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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **June 14, 2021** *which reads as follows:*

"G.R. No. 232797[*] *(Philip Morris Philippines Manufacturing, Inc.*[1] *v. Subic Bay Metropolitan Authority).*

This is an appeal by *certiorari* from the Decision[2] dated December 15, 2016, and Resolution[3] dated July 11, 2017, of the Court of Appeals *(CA)* in CA-G.R. SP No. 145186. The CA affirmed the December 2, 2015 Decision[4] of the Regional Trial Court, Olongapo City, Branch 75 *(RTC)* in Civil Case No. 99-0-13, dismissing the complaint for Injunction with Application for Issuance of a Writ of Preliminary Injunction filed by petitioner Philip Morris Philippines Manufacturing, Inc. *(Philip Morris)* against respondent Subic Bay Metropolitan Authority *(SBMA)*.

Antecedents

SBMA is a government-owned-and-controlled corporation *(GOCC)* created under Republic Act *(R.A.)* No. 7227 or the *Bases Conversion and Development Act of 1992* to develop the Subic Bay Freeport Zone *(SBFZ)* into a self-sustaining industrial, commercial, financial, and investment center.

On April 13, 1996, SBMA entered into a Joint Venture Agreement with Japan International Development Organization Ltd. and Toyo Construction Co., Ltd. for the development, construction,

[*] Part of the Supreme Court Decongestion Program.
[1] Also referred to as "Phillip Morris Philippines Manufacturing, Inc." in some parts of the *rollo*.
[2] *Rollo*, pp. 149-168; penned by Associate Justice Apolinario D. Bruselas, Jr. with Danton Q. Bueser and Renato C. Francisco, concurring.
[3] Id. at 170-171.
[4] Id. at 1940-1957; penned by Judge Raymond C. Viray.

operation and maintenance of an industrial estate within the SBFZ, presently known as the "Subic Technopark." The joint venture company was registered as the Subic Technopark Corporation *(STEP)*. SBMA executed a Master Lease Agreement[5] *(STEP MLA)* in favor of STEP for a 50-year lease over 55 hectares of land, beginning on June 30, 1997.[6]

STEP entered into various assignments of its leasehold rights with third parties with the conformity of SBMA. On August 1, 2008, Philip Morris and SBMA executed the STEP-PMPI-SBMA Assignment of Leasehold Rights *(ALR)*, whereby STEP assigned to Philip Morris its leasehold rights over 49,279 square meters in Subic Technopark for a period of 50 years.[7]

On October 1, 2012, SBMA implemented the Policy on Common Use Service Area *(CUSA)* Fee to recover the expenses for the following municipal services for tenants at the SBFZ: 1) Security Services or Law Enforcement; 2) Fire Protection and Prevention; 3) Street Cleaning; and 4) Street Lighting. The CUSA Fee was earlier approved by the Board of Directors of SBMA through Board Resolution Nos. 12-04-4348 dated April 13, 2012, and 12-08-4505[8] dated August 3, 2012. SBMA's direct lessees and residents were informed, through letters and a Primer, on the planned imposition of the CUSA Fee, including penalties for non-payment. Notifications were posted in public places and published in newspapers of general circulation. The CUSA Fee Policy was filed with the University of the Philippines *(UP)* Law Center and letters were sent to all locators and residents. Public hearings were also conducted regarding the implementation of the said policy.[9]

Philip Morris received billings for the CUSA Fee and was charged an amount of ₱59,166.12 per month at a rate of ₱1.20 per sq. m.. To avoid penalties, Philip Morris paid the amount under protest.[10]

On August 30, 2013, Philip Morris filed a Complaint for Injunction with Application for Issuance of a Writ of Preliminary Injunction[11] against SBMA. Philip Morris questioned the validity of the CUSA Fee, arguing in the main, that the CUSA Fee is, in reality, a property tax. It posited that R.A. No. 7227 and its Implementing

[5] Id. at 242-253.
[6] Id. at 179-180.
[7] Id. at 254-281.
[8] Id. at 523-524.
[9] Id. at 234-241; 525-546.
[10] Id. at 152.
[11] Id. at 173-230.

Rules and Regulations *(IRR)* did not grant SBMA with the power to tax, but only to collect reasonable fees for the implementation of a sanitation system, collection and disposal of garbage, and/or installation and maintenance of a sewage system. Under Section 12(c) of R.A. No. 7227, no national and local taxes shall be imposed within the Subic export processing zones, other than the 5% Gross Receipts Tax *(GRT)* imposed on all locators. Also, the CUSA Fee violates the non-impairment clause, specifically Clause 4.02 of the ALR, which provides that "no other amounts of payments" shall be due.[12]

Philip Morris also assailed the penalty being imposed, contending that SBMA had no power to impose administrative sanctions considering that the penalty clause under the policy was unpublished.[13] The published version of the SBMA August 3, 2012 Resolution did not contain the penalty clause because there is no such penalty clause in the resolution itself, and it only appeared in the letter/s sent to the locators/residents.[14]

SBMA filed its Answer,[15] emphasizing that as a "self-sustaining" agency, it does not receive any revenue allotment from the National Government, although it operates, in all respects, like a local government unit providing all municipal services at SBFZ. As such, SBMA recoups its expenditures in maintaining SBFZ and running its affairs through powers expressly granted to it by R.A. No. 7227, to wit: generating funds through leasing, selling or disposing its assets and by imposing administrative, management, regulatory and/or service fees or by obtaining loans and/or contributions. Among the municipal services being rendered by SBMA are: the security services or law enforcement, fire protection and prevention, street cleaning, street lighting and 24-hours emergency response, road maintenance, facilities management, and garbage collection. While SBMA earns gross revenue, the amount of costs expended for these services eats it up leaving no funds left for further infrastructure development. The annual cost for security services, street lighting, street cleaning, and fire protection and prevention services amounts to ₱388 Million. Hence, the CUSA Fee was implemented as among the key initiatives to recover its expenses for the said services, to be charged to SBMA's direct tenants at SBFZ as their proportionate share on the costs

[12] Id. at 189-219.
[13] Id. at 219-226.
[14] Id. at 1603-1610; 1526-1530.
[15] Id. at 376-425.

incurred only for these four services. As to the publication and notice requirements, these were all complied with to inform the affected tenants and locators/residents.[16]

SBMA also argued that Administrative Order No. 31,[17] issued by the Office of the President *(OP)* on October 1, 2012, directed and authorized SBMA to rationalize the rates of its existing fees and charges and, if found necessary, to increase such rates and impose new fees and charges. In fact, the OP, in a letter dated November 12, 2012,[18] expressed support for the increase in revenues initiated by SBMA and denied the request to subsidize SBMA's debts. The OP specifically stated that it cannot rescind the CUSA Fee Policy "as it is a cost recovery measure that forms part of the initiatives taken by SBMA to improve its distressed financial state."[19]

SBMA maintained that the CUSA Fee is a valid imposition as a cost recovery measure. It posited that Philip Morris should have submitted its concern through arbitration as provided under Clause 21.3 of STEP MLA and Clause 15.09 of the ALR.[20]

Ruling of the RTC

After trial, the RTC rendered its decision dismissing the complaint and upholding the questioned SBMA Resolutions as a cost-recovery mechanism pursuant to R.A. No. 7227 and sanctioned under the lease agreements. The CUSA rates, including the penalties, were found to be reasonable, not confiscatory, and duly published. It also ruled that SBMA was granted express powers to generate funds or recover costs of expenses under Sec. 13(b)(3) of R.A. No. 7227 and Sec. 10(c) and (k) of its IRR.[21]

Ruling that the CUSA Fee is not a tax, the RTC held that it was not primarily intended to raise revenue, but is rather a cost recovery measure expressly authorized under the law. It noted that the Commission on Audit *(COA)* gave clearance for the crediting of the CUSA Fee collection under the "expense" account precisely because the collection is not income or revenue, but a cost recovery measure. The collected fees do not form part of the general funds of SBMA, but

[16] Id. at 377-382.
[17] Id. at 647-648.
[18] Id. at 649.
[19] Id.
[20] Id. at 416-422.
[21] Id. at 1954-1955.

are covered by separate official receipts, allotted and earmarked for the provision and improvement of the four covered municipal services.[22]

As further evidence of SBMA's authority to impose the CUSA Fee, the RTC noted that Administrative Order No. 31 issued by the OP clearly authorized GOCCs like SBMA to rationalize the rates of its existing fees and charges and, if found necessary, to increase such rates and impose new fees and charges. The CUSA rates are not arbitrary or confiscatory: these are reasonable, bear a genuine relation to its purpose, and are proportionately fixed for each locator-tenant in relation to the cost of regulation. Such rates were fixed after the conduct of public hearings.[23]

The RTC likewise sustained the imposition of corresponding penalties for non-payment of the CUSA Fee, in accordance with Chapter II(B)(11) of the IRR of R.A. No. 7227. As to the publication requirement, this was satisfied through public hearings and notices which even appeared on SBMA's website. Philip Morris received notices from SBMA prior to the implementation of the CUSA Fee Policy with penalties for violations indicated. Most important, the policy was registered with the UP Law Center. Hence, there was due process and Philip Morris was properly informed of the new regulation.[24]

Philip Morris filed a motion for reconsideration, which was denied in the RTC Order[25] dated February 2, 2016.

Dissatisfied, Philip Morris elevated the case to the CA.

Ruling of the CA

In its Decision[26] dated December 15, 2016, the CA affirmed the RTC decision, declaring that while SBMA has no power to tax, it is empowered by law to regulate the operation and maintenance of utilities as well as other services, and to fix just and reasonable rates and charges therefor. In fact, SBMA had earlier imposed garbage fee and road user's fee. That such power was not explicitly stipulated in the ALR does not render the exercise of such power illegal or invalid. It is basic that laws are deemed incorporated in contracts. The power

[22] Id. at 1955.
[23] Id.
[24] Id. at 1956-1957.
[25] Id. at 2019-2021.
[26] Id. at 149-168.

of SBMA to regulate the operation and maintenance of utilities as well as other services and to fix just and reasonable rates and charges therefor, like the CUSA Fee, is thus implied in the MLA between SBMA and STEP and in the ALR between [Philip Morris] and SBMA.[27]

On the issue of whether the CUSA Fee is a tax or a fee, the CA held that such imposition does not partake the nature of a tax. While it is true that SBMA explained in its Primer that after it had been operating at a loss since 2008, and had resorted to several key initiatives including the imposition of the CUSA Fee to generate new revenue streams, it was, however, established that the collections from the CUSA Fee would not form part of its public funds but would be applied directly to the costs of the four municipal services. The COA even allowed it to credit the CUSA Fee collection under "expense" account instead of recording it as a revenue.[28]

The CA further noted that although, initially, the commercial rate of the CUSA Fee was based on the leased area, the rate was subsequently revised to base the fee instead on the appraised value of the leased property. Though the 2% of appraised value calculation is similar to that of a real property tax under Sec. 233 of the Local Government Code, where it is fixed at a certain percentage of the assessed value of real property, this alone does not automatically characterize the CUSA Fee as a property tax. Having been granted the power to impose fees, the SBMA has ample discretion to determine the rates of the CUSA Fee that may be imposed. Such rate should not be unreasonable and excessive; it is subject to limitation – not to exceed 20% of the actual monthly rent.[29]

As to the penalty clause, the CA said that SBMA, acting as the implementing arm of the Bases Conversion and Development Authority *(BCDA),* has been empowered to exercise such powers as may be essential, necessary or incidental to the powers granted to it, which include the power to impose fines and administrative penalties. Under Sec. 10(k) of the IRR of R.A. No. 7227, among SBMA's sources of revenue are proceeds from administrative fines and penalties. This provides sufficient basis for the penalty clause for non-payment of the CUSA Fee, which was also duly published, disseminated through letters and notices, and registered with the UP Law Center National Administrative Register.[30]

[27] Id. at 156-159.
[28] Id. at 159-160.
[29] Id. at 163-165.
[30] Id. at 166-167.

Issues

After its motion for reconsideration having been denied by the CA, Philip Morris filed the present petition for review based on the following grounds:

A.

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN HOLDING THAT SBMA IS AUTHORIZED UNDER [R.A. NO. 7227] AND ITS IRR TO IMPOSE THE QUESTIONED SBMA RESOLUTIONS;

B.

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN HOLDING THAT SBMA IS AUTHORIZED TO IMPOSE THE SBMA CUSA FEE AS IT IN FACT HAD EARLIER IMPOSED GARBAGE FEE AND ROAD USER'S FEE WHICH VALIDITY [WERE] NOT QUESTIONED;

C.

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN HOLDING THAT THE UNILATERAL AND FORCED IMPOSITION OF THE SBMA CUSA FEE HAS CONTRACTUAL BASIS UNDER THE STEP-PMPMI-SBMA LEASE ASSIGNMENT AND THE STEP-SBMA MLA;

D.

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN FINDING THAT THE UNILATERAL AND FORCED IMPOSITION OF THE SBMA CUSA FEE IS FOR PURPOSES OR IN VIEW OF, OR INCIDENTAL TO, REGULATION AND NOT A TAX WHICH INDISPUTABLY SBMA HAS NO POWER TO IMPOSE;

E.

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN FINDING THAT THE IMPOSITION OF THE SBMA CUSA FEE IS JUST AND EQUITABLE. THE SBMA CUSA FEE RATES ARE UNREASONABLE, ARBITRARY, AND EXCESSIVE AS TO BE PROHIBITIVE, OPPRESSIVE, CONFISCATORY, AND IN RESTRAINT TO TRADE;

F.

THE COURT OF APPEALS [COMMITTED SERIOUS AND REVERSIBLE ERROR] IN FINDING THAT THE PENALTIES IMPOSED FOR NON-PAYMENT OF THE SBMA CUSA FEE HAVE LEGAL BASIS AND ARE THEREFORE, EFFECTIVE AND ENFORCEABLE;

G.

THE COURT OF APPEALS [COMMITTED SERIOUS AND REVERSIBLE ERROR] IN FINDING THAT THE IMPOSITION OF THE SBMA CUSA [FEE] HAS LEGAL BASIS. THE SBMA CUSA FEE IS UNCONSTITUTIONAL FOR BEING VIOLATIVE OF THE NON-IMPAIRMENT AND EQUAL PROTECTION CLAUSES OF THE 1987 CONSTITUTION.[31]

Philip Morris insists that SBMA's imposition of the CUSA Fee is unilateral, forced, and has the effect of amending, varying, or modifying the terms of the ALR and the STEP MLA. The additional imposition makes doing business in the SBFZ costlier and more difficult, and violates Clause 10.02 of the ALR and Clauses 9, 10 and 19 of the STEP MLA. The CUSA Fee clearly infringes the non-impairment clause of the Constitution.[32]

Also, the CUSA Fee is not a mere regulatory fee but a tax, as it is being collected for a public purpose, *i.e.,* to fund municipal services within the common areas of the SBFZ which are for the direct benefit of the general public. There is nothing in R.A. No. 7227 Sec. 13(b)(3) that grants SBMA the power to unilaterally impose the CUSA Fee for public municipal services. Such additional imposition is actually repugnant to the incentive system under Sec. 12(c) of R.A. No. 7227. Finally, the CUSA Fee rates are unreasonable, arbitrary and excessive as to be prohibitive, oppressive, confiscatory and in restraint of trade.[33]

In its Comment,[34] SBMA reiterates the contractual obligations of Philip Morris under the ALR and the STEP MLA to comply with SBMA's rules and regulations, as well as the restrictions. Philip Morris should have submitted the matter for arbitration pursuant to the Arbitration Clause of the ALR and STEP MLA.

[31] Id. at 69-70.
[32] Id. at 70-73.
[33] Id. at 75-79.
[34] Id. at 2253-2297.

While agreeing with the position that SBMA has no power to tax, SBMA maintains that the CUSA Fee is merely a cost recovery or reimbursement mechanism, and as such does not constitute revenue and is not intended to raise revenue. In fact, the actual amount of CUSA Fee, collected in the amount of ₱53,496,767.19 is not even sufficient to cover those costs programmed just for repairs of equipment and facilities used for the four services, which is ₱66,187,748.50. In short, SBMA still covers the bulk of the expenses for the four services covered by the CUSA Fee Policy which, even if fully collected, would just amount to a partial recovery of actual expenses for the said services. The provisions of R.A. No. 7227 and its IRR, as well as Administrative Order No. 31 of the OP, serve as legal basis for the CUSA Fee.[35]

On the reasonableness and necessity of the additional imposition, SBMA cites Administrative Order No. 31 of the OP which declared that: "x x x equity requires that persons receiving or benefiting from rendered services share the cost of providing such services." SBMA maintains that R.A. No. 7227 and its IRR expressly granted it the authority to impose the CUSA Fee, regardless of the absence of any proviso in the law regarding any share in the 5% preferential income tax at SBFZ.[36]

SBMA notes that unlike other economic and freeport zones,[37] it administers the SBFZ independently and autonomously from the LGUs. Moreover, the OP has supported and sustained the CUSA Fee as such "would ultimately redound to the benefit of the locators who already enjoy significant tax and other incentives under existing laws."

Taking into consideration the opposing arguments of the parties, We reduce the issues for resolution as follows: 1) Is SBMA authorized under existing laws to impose the CUSA Fee and the corresponding penalty in case of non-payment; 2) Does the imposition of the CUSA Fee infringe the non-impairment clause; and, 3) Is the CUSA Fee a tax measure.

Our Ruling

The petition is without merit.

- over -

[35] Id. at 2269-2275.
[36] Id. at 2276-2286.
[37] Such as Cagayan Economic Zone Authority or CEZA under R.A. No. 7922; Aurora Pacific Economic Zone and Freeport Authority (APECO) under R.A. No. 9490; Authority of the Freeport Area of Bataan (AFAB) under R.A. No. 9728; and Zamboanga Freeport Authority (ZFA).

R.A. No. 7227 and its IRR, and Administrative Order No. 31 authorize the SBMA to collect reasonable fees such as the CUSA Fee.

Sec. 13(b)(3) of R.A. No. 7227 grants the SBMA the following powers:

> SECTION 13. *The Subic Bay Metropolitan Auhtority.* —
>
> (a) Creation of the Subic Bay Metropolitan Authority. — A body corporate to be known as the Subic Bay Metropolitan Authority, is hereby created as an operating and implementing arm of the Conversion Authority.
>
> (b) Powers and Functions of the Subic Bay Metropolitan Authority. — The Subic Bay Metropolitan Authority, otherwise known as the Subic Authority, shall have the following powers and functions:
>
> x x x x
>
> (3) **To undertake and regulate the establishment, operation and maintenance of utilities, other services and infrastructure in the Subic Special Economic Zone** including shipping and related business, stevedoring and port terminal services or concessions, incidental thereto and airport operations in coordination with the Civil Aeronautics Board, **and to fix just and reasonable rates, fares charges and other prices therefor.** (emphases supplied)

On the other hand, Sec. 10(k)(5) of the IRR of R.A. No. 7227 states:

> SECTION 10. *Powers and Functions.* — The SBMA shall have the following powers and functions:
>
> x x x x
>
> **k. To raise revenues from among, but not limited to, the following:**
>
> (1) periodic license fees and/or application, filing and registration and administrative/regulatory fees from SBF Enterprises;
> (2) lease of land, facilities or other properties in the former Subic Naval Base area, as well as other areas in the SBF;

(3) management and administrative service fees for processing, handling and escorting of importations, exportations and local sales or purchases;
(4) capital or other contributions from the national government;
(5) ***service and utility charges;***
(6) voluntary contributions;
(7) resources from external, technical and financial assistance agencies;
(8) grants from the National Government, local government units, local and foreign state-owned and privately owned entities and international organizations;
(9) donations and contributions of all kinds;
(10) funds from loans and/or other securities obtained as authorized by the Board of Directors; and
(11) proceeds from administrative fines, and penalties (emphasis supplied)

Clearly, both R.A. No. 7227 and its IRR expressly grant the SBMA with authority to fix reasonable service and utility fees necessary for the establishment, operation, maintenance of utilities, other services, and infrastructure of the SBFZ. Necessarily, these fees would include the charges collected by SBMA from its tenants to cover expenses for security services or law enforcement, fire protection and prevention, street cleaning, and street lighting, which comprise the CUSA Fee.

Furthermore, Administrative Order No. 31 dated October 1, 2012, directed GOCCs, such as SBMA, not only to rationalize existing fees but also to impose additional charges "to enable the government to effectively provide services without straining the National Government's sources." The said issuance also based the imposition of fees on the principle of equity whereby persons who receive or benefit from the services rendered should share the cost for such services.[38] Accordingly, Administrative Order No. 31 fully supports and sustains the CUSA Fee to cover the four municipal services which were previously rendered without charge by SBMA within the SBFZ.

Philip Morris, however, argues that applying the principle of *ejusdem generis,* the provision of municipal services could not have

[38] The Second and Third Whereas Clauses read:
"**WHEREAS,** the rates of fees and charges collected must be just and reasonable to enable the government to effectively provide services without straining the National Government's resources;
WHEREAS, equity requires that persons receiving or benefiting from rendered services share the cost of providing such services"; *rollo*, p. 647.

been contemplated by the legislature as covered by the phrase "other services and infrastructure" mentioned in Sec. 13(3) of R.A. No. 7227.

We disagree.

Ejusdem generis is a rule of statutory construction stating that "where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned." The rule "is founded upon the idea that if the legislature intended the general words to be used in an unrestricted sense, the particular classes would not have been mentioned."[39]

In *National Power Corporation v. Angas*,[40] this Court explained the purpose and rationale of the rule, thus:

> The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms (2 Sutherland, *Statutory Construction*, 3rd ed., pp. 395-400).[41]

We hold that the term "other services and infrastructure" is sufficiently broad as to include the municipal services covered by the CUSA Fee. While the provision enumerated only the four major infrastructure and businesses (*i.e.,* shipping and related business, stevedoring and port terminal services or concessions and airport operations, which according to the proceedings of the Bicameral Conference Meeting cited by Philip Morris in its Reply,[42] were described by legislators as "the whole life and soul of Subic Naval Base"), the provision of security and law enforcement, fire prevention and protection, street cleaning and street lighting of the common use areas in the SBFZ are services necessary and beneficial to the operation and maintenance of the infrastructure and businesses expressly mentioned.

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[39] *Ollada v. Court of Tax Appeals,* 99 Phil. 604, 610-611 (1956), citing Crawford, The Construction of Statutes pp. 326-327.
[40] 284-A Phil. 39 (1992), as cited in *Pelizloy Realty Corporation v. The Province of Benguet*, 708 Phil. 466, 481 (2013).
[41] Id. at 45-46.
[42] *Rollo*, pp. 2331-2332.

As a "self-sustaining, industrial, commercial, financial and investment center" aimed at "genera[ting] employment opportunities in and around the zone and to attract and promote productive foreign investments"[43] envisioned by the legislators, the SBMA must ensure that economic activities take place in secure and well-maintained common use areas such as roads and bridges within its territory. Indeed, the conduct of trade and commerce in general within the SBFZ are not confined to its port and airport sites. The business establishments within the SBFZ all benefit from the common use areas in the overall conduct of their businesses.

It is also significant to note while Sec. 12(h) of R.A. No. 7227 provides that the "defense of the zone and the security of its perimeters shall be the responsibility of the National Government in coordination with the [SBMA]," the latter was mandated to "establish its own internal security and fire-fighting forces." This is consistent with the objective of the law for the SBFZ to be a "self-sustaining" financial and investment center. Philip Morris' argument comparing the SBFZ with other economic zones in the country and their administration by the PEZA, and its insistence that the remedy is to amend R.A. No. 7227 so as to grant SBMA a share in the 5% GRT to enable it to fund the municipal services, is thus untenable.

The SBMA not previously collecting charges or fees for the subject services from business establishments or locators in the SBFZ is not a bar to the subsequent implementation of the CUSA Fee. The law clearly granted it authority to impose reasonable fees and charges for the provision of the municipal services covered by the CUSA Fee.

The imposition of the CUSA Fee did not violate the non-impairment clause.

On the supposed infringement of the non-impairment clause of the Constitution, this argument deserves scant consideration. Under the ALR, Philip Morris undertook to faithfully comply with its warranties to STEP and SBMA that –

> 10.03 **Representations and warranties of PMPMI.** PMPMI represents and warrants the ASSIGNOR and SBMA that:
>
> x x x x

[43] Sec. 12(a), R.A. No. 7227.

> (g) It shall, in the performance of its obligations under this Agreement, comply with **all the provisions of laws,** ordinances, **rules and regulations**, and observe environmental, security, safety and health regulations and/or guidelines, **and other policies as may be made known to it** or agreed upon by the Parties pursuant to this Agreement.[44] (emphases supplied)

Notably, Philip Morris' principal, STEP, had a similar undertaking under the STEP MLA to comply with governmental rules and regulations and enforce the terms and conditions of all sublease agreements, thus:

> 5. USE
>
> STEP shall use and occupy the Property solely for purposes as permitted by SBMA and observe zoning code, environmental regulations, **and other governmental rules and regulations. STEP shall in the sublease agreement require the subtenants to observe the same.** However, STEP shall in no event be responsible for subtenant's violation of this section or liabilities arising therefrom; provided, however, STEP shall use all due efforts to enforce the terms and conditions of all sublease agreements.[45]

The CUSA Fee is not a tax.

On the theory that the CUSA Fee is in reality a tax, the Court finds such without basis.

In *Progressive Development Corporation v. Quezon City*,[46] We explained the distinction between a tax and a license or regulatory fee, thus:

> The term "tax" frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although *license fee* is a legal concept distinguishable from tax: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if the generating

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[44] *Rollo*, p. 269.
[45] Id. at 244.
[46] 254 Phil. 635 (1989), citing *Compañia General de Tabacos de Filipinas v. City of Manila,* 118 Phil. 380, 383 (1963); *Pacific Commercial Co. v. Romualdez*, 49 Phil. 917, 923-924 (1927), and *Manila Electric Company v. El Adutior General y La Comisión de Servicios Públicos,* 73 Phil. 128, 133 (1941); *Republic of Philippine Rabbit Bus Lines,* 143 Phil. 158 (1970).

> of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; **but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax.**[47] (emphasis supplied)

In *Ferrer, Jr. v. Mayor Bautista (Ferrer)*[48] which involved the issue of the validity of a city ordinance imposing a garbage fee, We concluded that the fee imposed for garbage collections under the ordinance is a charge fixed for the regulation of an activity. We explained:

> Certainly, as opposed to petitioner's opinion, the garbage fee is not a tax. In *Smart Communications, Inc. v. Municipality of Malvar, Batangas*, the Court had the occasion to distinguish these two concepts:
>
> > In *Progressive Development Corporation v. Quezon City,* the Court declared that "if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; **but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax**."
> >
> > In *Victorias Milling Co., Inc. v. Municipality of Victorias,* the Court reiterated that the purpose and effect of the imposition determine whether it is a tax or a fee, and that the lack of any standards for such imposition gives the presumption that the same is a tax.
> >
> > We accordingly say that the designation given by the municipal authorities does not decide whether the imposition is properly a license tax or a license fee. The determining factors are the purpose and effect of the imposition as may be apparent from the provisions of the ordinance. Thus, "[w]hen no police inspection, supervision, or regulation is provided, nor any standard set for the applicant to establish, or that he agrees to attain or maintain, but any and all persons engaged in the business designated, without qualification or hindrance, may come, and a license on payment of the stipulated sum will issue, to do business, subject to no prescribed rule of conduct and under no guardian eye, but according to the unrestrained judgment or fancy of the applicant and licensee, *the*

[47] Id. at 643.
[48] 762 Phil. 233 (2015).

> *presumption is strong that the power of taxation, and not the police power, is being exercised."*
>
> In Georgia, U.S.A., assessments for garbage collection services have been consistently treated as a fee and not a tax. In another U.S. case, the garbage fee was considered as a "service charge" rather than a tax as it was actually a fee for a service given by the city which had previously been provided at no cost to its citizens.
>
> Hence, **not being a tax**, the contention that the **garbage fee** under Ordinance No. SP-2235 violates the rule on double taxation must necessarily fail.
>
> Nonetheless, although a special charge, tax, or assessment may be imposed by a municipal corporation, it must be reasonably commensurate to the cost of providing the garbage service. **To pass judicial scrutiny, a regulatory fee must not produce revenue in excess of the cost of the regulation because such fee will be construed as an illegal tax when the revenue generated by the regulation exceeds the cost of the regulation.**[49] (emphases supplied)

The ordinance imposing the garbage fee in *Ferrer* was declared invalid for violation of the equal protection clause of the Constitution and the provisions of the Local Government Code, that an ordinance must be equitable and based as far as practicable on the taxpayer's ability to pay, and not unjust, excessive, oppressive, and confiscatory. It also violates the limitation on penalty under Sec. 168 of the same Code.

Nevertheless, *Ferrer* is relevant to the present controversy because the services covered by the CUSA Fee, particularly street lighting and street cleaning, also cannot be considered a tax but a fee for services previously provided by SBMA at no cost to the tenants/locators in the SBFZ. In view of the dire financial situation of SBMA due to losses from its operations, it implemented the CUSA Fee Policy as a cost recovery measure. As already mentioned, SBMA was given express power under Sec. 13(b)(3) of R.A. No. 7227 to collect such service fees at just and reasonable rates in the exercise of its administrative and supervisory functions over the SBFZ.

Both the RTC and the CA had correctly found the CUSA Fee as reasonable and not confiscatory. The Court is also convinced by the illustration provided by the SBMA that the actual collections were not

[49] Id. at 282-823; *Victorias Milling Co., Inc. v. Municipality of Victorias,* 134 Phil. 180, 189-190 (1968), cited in *Progressive Development Corportion v. Quezon City*, supra note 46, at 646 (1989) and *Smart Communications, Inc. v. Municipality of Malvar, Batangas,* 727 Phil. 430, 442 (2014).

sufficient for the annual cost of providing the four services they cover. Hence, We reject the position made by Philip Morris that the CUSA Fee is a tax measure since the revenue generated therefrom did not exceed the cost of the regulation.

The penalty for non-payment of the CUSA Fee is sustained.

On the issue of the alleged non-publication of the penalty charges for non-payment of the CUSA Fee, the same is likewise without merit.

Procedural due process demands that administrative rules and regulations be published in order to be effective.[50] In *Tañada v. Tuvera,*[51] the Court ruled that publication is indispensable for the validity of all statutes, including administrative rules that are intended to enforce or implement existing laws:

> We hold therefore that *all* statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.
>
> Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. **Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation**.[52] (emphasis supplied)

Sec. 3 of Chapter 2, Book VII of the Administrative Code of 1987 further required the filing of the proposed administrative regulations with the Office of the National Administrative Register *(ONAR),* UP Law Center.

> Section 3. Filing. —
>
> (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule

[50] *Association of Southern Tagalog Electric Cooperatives, Inc. (ASTEC) v. Energy Regulatory Commission,* 695 Phil. 243, 273 (2012), citing *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission,* 517 Phil. 23, 61-62 (2006) and *Republic of the Philippines v. Express Telecommunications Co., Inc.,* 424 Phil. 372, 393 (2002).
[51] 230 Phil. 528 (1986).
[52] Id. at 535.

> adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.
>
> (2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under paid of disciplinary action.
>
> (3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

In this case, the publication requirement was duly complied with as evidenced by the Affidavit of Publication issued by two (2) newspapers of general circulation.[53] The published SBMA Board Resolution contained a penalty clause for non-compliance. Both the RTC and the CA found that the questioned CUSA Policy including the penalties for non-compliance were registered with the ONAR UP Law Center. The individual notices sent to tenants and residents likewise set forth in detail the imposable penalties for non-payment of the CUSA Fee.

WHEREFORE, the petition is **DENIED**. The December 15, 2016 Decision and July 11, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 145186 are hereby **AFFIRMED**.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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- over -

[53] *Rollo*, pp. 575-576.

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