Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

UNILEVER PHILIPPINES, INC
Petitioner,

-versus-

THE TREASURER OF THE CITY OF MANILA,
Respondent.

CTA A.C. No 26
(RTC Branch 47, Manila)
(Civil Case No. 03-106337)

Members:
ACOSTA, *Chairperson.*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAY 26 2008 ; 1:10 pm

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DECISION

Casanova, J.

This is an appeal, by way of a Petition for Review[1], filed by the Petitioner-UNILEVER PHILIPPINES, INC. (UNILEVER), under Section 9 of Republic Act No. 9282, in relation to Section 42 of the Revised Rules of Court. It is brought to question the April 10, 2006 Decision[2] (Assailed Decision) and the August 24, 2006 Order[3] (Assailed Order) of the Honorable Regional Trial Court (RTC) of Manila, Branch 47 in Civil Case No. 03-106337 entitled, "*Unilever Philippines, Inc. vs. The Treasurer of the City of Manila.*" In the Assailed Decision, the court *a quo* dismissed petitioner's Complaint and, thereafter, denied petitioner's Motion for Reconsideration in its Order dated August 24, 2006.

[1] CTA Rollo, p. 1-21.
[2] CTA Rollo, Petition for Review Annex A, pp.26-31.
[3] CTA Rollo, Petition for Review Annex B p. 32.

The facts of the case as culled from the records are as follows:

Petitioner is a domestic corporation duly organized under the laws of the Philippines with principal office address at 1351 United Nations Avenue, Manila. On the other hand, respondent is the Treasurer of the City of Manila and is being sued in such capacity. She is tasked with the implementation of the City's Revenue Code, as well as the collection and assessment of business taxes, license fees and permit fees within said City.

Petitioner scrupulously pays the business taxes collected from it by the City of Manila. On April 19, 2001, it paid taxes under both Sections 14 and 21 of the Manila Revenue Code (MRC), corresponding to the second quarter of 2001.

Section 14 of the MRC provides for tax on manufacturers, assemblers and other processors of articles of commerce, to wit:

> "SECTION 14. Tax on Manufacturers, Assemblers and Other Processors — There is hereby imposed a graduated tax 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 xxx"

Section 21 of the same code, on the other hand, imposes tax on businesses subject to the excise, value-added or percentage taxes under the National Internal Revenue Code. Section 21 states:

> "SECTION 21. Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC. — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of three percent (3%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code. Xxx"

The rates under both provisions were changed by amendment to the MRC, such as Ordinance No. 7988 in the year 2000 and Ordinance No. 8011 in the year 2001.

Thus, for the second quarter of 2001, petitioner paid a total of P8,773,943.99[4] under Section 21.

In a letter[5] dated October 4, 2001, petitioner filed a claim for refund of business taxes assessed and collected on the basis of Section 21 of the City's Revenue Code. Despite receipt of the letter, no refund was made by the respondent, constituting a denial of the said claim for refund. Thus, within the two (2) year period from the date of payment, petitioner filed a Petition for Refund[6] before the Regional Trial Court of Manila on April 15, 2003, claiming refund of business taxes assessed and collected erroneously from petitioner under Section 21 of the MRC, and under Ordinance Nos. 7988 and 8011 amending said Code.

In her Answer[7] dated April 30, 2003, respondent admitted the personality of the parties as well as their capacity to sue and be sued. She also admitted the fact of payment, the fact of demand for refund, as well as the basis for the claim for refund, specifically Sections 14 and 21 of the MRC. She, however, denied that petitioner is entitled to refund.

During the pre-trial conference, it was agreed that the only matter to be resolved by the trial court is the legal issue of whether petitioner is entitled to a refund of business taxes paid under Section 21 of the MRC for the second quarter of 2001. The parties were directed to file their respective Memorandum[8].

[4] CTA Rollo, Petition for Review Annex C, p. 33.
[5] CTA Rollo, Petition for Review Annex D, pp. 34-36.
[6] CTA Rollo, Petition for Review Annex E, pp. 37-47.
[7] CTA Rollo, Petition for Review Annex F, pp.48-58.
[8] CTA Rollo, Petition for Review Annex G (petitioner's Memorandum) and Annex H (respondent's Memorandum) pp. 59-74 and pp. 75-91, respectively.

On April 10, 2006, the Regional Trial Court rendered the Assailed Decision dismissing the petition. In denying the Petition for Refund, the court a quo relied on respondent's argument that the assessment on and collection from petitioner of taxes under both Section 14 and 21 of the MRC does not constitute double taxation. Thus, the dispositive portion of the Assailed Decision states:

> *"The Court after going over the arguments contained in the respective Memoranda filed by the parties in this case as well as the pertinent laws and jurisprudence on the matter finds and so holds that the taxes imposed under Section 21 of the Manila Revenue Code are different from the taxes collected under Section 14 of the same Code, thus, there is no double taxation to speak of.*
>
> *In view of the foregoing, the petitioner's claim for refund is disallowed and this petition is hereby dismissed for lack of merit.*
>
> *SO ORDERED."*

Aggrieved by the above-mentioned Decision, petitioner filed a Motion for Reconsideration[9] on June 2, 2006 which was subsequently denied by the court a quo in its Order[10] dated August 24, 2006, to wit:

> *"WHEREFORE, the Motion for Reconsideration filed by the petitioner is DENIED.*
>
> *SO ORDERED."*

On November 8, 2006, petitioner filed the instant Petition for Review[11] praying that:

1. The Petition for Review be given due course;
2. After due consideration, render judgment reversing and setting aside the 12 May 2006[12] Decision and 27 July 2006[13] Order of the Honorable Regional Trial Court and:

[9] CTA Rollo, Petition for Review Annex I, pp.92-108.
[10] Supra, note 3.
[11] Supra, note 1.
[12] Should be April 10, 2006.
[13] Should be August 24, 2006.

a. DECLARING that petitioner Unilever is not liable for business taxes under Section 21 of the City of Manila's Revenue Code having already paid business taxes under Section 14 thereof; and

b. REFUNDING to petitioner Unilever taxes paid thereunder for the third[14] quarter of the year 2001 in the amount of P8,773,943.99.

Petitioner raised the following ground[15] in support of the instant Petition for Review, to wit:

> "THE ENFORCEMENT OF SECTION 21 OF THE CITY OF MANILA'S REVENUE CODE AGAINST PETITIONER CONSTITUTES DOUBLE TAXATION PROHIBITED BY LAW IN VIEW OF TAXES COLLECTED BY THE CITY AND PAID BY PETITIONER UNDER SECTION 14 OF THE REVENUE CODE. THUS, THE TAXES COLLECTED BY RESPONDENT BEING CLAIMED IN THE PROCEEDINGS A QUO IN THE AMOUNT OF P8,773,943.99 SHOULD BE IMMEDIATELY REFUNDED."

In an Order[16] dated December 20, 2006, respondent was required to file a Comment within fifteen (15) days from receipt of the said Order. Further, petitioner was also ordered to submit the original or a certified true copy of the Secretary's Certificate attached to the Petition for Review.

Petitioner filed a "Motion for Extension of Time"[17] praying that it be given an extension of five (5) days from January 14, 2007 or until January 19, 2007, within which to submit the original or certified true copy of the Secretary's Certificate. On January 25, 2007, petitioner filed a "Submission"[18] attaching therewith the required Secretary's Certificate and apologizing for the delay in filing the said Submission. In an Order dated January 26, 2007, the Court

[14] Should be second quarter of 2001.
[15] Petition for Review, CTA Rollo, p. 6.
[16] CTA Rollo, p. 115.
[17] CTA Rollo, p. 116-118.
[18] CTA Rollo, pp. 120-122.

granted petitioner's Motion for Extension of Time and noted petitioner's Submission of its Secretary's Certificate.

On the other hand, on January 25, 2007 respondent filed through registered mail a "Motion for Extension of Time to File Comment"[19] praying for an extension of fifteen (15) days from the above-mentioned date within which to file a Comment on the instant Petition for Review. Said motion was granted by the Court in an Order[20] dated February 5, 2007.

On February 6, 2007, respondent filed a Comment[21] praying that the instant Petition for Review be denied due course and dismissed for lack of merit.

Respondent argued that the tax imposed upon petitioner under Section 21 of the MRC, as amended, is in a concept of indirect tax upon end-users of the goods and services of the business, not the establishment itself. It represents additional amounts affixed by petitioner to the basic prices of its goods and services which are paid by the end-users to the business establishments. Section 21 is actually not a tax on the business of the petitioner but on the end-users whereas under Section 14 (Manufacturer's tax) the tax is specifically levied on the business of petitioner being a manufacturer.

In addition, respondent stated that the instant case is legally impermissible because petitioner has no cause of action. Petitioner failed to appeal the revenue measure within 30 days from its enactment, thus, it is already barred to seek redress for its failure to observe Section 187 of the 1991 Local Government Code (LGC).

In a Resolution[22] dated February 20, 2006, *(should be 2007)* the Court gave both parties a period of thirty (30) days from notice thereof to file their simultaneous Memoranda. On March 12, 2007, petitioner filed a Memorandum in

[19] CTA Rollo, pp. 124-126.
[20] CTA Rollo, p. 128.
[21] CTA Rollo, pp. 129-145.
[22] CTA Rollo, p. 148.

compliance with the said Resolution. Respondent, on the other hand, filed, through registered mail, a "Motion for Extension of Time to File Memorandum"[23] on April 4, 2007. Said motion was granted by the Court in an Order[24] dated April 18, 2007, giving the respondent until April 19, 2007 within which to file a Memorandum. On May 11, 2007, the Court promulgated a Resolution[25] submitting the instant case for decision considering the Memorandum filed by the petitioner on March 12, 2007 sans respondent's Memorandum.

On July 12, 2007, the Court issued a Resolution[26] directing the Branch Clerk of Court of Branch 47, City of Manila, to forward before the CTA all the records of Civil Case No. 03-106337. In addition, the Resolution dated May 11, 2007 was set aside.

On October 3, 2007, Atty. Rogelio M. Linatoc, Clerk of Court V, transmitted the entire records of Civil Case No. 03-106337 in compliance with the said Resolution. On October 18, 2007, the case was submitted for decision.

After a careful perusal of the arguments raised by both parties in their respective pleadings and the pieces of evidence presented before this Court, We find merit in petitioner's contentions.

To begin with, the authority of the City of Manila to impose taxes as well as its limitations thereof is provided for in the Philippine Constitution under Section 5, Article X, "LOCAL GOVERNMENT", to wit:

> "Sec. 5. Each local government unit shall have the power to create its sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such fees, taxes, and charges shall accrue exclusively to the local governments."

[23] CTA Rollo, pp. 164-165.
[24] CTA Rollo, p. 169.
[25] CTA Rollo, p. 170.
[26] CTA Rollo, p. 172.

Pursuant to the constitutional mandate, Congress enacted the Local Government Code of 1991 (LGC) that set forth the guidelines and limitations on the power to tax of local governments like City of Manila, to wit:

> "Sec. 128. Scope. – The provisions herein shall govern the exercise by provinces, cities, municipalities, and barangays of their taxing and other revenue-raising powers.
>
> Sec. 129. Power to Create Sources of Revenue. - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units."

The City of Manila, through the Revised Revenue Code of the City of Manila (RRCCM), otherwise known as Tax Ordinance No. 7988, as amended by Ordinance No. 8011, imposes and collects taxes on people, transactions and businesses found within its jurisdiction. Petitioner in the instant case is a manufacturer and pays taxes to the City of Manila by virtue of Sections 14 and 21 of the Tax Ordinance No. 7988, as amended. A manufacturer is defined by the LGC as:

> SEC. 131. *Definition of Terms.* - When used in this Title, the term:
>
> xxx
>
> (o) "Manufacturer" includes every person who, by physical or chemical process, alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured products so as to reduce it to marketable shape or prepare it for any of the use of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption;

Based on the above definition, a manufacturer is any person that changes, modifies or combines any product to take the form of another product or finished product for the purpose of selling or distributing them to others for a fee.

Section 14 of Ordinance No. 7988, as amended, imposes a percentage tax 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 with the gross sales or receipts for the preceding calendar year in accordance with the schedule provided therein. Section 21 on the other hand, is entitled "Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes under the NIRC" and it provides for the imposition of a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts on the business and articles of commerce subject to excise, value added or percentage taxes under the National Internal Revenue Code (NIRC).

Respondent avers that a manufacturer's tax under Section 14 is distinct and different from the imposition under Section 21 of tax on businesses subject to the excise, value-added or percentage taxes under the NIRC.

Respondent's argument is not correct.

In the case at bench, petitioner is being taxed as a manufacturer of goods in Section 14 of the ordinance. Likewise, it is taxed under Section 21 (a) on its business of selling manufactured goods. Hence, both Sections 14 and 21 of the MRC are business taxes based on petitioner's sales as a manufacturer.

Respondent states that the residual power of the City of Manila to tax is plenary and explicit, as provided for in Section 186 of the LGC.[27]

[27] "Local Government Units may exercise the power to levy taxes, fees, or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code as amended or other applicable laws; Provided, that the taxes, fees, or other charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy; Provided, further, that the ordinance levying such taxes, fees, or charges shall not be enacted without any prior public hearing conducted for the purpose."

It must be noted that among the limitations contained in the LGC on local government units like the City of Manila is specified in Section 143 (h) thereof, which reads as follows:

> "Sec. 143. Tax on Business- The municipality may impose taxes on the following businesses:
> xxx
>
> (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
>
> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein."

From the above provision, paragraph (h) explicitly provides that the taxes therein may no longer be imposed on businesses subjected to tax under paragraphs (a) to (g) of the same section, which reads as follows:

> "SEC. 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 sales or receipts for the Amount of Tax preceding calendar year in the amount of:
>
> 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 Amount of Tax preceding calendar year in the amount of:
>
> x x x
>
> (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 (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:
>
> (1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;
(3) Cooking oil and cooking gas;
(4) Laundry soap, detergents, and medicine;
(5) Agricultural implements, equipment and post- harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;
(6) Poultry feeds and other animal feeds;
(7) School supplies; and
(8) Cement.

(d) On retailers, With gross sales or receipts Rate of tax for the preceding calendar year of:

x x x

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 (P=50,000.00) or less, in the case of cities, and Thirty thousand pesos (P=30,000.00) or less, in the case of municipalities.

(e) On contractors and other independent contractors, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:

x x x

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually. "

From the foregoing, paragraph (h) states that a tax may only be imposed on "any business, not otherwise specified in the preceding paragraphs", i.e. paragraphs (a) to (g). This clearly indicates the intention of the framers of LGC to include in subsection (h) those businesses or persons not covered in subsections (a) to (g). Petitioner in the instant case has already been taxed on business tax on manufacturers under Sec. 14 of the RRCCM or Tax Ordinance No. 7988. Thus, subjecting the petitioner to the business tax of manufacturers subject to excise tax, value-added tax or percentage tax under NIRC again under Sec. 21 of the same code is an apparent violation of Sec. 143 (h) of the LGC, which is tantamount to double taxation. Note that Section 14 of the Tax Ordinance is derived from Section 143 (a) of the Local Government Code.

Double taxation as defined by the Supreme Court means:

> "Taxing the same property twice when it should be taxed only once; that is, "x x x taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character." [28]

Moreover, in the Pepsi-Cola case, the Supreme Court likewise said:

> "Double taxation, in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality."[29]

Respondent submits to this Court that there was no double taxation in the instant petition as the taxes imposed in Sections 14 and 21 are of two different kinds or characters, being taxed on two different entities (i.e. to petitioner and its customers respectively) and for different purposes.

This Court rules otherwise.

In the long line of cases[30] decided by this Court, it was consistently held that the imposition of business taxes under Sections 14 and 21(a) of the MRC as amended, upon a manufacturer like the petitioner constitutes double taxation as

[28] Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003.
[29] Pepsi-Cola Bottling Co. of the Philippines, Inc. vs. Municipality of Tanauan, Leyte, No. L-31156, February 27, 1976, 69 SCRA 466-467.
[30] Unilever Philippines, Inc. vs. The Treasurer of Manila, CTA AC No. 25, June 18, 2007; Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila vs. Unilever Philippines, Inc. , CTA A.C. No. 21, May 10, 2007; Alcan Packaging Starpack Corporation (formerly Starpack Philippines Corporation) vs. The Treasurer of the City of Manila, CTA AC No. 17, September 11, 2006; Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila, CTA AC No. 15, July 21, 2006;

there was taxation twice, for the same activity (i.e. manufacturing), by the same public authority within the same taxing jurisdiction (City of Manila) for the same purpose (i.e. to generate revenue for the City of Manila) for the same taxable period, which is in the case at bar, second quarter of 2001.

This Court submits that Sections 14 and 21 of the Ordinance No. 7988, as amended are founded under Section 143 of the LGC. A comparison of their contents reveals that Sections 14 and 21 of Ordinance No. 7988 has semblance with Section 143 (a) and (h) respectively of the LGC, to wit:

LGC	**Ordinance No. 7988**
"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:**	Section 14. "Tax on Manufacturers, Assemblers, and Other Processors - There is hereby imposed a graduated tax **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:**
Section 143. Tax on Business – The municipality may impose taxes on the following businesses: xxx (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, **That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended,** the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding	Section 21. Tax on Businesses Subject to Excise, Value-Added or Percentage Taxes Under the NIRC. – **On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereafter referred to as NIRC, as amended,** a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:

a

calendar year. The sanggunian concerned may prescribe a schedule of graduated tax rates by in no case to exceed the rates prescribed herein. (Emphasis Ours)	(A) On persons who sell goods and services in the course of trade or business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of said code. (Emphasis Ours)

Clearly, the enumerated businesses in the aforementioned provisions in the LGC and the MRC are the same.

In addition, respondent avers that petitioner's case is legally impermissible because it has no cause of action as it was already barred to seek redress for its failure to observe Section 187 of the LGC, which reads as follows:

> "Sec. 187. Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings. – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That the public hearings shall be conducted for the purpose prior to the enactment thereof: Provided further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee or charge levied therein: Provided, finally, That within thirty (30) days after the receipt of the decision or the lapse of the sixty day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction."

Respondent alleges that petitioner failed to appeal the revenue measure within thirty (30) days from its enactment; therefore, it is barred from filing the complaint in the court a quo. Respondent further said that Section 187 is a condition sine qua non before resort to the court may be had. Moreover, respondent said petitioner is estopped to file a claim for refund for its failure to appeal the assessment she made in utter disregard of Section 195 of the LGC, which reads as follows:

> "Sec. 195. – Protest of Assessment. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from receipt of the notice of assessment, the taxpayer may file a

> written protest with the local treasurer contesting the assessment; otherwise the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappelalable."

Respondent further contends that for failure of the petitioner to contest the assessment, it can no longer validly claim for a tax refund or credit.

We are not persuaded.

The foregoing provisions of the LGC cover the protest of assessment and the procedure for approval and effectivity of tax ordinances and revenue measures. It must be noted that the present case involves a claim for refund under the RRCCM. Clearly, a refund is not the same case as that of a disputed assessment which is referred to in Section 195 of the LGC. Petitioner in the instant case did not raise any issue regarding incorrect assessment since there was no notice of assessment issued by herein respondent to petitioner requiring the latter to pay its taxes. Technically speaking, there was no assessment to protest to.

Moreover, Section 187 of the LGC specifically provides that "any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) day xxx" In the present case, petitioner did not question the legality of Sections 14 and 21. It only posits the enforcement thereof, as it already paid business taxes under Section 14 of the RRCCM as well as Section 21 of the same code. Thus, Section 187 has no application in the instant case.

Lastly, the Court would like to take judicial notice the case of Coca Cola Bottlers Philippines, Inc. vs. City of Manila, et. al. G.R. No. 156252, June 27,

2006. In the said case, the Highest Tribunal declared null and void Tax Ordinance 7988, as amended by Tax Ordinance No. 8011 of the City of Manila, for failure to comply with the publication requirements of ordinances as prescribed by the LGC, to wit:

> "Section 188. Publication of Tax Ordinances and Revenue Measures. – Within ten (10) days after their approval, certified true copies of all provincial, city and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation; Provided, however, that in provinces, cities, and municipalities where there are no newspapers or local circulations the same may be posted in at least two (2) conspicuous and publicly accessible places."

The Coca Cola case is a *stare decisis* in the case at bench. The subjects of the instant petition are Sections 14 and 21 of Ordinance No. 7988, as amended by Ordinance No. 8011.

The Supreme Court defined *stare decisis* in its previous rulings, to wit:

> "*Stare decisis et non quieta movere.* Stand by the decision and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[31]"

> "Under the doctrine of *stare decisis*, once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised. *Stare decisis* proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike.[32]"

As stated by the Supreme Court, Ordinance No. 7988, as amended by Ordinance 8011 is null and void. An invalid ordinance does not, in legal contemplation, exist. A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise

[31] Grand Placement and General Services Corporaton vs. Court of Appeals, et. al., G.R. NO. 142358,January 31, 2006.
[32] Ayala Corporation vs. Rosa-Diana Realty and Development Corporation, G.R. No. 134284, December 1, 2000.

needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people.[33] However, the authority of the City of Manila to impose taxes by virtue of the Local Government Code of 1991 is not absolute. In the present case, respondent gets its authority to tax the petitioner from an invalid ordinance. It cannot impose taxes that constitute a violation of the constitutional principle of uniformity and equal protection in taxation.

Moreover, jurisprudential rule states that only decisions of the Supreme Court are authoritative and precedent setting. Since the Coca Cola case is a stare decisis in the instant case, the ruling of the High Court, will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision promulgated on April 10, 2006 and the Order dated August 24, 2006, both issued by Hon. Augusto T. Gutierrez of RTC Branch 47, City of Manila, are hereby **REVERSED** and **SET ASIDE**.

Accordingly, respondent-Treasurer of the City of Manila is **ORDERED TO REFUND** to petitioner Unilever Philippines, Inc. the amount of **EIGHT MILLION SEVEN HUNDRED SEVENTY THREE THOUSAND NINE HUNDRED FORTY THREE PESOS AND 99/100 (Php 8,773,943.99)** representing petitioner's erroneously paid local business taxes for the second quarter of taxable year 2001.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[33] Reyes vs. Court of Appeals, 320 SCRA 486.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice