

SECOND DIVISION

[G.R. No. 180639, June 29, 2010]

**LEPANTO CONSOLIDATED MINING COMPANY, PETITIONER, VS.
HON. MAURICIO B. AMBANLOC, IN HIS CAPACITY AS THE
PROVINCIAL TREASURER OF BENGUET, RESPONDENT.**

DECISION

ABAD, J.:

This case is about the liability of a mining corporation for taxes imposed by a province for the extraction of sand and gravel from areas covered by its mining lease with the national government and used exclusively in its mining operations.

The Facts and the Case

The national government issued to petitioner Lepanto Consolidated Mining Company (Lepanto) a mining lease contract covering, among others, its "TIKEM" leased mining claim at Sitio Nayak, Barrio Palasan (Suyoc), Municipality of Mankayan, Benguet. The contract granted Lepanto the right to extract and use for its purposes all mineral deposits within the boundary lines of its mining claim. Upon inquiry, the Mines and Geo-sciences Bureau of the Department of Environment and Natural Resources (DENR) advised Lepanto that, under its contract, it did not have to get a permit to extract and use sand and gravel from within the mining claim for its operational and infrastructure needs. Based on this advice, Lepanto proceeded to extract and remove sand, gravel, and other earth materials from the mining site.

Lepanto used the quarried materials to back-fill stopes--portions of the earth excavated as a result of mining--replacing what had been mined to maintain the integrity of the ground. It also used sand and gravel to construct and maintain concrete structures needed in its mining operation, such as a tailings dam, access roads, and offices. Its use of quarry resources, readily available within its mining claim, was more practical and cheaper than having to outsource them.

Respondent Mauricio Ambanloc, the provincial treasurer of Benguet, sent a demand letter to Lepanto, asking it to pay the province P1,901,893.22 as sand and gravel tax, for the quarry materials that it extracted from its mining site from 1997 to 2000. Lepanto sent a letter-protest to the provincial treasurer, but the latter denied the same, insisting on payment.

Lepanto filed a petition with the Regional Trial Court (RTC) of Benguet to question the assessment.^[1] The RTC ruled that Lepanto was liable for the amount assessed, with interest at the rate of 2 percent per month from the time the tax should have been paid. Lepanto appealed the RTC decision to the Court of Tax Appeals (CTA) where it was raffled to its Second Division.^[2] The Second Division affirmed the ruling of the RTC with the modification that the interest of 2 percent per month shall

not exceed 36 months.^[3]

Lepanto appealed the decision of the Second Division to the CTA *En Banc*.^[4] Three justices of the CTA voted to affirm the decision but three justices dissented. Because the needed vote of four members could not be obtained, the *En Banc* dismissed the appeal, resulting in the affirmance of the decision of the Second Division. Lepanto's motion for reconsideration met the same fate, hence, this appeal.

The Issue Presented

The sole issue presented in this case is whether or not Lepanto is liable for the tax imposed by the Province of Benguet on the sand and gravel that it extracted from within the area of its mining claim and used exclusively in its mining operations.

The Court's Rulings

One. Lepanto claims that the tax on sand and gravel applied only to commercial extractions. In its case, it extracted these materials for use solely in its mining operations. Lepanto did not supply other users for some profit. Thus, its extractions were not commercial and should not be subject to provincial tax.

The CTA's Second Division held, however, that sand and gravel taxes may be imposed even on non-commercial extractions. Since Section 138 of the Local Government Code (Republic Act 7160) authorized provinces to impose a tax on the extraction of sand and gravel from public lands, without distinguishing between personal and commercial uses, then the tax should be deemed to cover extractions for both purposes. The provision reads:

Sec. 138. Tax on Sand, Gravel and Other Quarry Resources. - The province may levy and collect not more than ten percent (10%) fair market value in the locality per cubic meter of ordinary stones, sand gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.

But the CTA Second Division ruling overlooks the fact that Republic Act 7160 is not the provincial government's basis for taxing Lepanto's extraction. It is but the general law that delegates to provinces the power to impose taxes on the extraction of quarry resources. As it happens, the scope and validity of such delegation is not the issue in this case. The question of Lepanto's liability for tax should be determined based on the revenue measure itself, which in this case, was the Revised Benguet Revenue Code (the revenue code).^[5] The relevant provisions of this provincial revenue code reads:

Article D. Tax on Sand, Gravel and Other Quarry Resources.

x x x x