**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

| | |
|---|---|
| **THE CITY OF TAGUIG AND ATTY. J. VOLTAIRE ENRIQUEZ IN HIS CAPACITY AS THE CITY TREASURER OF THE CITY OF TAGUIG,** Petitioners, | **CTA EB NO. 2927** (CTA AC No. 268) |
| | Present: |
| - versus - | **DEL ROSARIO, *P.J.*,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES *JJ.*** |
| **HOLCIM PHILIPPINES, INC.,** Respondent. | Promulgated: SEP 29 2025 4:20 p.m. |

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

## DECISION

***FERRER-FLORES, J.:***

At bar is a **Petition for Review (Re: Decision dated November 15, 2023 and Resolution dated March 5, 2024 of the Special Second Division, Court of Tax Appeals)** filed by petitioners **The City of Taguig and Atty. J. Voltaire Enriquez, in his capacity as the City Treasurer of the City Of Taguig** on June 24, 2024 assailing the Decision dated November 15, 2023[1] (assailed Decision), and the Resolution dated March 5, 2024,[2] (assailed Resolution) of the Court of Tax Appeals (CTA) Special Second Division[3] in CTA AC No. 268, the dispositive portions of which read:

---

[1] *Rollo*, pp. 70 to 95.

[2] *Id.* at 97 to 99.

[3] Penned by Associate Justice Lanee S. Cui-David and concurred in by Associate Justice Jean Marie A. Bacorro-Villena.

*Assailed Decision:*

**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**. Accordingly, the assailed Judgment dated May 6, 2022, and Order dated June 13, 2022, rendered by the RTC-Branch 271, City of Taguig, in Civil Case Nos. 447-TG and 490-TG are **REVERSED** and **SET ASIDE**.

Respondents are **ORDERED TO REFUND** petitioner Holcim Philippines, Inc., the amount of **P8,131,289.20**, representing its erroneously paid LBT for the year 2018.

**SO ORDERED.**

*Assailed Resolution:*

**WHEREFORE**, there being no new matters and issues raised that will merit a reconsideration, let alone modification of the assailed Decision of November 15, 2023, respondents' *Motion for Reconsideration (of the Decision dated November 15, 2023)* is **DENIED** for lack of merit.

**SO ORDERED.**

## THE PARTIES[4]

Petitioner City of Taguig (petitioner City) is a local government unit created by law with principal office located at Taguig City Hall, Gen. Luna Street, Tuktukan, Taguig City and is represented by the City Legal Office of Taguig City with office address at 4th Floor, Taguig City Hall, General Luna Street, Tuktukan, Taguig City.

Petitioner Atty. J. Voltaire L. Enriquez (petitioner Enriquez) is the City Treasurer of the City of Taguig and is likewise represented by the City Legal Office of Taguig City.

Respondent **Holcim Philippines, Inc.** (respondent/Holcim) is a domestic corporation organized and existing under the laws of the Philippines, with principal office located at the 7th Floor, Venice Corporate Center, McKinley Town Center, Fort Bonifacio, Taguig City.

4 Paragraph (Par.) 9, III. Parties, *Petition for Review (Re: Decision dated November 15, 2023 and Resolution dated March 5, 2024 of the Special Second Division, Court of Tax Appeals), Rollo*, pp. 42 to 43.

## FACTUAL ANTECEDENTS

The factual antecedents as narrated in the assailed Decision are as follows:[5]

> On January 10, 2018, as required for its application for the renewal of a business permit, petitioner [herein respondent] executed a Certification stating that its gross sales/receipts for January to December 2017 amounted to ₱3,539,770,902.34.
>
> On January 15, 2018, April 4, 2018, June 11, 2018, and September 18, 2018, respondent City of Taguig [herein petitioner City] issued four (4) Billing Statements assessing petitioner [herein respondent] of LBT for the 1st, 2nd, 3rd and 4th quarters of 2018, respectively, in the amount of ₱4,024,943.93 for each quarter.
>
> On January 19, 2018, April 19, 2018, July 13, 2018, and October 11, 2018, petitioner [herein respondent] paid the LBT as evidenced by Official Receipt Nos. A-3750183, A-3919879, A-4035852, and A-4121919, [16] respectively, detailed as follows:

| Quarter Covered (2018) | Billing Date | LBT | Date of Payment | Official Receipt |
|---|---|---|---|---|
| 1st | January 15, 2018 | ₱4,024,943.93 | January 19, 2018 | A-3750183 |
| 2nd | April 4, 2018 | ₱4,027943.93 | April 19, 2018 | A-3919879 |
| 3rd | June 11, 2018 | ₱4,027943.93 | July 13, 2018 | A-4035852 |
| 4th | September 18, 2018 | ₱4,027943.93 | October 11, 2018 | A-4121919 |

> On separate dates, specifically on March 16, 2018, May 30, 2018, August 2, 2018, and November 9, 2018, petitioner [herein respondent] sent to respondent City Treasurer [herein petitioner Enriquez] a letter requesting a refund of its alleged overpayment of LBT amounting to ₱2,032,820.80 for each quarter. Petitioner [herein respondent] maintains that the bases of the assessment for LBT for the 1st, 2nd, 3rd, and 4th quarters of 2018 were erroneous and contrary to law.
>
> Respondents [herein petitioner s] failed to act on each petitioner's [herein respondent's] letter request, prompting it to elevate its claim before the court *a quo*.

## PROCEEDINGS BEFORE THE RTC

As narrated in the assailed Decision, the proceedings before the Regional Trial Court (RTC) – Branch 271 are as follows:[6]

---

5 *Rollo*, pp. 71 to 72.
6 *Id.* at 73 to 75.

**Civil Case No. 447-TG:**

On November 6, 2018, petitioner [herein respondent] filed a *Petition for Refund* with the RTC, docketed as Civil Case No. 477-TG, praying that judgment be rendered granting its claim for refund of erroneously paid LBT for the 1st to 3rd quarters of 2018 in the aggregate amount of ₱6,098,468.40. The case was initially raffled to RTC-Branch 153 on November 18, 2018.

On March 15, 2019, respondents [herein petitioners] filed their Answer, while petitioner [herein respondent] filed its *Reply (Re: Respondent's Answer dated March 1, 2019)* on April 5, 2019.

Thereafter, or on May 9, 2019, petitioner [herein respondent] filed a *Motion for Consolidation with Motion to Defer Mediation.*

**Civil Case No. 490-TG:**

On February 8, 2019, petitioner [herein respondent] filed a *Petition for Refund* before the RTC, which was initially raffled to Branch 69, praying for the Court to render judgment granting petitioner's [herein respondent's] claim for refund of alleged erroneously paid LBT in the amount of ₱2,032,822.80 for the 4th quarter of 2018.

On April 16, 2019, respondents [herein petitioners] filed their *Answer*, while petitioner [herein respondent] filed its *Reply (Re: Respondent's Answer dated April 4, 2019)* on May 2, 2019.

On June 7, 2019, petitioner [herein respondent] filed a *Motion for Consolidation*, praying that Civil Case No. 490-TG be consolidated with Civil Case No. 447-TG.

**Consolidated cases a quo:**

On June 13, 2019, RTC-Branch 69 issued an Order, consolidating Civil Case No. 490-TG with Civil Case No. 447-TG pending before RTC-Branch 153.

In view thereof, RTC-Branch 153 issued the Order dated July 3, 2019, rendering moot the motion for consolidation filed by petitioner [herein respondent] in Civil Case No. 447-TG. In the same Order, the case was set for mediation.

Subsequently, and after a failed mediation, the case was set for Judicial Dispute Resolution (JDR) on October 17, 2019. However, there being no settlement reached by the parties, the JDR was terminated and ordered that the case be forwarded to the RTC's Office of the Clerk of Court for re-raffle to another branch, RTC-Branch 271 (court *a quo)* [herein RTC].

After filing the *Pre-Trial Brief for the Defendants* on September 17, 2020, and petitioner's [herein respondent's] *Pre-Trial Brief* on September 29, 2020, the case was set for *Pre-Trial* on November 11, 2021.

On February 10, 2022, the Pre-Trial was terminated, and the parties proceeded to trial, where they presented their respective documentary and testimonial evidence in support of their case.

Thereafter, or on May 6, 2022, the court a quo [herein RTC] rendered the assailed Judgment, the dispositive portion of which reads:

> "**ALL THE FOREGOING CONSIDERED**, the consolidated cases for ***Refund of Local Business Taxes in Civil Cases Nos. 447 and 490*** are hereby **DISMISSED**.
>
> **SO ORDERED.**"

In dismissing the consolidated cases for refund of LBT, the court a quo [herein RTC] ruled that while petitioner [herein respondent] is entitled to the 50% preferential rate given to manufacturers of cement in accordance with Section 143 (c) (8) of the Local Government Code (LGC), the filing of its judicial claims for refund on November 6, 2018 and February 8, 2019, respectively, were beyond the 30 days to appeal the claims in court. As found by the court *a quo*, the *Billing Statements* issued by respondents [herein petitioners] for the four (4) quarters of the taxable year 2018 were in the nature of Notices of Assessment. Considering that respondent City Treasurer [herein petitioner Enriquez] did not act on the four (4) protest letters, petitioner [herein respondent] should have filed its appeal before the court within thirty (30) days from the lapse of the sixty (60)-day period for the local treasurer to decide the protest, under Section 195 of the LGC.

Aggrieved, petitioner [herein respondent] filed a *Motion for Reconsideration (Re: Judgment dated May 6, 2022.* On May 26, 2022 but the same was denied in the equally assailed Order dated June 13, 2022.

## PROCEEDINGS BEFORE THE COURT IN DIVISION

Undeterred by the judgment of the RTC, respondent filed a *Petition for Review* on July 14, 2022.

On July 26, 2022, the Court issued a Resolution giving petitioners 10 days from notice to file their comment on the *Petition for Review*.

Petitioners filed their *Comment/Opposition (To Petitioner's Petition for Review dated 13 July 2022)* on September 19, 2022 via registered mail.

On October 25, 2022, the RTC forwarded the records of Civil Case Nos. 447-TG and 490-TG, which the Court noted in the Resolution dated November 2, 2022.

Considering the submission of respondent's *Memorandum* on November 3, 2022, and petitioners' *Memorandum* on November 17, 2022, the case was submitted for decision on December 9, 2022.

On November 15, 2023, the Court issued the assailed Decision.

Petitioners filed their *Motion for Reconsideration (of the Decision dated November 15, 2023)* on December 19, 2023, while Holcim filed its *Comment/Opposition (Re: Respondents' Motion for Reconsideration dated December 19, 2023)* on January 29, 2024.

The Court issued the assailed Resolution on March 5, 2024.

## PROCEEDINGS BEFORE THE COURT *EN BANC*

Petitioners filed a *Motion for Extension of Time to File Petition for Review (Re: Decision dated November 15, 2023 and Resolution dated March 5, 2024 of the Special Second Division, Court of Tax Appeals)*, praying for an extension of 15 days from June 8, 2024, or until June 23, 2024, within which to file their Petition for Review,[7] which was granted in the Minute Resolution dated June 13, 2024.[8]

On June 24, 2024, petitioners filed their *Petition for Review (Re: Decision dated November 15, 2023 and Resolution dated March 5, 2024 of the Special Second Division, Court of Tax Appeals.*[9] The Court *En Banc* required respondent to file its comment thereon within 10 days from notice.[10]

Respondent filed its *Comment/Opposition (Re: Petitioners' Petition for Review dated June 24, 2024)* on July 29, 2024.[11] In the Minute Resolution dated August 14, 2024,[12] the Court noted respondents' *Comment/Opposition (Re: Petitioner's Petition for Review dated June 24, 2024)* and submitted the case for decision.

## ISSUES

In assailing the Decision and Resolution of the CTA Special Second Division, petitioner assigns the following errors:

---

7 *Rollo*, pp. 1 to 4.
8 *Id.* at 40.
9 *Id.* at 41 to 63.
10 Minute Resolution dated July 17, 2024, *Id.* at 102.
11 *Id.* at 131 to 153.
12 *Id.* at 157.

A. The Honorable CTA-Division committed reversible error in finding that the Billing Statements issued by the petitioners are not in the nature of a NOA as contemplated by Section 195 of the LGC of 1991.

B. The Honorable Court committed reversible error in finding that respondent complied with the prescriptive period for filing claims for refund as provided in Section 196 of the LGC of 1991.

C. The Honorable Court committed reversible error in finding that respondent is entitled to a refund in the amount of ₱8,131,289.20.

***Petitioners' arguments***

Petitioners insist that the Billing Statements are in the nature of Notice of Assessment (NOA) as these contain the amount and nature of the tax assessed, the amount of any deficiency, surcharges, interests and penalties due from respondent. According to petitioners, Section 195 of the LGC of 1991 does not require that an investigation or examination of books be first conducted before a notice of assessment is issued. Inasmuch as that the Billing Statements are considered NOAs, petitioners contend that the RTC correctly found that respondent belatedly filed its claim for refund beyond the 30-day reglementary period, pursuant to Section 195 of the LGC of 1991. Thus, the assessments have become conclusive and unappealable.

Finally, petitioners argue that respondent is not entitled to a refund, as it is not considered an exporter or seller of essential commodities under Ordinance No. 34, Series of 2017, issued by petitioner City. Assuming that it is not within the power of petitioner City to tax, petitioner Enriquez, as the City Treasurer, has no power to determine whether an ordinance is valid or not and may only enforce the validly enacted ordinance. Consequently, petitioners are correct in assessing respondent the regular rate and not giving it the preferential rate of 50%.

***Respondents arguments***

Respondent, on the other hand, avers that petitioners' failed to demonstrate any reversible error on the part of the Court in Division as the instant *Petition for Review* merely rehashed the unpersuasive and baseless arguments presented in their *Comment/Opposition* before the Court in

Division. The grounds relied upon by the petitioners have already been considered, discussed, and passed upon by the Court in Division.

Respondent maintains that the Billing Statements issued by the Business Permits an Licensing Office (BPLO) of petitioner City are not the "assessments" contemplated in Section 195 of the LGC of 1991 and are not formal "assessments" that should be formally protested. Respondent submits that petitioner City did not conduct any examination or "finding" that must precede an assessment under Section 195 of the LGC of 1991, as the Billing Statements were issued in connection with its application for renewal of the business permit in petitioner City.

For respondent, it timely filed its judicial claim for refund within the two-year period under Section 196 of the LGC of 1991. Finally, respondent emphasizes that it is entitled to the preferential rate of tax under Section 143(c)(8) of the LGC of 1991.

## RULING OF THE COURT *EN BANC*

The instant *Petition for Review* is meritorious.

### *Timeliness of the Petition for Review*

Before delving into the merits of the instant case, the Court shall first determine its jurisdiction.

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA) provides:

> Sec. 3. *Who may appeal; period to file petition.* –
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of he reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

Petitioner received the assailed Resolution on May 24, 2024. Counting 15 days therefrom, petitioner had until June 8, 2024 within which to elevate the appeal before this Court.

On June 7, 2024, petitioner filed a *Motion for Extension of Time To File Petition for Review (Re: Decision dated November 15, 2023 and Resolution dated March 5, 2024 of the Special Second Division, Court of Tax Appeals).* In the Minute Resolution dated June 13, 2024, petitioner was granted 15 days or until June 23, 2024 within which to file its Petition for Review.

Petitioner, thus, timely filed the instant *Petition for Review* on June 24, 2024.[13]

***The Billing Statements are not considered as NOA.***

Petitioners maintain that the Billing Statements are in the nature of a NOA referred to in Section 195 of the LGC of 1991, as these contain the amount and nature of the tax assessed, the amount of any deficiency, surcharges, interests and penalties due from respondent.

We do not agree.

The Court in Division correctly held that the Billing Statements issued by the BPLO of petitioner City cannot be considered as a NOA contemplated under Section 195 of the LGC of 1991 as it did not state the legal basis for coming up with the amount indicated therein.

The BPLO issued the Billings Statements to the respondents in view of its renewal of business permits for the year 2018.

The application of Section 195 of the LGC of 1991 requires that a valid assessment be issued, viz.:

> **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**. xxx (Emphasis ours)

Based on the foregoing, a NOA must be issued by the local treasurer or a duly authorized representative against the concerned taxpayer indicating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests, and penalties, and after finding that the correct taxes, fees, or charges have not been paid.

---

[13] June 23, 2024 was a Sunday.

A perusal of the Billing Statements issued by the BPLO of petitioner City reveals that there are no "findings that the correct taxes, fees, or charges have not been paid"; instead, the Billing Statements indicate the amount to be paid by respondent as part of renewing its business permits based on gross receipts/sales of the previous year.

Moreover, there is no sufficient indication of the factual and legal bases in the Billing Statements. In the recent case of *Jose vs. Tigerway Facilities and Resources, Inc.*,[14] the Supreme Court held as follows:

> Pertinently, Section 195 explicitly states that the notice of assessment must indicate the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests, and penalties. In *Yamane v. BA Lepanto Condominium Corporation*, this Court clarified this requirement:
>
>> Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the sanggunian, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.
>
> Furthermore, in *National Power Corporation v. Province of Pampanga*, **this Court elucidated on the significance of the taxing authority's duty <u>to adequately inform the taxpayer of the factual and legal basis for the assessment</u>**, thus:
>
>> Verily, taxpayers must be informed of the nature of the deficiency tax, fee, or charge, as well as the amount of deficiency, surcharge, interest, and penalty. **Failure of the taxing authority to sufficiently inform the taxpayer of the**

[14] G.R. No. 247331, February 26, 2024.

> **facts and law used as bases for the assessment will render the assessment void**. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, albeit involving national internal revenue taxes, the Court explained the importance of the notice requirement with due regard to the taxpayers' constitutional rights, to wit:
>
> > The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.
> >
> > The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.
> >
> > *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, held that a final assessment notice that only contained a table of taxes with no other details was insufficient: x x x
> >
> > Any deficiency to the mandated content of the assessment or its process will not be tolerated. x x x
>
> xxx xxx xxx
>
> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations 'that taxpayers should be able to present their case and adduce supporting evidence.' (Citations omitted; Emphasis in the original)." (*Emphases and underscoring added)*

Indubitably, failure of the taxing authority to sufficiently inform the taxpayer of the facts and law used as bases for the assessment will render the assessment void.

Here, it is apparent from the subject Billings Statements that the same was *not* issued as an assessment of LBT, contemplated in Section 195 of the LGC of 1991, rather as a pre-requisite for the issuance/renewal of respondent's business permit. There were no indicia that petitioner Enriquez or his/her duly authorized representative made a finding that respondent failed to pay correct taxes, fees, or charges, or that there was a subsequently issued notice of assessment against petitioner, stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests, and penalties.

Considering the foregoing, the Court *En Banc* is constrained to concur with the ruling of the Court in Division that the Billing Statements issued to respondent do not meet the requirements of a valid NOA in Section 195 of the LGC of 1991, *viz.*:

> In this case, a perusal of the Billing Statements shows that the same did not provide notice of the facts and laws on which the billed amounts were based. From the details indicated in the said Billing Statements, it can be observed that the same were issued not as assessments of LBT but for the renewal of petitioner's business permit. Notably, in the previously cited ICTSI case, the Supreme Court likewise concluded that the alleged "assessments" of LBT that must be paid as a prerequisite for the renewal of business permit could not be considered as the "notice of assessment" required under Section 195 of the LGC of 1991 as the same does not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner, to wit:
>
> > "The 'assessments' from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila. **While these receipts state the amount and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the 'notice of assessment' required under Section 195 of the Local Government Code.**" (Emphases added)
>
> Similarly, in this case, no deficiency tax, surcharge, or interest were indicated in the subject Billing Statements.
>
> Moreover, based on the allegations of both petitioner and respondents, the issue in this case also concerns the provisions of the LGC of 1991 and the Tax Ordinance of the City of Taguig that should be applied in the computation of petitioner's LBT liability. While petitioner invokes Section 143 (c) (8) of the LGC of 1991, respondents invoke Tax Ordinance No. 34, Series of 2017, of the City of Taguig. This and the Ordinance's pertinent provision were not stated in the subject Billing Statements. Clearly, the Billing Statements did not state the legal basis for coming up with the amount of LBT indicated therein. Thus, with more reason, the said Billing Statements cannot be considered as the notice of assessment contemplated under Section 195 of the LGC of 1991. (Emphasis not ours)

***Section 195 of the LGC in 1991 is not applicable to respondent's claim for refund.***

In view of the finding that the Billings Statements are not the "assessment" contemplated under Section 195 of the LGC, respondent's claim for refund was made pursuant to Section 196 of the LGC.

Sections 195 and 196 of the LGC of 1991 are two distinct remedies, the former being available to contest an assessment, while the latter is used to claim a refund for an erroneously or illegally collected tax, fee or charge. Sections 195 and 196 read as follows:

> Section 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 the 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 cancelling 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 the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.**
>
> Section 196. *Claim for Refund of Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. **<u>No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit</u>**. *(Emphases and underscoring added)*

In the oft-cited case of *International Container Terminal Services, Inc. vs. The City of Manila, et al.* (*International Container* case),[15] affirming its ruling in *City of Manila vs. Cosmos Bottling Corp.*,[16] the Supreme Court elucidated as follows: ᵘᵞ

[15] G.R. No. 185622, October 17, 2018.
[16] G.R. No. 196681, June 27, 2018.

In *City of Manila v. Cosmos Bottling Corp.*, this Court distinguished between these two (2) remedies:

> The first provides the procedure for contesting an assessment issued by the local treasurer; whereas the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.
>
> Obviously, **the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges**. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.
>
> On the other hand, **Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him**. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.
>
> **Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer.** In this instance, the taxpayer cannot be required to await the decision of the local

> treasurer any longer, otherwise, his judicial action shall be barred by prescription.
>
> **Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice.** By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC. (Emphasis in the original, citation omitted)

If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the LGC of 1991. Thus, it must file a written protest with the local treasurer within 60 days from receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. xxx.

If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. 'Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.'

On the other hand, **<u>if no assessment notice is issued by the local treasurer</u>, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.**

xxx xxx xxx

What determines the appropriate remedy is the local government's basis for the collection of the tax. **It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state 'the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties.'** xxx xxx xxx

xxx xxx xxx

**No such precondition is necessary for a claim for refund pursuant to Section 196.** *(Emphases and underscoring added)*

It is clear from the foregoing that Section 195 of the LGC of 1991 presupposes an existence of a valid tax assessment, whereas there is no such precondition in a claim for refund under Section 196 of the same code.

In view of the earlier disquisition as regards the Billing Statements not considered as the NOA in Section 195 of the LGC of 1991, respondent is, thus, correct in invoking Section 196 of the LGC of 1991 in its claim for refund.

On this score, petitioners' claim that RTC correctly found that respondent belated file its claim for refund (i.e., for being filed beyond the 30-day reglementary period, pursuant to Section 195 of the LGC) is bereft of merit.

As aptly found by the Court in Division, respondent timely filed its respective administrative claims for refund before petitioner Enriquez for the LBTs paid on January 19, 2018, April 19, 2018, July 13, 2018, and October 11, 2018, and likewise timely filed its judicial claims for refund before the RTC.

***Petitioner is not entitled to the preferential rate for essential commodities under Section 143(c)(8) of the LGC of 1991.***

Petitioners maintain that the basis of their LBT assessment is Section 6 of Tax Ordinance No. 34, Series of 2017 of the City of Taguig, where "cement" is not included as an essential commodity, *viz.*:

> **Section 6. EXPORTERS AND SELLERS OF ESSENTIAL COMMODITIES.** — Section 75 c) of the Revenue Code of Taguig of 1993, as amended, is hereby amended to read as follows:
>
> "c) the gross receipts of the following business shall be entitled to a preferential tax rate of one-half (1/2) of the rates prescribed under subsections a), b), and e) of Section 75 of the amended Revenue Code of Taguig of 1993:
>
> 1.) Exporters; and
>
> 2.) Sellers of essential commodities, Essential commodities are limited to basic necessities or goods vital to the needs of consumers for their sustenance and existence, such as, but not limited to, unprocessed rice, corn, and flour; fresh, dried or

> canned fish; other fresh marine food products; fresh pork, beef and poultry meat; fresh eggs; fresh milk; sugar; cooking oil; salt; laundry soap and detergent; household liquified petroleum gas (LPG); and medicine classified as essential by the Department of Health".

Section 143 (c) (8) of the LGC of 1991, however, provides for the 50% preferential rate given to, *inter alia*, manufacturers of cement as an essential commodity, to wit:

> SEC. 143. Tax on Business. — The municipality may impose taxes on the following businesses:
>
> (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.**

The Court in Division agreed with the findings of the RTC and ruled that Tax Ordinance No. 34, Series of 2017, of the City of Taguig cannot expand nor limit the applicability of the 50% preferential tax rates by limiting the enumeration of what constitutes essential commodities and in doing so is a clear violation of the LGC of 1991.

The Special Second Division held that "[u]nlike the national government, LGUs have no inherent power to tax. They merely derived the power from Article X, Section 5 of the 1987 Constitution. Consistent with this provision, the LGC was enacted to give each LGU the power to create its source of revenue and to levy taxes, fees, and charges subject to statutory guidelines and limitations."

The Court in Division further explained that an LGU may create its sources of revenue and to levy taxes, fees, and charges, but subject to the provisions of the LGC of 1991, consistent with the basic policy of local autonomy. Hence, the power of an LGU to impose or levy taxes cannot go beyond the limitations set forth by the provisions of the LGC of 1991.

To reiterate, the power of a municipality and city to impose business taxes is derived from Section 143 (a) and (e), in relation to Section 151 of the LGC of 1991.

Thus, as correctly found by the Court in Division, petitioner City may tax manufacturers under subsection (a) of Section 143 of the LGC of 1991; however, manufacturers of essential commodities, such as cement, may only be taxed with a rate not exceeding 50% of the rates prescribed for under Section 143 (a), (b) and (d). Moreover, Section 143(c) of the LGC of 1991 enumerates the articles considered as essential commodities.

The Court *En Banc* likewise agrees with the Court *a quo* that the computation by petitioners in billing respondent of LBT for the taxable period 2018 is incorrect for being based on its gross receipts for CY 2016 and not for CY 2017, which is the CY preceding the subject taxable period in this case.

Respondent, however, is still not entitled to the 50% preferential tax rate as it is not *exclusively* engaged in the sale and/or manufacture of cement.

The evidence presented before the RTC shows that petitioner is a manufacturer and/or wholesaler *not* just of cement, but is also engaged in the business of manufacturing, production, and merchandising, whether domestically or for export, of <u>cement, cement products and by-products</u>, including its derivatives, and any kinds of minerals and building materials, to wit:

> To engage in the **business of manufacture, production and merchandising, whether domestically or for export**, of **<u>cement, cement products</u>** and **<u>by-products</u>**, **<u>including its derivatives</u>**, and **<u>any and all kinds of minerals and building materials</u>**. (As amended on March 31, 2011 by the Board of Directors and on May 12, 2011 by the Shareholders)

From the nature of its business, respondent is not exclusively engaged in the sale and/or manufacture of cement as it may engage in the sale and/or manufacture of all kinds of minerals and building materials. Further, respondent's Certification of its total gross receipts/sales for the CY 2017 does not indicate that its sales were solely from the sale of cement. In fine, there is no way for the Court to verify that respondent's sales pertain to comment only to justify the application of the preferential rate.

On this score, respondent failed to prove that it is entitled to the preferential rate of LBT under Section 143 (c)(8) of the LGC of 1991.

In view of the foregoing, while the Billing Statements issued by petitioners are not considered as NOA, thus, the applicable provision for respondent's claim for refund is Section 196, and not Section 195, of the LGC of 1991, Holcim is not entitled to the preferential rate of 50% for LBT.

Nevertheless, considering that the basis for computing LBT for 2018 by petitioner was based on respondent's gross revenue for 2016, respondent is liable to pay only the amount of ₱15,936.969.06, representing the LBT based on gross receipts for 2017, as determined by the Court in Division in this wise:

| | |
|---|---|
| Declared Revenue (2017) | ₱ 3,539,770,902.34 |
| Tax Computation | |
| Tax Due on the first ₱1,000,000.00 | 12,500.00 |
| Tax Due in excess of ₱1,000,000.00 (45% of 1%) | 15,924,469.06 |
| **Total Tax Due (Annually)** | **₱ 15,936,969.06** |
| **Total Tax Due (Quarterly)** | **₱ 3,984,242.27** |

Thus, respondent is still entitled to a refund but only in the total amount of **₱162,806.64**, representing overpayment of petitioner's LBT for TY 2018, computed as follows:

| | |
|---|---|
| Total Business Tax paid (Annual) | ₱ 16,099,775.72 |
| Business Tax paid per Quarter of 2018 | ₱ 4,024,943.93 |
| Should be Tax Due | ₱ **3,984,242.27** |
| **Overpayment (Quarterly)** | **₱ 40,701.66** |
| **Overpayment (Annual – 2018)** | **₱ 162,806.64** |

**WHEREFORE**, the instant **Petition for Review** is still **DENIED**. Considering the discussion above, the Decision dated November 15, 2023 in CTA AC No. 268 is hereby **MODIFIED to read as follows:**

> **WHEREFORE**, in light of the foregoing considerations, the **Petition for Review** is **PARTIALLY GRANTED**. Accordingly, the assailed Judgment dated May 6, 2022, and Order dated June 13, 2022, rendered by the RTC-Branch 271, City of Taguig, in Civil Case Nos. 447-TG and 490-TG are **REVERSED** and **SET ASIDE**.

Respondents are **ORDERED TO REFUND** petitioner Holcim Philippines, Inc., the amount of ₱162,806.64, representing its overpaid LBT for the year 2018.

**SO ORDERED.**

**SO ORDERED.**

**CORAZON G. FERRER-FLORES**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

*On Leave*
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

*With due respect, please see CDO.*
**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

*With due respect, please see Dissenting Opinion.*
**LANEE S. CUI-DAVID**
Associate Justice

*With due respect, I join the CDO of Justice San Pedro.*
**HENRY S. ANGELES**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice

**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
**QUEZON CITY**

***EN BANC***

| | |
|---|---|
| **THE CITY OF TAGUIG AND ATTY. J. VOLTAIRE ENRIQUEZ IN HIS CAPACITY AS THE CITY TREASURER OF THE CITY OF TAGUIG,** Petitioners, | **CTA EB NO. 2927** (CTA AC No. 268) |
| | Present: **DEL ROSARIO,** *P.J.* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** |
| -versus- | **CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.* |
| **HOLCIM PHILIPPINES, INC.** Respondent. | Promulgated: SEP 29 2025 4:20 p.m. |

x --------------------------------------------------------------------------------------- x

## CONCURRING AND DISSENTING OPINION

***MODESTO-SAN PEDRO, J.:***

I agree with the finding that the refundable amount should be computed based on respondent's gross sales for 2017. However, with all due respect to my esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, I disagree with her finding that petitioner is not entitled to the preferential rate for essential commodities under *Section 143 (c) (8) of the Local Government Code of 1991 ("LGC").*

Respondent, as a manufacturer and wholesaler of an essential commodity, *i.e.*, cement, is entitled to the preferential rate for local business tax ("LBT") under *Section 143(c)(8) of the LGC*. Accordingly, it is entitled to a refund of erroneously paid LBT for the 1st, 2nd, and 3rd quarters of calendar year ("CY") 2018.

Unlike the national government, local government units ("LGUs") have no inherent power to tax. They merely derive such power from *Article X, Section 5 of the 1987 Constitution.* Consistent with this provision, the *LGC* was enacted to give each LGU the power to create its own source of revenue and to levy taxes, fees, and charges, *subject to statutory guidelines and limitations*.[1] Additionally, it is clear that *Section 129, Book II, of the LGC,* empowers each LGU to create its own sources of revenue, and to levy taxes, fees, and charges, consistent with the basic policy of local autonomy, but *subject to the provisions of the said Code.* In other words, the power of an LGU to impose or levy taxes cannot go beyond the limitations set forth by the provisions of the *LGC.*

The power of a municipality and city to impose business taxes finds basis under *Section 143 in relation to Section 151, both of the LGC,* to wit:

> 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 of 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 10,000.00 | | 165.00 |
| 10,000.00 or more but less than | 15,000.00 | 220.00 |
| 15,000.00 or more but less than | 20,000.00 | 302.00 |
| 20,000.00 or more but less than | 30,000.00 | 440.00 |
| 30,000.00 or more but less than | 40,000.00 | 660.00 |
| 40,000.00 or more but less than | 50,000.00 | 825.00 |
| 50,000.00 or more but less than | 75,000.00 | 1,320.00 |
| 75,000.00 or more but less than | 100,000.00 | 1,650.00 |
| 100,000.00 or more but less than | 150,000.00 | 2,200.00 |
| 150,000.00 or more but less than | 200,000.00 | 2,750.00 |
| 200,000.00 or more but less than | 300,000.00 | 3,850.00 |
| 300,000.00 or more but less than | 500,000.00 | 5,500.00 |
| 500,000.00 or more but less than | 750,000.00 | 8,000.00 |
| 750,000.00 or more but less than | 1,000,000.00 | 10,000.00 |
| 1,000,000.00 or more but less than | 2,000,000.00 | 13,750.00 |
| 2,000,000.00 or more but less than | 3,000,000.00 | 16,500.00 |
| 3,000,000.00 or more but less than | 4,000,000.00 | 19,800.00 |
| 4,000,000.00 or more but less than | 5,000,000.00 | 23,100.00 |
| 5,000,000.00 or more but less than | 6,500,000.00 | 24,375.00 |
| 6,500,000.00 or more | at a rate not exceeding thirty-seven and a half percent (37 1/2%) of one percent (1%) | |

> (b) On wholesalers, distributors, or dealers of any article of commerce of whatever kind of nature, in accordance with the following schedule:

---

[1] *City of Cagayan De Oro vs. Cagayan Electric Power & Light Co., Inc. (CEPALCO)*, G.R. No. 224825, October 17, 2018.

| With gross sales or receipts for the preceding calendar year in the amount of: | | Amount of Tax Per Annum |
|---|---|---|
| Less than 1,000.00 | | 18.00 |
| 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 | 250,000.00 | 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%) | |

(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 for the preceding calendar year of: | Per Annum Rate of Tax |
|---|---|
| P400.000.00 or less.................................................. | 2% |
| more than P400,000.00............................................ | 10% |

. . . .

(Italics supplied.)

SEC. 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*: . . . .

*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. (Emphases and italics supplied.)

Thus, based on *Section 151, in relation to Section 143, both of the LGC*, a city, such as petitioner Taguig, may tax manufacturers under *Section 143 (a) of the LGC*. However, manufacturers of essential commodities, such as cement, may only be taxed with a rate not exceeding 50% of the rates prescribed for under *Sections 143 (a), (b), and (d) of the LGC*. Relative thereto, under *Section 131(o) of the LGC*, a manufacturer is any person that changes or modifies any product to take the form of another, either to prepare it for special uses or to transform it to some marketable shape, for the purpose of selling or distributing them to others for a fee.

In this case, respondent's primary purpose is "(t)o engage in the business of manufacture, production and merchandising, whether domestically or for export, of cement, cement products and by-products, including its derivatives, and any and all kinds of minerals and building materials," as found in the majority opinion. Thus, petitioner is a manufacturer and/or wholesaler of cement, which is classified by *Section 143(c) of the LGC* as an essential commodity.

The fact that respondent engages in the manufacture of "any and all kinds of minerals and building materials" does not cancel out petitioner's status as a manufacturer and/or wholesaler of cement entitled to the reduced LBT rates under *Section 143 (c) of the LGC*. Nowhere in the stated provision is it provided that a manufacturer and/or wholesaler of essential commodities must exclusively manufacture or wholesale the subject essential commodity to the exclusion of other goods to be entitled to the preferential LBT rates. And, as discussed above, disregarding respondent's clear status as a manufacturer of essential commodities is clearly beyond the limitations provided by the *LGC* as to how LGUs can impose LBT on manufacturers of cement like petitioner in this case.

Consequently, I believe that respondent is entitled to the preferential rates under *Section 143 (c) of the LGC* as a manufacturer and/or wholesaler of cement.

All told, I vote that the refundable amount be computed using (1) respondent's gross sales for 2017; and (2) the preferential rates under *Section 143(c) of the LGC.*

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**THE CITY OF TAGUIG AND ATTY. J. VOLTAIRE ENRIQUEZ IN HIS CAPACITY AS THE CITY TREASURER OF THE CITY OF TAGUIG,**
*Petitioners,*

- versus -

**HOLCIM PHILIPPINES, INC.,**
*Respondent.*

**CTA *EB* NO. 2927**
(CTA AC No. 268)

*Present:*

**DEL ROSARIO,** *P.J.,*
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,**
**MODESTO-SAN PEDRO,**
**REYES-FAJARDO,**
**CUI-DAVID,**
**FERRER-FLORES,** *and*
**ANGELES,** *JJ.*

Promulgated:

SEP 29 2025 4:20p.m.

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

## DISSENTING OPINION

***CUI-DAVID, J.:***

It is with regret that I cannot concur with the majority in their submittal. I maintain my stance, as reflected in the assailed *Decision* dated November 15, 2023, that respondent is entitled to the preferential rate under Section 143(c) of the Local Government Code (LGC) of 1991 as a manufacturer and/or wholesaler of essential commodities. Hence, this dissent.

At the outset, it bears emphasizing that local government units (LGUs) have no inherent power to tax. Their taxing authority is derived from Article X, Section 5 of the 1987 Constitution, [1] To implement this constitutional provision, Congress enacted the LGC of 1991, which empowers LGUs to

[1] Sec. 5. Each local government unit shall have the power to create its own 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 taxes, fees, and charges shall accrue exclusively to the local governments.

x---------------------------------------------------------------------------------------------x

create their own sources of revenue and to levy taxes, fees, and charges, **subject to statutory guidelines and limitations**.[2]

Under Section 129 thereof, LGU's may create their own sources of revenue and levy taxes, fees, and charges, consistent with the basic policy of local autonomy, but *subject to the provisions of the said Code.* Simply put, LGUs cannot exercise taxing power beyond the bounds set by law.

The authority of municipalities and cities to impose business taxes is found in Section 143, in relation to Section 151, of the LGC of 1991, which provides:

> 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 of 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 10,000.00 | | 165.00 |
| 10,000.00 or more but less than | 15,000.00 | 220.00 |
| 15,000.00 or more but less than | 20,000.00 | 302.00 |
| 20,000.00 or more but less than | 30,000.00 | 440.00 |
| 30,000.00 or more but less than | 40,000.00 | 660.00 |
| 40,000.00 or more but less than | 50,000.00 | 825.00 |
| 50,000.00 or more but less than | 75,000.00 | 1,320.00 |
| 75,000.00 or more but less than | 100,000.00 | 1,650.00 |
| 100,000.00 or more but less than | 150,000.00 | 2,200.00 |
| 150,000.00 or more but less than | 200,000.00 | 2,750.00 |
| 200,000.00 or more but less than | 300,000.00 | 3,850.00 |
| 300,000.00 or more but less than | 500,000.00 | 5,500.00 |
| 500,000.00 or more but less than | 750,000.00 | 8,000.00 |
| 750,000.00 or more but less than | 1,000,000.00 | 10,000.00 |
| 1,000,000.00 or more but less than | 2,000,000.00 | 13,750.00 |
| 2,000,000.00 or more but less than | 3,000,000.00 | 16,500.00 |
| 3,000,000.00 or more but less than | 4,000,000.00 | 19,800.00 |
| 4,000,000.00 or more but less than | 5,000,000.00 | 23,100.00 |
| 5,000,000.00 or more but less than | 6,500,000.00 | 24,375.00 |
| 6,500,000.00 or more | at a rate not exceeding thirty-seven and a half percent (37 1/2%) of one percent (1%) | |

> (b) On wholesalers, distributors, or dealers of any article of commerce of whatever kind of nature, in accordance with the following schedule:

[2] *City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc. (CEPALCO)*, G.R. No. 224825, October 17, 2018.

| With gross sales or receipts for the preceding calendar year in the amount of: | | Amount of Tax Per Annum |
|---|---|---|
| Less than 1,000.00 | | 18.00 |
| 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 | 250,000.00 | 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%) | |

(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

x---------------------------------------------------------------------------------------------------x

**(8) Cement.**[3]

(d) On retailers:

| With gross sales or receipts for the preceding calendar year of: | Rate of Tax per annum |
|---|---|
| P400,000.00 or less.................................................. | 2% |
| more than P400,000.00........................................... | 10% |

... ... ...

SEC. 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**: ...

**The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by <u>not more than fifty percent (50%)</u>** except the rates of professional and amusement taxes. *(Emphases and underscoring added)*

Thus, a city, such as petitioner City of Taguig, may tax manufacturers under subsection (a) of Section 143 of the LGC of 1991; however, manufacturers of essential commodities, such as **cement**, may only be taxed with a rate not exceeding 50% of the rates prescribed under Section 143(a), (b), and (d).

In the instant case, petitioners based their LBT assessment under Section 6 of Tax Ordinance No. 34, Series of 2017 of the City of Taguig, which excluded cement from the enumeration of essential commodities, *viz*:

Section 6. EXPORTERS AND SELLERS OF ESSENTIAL COMMODITIES - Section 75 c) of the Revenue Code of Taguig of 1993, as amended, is hereby amended to read as follows:

... ... ...

c) the gross receipts of the following business shall be entitled to a preferential tax rate of one-half (1/2) of the rates prescribed under subsections a), b), and e) of Section 75 of the amended Revenue Code of Taguig of 1993:

1. Exporters; and

2. Sellers of **essential commodities, essential commodities are limited to basic necessities or goods vital**

---

[3] Emphasis supplied.

> **to the needs of consumers for their sustenance and existence, such as, but not limited to**, unprocessed rice, corn, and flour; fresh, dried or canned fish; other fresh marine food products; fresh pork, beef and poultry meat; fresh eggs; fresh milk; sugar; cooking oil; salt; laundry soap and detergent; household liquified petroleum gas (LPG); and medicine classified as essential by the Department of Health." (*Emphasis supplied*)

As such, the billed LBT rate imposed on respondent was calculated under the general category of "manufacturers" without regard to its status as a manufacturer of essential commodities, *i.e.*, cement. This is clearly beyond the limitations set forth under the LGC of 1991.

Hence, in the assailed *Decision* dated November 15, 2023, the Court ruled that petitioners cannot, by local ordinance, either expand or restrict the applicability of the 50% preferential tax rates by limiting the enumeration of what constitutes essential commodities. Doing so is a clear violation of the LGC of 1991.

However, on appeal before the Court *En Banc*, the majority holds the view that respondent is not entitled to the 50% preferential tax rate under Section 143(c) of the LGC of 1991, as it is not ***exclusively*** engaged in the manufacture and/or sale of cement.

With all respect to the majority, I disagree.

Section 131(o) of the LGC defines "*Manufacturer*" as any "*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 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*

M

*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.*"

In the instant case, and as the records reveal, respondent's primary purpose is "*to engage in the business of manufacture, production, and merchandising, whether domestically or for export, of cement, cement products and by-products, including its derivatives, and any kinds of minerals and building materials.*[4] This establishes beyond doubt that respondent is a manufacturer and/or wholesaler of cement, an essential commodity under Section 143(c) of the LGC.

As emphasized by my esteemed colleague, Associate Justice Maria Rowena Modesto-San Pedro, in her *Concurring and Dissenting Opinion*, the fact that respondent engages in the manufacture of "any and all kinds of minerals and building materials" does not negate its status as a manufacturer and/or wholesaler of cement entitled to the reduced LBT rates under Section 143(c) of the LGC of 1991. She correctly noted that Section 143(c) nowhere requires that a taxpayer must *exclusively* manufacture or wholesale the essential commodity to be entitled to the preferential LBT rates.

Indeed, there is nothing in Section 143(c) of the LGC of 1991 that a person must exclusively manufacture or wholesale essential commodities to be entitled to the preferential rate. *Ubi lex non distinguit, nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish.[5]

All told, I vote to **DENY** the *Petition for Review* filed by the City of Taguig and Atty. J. Voltaire Enriquez in his capacity as City Treasurer, and to **AFFIRM** the assailed *Decision* and *Resolution* of the Court in Division.

**LANEE S. CUI-DAVID**
Associate Justice

---

4 Exhibit "A", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 759–770.
5 *Philippines Free Press, Inc. v. Court of Appeals*, G.R. No. 132864, October 24, 2006 [Per J. Garcia, Third Division].