REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

LIBERTY M. TOLEDO, in her capacity as THE TREASURER OF THE CITY OF MANILA, Petitioner,	**C.T.A. AC NO. 21**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
	Promulgated:
UNILEVER PHILIPPINES, INC., Respondent.	**MAY 10 2007**

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DECISION

UY, *J.*:

Petitioner, Liberty Toledo, filed this Petition for Review in her capacity as the City Treasurer of the City of Manila, against respondent Unilever Philippines, Inc., pursuant to Republic Act (R.A.) No. 9282 seeking for the reversal of the Decision dated December 15, 2005, as well as the Order dated January 23, 2006, both rendered by the Regional Trial Court of Manila, Branch 50 thereof, in Civil Case No. 04-110442 entitled "Unilever Philippines Inc., petitioner, versus The City Treasurer of City of Manila, respondent".

THE FACTS

As culled from the records, these are the pertinent facts of the case.

Petitioner, Liberty M. Toledo, is the City Treasurer of the City of Manila 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 the City, and she filed the instant petition in her capacity as such City Treasurer. Her office address is located at the Ground Floor, Manila City Hall, Taft Avenue, Manila. On the other hand, respondent Unilever Philippines, Inc., is a domestic corporation duly organized under Philippine laws with principal address at 1351 United Nations Avenue, Manila, within the local tax jurisdiction of herein petitioner.

On July 18, 2002, respondent, Unilever Philippines, Inc., paid business taxes to the City of Manila in the amount of P11,350,041.00 for the third quarter of the taxable year 2002, under Section 21 of Ordinance No. 7794, as amended, otherwise known as the Manila Revenue Code (MRC). Believing that it had erroneously paid the subject taxes, respondent filed a claim for refund thereof with the petitioner, in her capacity as the City Treasurer of Manila, through a Letter dated July 5, 2004, received by the latter on July 6, 2004. As petitioner had not acted upon the claim, respondent filed on July 16, 2004 a "Petition for Refund" with an application for a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction with the Regional Trial Court (RTC) of Manila, Branch 50,[1] docketed as Civil Case No. 04-110442,

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[1] Annex "C" of Petition for Review, Petition for Refund, Civil Case No. 04-110442, RTC of Manila, Branch 50, Records, pp. 46-55.

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pursuant to Section 196 of R.A. 7160, otherwise known as the Local Government Code of 1991 (LGC).

In said case, respondent, as the petitioner therein, alleged that it pays business taxes under Sections 14 and 21 of the MRC which constitutes double taxation because the aforesaid sections are based on Section 143(a) and (h) of the LGC, respectively; and that Section 143(h) of the LGC should apply only to businesses not specified in the preceding paragraphs, including Section 143(a).

For her part, petitioner, as the respondent in the lower court case, admits payment of the subject taxes by Unilever, but maintains that refund thereof should not be made because the latter failed to comply with the provisions of Sections 195 (refers to protest on assessment) and 187 (refers to procedure for approval and effectivity of tax ordinances and revenue measures) of the LGC; that since Unilever is asking for a tax exemption, the latter should prove its right under clear and unmistakable terms found in the exempting statute; and that it violated the rule against forum-shopping for having filed numerous petitions before the different branches of the RTC of the City of Manila alleging the same cause of action (that there is double taxation) and the prayer for the same relief of tax refund/credit.

On May 30, 2005, the presiding judge of the court *a quo,* Hon. William P. Peralta, issued a TRO against petitioner, as the respondent therein, the dispositive portion of which reads:

> "IN VIEW OF THE FOREGOING AND IN THE INTEREST OF JUSTICE, LET A TEMPORARY RESTRAINING ORDER BE ISSUED EFFECTIVE FOR TWENTY (20) DAYS ENJOINING THE RESPONDENT TO CEASE AND DESIST IN ASSESSING AND

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COLLECTING TAXES FROM THE PLAINTIFF PURSUANT TO SECTION 21 OF THE MANILA REVENUE CODE.

CONSIDERING THAT THE HEARING FOR THE PRAYER FOR THE ISSUANCE OF WRIT OF PRELIMINARY INJUUNCTION HAS ALREADY BEEN TERMINATED, UPON THE LAPSE OF TWENTY (20) DAYS THE PRAYER FOR THE ISSUANCE OF WRIT OF PRELIMINARY INJUNCTION SHALL BE CONSIDERED SUBMITTED FOR RESOLUTION.

Notify the parties.

SO ORDERED.

Manila, Philippines, May 30, 2005."[2]

Subsequently, Unilever presented its oral and documentary evidence in support of its application for a writ of preliminary injunction while the City Treasurer only presented documentary evidence. After the parties filed their respective Memoranda, the court *a quo* issued an Order dated August 8, 2005 granting the said application enjoining the collection of the subject taxes during the pendency of the case. The dispositive portion of said Order reads:

> "In view of the foregoing, the Court finds the prayer for the Preliminary Injunction to be in consonance with the requirements provided for by law and jurisprudence. Thus, hereby enjoins the City Treasurer of Manila from collecting taxes on the Petitioner on the basis of Section 21 of the Manila Revenue Code during the pendency of the case. Petitioner Unilever Philippines Inc. is hereby ordered to post a bond of Eleven Million Three Hundred Fifty Thousand Forty One Pesos (P11,350,041.00).
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> SO ORDERED.
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> Manila Philippines, August 8, 2005."[3]

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[2] Annex "E", Petition for Review, Order dated May 30, 2005, Civil Case No. 041-110442, Records, pp. 65-66.

[3] Annex "F", Petition for Review, Order dated August 8, 2005, Civil Case No. 04-110442, Records, pp. 67-69.

On August 25, 2005, petitioner filed a Motion for Reconsideration of the aforesaid Order. Pending resolution thereof, the main case was set for pre-trial on October 24, 2005 and the parties agreed to limit the issues to the legal issue of whether or not Unilever Philippines, Inc. is entitled to a refund of the tax it had paid for the third quarter of 2002 in the sum of P11,350,041.00. As there was no longer any controversy over the fact that payment was made for both Sections 21 and 14 of the MRC, and that demand for refund was made but not acted upon, the Court *a quo* deemed the filing of memorandum appropriate.[4] Thereafter, on December 15, 2005, the court *a quo* promulgated the assailed Decision allegedly received by petitioner on December 22, 2005, the *fallo* of which states:

> "WHEREFORE PREMISES CONSIDERED, the Court finds the Petition for Refund meritorious and accordingly, declares that the Petitioner Unilever Philippines Inc. 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. The respondent is hereby directed to Refund in favor of the Petitioner the taxes paid thereunder for the third quarter of year 2002 in the amount of P11,350,041.07.
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> The injunction previously issued is now made permanent.
>
> SO ORDERED.
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> MANILA, PHILIPPINES, December 15, 2005."[5]

A Motion for Reconsideration of the subject Decision was allegedly filed on January 5, 2006 by herein petitioner, which the court *a quo* denied in an Order dated January 23, 2006.[6]

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[4] Annex "A" of Petition for Review, page 4 of the Decision, Civil Case No. 04-110442, Records, p. 33.
[5] Ibid, Records, pp. 30-44 at pp. 43-44.

Hence, this Petition for Review filed on February 27, 2006 alleging the following errors committed by the court *a quo*, *viz*:

> "I- THE HONORABLE COURT GRAVELY ERRED IN ASSUMING THAT THE BASIS OF SECTION 21 OF THE MANILA REVENUE CODE AS AMENDED IS SECTION 143 (h) OF THE 1991 LOCAL GOVERNMENT CODE;
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> II- THE HONORABLE COURT GRAVELY ERRED IN HOLDING THAT IF A TAXPAYER IS ALREADY TAXED UNDER SECTION 143(a) TO (g) OF THE 1991 LOCAL GOVERNMENT CODE IT CAN NO LONGER BE TAXED UNDER SECTION 143 (h) OF THE SAME;
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> III- THE HONORABLE COURT GRAVELY ERRED IN HOLDING THAT THERE IS PROHIBITED DOUBLE TAXATION IN THE IMPOSITION OF SECTION 21 OF THE MANILA REVENUE CODE, AS AMENDED.
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> IV- THE HONORABLE COURT GRAVELY ERRED IN HOLDING THAT THE PROVISO IMMEDIATELY PRECEDING PARAGRAPH C OF SECTION 21 OF THE MANILA REVENUE CODE REFERS ONLY TO SECTION C AND NOT TO PARAGRAPH A THEREOF;
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> V- THE HONORABLE COURT GRAVELY ERRED IN HOLDING THAT SECTION 195 OF THE 1991 LOCAL GOVERNMENT CODE IS APPLICABLE ONLY WHEN A TAXPAYER HAS INCORRECTLY PAID TAXES WITH THE CITY TREASURER;
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> VI- THE HONORABLE COURT GRAVELY ERRED IN HOLDING THAT PETITIONER SHOULD NOT BE FAULTED FOR NOT COMPLYING WITH SECTION 187 OF THE 1991 LOCAL GOVERNMENT CODE BECAUSE ALLEGEDLY IT DID NOT QUESTION THE CONSTITUTIONALITY OF SECTION 21 OF THE MANILA REVENUE CODE, AS AMENDED;
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> VII- THE HONORABLE COURT GRAVELY ERRED IN HOLDING THAT THERE IS NO FORUM-SHOPPING IN THE FILING OF THE INSTANT CASE BY PETITIONER; AND
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> VIII- THE HONORABLE COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING A WRIT OF PRELIMINARY

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[6] Annex "B" of Petition for Review, Order dated January 23, 2006, Civil Case No. 04-110442, Records, p. 45.

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INJUNCTION ENJOINING RESPONDENT FROM COLLECTING TAX UNDER SECTION 21 OF THE MANILA REVENUE CODE, AS AMENDED."[7]

With the filing of respondent's Comment on April 6, 2006 through registered mail and duly received by this Court on April 19, 2006, and the respective Memoranda of petitioner and respondent on August 7, 2006 and July 6, 2006, respectively, this case was deemed submitted for decision in the Resolution dated January 11, 2007.[8]

Hence, this Decision.

THIS COURT'S RULING

First Assigned Error:

The court a quo gravely erred in assuming that the basis of Section 21 of the Manila Revenue Code, as amended, is Section 143 (h) of the 1991 Local Government Code.

To determine whether or not Sections 14 and 21 of the MRC are based on Sections 143 (a) and (h), respectively, of the LGC, We juxtapose these provisions together as follows:

Local Government Code of 1991 (LGC)	***Manila Revenue Code (MRC)***
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:

[7] Grounds for the Allowance of the Petition, Petition for Review, Records, pp. 6-7.
[8] Resolution dated January 11, 2007, Records, p. 154.

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Section 143. *Tax on Business.* — The municipality may impose taxes on the following businesses: x x x (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 *(Underscoring supplied).*	**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 fifty percent (50%) of one percent (1%) 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 said code *(Underscoring supplied).*

Evidently, the businesses covered under Sections 14 and 21 of the MRC are similar to the businesses covered under Sections 143(a) and (h) of the LGC, respectively. Thus, We affirm the court *a quo*'s ruling on this issue that Sections 14 and 21 of the MRC are based on Sections 143 (a) and (h) of the LGC, respectively.

Second assigned error:

The court a quo gravely erred in holding that if a taxpayer is already taxed under Section 143(a) to (g) of the 1991 Local Government Code it can no longer be taxed under Section 143 (h) of the same.

According to petitioner, when the court *a quo* ruled that a taxpayer already taxed under Section 143(a) to (g) of the LGC can no longer be taxed under Section 143(h) of the same Code, it failed to take into account Section 186 thereof, which provides:

> "**SEC. 186.** ***Power To Levy Other Taxes, Fees or Charges.*** — 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 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."

Petitioner further submits that the power of Local Government Units (LGUs) to levy taxes, fees or charges is not limited to those specifically enumerated under Section 143 of the LGC, but also extends to any other tax base or subject provided that the conditions set forth under Section 186 of the same code are complied with; and that the only limitation for the imposition of tax under Section 21 of the MRC is provided under Section 143 of the LGC, namely, that the rate to be imposed on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code (NIRC) of 1997, shall not exceed 2% of gross sales or receipts of the preceding calendar year.

We find petitioner's interpretation erroneous and We disagree with its contention that Section 143 of the LGC should be qualified by Section 186 of the same Code. An analysis of both provisions shows that Section 186 grants the general power of LGUs to levy taxes, fees or charges subject to the limitations provided therein, while Section 143 grants municipalities *(cities*

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are included under Section 151) the power to levy taxes on certain businesses likewise subject to the limitations provided therein. In other words, Section 186 is a general provision while Section 143 is a special provision. Relative thereto, We quote a principle in statutory construction, which provides that:

> "Where there is a particular or special provision and a general provision in the same statute and the latter in its most comprehensive sense would overrule the former, the particular or special provision must be operative and the general provision must be taken to affect only the other parts of the statute to which it may properly apply. In other words, the particular or special provision is construed as an exception to the general provision. In this way, all the provisions are given effect."[9]

Following the foregoing principle, Section 143 of the LGC (a special or particular provision) should be construed as an exception to Section 186 of the same Code (a general provision), not *vice-versa.*

We now proceed to determine whether or not respondent may be taxed under Section 21 of the Manila Revenue Code, as amended, which has its basis in Section 143(h) of the LGC, despite having been taxed under Section 14 of the same Code which is based on Section 143 (a) thereof. We peruse the pertinent provisions of Section 143 (a) and (h):

> "**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:
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[9] Agpalo, Ruben, Statutory Construction, 5th Edition, 2003.

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

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(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section:

(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,

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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 (P50,000.00) or less, in the case of cities, and Thirty thousand pesos (P30,000.00) or less, in the case of municipalities.

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

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(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.

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(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.

(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." *(Emphasis and underscoring supplied*)

Apparently, under subparagraph (h) of Section 143, a municipality or city may tax any business that is not covered by the enumerations mentioned in subsections (a) to (g) thereof, based on the qualifying proviso which reads: "On any business, **not otherwise specified in the preceding paragraphs (meaning, paragraphs [a] to [g]), which the *sanggunian* concerned may deem proper to tax**". This clearly indicates the intent of the LGC to cover under subsection (h) of Section 143, only those businesses that are not already included in subsections (a) to (g), and to definitely, exclude those businesses already included therein. Thus, the court *a quo* correctly ruled and held that:

"What this means is that if a taxpayer is already taxed under Section 143(a) to (g), it can no longer be taxed under Section 143(h) because the tax under this subsection cannot be applied if the taxpayer already pays under the preceding subsections. That is the clear import of the Local Government Code. And if Section 14 of the Revenue Code is based on Section 143(a) of the Local Government Code, and Section 21 of the Manila Revenue Code is based on Section 143(h) of the Local Government Code, then once a taxpayer is taxed on Section 14, any additional exaction under Section 21 is illegal at most, and oppressive at the very least. This is very clear from the wordings of the Local Government Code, and this Court

> does not even have to go into the definition of double taxation. The provisions speak for themselves. "It is elementary, under the rules of statutory construction, that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says". *(Decision, p. 8, Civil Case No. 04-110442, citations omitted).*

<u>Third and Fourth assigned errors:</u>

> *The court a quo gravely erred in holding that there is prohibited double taxation in the imposition of Section 21 of the Manila Revenue Code, as amended; and the court a quo gravely erred in holding that the proviso immediately preceding paragraph C of Section 21 of the Manila Revenue Code refers only to Section C and not to Paragraph A thereof.*

Petitioner argues that there is no double taxation in imposing taxes based on Sections 14 and 21 of the MRC, as amended, since there is no taxation on the same property or object by the same taxing authority. Petitioner further claims that Section 14 refers to a tax imposed on business establishments, while Section 21 refers to a tax imposed on end-users; and that the second paragraph in Section 21 (C) stating that "*the tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter*" also applies to paragraph (A) therein which imposes taxes on *"persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, x x x".* Correspondingly, petitioner maintains that respondent is merely a withholding agent under Section 21 of the MRC.

We find petitioner's arguments untenable.

Section 21 of the MRC, as amended, in its entirety reads:

"**Section 21.** *Tax on Business 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 fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar is hereby imposed:

A) On persons who sell goods and services in the course of trade of 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.

B) On the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passengers or freight for hire, and common carriers land, air or water, except owners of *bancas* and owners of animal-drawn two-wheel vehicle.

C) On the amount paid on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, except amounts paid by the government, its political subdivisions or instrumentalities; diplomatic services; public international organizations or any of their agencies based in the Philippines; and news services.

<u>The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter</u>.

D) Excisable goods subject to VAT

(1) Distilled spirits
(2) Wines
(3) Tobacco products (other than cigarettes, cigar and chewing tobacco)
(4) Tobacco specially prepared for chewing
(5) Fireworks
(6) Cinematographic film
(7) Saccharine
(8) Coal and Coke
(9) Fermented liquor, brewer's wholesale price, excluding the *ad valorem* tax

(10) Automobiles, manufacturers or importers selling price
(11) Non-essential goods based on the wholesale price, net of excise tax and VAT

(a) Jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitation thereof; goods made of, or ornamented, mounted or fitted with precious metals or imitation thereof or ivory (not including surgical and dental instruments. silver-plated wares, frames or mountings for spectacles of eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of teeth.)
(b) Perfumes and toilet waters.
(c) Yacht and other vessels intended for pleasure or sports.

(12) Mineral products, based on actual market value of the annual gross output the time of removal

E) Excisable goods not subject to VAT

(1) Naptha when used as raw material for production of petrochemical products
(2) Asphalt" *(Underscoring supplied)*

Applying the rule on statutory construction which states: "*ad proximum antecedens fiat relatio nisi impediatur sentencia* (*relative words refer to the nearest antecedent, unless it be prevented by the context*)", We find that the subject qualifying proviso stating that "the tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services", refers only to the immediately preceding paragraph of the same subsection (C) of Section 21 which refers to "overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services",

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being the nearest antecedent thereto, and not to the other paragraphs of the same provision such as paragraph (A).

Moreover, a similar provision found under Section 120 of the NIRC of 1997 supports the finding that the subject *proviso* qualifies only paragraph (C) of Section 21 of the MRC, as amended (refers to a tax imposed on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services), to wit:

> "**SEC. 120.** *Tax on Overseas Dispatch, Message or Conversation Originating from the Philippines.* —
>
> (A) *Persons Liable.* — There shall be collected upon every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment service, a tax of ten percent (10%) on the amount paid for such services. The tax imposed in this Section shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter."

In ascertaining the intention of the lawmaker, courts are permitted to look into prior laws on the same subject and to investigate the antecedents of the statute involved. This rule is especially applicable in the interpretation of codes, revised, or compiled statutes, for the prior laws which have been codified, compiled, or revised will show the legislative history that will clarify the intent of the law or shed light on the meaning and scope of the codified or revised statute.[10]

The court *a quo* aptly observed on pages 13-14 of its assailed Decision as follows:

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[10] Ibid at p. 98.

> "The portion therefore quoted by the respondent could only have been referring to the immediately preceding paragraph C, and not to the first paragraph, paragraph A, under which the petitioner was assessed Section 21 taxes. The alternative scenario could not have been possible because, as stated by the petitioner in its Memorandum, it is not involved in the business of overseas dispatch and overseas messaging transmission.
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> This is further bolstered by the fact that a similar tax on businesses conducting overseas dispatch and messaging transmission is imposed by the National Revenue Code. This Court is referring to Section [120] thereof which provides: x x x"

Having established that the subject *proviso* indeed does not qualify paragraph (A) of Section 21, the tax imposed under the same provision is not a tax on end-users but a tax on the business of manufacturing. In other words, respondent is not merely a withholding agent.

Turning now to the issue of whether or not there is double taxation, the Supreme Court defined "double taxation" in the case of ***Commissioner of Internal Revenue vs. Solidbank Corporation***[11] as follows:

> "*Double taxation* means taxing the same property twice when it should be taxed only once; that is, "... 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." *(Citations omitted)*

After carefully analyzing the court *a quo*'s ruling on this issue, this Court sees no reason to reverse its finding that there is indeed direct duplicate taxation (the obnoxious type of double taxation) as it is in consonance with the foregoing jurisprudence. We agree with the court *a quo* that the imposition of the business taxes under Section 14 and Section 21 (A)

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[11] 416 SCRA 436 (2003).

of the MRC, as amended, upon Unilever Philippines, Inc., constitutes double taxation, as there was taxation twice, for the same subject or activity, which is the business of manufacturing; by the same public authority, which is the City of Manila; within the same taxing jurisdiction, which is again the City of Manila; for the same purpose, which is to generate revenue for the City of Manila; and, in the same year or taxing period, which is the gross receipts for the year 2001.

<u>Fifth assigned error:</u>

> *The court a quo gravely erred in holding that Section 195 of the 1991 Local Government Code is applicable only when a taxpayer has incorrectly paid taxes with the City Treasurer.*

Petitioner argues that the court *a quo* erred in ruling that respondent is not required to comply with Section 195 of the LGC because the same provision is not limited only to a case when a taxpayer has incorrectly paid taxes with the City Treasurer.

Section 195 of the LGC provides:

> "**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 the receipt of the <u>notice of assessment</u>, 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 the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment

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becomes conclusive and unappealable." *(Underscoring supplied)*

According to petitioner, the foregoing provision speaks of a "notice of assessment" as distinguished from a notice of delinquency or delinquent payment of tax. Hence, petitioner concludes that the court *a quo* erred in presuming that the assessment referred to under the foregoing provision is limited only to taxes "incorrectly paid".

We disagree with petitioner's interpretation of the foregoing provision.

At the outset, the present case involves a claim for refund of taxes paid under Section 21 of the MRC, while Section 195 of the LGC speaks of "protest of assessment". Evidently, a refund is totally different from a case of disputed assessment. Thus, the court *a quo* was correct when it held in its assailed Decision (on page 9 thereof) that Section 195 is not applicable therein.

As correctly pointed out by the court *a quo,* Section 195 of the LGC pertains only to instances when a taxpayer has incorrectly paid taxes and the local treasurer issues a notice of assessment for the payment of the correct taxes, in which case, the taxpayer shall file a written protest and follow the procedure laid down by the above quoted Section 193. In the instant case, no notice of assessment requiring for the payment of any unpaid taxes, was issued by herein petitioner acting as the City Treasurer of the City of Manila. Notably, the payment of the tax being refunded in the instant Petition is admitted and no issue regarding its incorrectness was raised by the latter. Therefore, there is no proper subject matter for which a corresponding protest can be filed.

In this regard, the applicable provision in this case is Section 196 of the LGC, which states:

> "**SEC. 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. 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."

In the case at bench, respondent paid taxes imposed under Section 21 of the MRC on July 18, 2002 for the third quarter of the year 2002; filed its written claim for refund with petitioner on July 6, 2004; and thereafter, filed the Petition for Refund with the court *a quo* on July 16, 2004. All these were done within the two-year prescriptive period imposed under Section 196, thereby complying with the requisites mentioned in the foregoing provision.

Sixth Assigned Error:

> *The Honorable Court gravely erred in holding that petitioner should not be faulted for not complying with Section 187 of the 1991 Local Government Code because allegedly it did not question the constitutionality of Section 21 of the Manila Revenue Code, as amended.*

Petitioner faults the court *a quo* in ruling that respondent is not required to comply with Section 187 of the LGC, quoted hereunder, to wit:

> "**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 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 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."

Petitioner contends that the constitutionality of Section 21 of the MRC, as amended, was brought by the respondent before the court *a quo* when the latter presented the issue of double taxation; hence, observance of Section 187 is a condition *sine qua non* before resort to court may be had.

We are not persuaded.

It must be pointed out that respondent did not attack the constitutionality of Section 21 of the MRC, as amended, in the court below but merely claims that the imposition of taxes under Section 21 constitutes double taxation because it had already been taxed under Section 14 of the same Code. Thus, the court *a quo* did not err in ruling that respondent is not required to comply with Section 187 of the LGC. In fine, by contending that there was double taxation, respondent did not question the constitutionality of Section 21 of the MRC, as amended.

Well-entrenched in constitutional law is the precept that constitutional questions will not be entertained by courts unless they are "specifically raised, insisted upon, and adequately argued."[12] Nevertheless, Tax Ordinance Nos. 7988 and 8011, which introduced amendments to the Manila Revenue Code, have been declared null and void by the Supreme Court in ***Coca-Cola Bottlers Philippines, Inc. vs. City of Manila, Liberty M. Toledo - City***

[12] City of Baguio vs. Marcos, 27 SCRA 342 (1969).

Treasurer and Joseph Santiago – Chief, Licensing Division[13] on the ground of failure to comply with the publication requirements.

<u>Seventh assigned error:</u>

> *The Honorable Court gravely erred in holding that there is no forum-shopping in the filing of the instant case by petitioner.*

Petitioner insists that the court *a quo* erred in ruling that there is no forum-shopping despite the existence of similar cases lodged in different branches of the court allegedly conditioned on the different "payments made" or periods of payment involving identical parties, rights or causes of action, and relief sought.

We do not subscribe to petitioner's argument.

In ***Rudecon Management Corporation vs. Singson***,[14] the Supreme Court ruled that:

> "Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites:
>
> 1. Identity of parties, or at least such parties as those representing the same interests in both actions;
>
> 2. Identity of rights asserted and relief prayed for, the relief being founded on the same facts; and
>
> 3. Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res adjudicata* in the other case." *(Citations omitted)*

Undisputedly, the various petitions for refund filed by respondent refer to different payments made by the latter for different quarters. Each payment

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[13] 492 SCRA 279 (2006).
[14] 454 SCRA 612 (2005), citing Ayala Land, Inc. vs. Valisno, 324 SCRA 522 (2000).

made by respondent represents a distinct right or cause of action, and the same may be the proper subject of a petition for refund similar in nature with the petition filed before the court *a quo*. Thus, respondent Unilever having made several payments for different quarters of a specific year or period, herein respondent cannot be faulted for filing several cases of similar nature before the different courts in the City of Manila. Correspondingly, respondent is not guilty of forum-shopping.

Eight assigned error:

> *The court a quo gravely abused its discretion amounting to lack or excess of jurisdiction is issuing a writ of preliminary injunction enjoining respondent from collecting tax under Section 21 of the Manila Revenue Code, as amended.*

Petitioner contends that the court *a quo* gravely abused its discretion in issuing the subject Writ of Preliminary Injunction because it is violative of the basic taxation principle that collection of tax shall not be enjoined, citing several jurisprudence in support of its claim.

We disagree with petitioner.

The issuance of a writ of preliminary injunction is addressed to the sound discretion of the court, conditioned on the existence of a clear and positive right of the movant, which should be protected. It is an extraordinary peremptory remedy available only on the grounds expressly provided by law, specifically Section 3 of Rule 58 of the Rules of Civil Procedure, as amended.[15] In the issuance thereof, the courts are given sufficient discretion to determine the necessity for the grant of the relief prayed for, as it affects

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[15] Valley Trading Co., Inc. vs. Court of First Instance of Isabela, Br. II, 171 SCRA 501 (1989).

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the respective rights of the parties with the *caveat* that extreme caution be observed in the exercise of such discretion.[16]

It is also a settled rule that the issuance of the writ of preliminary injunction as an ancillary or preventive remedy to secure the rights of a party in a pending case is entirely within the discretion of the court taking cognizance of the case, the only limitation being that this discretion should be exercised based upon the grounds and in the manner provided by law. The exercise of sound judicial discretion by the lower court in injunctive matters should not be interfered with except in cases of manifest abuse,[17] none of which has been shown in this case. This Court, therefore, sustains the grant by the court *a quo* of the prayer for Preliminary Injunction.

All the foregoing considered, this Court finds no reversible error committed by the Regional Trial Court of Manila, Branch 50, that would merit a reversal of the assailed Decision and Resolutions rendered in Civil Case No. 04-110442.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit and the appealed Decision dated December 15, 2005, Orders dated May 30, 2005, August 8, 2005, and January 23, 2006 are hereby **AFFIRMED.**

Accordingly, petitioner, the Treasurer of the City of Manila, is hereby **ORDERED TO REFUND** to respondent, Unilever Philippines, Inc., the total amount of **ELEVEN MILLION THREE HUNDRED FIFTY THOUSAND FORTY ONE AND 7/100 PESOS (P11,350,041.07)** representing

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[16] Bataclan vs. Court of Appeals, 175 SCRA 764 (1989).
[17] Detective and Protective Bureau, Inc. vs. Cloribel, 26 SCRA 255 (1968).

respondent's erroneously paid local business taxes for the 3rd Quarter of taxable year 2002.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice