REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

HOLCIM PHILIPPINES, INC., *Petitioner,*	**CTA AC NO. 283**
-versus-	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
THE CITY OF MANILA AND JOSEPHINE D. DAZA, IN HER CAPACITY AS THE CITY TREASURER OF THE CITY OF MANILA, *Respondents.*	Promulgated: 1:25 p.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For the Court's resolution are (i) respondents' *Partial Motion for Reconsideration* ("respondents' Motion"), filed on November 13, 2024, with petitioner's *Comment (Re: Respondents' Partial Motion for Reconsideration dated November 13, 2024)*, filed on December 2, 2024; (ii) petitioner's *Motion for Reconsideration (Re: Decision dated October 22, 2024)* ("petitioner's Motion"), filed on November 14, 2024; and (iii) respondents' *Manifestation and Notice of Appearance*, filed on December 11, 2024. Both Motions assail this Court's Decision, dated October 22, 2024, which partially granted the refund sought by petitioner. Respondents' Motion serves as their comment to petitioner's Motion, as per the aforementioned Manifestation.

In their Motion, respondents argue that (i) *Section 143 of the Local Government Code* ("*LGC*") only identifies cement as an essential commodity, not petitioner's other products, so petitioner should not enjoy the preferential rate provided by the provision; (ii) petitioner's failure to submit its gross sales/receipts renders it not entitled to the preferential rate; and (iii) registration with the Securities and Exchange Commission ("SEC") is different from obtaining the authority to run a business in a specific locality.

Petitioner, meanwhile, primarily argues against the Court's finding that respondents' use of the Presumptive Income Level Assessment Approach ("PILAA") was justified, observing that respondents themselves admitted the amount of gross sales/receipts of petitioner for the year 2018 during the Pre-Trial held before the Regional Trial Court ("RTC").

Acting first on the *Manifestation and Notice of Appearance*, the same is hereby **NOTED**.

As for the Motions, they both lack merit.

Anent respondents' contention that the preferential rate provided by the *LGC* cannot apply to petitioner as the latter does not wholesale and/or manufacture cement only, the Court rejects the same. We quote from *Section 143 of the LGC* below:

> SECTION 143. Tax on Business. — The municipality may impose taxes on the following businesses:
>
> (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:
>
> With gross receipts for the preceding calendar year in the amount of:
>
> . . . .
>
> (b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:
>
> With gross receipts for the preceding calendar year in the amount of:
>
> . . . .
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section:
>
> . . . .
>
> (8) Cement.
>
> (d) On retailers.
>
> With gross receipts for the preceding calendar year in the amount of:

Meanwhile, *Section 131(n) of the LGC* defines the phrase "gross sales or receipts" as follows:

> (n) "Gross Sales or Receipts" include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT); . . .

The Court observes the following from the above:

(1) *Section 143(c)* does *not* use terms of exclusivity; in other words, it uses the phrase "of essential commodities" but not "of essential commodities *only*" or "of essential commodities *exclusively*";

(2) With its constant use of the phrase "gross receipts", *Section 143* focuses on distinct types of *businesses*, not distinct and differentiated *sales* of types of commodities manufactured, wholesaled, etc.; and

(3) *Section 143(c)* contains no indication that its preferential rate should be applied to the sales of specific essential commodities *only* and not, following the other subsections, to the total sales, the "gross receipts" of businesses dealing in said essential commodities.

Considering the above, the Court cannot accept respondents' argument here. To reiterate, nothing in the law says that the preferential rate applies to businesses dealing with essential commodities *only*, or that said rate applies not to the "gross receipts" of such a business but to its sales of the essential commodity *only*. Petitioner, being primarily a wholesaler and/or manufacturer of cement, is entitled to the preferential rate for cement on its gross sales/receipts, its dealings with cement products, by-products, derivatives, and so on notwithstanding.

On respondents' argument that petitioner's failure to submit its gross sales/receipts precludes it from the preferential rate, the same misses the point. Petitioner's failure to submit its gross sales/receipts has no bearing on whether it is entitled to the preferential rate. The only aspect of significance here is whether it deals in one of the enumerated essential commodities. Indeed, such failure is relevant only to the determination of whether respondents were justified in using PILAA, and the Court already agreed with them on that score. As such, the argument raises no actual challenge to Our ruling.

Regarding respondents' contention that registration with the Securities and Exchange Commission is different from being granted the authority to operate a business in a city, the same is irrelevant. The question is whether petitioner is entitled to the preferential rate under *Section 143(c) of the LGC*, *i.e.*, whether petitioner is a manufacturer/wholesaler of an essential commodity. The question is *not* whether petitioner is permitted to operate a business in the City of Manila. Being irrelevant, the argument is toothless as well.

Finally, petitioner's insistence that respondents admitted the amount of its gross sales/receipts rests on shaky ground. Recall that the major requirement for using PILAA is that the taxpayer is unable to provide proof of its gross sales/receipts. Respondents' admission, however, was made during the pre-trial before the RTC, *long after* they had made the assessment. As such, *at the time when they were assessing petitioner*, neither proof nor admission of petitioner's gross sales/receipts were available to them. There being no such proof or admission available, respondents had practically no recourse but to rely on PILAA. Their use of such an approach was thus justified.

In sum, neither Motion raises good reason to disturb Our ruling in the assailed Decision.

ACCORDINGLY, respondents' *Partial Motion for Reconsideration* and petitioner's *Motion for Reconsideration (Re: Decision dated October 22, 2024)* are both hereby **DENIED** for lack of merit. The Decision, dated October 22, 2024, is **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I reiterate my Concurring & Dissenting Opinion in the assailed Decision.
CORAZON G. FERRER-FLORES
Associate Justice