taxation. Inequities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation.[25]

Settled is the rule that every law, in this case an ordinance, is presumed valid. To strike down a law as unconstitutional, petitioner has the burden to prove a clear and unequivocal breach of the Constitution, which petitioner miserably failed to do.[26]

In *Smart Communications, Inc. v. Municipality of Malvar, Batangas,*[27] citing *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management,*[28] the Court held, thus:

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[25] See *Ferrer, Jr. v. City Mayor of Quezon City, et al.* G.R. No. 210551, June 30, 2015, 760 SCRA 652, 710.

[26] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, 686 Phil. 357, 372-373 (2012).

[27] 727 Phil. 430, 447 (2014).

[28] *Supra* note 26, at 373.

> To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision dated August 29, 2013 and the Resolution dated January 22, 2014 of the Court of Appeals in CA-G.R. SP No. 101482 are hereby **AFFIRMED with MODIFICATION** in so far as the tax rate of 1.25% to be imposed on petitioners is **REDUCED** to 1.21%.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

On official leave
JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On wellness leave
SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice