REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

THE TREASURER OF THE CITY OF MANILA,
Petitioner,

-versus-

UNILEVER PHILIPPINES, INC.,
Respondent.

C.T.A. AC NO. 46
(Civil Case No. 02-104955)

x--x

THE TREASURER OF THE CITY OF MANILA,
Petitioner,

-versus-

UNILEVER PHILIPPINES, INC.,
Respondent.

C.T.A. AC NO. 48
(Civil Case No. 04-108907)

x--x

THE TREASURER OF THE CITY OF MANILA,
Petitioner,

-versus-

UNILEVER PHILIPPINES, INC.,
Respondent.

C.T.A. AC NO. 49
(Civil Case No. 04-109703)

Members:

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

Promulgated:
2008, 3:20 pm

x--x

DECISION

BAUTISTA, J.:

Before Us are three Petitions for Review[1] filed by the Treasurer of the City of Manila against Unilever Philippines, Inc., praying for the reversal of:

[1] *Rollos,* C.T.A. AC No. 46 (Civil Case No. 02-104955) pp. 6 – 69; C.T.A. AC No. 48 (Civil Case No. 04-108907) pp. 6 – 127; and C.T.A. AC No. 49 (Civil Case No. 04-109703) pp. 6 – 100, all with Annexes.

1. the Decision dated November 3, 2006 rendered by Branch 21 of the Regional Trial Court of Manila, granting herein respondent's claim for refund; and

2. the Order dated July 12, 2007, denying herein petitioner's Motion for Reconsideration.

In the first Petition, docketed as C.T.A. AC No. 46, the Regional Trial Court of Manila, Branch 21, in Civil Case No. 02-104955, entitled *"Unilever Philippines, Inc. v. The Treasurer of the City of Manila,"* granted respondent's claim for refund of the taxes paid for the fourth (4th) quarter of the taxable year 2000 in the amount of P6,403,030.62.

Similarly, in the second Petition, docketed as C.T.A. AC No. 48, the same trial court, in Civil Case No. 04-108907, also entitled *"Unilever Philippines, Inc. v. The Treasurer of the City of Manila,"* granted respondent's claim for refund of taxes paid for the first (1st) quarter of the taxable year 2002 in the amount of P11,350,041.07.

While in the third Petition, docketed as C.T.A. AC No. 49, respondent's claim for refund of the taxes paid for the second (2nd) quarter of the taxable year 2002 in the amount of P11,350,041.07 was also granted by the same trial court, in Civil Case No. 04-109703, likewise entitled *"Unilever Philippines, Inc. v. The Treasurer of the City of Manila."*

Since all Petitions for Review involve the same parties and subject matter, We deemed it necessary to consolidate the aforementioned Petitions in Our Resolution dated April 4, 2008.[2]

[2] *Rollo,* C.T.A. AC No. 46 (Civil Case No. 02-104955), pp. 250 – 251.

Antecedent Facts

Petitioner 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.

Respondent Unilever Philippines, Inc., on the other hand, is a domestic corporation duly organized under the laws of the Philippines with principal office address at 1351 United Nations Avenue, Manila.

Respondent paid the business taxes collected from it by the City of Manila, pursuant to Sections 14 and 21 of Ordinance No. 7794, as amended, otherwise known as the Manila Revenue Code ("MRC"). Section 14 of the said Code provides for the tax on manufacturers, assemblers, and other processors of articles of commerce. The rates for this type of tax have been amended by Ordinance No. 7988 in the year 2000 and Ordinance No. 8011 in the year 2001. Section 21 of the MRC, on the other hand, imposes the tax on businesses subject to excise, value-added or percentage taxes under the National Internal Revenue Code ("NIRC"). This provision has likewise been modified by the amendments introduced by Ordinance Nos. 7988 and 8011.

Respondent, believing that the enforcement of Section 21 of the MRC constitutes double taxation, filed several claims for refund with the City Treasurer.

C.T.A. Case No. 46 (Civil Case No. 02-104955)

In a letter dated October 4, 2001, respondent filed a claim for refund with the City Treasurer for the business taxes it timely paid on October 20, 2000 for the 4th quarter of the taxable year 2000 in the amount of P6,403,030.62, pursuant to Section 21 of the MRC.[3]

Having received no response from the City Treasurer, respondent filed a Petition for Refund on October 24, 2002 with the Regional Trial Court of Manila, pursuant to Section 196 of the Local Government Code of 1991 ("LGC").[4] The case was docketed as Civil Case No. 02-104955 and raffled to Branch 21 of the Regional Trial Court of Manila.

On November 8, 2002, the City Treasurer of Manila filed her Answer to the Petition for Refund.[5] In her Answer, the City Treasurer admitted the fact of payment of the taxes paid under Section 14 of the MRC, as well as those paid under Section 21 thereof. However, she insisted that respondent is not entitled to refund because there is no double taxation.

The case was set for preliminary conference.

During the pre-trial, the proceeding in the said preliminary conference was adopted and the parties agreed to simultaneously file their respective Memoranda within thirty (30) days. On March 8, 2004, the City Treasurer submitted her Memorandum, while herein respondent filed its Motion to Admit Memorandum on March 15, 2007.[6]

C.T.A. Case No. 48 (Civil Case No. 04-108907)

In a letter dated January 12, 2004, respondent filed a claim for refund with the City Treasurer for the business taxes erroneously assessed and collected on January 21, 2002, for the 1st quarter of the taxable year 2002 in the sum of

[3] *Rollo*, C.T.A. AC No. 46 (Civil Case No. 02-104955), pp. 130 - 131.
[4] *Id.*, p. 7.
[5] *Id.*, p. 8.
[6] *Id.*

P11,350,041.07, under Section 21 of MRC.[7] Despite the lapse of time, the City Treasurer failed to comply with the demand.

Thus, on January 20, 2004, respondent filed a Petition for Refund with the Regional Trial Court of Manila, docketed as Civil Case No. 04-108907.[8]

On February 20, 2004, the City Treasurer of Manila filed her Answer alleging, among others, that the Petition for Refund states no cause of action and that the same is premature under Section 195 of the LGC.[9]

Thereafter, the case was set for preliminary conference.

During the pre-trial, the proceeding in the said preliminary conference was adopted and the parties agreed to simultaneously file their respective Memoranda within thirty (30) days. On September 23, 2005, herein respondent filed its Memorandum. On September 27, 2005, the City Treasurer submitted her Memorandum.[10]

C.T.A. Case No. 49 (Civil Case No. 04-109703)

In a letter dated March 26, 2004, respondent filed with the City Treasurer, a claim for refund of business taxes assessed and collected based on Section 21 of the MRC for the 2nd quarter of the taxable year 2002 in the sum of P11,350,041.07.[11] However, notwithstanding receipt of the claim for refund, no refund was made by the City Treasurer which constituted a denial of the claim.

[7] *Rollo*, C.T.A. AC No. 48 (Civil Case No. 04-108907), p. 31.
[8] *Id.*, p. 7.
[9] *Id.*, pp. 51 – 59.
[10] *Id.*, p. 8.
[11] *Rollo*, C.T.A. AC No. 49 (Civil Case No. 04-109703), pp. 31 - 32.

Hence, respondent filed a Petition for Refund on April 16, 2004 with the Regional Trial Court of Manila, Branch 21, docketed as Civil Case No. 04-109703.[12]

On May 17, 2004, the City Treasurer filed her Answer raising, among others, the defense that there is no double taxation as the tax imposed under Section 21 is not a tax on the business *per se;* rather, it is a tax on the person availing of the goods and services of the business.[13]

The case was subsequently set for preliminary conference.

During the pre-trial, the proceeding in the said preliminary conference was adopted and the parties agreed to simultaneously file their respective Memoranda within thirty (30) days.[14]

All three Petitions for Refund were consolidated by the Regional Trial Court of Manila, Branch 21.

The following issues were submitted by the parties for resolution by the trial court:

> "1) Whether or not Ordinance Nos. 7988 and 8011 amending the Manila Revenue Code violated the procedural rules of taxation for their effectivity and implementation thus cannot be made the basis of assessment of taxes;
>
> 2) Whether or not the enforcement of Sec. 21 of the Revenue Code of Manila against petitioner constitutes double taxation prohibited by law in view of taxes collected by the City and paid by petitioner under Sec. 14 of the same Code;
>
> 3) Whether or not the taxes paid by petitioner to the City on the basis of Section 21 should be immediately refunded."[15]

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[12] *Rollo*, C.T.A. AC No. 49 (Civil Case No. 04-109703), p. 7.
[13] *Id.*, pp. 54 – 64.
[14] *Id.*, p. 8.
[15] *Rollos*, C.T.A. AC No. 46 (Civil Case No. 02-104955), pp. 52 – 53; C.T.A. AC No. 48 (Civil Case No. 04-108907) pp.110 - 111; and C.T.A. AC No. 49 (Civil Case No. 04-109703) pp. 83 – 84, Assailed Decision dated November 3, 2006, pp. 3 – 4.

The Ruling of the Trial Court

On November 3, 2006, the trial court, through Judge Amor A. Reyes, rendered a Decision[16] granting the claims for refund of herein respondent. The trial court agreed with the opinion of the Department of Finance, through the Bureau of Local Government Finance, that Section 21 of the MRC amounts to double taxation in view of the taxes already collected under Section 14 or similar provisions.

In addition, the trial court, citing the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila, Liberty M. Toledo, et. al.*,[17] ruled that both Tax Ordinance Nos. 7988 and 8011 are null and void and without legal effect.

Thus, it disposed of the case in this wise:

> "**WHERFORE**, premises considered, the petitions are hereby **GRANTED**. The application to petitioner of Sec. 21 of the Tax Ordinance No. 7988 as amended by Tax Ordinance No. 8011 is hereby declared **VOID.** Respondent is hereby ordered to **REFUND/CREDIT** petitioner the taxes paid under Sec. 21 of the said ordinance. With costs against respondents.
>
> **SO ORDERED.**"[18]

Aggrieved by the Decision, herein petitioner filed a Motion for Reconsideration,[19] arguing that the declaration of the Supreme Court in the case of *Coca-Cola* has no doctrinal effect inasmuch as the pronouncement that Ordinance Nos. 7988 and 8011 are null and void, was made only in order to determine the propriety of the dismissal of the trial court of the petition for injunction filed by Coca-Cola.

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[16] *Id.*, C.T.A. AC No. 46 (Civil Case No. 02-104955) pp. 48 - 55; C.T.A. AC No. 48 (Civil Case No. 04-108907) pp.106 - 113; and C.T.A. AC No. 49 (Civil Case No. 04-109703) pp. 79 – 86.

[17] G.R. No. 156252, 493 SCRA 279, June 27, 2006.

[18] *Rollos*, C.T.A. AC No. 46 (Civil Case No. 02-104955) p. 55; C.T.A. AC No. 48 (Civil Case No. 04-108907) p. 113; and C.T.A. AC No. 49 (Civil Case No. 04-109703) p. 86.

[19] *Id.*, C.T.A. AC No. 46 (Civil Case No. 02-104955) pp. 59 - 68; C.T.A. AC No. 48 (Civil Case No. 04-108907) pp. 117 - 126; and C.T.A. AC No. 49 (Civil Case No. 04-109703) pp. 90 -99.

Moreover, petitioner argued that the Petitions for Refund are fatally flawed and should be dismissed outright for failure of respondent to plead its capacity to sue. Petitioner likewise claimed that respondent failed to state the authority of Atty. Danilo L. Cruz to sign for and on behalf of the respondent.

On July 12, 2007, the trial court issued an Order[20] denying the Motion for Reconsideration.

The Issues

Hence, the present recourse with petitioner ascribing to the trial court the following errors:

> "I. Whether or not the Honorable Regional Trial Court gravely erred in holding that there is double taxation in the imposition of Section 21 of the Manila Revenue Code, as amended.
>
> II. Whether or not the Honorable Regional Trial Court gravely erred in holding that Section 21 is expressly prohibited by Section 133 of the Local Government Code.
>
> III. Whether or not the Honorable Regional Trial Court gravely erred in holding that Sections 195 and 187 of the Local Government Code do not apply in the instant case."[21]

The Ruling of the Court

We find the consolidated Petitions for Review devoid of merit.

At the outset, We must point out that of the three issues raised by petitioner, only the first and third issues shall be discussed in this case. The second issue raised by the petitioner was never discussed by the trial court in its Decision dated November 3, 2006 nor in its Order dated July 12, 2007. In fact, a careful reading of the Petitions for Review would reveal that the Decision and

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[20] *Id.*, C.T.A. AC No. 46 (Civil Case No. 02-104955) pp. 56 - 58; C.T.A. AC No. 48 (Civil Case No. 04-108907) pp. 114 - 116; and C.T.A. AC No. 49 (Civil Case No. 04-109703) pp. 87 - 89.

[21] *Rollos*, C.T.A. AC No. 46 (Civil Case No. 02-104955) p. 9; C.T.A. AC No. 48 (Civil Case No. 04-108907) p. 9; and C.T.A. AC No. 49 (Civil Case No. 04-109703) p. 9.

the Order referred to and quoted in the said Petitions are the Decision dated October 3, 2006 and the Order dated December 12, 2006, rendered by Branch 33 of the Regional Trial Court of Manila, and not the Decision dated November 3, 2006 nor the Order dated July 12, 2007 rendered by Branch 21.[22] As We see it then, there is no reason for Us to discuss Section 133 of the LGC in relation to Section 21 of the MRC as the assailed Decision dated November 3, 2006 and the Order dated July 12, 2007 never declared that "tax on the end-user amounts to a sales tax which is expressly prohibited by Section 133 of the LGC."

<u>Double taxation exists</u>

We shall now proceed to discuss the issue on "double taxation."

In the case of *Commissioner of Internal Revenue v. Solidbank Corporation,*[23] the Supreme Court defined "double taxation" as:

> "Double taxation means taxing the same property twice when it should be taxed only once; that is, 'xxx 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)*

In the case at bar, the two tax provisions concerned are Sections 14 and 21 of the MRC, to wit:

> "Section 14. *Tax on Manufacturers, Assemblers and other Processors* - There is hereby imposed a graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule xxx"

> "Section 21. *Tax on Business Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC* - On any of the following businesses

[22] *Id.*, C.T.A. AC No. 46 (Civil Case No. 02-104955) pp. 9 - 12; C.T.A. AC No. 48 (Civil Case No. 04-108907) pp. 9 - 12; and C.T.A. AC No. 49 (Civil Case No. 04-109703) pp. 9 – 12.

[23] G.R. No. 148191, 416 SCRA 436, November 25, 2003.

and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter the 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 the said code.

xxx xxx xxx"

Petitioner insists that there is no double taxation as Sections 14 and 21 of the MRC pertain to different tax objects. According to petitioner, Section 14 is a tax on the business of the respondent as a manufacturer, while Section 21 is a tax upon the end-users.

We do not agree.

This argument has already been squarely resolved in the case of *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*.[24] In that case, We ruled that double taxation exists. The pertinent portions of Our discussion therein are as follows:

"On the issue of double taxation, this Court rules in favor of the petitioner. The power of the City of Manila to tax is based on Sections 151 and 143 of the Local Government Code, to wit:

'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: xxx'

'SEC. 143. **Tax on Business**. – The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

[24] C.T.A. AC No. 15 (Civil Case No. 01-102074), July 21, 2006.

xxx xxx xxx

> (h) **On any business, not otherwise specified in the preceding paragraphs,** which the sanggunian concerned may deem proper to tax: Provided, *That on any business subject to 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 case to exceed the rates prescribed herein.'

It is clear from subsection (h) that if a business is already taxed under sub-sections (a) to (g), such a business should no longer be taxed under subsection (h) thereof. In other words, the afore-quoted subsection (h) gives the sanggunian concerned the power to tax businesses not otherwise enumerated in the Local Government Code.

Based on the above provisions of the Local Government Code, the City of Manila enacted the Manila Revenue Code, Ordinance No. 7794. In this instant case, the involved provisions are:

> 'Section 14. *Tax on Manufacturers, Assemblers and other Processors* — There is hereby imposed graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines or ***manufacturers of any article of commerce*** of whatever kind or nature, in accordance with the following schedule: xxx.
>
> Section 21. *Tax on Business Subject to Excise, Value-Added or Percentage Taxes Under the NIRC* — **On any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC,** as amended, a tax of fifty (50%) of one (1%) percent *per annum* on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) **On persons who sell goods and services in the course of trade or business;** and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code.

Indubitably, Section 14 of the Manila Revenue Code is based on Section 143(a) of the Local Government Code, while Section 21 in turn is a variation of Section 143(h), also of the Local Government Code. It is to be noted that under Section 143(h) of the Local Government Code, the business tax that may be imposed on 'any business', comes with the proviso *'not otherwise specified in the preceding paragraphs.'* This could only mean that the municipality, or city, shall only impose the tax in either one of the paragraphs but not both. **When the City of Manila imposed both taxes through Sections 14 and 21 of the Manila Revenue Code, the same definitely contradicts the express mandate of Section 143(h) of the Local Government Code.**

Section 21 of the MRC reads *'on any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC*, as amended, a tax of xxx is hereby imposed: **On persons who sell goods and services in the course of trade or business;** and those who import goods whether for business or otherwise xxx.' Thus, it is evident from the foregoing that **Section 21 does not impose indirect taxes on businesses but imposes tax on businesses and articles of commerce which is subject to excise, VAT or percentage tax under the National Internal Revenue Code.**

In addition, an examination of Section 143(h) of the Local Government Code shows that the phrase *'on any business subject to excise, value-added or percentage tax under the National Internal Revenue Code'* merely qualifies or limits the rate of tax to be imposed on businesses already subject to excise, value-added or percentage tax under the National Internal Revenue Code and does not authorize Local Governments to impose such taxes. Hence, respondent's contention is without merit. **Moreover, the City Treasurer, in holding petitioner also liable under Section 21 of the Manila Revenue Code, (when it is already paying taxes under Section 14 of the same Code), violated the mandate of Section 143(h) of the Local Government Code, that forms the basis of Section 21, which clearly disallows the imposition of additional taxes on businesses already taxed under its other subsections.**

Section 131(o) of the Local Government Code and Article 220(o), Part One, Rule xxx Local Government Taxation, Implementing Rules & Regulations, define a 'manufacturer' in the following manner:

> A *manufacturer* includes every person who, by physical or chemical process, alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for special use or uses to which it could not have been put in its original condition, or who by any such process, alters the quality of any such raw material or manufactured or partially manufactured products so as to reduce it to marketable shape or prepare it for any of the use of industry, or who by any such process, combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured in their original condition could not have been put, and who in addition, alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption.

Pursuant to the above definition, 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, petitioner is being taxed under Section 14 as a manufacturer of goods, and additionally taxed under Section 21(a) on its business of selling manufactured goods. This is a clear case of double taxation.**

Double taxation or direct duplicate taxation in its 'obnoxious' form means, the taxing twice of the same taxing authority, within the same taxing jurisdiction or district, for the same purpose and the same period, of the same property in the same territory. All these elements exist in this case.

Respondent nonetheless argues that no double taxation exists because Section 14 is a tax on the manufacturers, assemblers, and other processors while Section 21 is a tax on the end-users or on the persons paying for the goods or services and not on the business itself and the seller of the goods or services is a mere withholding agent of the City of Manila.

This argument is untenable. Section 21 clearly reads that a tax is imposed on the **business** subject to excise, value-added or percentage tax. Simply put, Section 21 is a business tax on persons who sell goods and services in their trade or business, and those who import goods whether for business or otherwise. To adopt the view of the respondent that the end-users are the persons subject to tax under Section 21, would mean that the activity that is being taxed is the purchase of goods or the 'purchasing power' of the buyer, but the same is not a business activity.

While there is some truth to respondent's claim that double taxation is not prohibited, it becomes 'obnoxious' where a taxpayer is being taxed twice for the benefit of the same governmental entity, for the same purpose. Thus, the Court cannot countenance this form of double taxation." *(Citations omitted) (Emphasis supplied)*

Also, in the recent case of *The Treasurer of the City of Manila v. Unilever Philippines, Inc.,*[25] We reiterated Our view that businesses taxed under Sections 14, 18, and 24 of the MRC can no longer be taxed under Section 21 thereof as the imposition of the business taxes under Sections 14 and 21 of the MRC, as amended, constitutes double taxation.

[25] C.T.A. AC No. 28 (Civil Case No. 06-114255), November 28, 2007, *citing Unilever Phils., vs. The Treasurer of the City of Manila, C.T.A. AC No. 25, June 18, 2007; Swedish Match Phils., Inc. vs. The Treasurer of the City of Manila, C.T.A. AC No. 15, July 21, 2006; International Container Terminal Services vs. The City of Manila, et al., C.T.A. AC No. 11, May 17, 2006; Zarcon Development Corp. vs. The City Treasurer of the City of Manila, C.T.A. AC NO. 24, May 16, 2007; Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila vs. Unilever Phils., Inc., C.T.A. AC No. 21, May 10, 2007.*

Once more, We stand by Our ruling.

Double taxation exists as the City of Manila imposes taxes on the manufacturing business of the respondent under both Sections 14 and 21 of the MRC. Section 14 of the MRC imposes a tax on the manufacturers based on the gross sales for the preceding year in accordance with the schedule stated therein, under the authority of Section 143 (a) of the LGC. While Section 21 of the MRC provides for the imposition of a tax of fifty percent (50%) of one (1%) *per annum* on the gross sales or receipts on businesses and articles of commerce subject to excise, value added or percentage taxes under the NIRC, under the authority of Section 143 (h) of the LGC. However, considering that respondent is already taxed under Section 14 of the MRC, based on Section 143 (a) of the LGC, it can no longer be taxed under Section 21 of the same Code, as Section 143 (h) of the LGC, upon which Section 21 is based, allows the imposition of business tax only on businesses not otherwise specified in the preceding paragraphs thereof. No doubt the clear tenor of paragraph (h), Section 143 of the LGC, is to prohibit double taxation of businesses taxed under paragraphs (a) to (g) thereof.[26]

For this reason, We are in accord with the ruling of the trial court that Section 21 of the MRC amounts to double taxation.

[26] Unilever Philippines, Inc. v. The Treasurer of the City of Manila, C.T.A. AC No. 25 (Civil Case No. 03-107304), June 18, 2007.

Sections 187 and 195 of the Local Government Code do not apply

Petitioner contends that the Petitions for Refund should have been dismissed because respondent failed to comply with Sections 187 and 195 of the LGC, which provide that:

> "Sec. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearing.* — xxx : 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: xxx : 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 the appropriate proceedings with a court of competent jurisdiction."
>
> "Sec. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that the 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-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable."

Petitioner is of the view that since respondent failed to appeal the revenue measure within 30 days from its enactment, respondent may no longer file the Petitions for Refund.

Again, We do not subscribe to this argument. An appeal to the Secretary of Justice pursuant to Section 187 of the LGC is not necessary where there is no question on the constitutionality or legality of tax ordinances or revenue measures.[27] It is well to note that respondent is not questioning the validity or constitutionality of Section 21 of the MRC. Instead, respondent is asking for a refund of business taxes erroneously assessed and collected under Section 21 of the MRC on the ground that this imposition constitutes double taxation. Thus, Section 187 does not apply in this case.

Besides, the issue of the constitutionality of Tax Ordinance Nos. 7988 and 8011 has already been resolved in the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila, Liberty Toledo, et. al.*,[28] where the Supreme Court declared the ordinances null and void on the ground of failure to comply with the publication requirements.

Anent the argument of petitioner that respondent is *estopped* from claiming refund because it failed to protest or appeal the assessment as required in Section 195 of the LGC, We find the same untenable.

As aptly pointed out by respondent, citing *Alcan Packaging Starpack Corporation (formerly Starpack Philippines Corporation) v. The Treasurer of the City of Manila*,[29] Section 195 of the LGC pertains to protests on the assessment/s issued by the local treasurer against a taxpayer who has been found to have not paid its correct taxes, fees, or charges. Such is not the situation in the instant case.

Atty. Danilo L. Cruz is authorized to file the Petitions for Refund

Finally, petitioner avers that respondent failed to state the authority of Atty. Danilo L. Cruz to file the Petitions for Refund. Petitioner alleges that no

[27] Zarcon Development Corporation v. The City Treasurer of Manila, C.T.A. AC No. 24, May 16, 2007; City of Manila, et. al., v. Columbia Pictures Industries, Inc., C.T.A. AC No. 29, August 30, 2007; and The Treasurer of the City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 28, November 28, 2007.
[28] *Supra*, note 14.
[29] C.T.A. AC No. 17 (Civil Case No. 01-102097), September 11, 2006.

authority was shown to prove that Atty. Cruz was authorized to sign the Verification and Certification of Non-Forum Shopping.

This deserves scant consideration as the Secretary's Certificate attached to the Petition for Refund expressly states that Atty. Danilo L. Cruz is duly authorized to sign the Verification and Certification for and in behalf of the respondent. [30]

All told, We find no reason to reverse the ruling of the trial court.

WHEREFORE, the consolidated Petitions for Review are hereby **DENIED** for lack of merit. The Decision dated November 3, 2006 and Order dated July 12, 2007 rendered in Civil Case Nos. 02-104955, 04-108907, and 04-109703 are hereby **AFFIRMED.**

Accordingly, petitioner is hereby **ORDERED TO REFUND or ISSUE TAX CREDITS** to respondent, Unilever Philippines, Inc. in the amounts of P6,403,030.62, P11,350,041.07, and P11,350,041.07 representing erroneously paid local business taxes for the fourth quarter of the taxable year 2000, first quarter of the taxable year 2002, and second quarter of the taxable year 2002, respectively.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[30] *Rollo*, C.T.A. Case No. 49 (Civil Case No. 04-109703), p. 53.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division