REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Second Division

HOLCIM PHILIPPINES, INC., Petitioner,	**CTA AC NO. 283** [RTC Civil Case No. R-MNL-21-00369-CV]
-versus-	
THE CITY OF MANILA AND JOSEPHINE D. DAZA, IN HER CAPACITY AS THE CITY TREASURER OF THE CITY OF MANILA Respondents.	Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.* Promulgated: OCT 22 2024 1:05 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a *Petition for Review* filed by petitioner Holcim Philippines, Inc.,[1] praying that the Court render judgment: (i) reversing and setting aside the Decision, dated September 23, 2022[2] (RTC Decision), and Order, dated December 29, 2022[3] (RTC Order), both issued by the Regional Trial Court of the City of Manila– Branch 21 (RTC), in Civil Case No. R-MNL-21-00369-CV; and (ii) granting petitioner's claim for refund of the illegally and erroneously collected local business tax (LBT) by respondents in the total amount of ₱1,615,329.42.

The Parties

Petitioner Holcim Philippines, Inc. 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] It is a manufacturer and/or wholesaler

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1 Docket, pp. 1 to 38.
2 Docket, pp. 42 to 51.
3 Docket, pp. 52 to 54.
4 Exhibit "A", RTC Docket RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 176 to 187.

of cement, as its primary purpose stated in its Amended Articles of Incorporation 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 and all kinds of minerals and building materials."[5]

Respondent the City of Manila is a local government unit created by law. It may be served summons, notices, orders, and other processes of this Court through the Office of the City Legal Officer, City of Manila and/or Office of the City Mayor, City of Manila.[6]

Respondent Josephine D. Daza is the Acting City Treasurer of respondent City of Manila.[7]

The Facts

On January 11, 2019, as required for its application for the renewal of its business permit, petitioner executed a *Certification*,[8] stating therein that its gross sales/receipts for the calendar year 2018 amounted to ₱895,983,662.64.

Thereafter, on January 14, 2019, respondents issued to petitioner a *Statement of Account*, dated January 14, 2019,[9] stating that it was liable to pay LBT of ₱2,613,286.45 for the year 2019. Petitioner then paid the said amount on January 21, 2019, as evidenced by Official Receipt No. U034044593B.[10]

On January 15, 2021, petitioner sent to the City of Manila its letter-request for refund of erroneously and illegally collected LBT amounting to ₱1,615,329.42.[11]

On January 19, 2021, petitioner filed its *Petition for Refund* with the RTC,[12] praying that judgment be rendered granting its claim for refund of erroneously paid LBT in the amount of ₱1,615,329.42. Respondents filed

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5 Exhibit "A", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 176 to 187.

6 Par. 5, *Petition for Refund*, vis-à-vis par. 3, Answer, RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 2 to 3 and 70, respectively.

7 Par. 11, *Petition for Review*, vis-à-vis Par. 1, *Comment to the Petition for Review*, pp. 4 and 211, respectively.

8 Pre-Trial Order, RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, p. 212; Exhibit "B", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, p. 188.

9 Exhibit "C" and Exhibit "2", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, p. 189; Order dated December 7, 2021, RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 210 to 211.

10 Exhibit "D", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, p. 129; Exhibit "4", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, p. 202.

11 Exhibit "E" and Exhibit "1", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 130 to 134.

12 RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 1 to 16.

their *Answer (to the Petition for Refund dated 19 January 2021)* on February 19, 2021.[13]

After trial, the RTC promulgated the assailed RTC Decision on September 23, 2022,[14] the dispositive portion of which is as follows:

> WHEREFORE, the instant Petition for Refund is hereby DISMISSED for failure of the Petitioner to prove its claim by preponderance of evidence.
>
> SO ORDERED.

On December 2, 2022, petitioners filed a *Motion for Reconsideration (Re: Decision dated September 23, 2022)*,[15] to which respondents filed their *Comment to Petitioner's Motion for Reconsideration* on December 9, 2022.[16] This was denied in the assailed RTC Order, dated December 29, 2022.[17]

Aggrieved, petitioner filed the present *Petition for Review* on February 13, 2023.[18] Respondents posted their *Comment to the Petition for Review*[19] on May 15, 2023. Petitioner then filed a *Reply (Re: Respondent's Comment dated May 14, 2023)* on June 2, 2023.[20]

In compliance with this Court's Resolution dated July 18, 2023,[21] The RTC transmitted to the Court its records of Civil Case No. R-MNL-21-00369 on July 28, 2023.[22]

Then, in the Resolution, dated August 16, 2023,[23] the Court ordered the parties to file their respective memoranda. Accordingly, respondents' *Memorandum* was filed on October 5, 2023,[24] and petitioner's *Memorandum* was submitted on October 6, 2023.[25]

The case was submitted for decision on October 25, 2023.[26] Hence, this Decision.

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13 RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 70 to 76.
14 RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 350 to 359.
15 RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 360 to 376.
16 RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 378 to 382.
17 RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 384 to 386.
18 Docket, pp. 1 to 41.
19 Docket, pp. 211 to 216.
20 Docket, pp. 220 to 224.
21 Docket, pp. 226 to 227.
22 RTC-Branch 21 *Transmittal* dated July 26, 2023, Docket, pp. 228 to 231.
23 Docket, pp. 234 to 235.
24 Docket, pp. 237 to 242.
25 Docket, pp. 249 to 289.
26 Minute Resolution dated October 25, 2023, Docket.

The Issue

Petitioner submits the following issue for this Court's resolution, to wit:

> [W]hether Petitioner is entitled to the refund of the Total Claim for Refund representing illegally and erroneously billed and collected LBT by Respondents from Petitioner.[27]

Petitioners' arguments:

Petitioner argues as follows:

(1) It complied with the requirements of *Section 196 of the Local Government Code* (LGC) *of 1991* to entitle it to a refund; that its registration as an ordinary wholesaler is irrelevant to petitioner's claim for refund and to deny the claim for refund on this basis is not in accordance with the Section 143(c)(8) of the LGC of 1991;

(2) It has sufficiently proven that it is engaged in the business of manufacture and/or wholesale of cement, and, thus, entitled to the preferential rate under Section 143(c)(8) of the LGC of 1991; that respondents admitted that it is engaged in the business of manufacturing and/or wholesaling of cement and that it operates the Holcim Philippines, Inc. – Manila Cement Terminal located in L10 B2 Manila Harbor Center, Tondo, Manila for its cement wholesaling business; that the *Statement of Account* issued by respondent's License Division is not the "assessment" contemplated under Section 195 of the LGC of 1991 and is not the "assessment" that should be formally protested; that there was no "finding" or examination made by respondent City Treasurer that must precede an assessment under Section 195 of the LGC of 1991; that the *Statement of Account* was issued in connection with petitioner's application for renewal of business permit in respondent City of Manila and failed to state the amount of deficiency taxes that were due from petitioner; that petitioner's right to due process of law was violated by the issuance of the *Statement of Account* and that the use of PILAA in the computation of LBT is baseless and arbitrary; and that the *Statement of Account* is invalid because respondents did not apply the correct rate of LBT to petitioner.

[27] Issue, *Petition for Review*, Docket, p. 11.

Respondents' counterarguments:

Respondents contend that the Court *a quo* was correct in dismissing the petition for refund; that petitioner was not entitled to the preferential rate on LBT; that the City Treasurer has no authority to change or amend information of any business taxpayer; that the business owner has the sole responsibility to ensure the correctness of the nature of the business it is trying to register/renew; and that petitioner caused the amendment of the nature of its business.

The Court's Ruling

The present *Petition for Review* is partly meritorious.

The subject Statement of Account is not the "assessment" contemplated under Section 195 of the LGC of 1991

In the assailed Decision,[28] the Court *a quo* held that petitioner is not entitled to the refund of its payment of LBT for the year 2019 considering it was accorded due process when it received the *Statement of Account*, dated January 14, 2019, with details of fees to be paid but did not file any protest with the City Treasurer of Manila to question the basis of the assessment, pursuant to *Section 195 of the LGC of 1991.*

Petitioner assails the above ruling, maintaining that its cause of action is based on *Section 196*, and not *Section 195*, *of the LGC of 1991*, and that the *Statement of Account* is not the assessment pertained to under *Section 195 of the LGC of 1991.*

The Court agrees with petitioner.

Sections 195 and 196 of the LGC of 1991 provide:

> 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

[28] Docket, pp. 42 to 51.

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. ***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.***
(Emphasis and italics supplied.)

Accordingly, the above provisions govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes.

In *International Container Terminal Servince, Inc. v. The City of Manila,*[29] the Supreme Court held as follows:

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

[29] G.R. No. 185622, October 17, 2018.

> 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.
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> 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.
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> *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. . . .

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.'
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> On the other hand, ***if no assessment notice is issued by the local treasurer****, 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.*
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> . . . .
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> 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.'* . . .
>
> . . . .
>
> *No such precondition is necessary for a claim for refund pursuant to Section 196.*
> (Citations omitted; emphasis and italics supplied.

To be sure, *Section 195* only finds application in cases where a notice of assessment is issued to the taxpayer, thereby presupposing the existence of a valid tax assessment.[30] In *National Power Corporation vs. Province of Pampanga*,[31] the Supreme Court elucidated on the significance of the taxing authority's duty to adequately inform the taxpayer of the factual and legal basis for the assessment:

> Taxpayers' obligation for deficiency taxes cannot depend on a guessing game. *To stress, the taxpayer must not only be informed of what taxes it is liable to pay* ***and under what authority the obligation to pay is based****.* Equally important is that it must be advised how much is the pending tax liability and the period covered. *Without these particulars, taxpayers would be deprived of adequate opportunity to prepare for an intelligent appeal as they would have no way of determining what is considered by the taxing authority in making the assessment.*
> (Emphasis and italics supplied.)

More recently, in *Jose vs. Tigerway Facilities and Resources, Inc.,*[32] the Supreme Court also ruled 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:

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[30] *Hon. Lourdes R. Jose, in her capacity as City Treasurer of City of Caloocan vs. Tigerway Facilities and Resources, Inc.*, G.R No. 247331, February 26, 2024.
[31] G.R. No. 230648, October 6, 2021.
[32] G.R. No. 247331, February 26, 2024.

> 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* ***to adequately inform the taxpayer of the factual and legal basis for the assessment***, 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 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:
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> 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.
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> 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: . . . .
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> Any deficiency to the mandated content of the assessment or its process will not be tolerated. . . .
>
> . . . .
>
> 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 italics supplied.)

Based on the foregoing, *Section 195 of the LGC of 1991* requires that that the notice of assessment state the nature of the tax, fee, or charge and the amount of deficiency, surcharges, interests, and penalties.

In this case, a perusal of the subject *Statement of Account* shows that the same was issued not as an assessment of LBT but as a prerequisite for the issuance/renewal of petitioner's business permit. The said *Statement of Account* does not contain any information about the facts and law upon which the supposed assessment is based. Moreover, there is also no showing that the City Treasurer of Manila or their duly authorized representative made a finding that petitioner failed to pay correct taxes, fees, or charges, and that they subsequently issued to petitioner a notice of assessment, stating the nature of the tax, fee, or charge and the amount of deficiency, the surcharges, interests, and penalties.

Thus, petitioner correctly argued that the subject *Statement of Account* issued to it is not the notice of assessment under *Section 195 of the LGC of 1991*. Hence, *Section 196* governs petitioner's claim for refund for 2019.

Petitioner complied with the prescriptive period for filing claims for refund of LBT as provided in Section 196 of the LGC of 1991

Applying the above and finding that the *Statement of Account* is not considered as the notice of assessment contemplated under *Section 195 of the LGC of 1991*, the applicable provision in this case in determining the timeliness of the filing of petitioner's judicial claim for refund before the Court *a quo* is, and should only be, *Section 196 of the LGC of 1991*.

To recall *Section 196 of the LGC of 1991*, 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 and no case or proceeding shall be entertained in any court after the expiration of two years from the date of payment of such tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

In this case, petitioner paid the LBT to the Office of the City Treasurer on January 21, 2019.[33] Counting two years from said date, petitioner had until January 21, 2021, to file its administrative and judicial claims for refund. Notably, petitioner's administrative claim for refund was filed on January 15, 2021 before the City Treasurer's Office,[34] and its judicial claim for refund filed before the Court *a quo* on January 19, 2021.[35] Thus, both administrative and judicial claims fell within the two-year prescriptive period.

Respondents should have assessed petitioner using the reduced rate for manufacturers and/or wholesalers of essential commodities

As narrated in the assailed *Decision*, petitioner, as a manufacturer and wholesaler of an essential commodity, *i.e.*, cement, contends that it is entitled to the preferential rate for local business tax under *Section 143(c)(8) of the LGC of 1991*.

Respondents, on the other hand, argue that petitioner failed to correctly register its business as one engaged in the manufacturing or wholesaling of essential commodities, thus, petitioner is not entitled to any preferential treatment in the payment of LBT and is not entitled to the refund of the amount of ₱1,615,329.42.

The Court *a quo* concluded that petitioner is not entitled to the refund of its payment of local business tax for the year 2019:

> 1. The local business tax for the year 2019 is the subject of this case and Holcim was registered as an ordinary wholesaler in the City of Manila in 2019 and prior thereto, thus, the respondent's assessment

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[33] Exhibit "D", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, p. 129; Exhibit "4", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, p. 202.

[34] Exhibit "E" and Exhibit "1", RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 130 to 134.

[35] RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, pp. 1 to 16.

> of local business tax for 2019 of Holcim as an ordinary wholesaler is proper. The application of the preferential local business tax rate as wholesaler of cement, an essential commodity will commence only on March 30, 2022 onwards when Holcim applied for an amendment of its nature of business from an ordinary wholesaler to wholesaler of cement, an essential commodity.

This Court disagrees with the ruling of the Court *a quo*.

Unlike the national government, local government units have no inherent power to tax. They merely derived 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*.[36] Additionally, it is clear that *Section 129, Book II, of the LGC of 1991*, 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 of 1991.

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 of 1991*, to wit:

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

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

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:

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 of 1991*, a city, such as respondent City of Manila, may tax manufacturers under *Section 143(a) 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 *Sections 143(a), (b), and (d)*. Articles considered as essential commodities are limited to those enumerated in *Section 143(c)*. Relative thereto, under *Section 131(o) of the LGC of 1991*, 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.

Significantly, however, there is nothing in the covered provisions that mentions prior registration with an LGU before an entity may be considered as a manufacturer.

In *University of Mindanao, Inc. vs. Bangko Sentral Pilipinas, et al.*,[37] the Supreme Court ruled:

> Corporations are artificial entities granted legal personalities upon their creation by their incorporators in accordance with law. Unlike natural persons, they have no inherent powers. Third persons dealing with corporations cannot assume that corporations have powers. *It is up to those persons dealing with corporations to determine their competence* ***as expressly defined by the law and their articles of incorporation.***
>
> *A corporation may exercise its powers* ***only within those definitions****. Corporate acts that are* ***outside those express definitions under the law or articles of incorporation or those 'committed outside the object for which a corporation is created' are ultra vires.***
>
> *The only exception to this, rule is when acts are necessary and incidental to carry out a corporation's purposes*, and to the exercise of powers conferred by the Corporation Code and under a corporation's articles of incorporation. This exception is specifically included in the general powers of a corporation under Section 36 of the Corporation Code:
>
> > SEC. 36. Corporate powers and capacity. — Every corporation incorporated under this Code has the power and capacity:
> >
> > ....
> >
> > 11. *To exercise such other powers as may be essential or necessary* ***to carry out its purpose or purposes as stated in its articles of incorporation.*** (Emphasis supplied)
>
> *Montelibano, et al. v. Bacolod-Murcia Milling Co., Inc.* stated the test to determine if a corporate act is in accordance with its purposes:
>
> > *It is a question*, therefore, in each case, of the *logical relation of the act to* ***the corporate purpose expressed in the charter.*** If that act is one which is lawful in itself, and not otherwise prohibited, is done for the purpose of serving corporate ends, and is reasonably tributary to the promotion of those ends, *in a substantial, and not in a remote and fanciful, sense,* it may fairly be considered within charter powers. The test to be applied is whether the act in question is in *direct and immediate furtherance of the corporation's business, fairly incident to the express powers and reasonably necessary to their exercise*. If so, the corporation has the power to do it; otherwise, not. (Emphasis supplied)
>
> (Emphases and italics supplied.)

Based on the foregoing, the corporate purpose expressed in a corporation's articles of incorporation or charter is definitive of a corporation's powers and competence in that a corporation may exercise its

[37] G.R. No. 194964-65, January 11, 2016.

powers only within those definitions. Corporate acts that are outside those express definitions under the law or articles of incorporation or those "committed outside the object for which a corporation is created" are *ultra vires*. It is also up to third persons dealing with corporations to determine *their competence as expressly defined by the law and their articles of incorporation.*

In this case, the parties stipulated that petitioner'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."[38] Thus, petitioner is a manufacturer and/or wholesaler of cement, as defined by *Section 131(o) of the LGC of 1991* and its Amended Articles of Incorporation.

However, respondents billed LBT at the rate for manufacturers in general, insisting that petitioner is not registered with respondent City of Manila's Bureau of Permits as a business engaged in the wholesale of essential commodities and without considering that petitioner is a manufacturer of essential commodities, which is clearly beyond the limitations provided by the *LGC of 1991* for manufacturers of cement like petitioner in this case. To reiterate, there is nothing in the *LGC of 1991* that requires prior registration with the concerned LGU before an entity may be considered a manufacturer, that remotely suggests that a cement manufacturer like petitioner must first register with the Bureau of Permits before it may be considered as such.

Accordingly, petitioner is a manufacturer and/or wholesaler of cement, as expressly defined by the *Section 131(o) of the LGC of 1991* and its Amended Articles of Incorporation. The computation by respondents in billing petitioner of LBT for the taxable period 2019 is thus incorrect.

Respondents did not err in using the Presumptive Income Level Assessment Approach

Petitioner claims that respondents should not have used the Presumptive Income Level Assessment Approach (PILAA), a method for assessing LBT. It argues that PILAA may only be used if a taxpayer is unable to provide proof of its gross sales or receipts. Here, however, Petitioner's Certification, which indicates the total amount of petitioner's gross sales or receipts for calendar year 2018, was "made available" to respondents. As such, the latter should not have used PILAA in assessing petitioner.

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[38] Pre-Trial Order, RTC Docket (Civil Case No. R-MNL-21-00369-CV) – Vol. 1, p. 212; Exhibit "A", p. 225.

The Court disagrees.

It is true that the use of PILAA is not appropriate for all assessments. Requirements for such use are laid down by *Bureau of Local Government Finance (BLGF) Memorandum Circular No. 01-001-17*:

> B. Assessment of LBT for Renewal of Business Permit
>
> 1. In the absence of audited Financial Statement, the LBT shall be based on the Sworn Declaration of gross sales or receipts by the taxpayers or its Income Tax Returns (ITR). In case of suspected underdeclaration of gross sales/receipts, the application shall be tagged by the LGU, and the business may be subjected to the examination of books of accounts by the local treasurer, which shall be done after the business renewal period.
>
> . . . .
>
> 3. *The Presumptive Income Level Assessment Approach (PILAA) may be used in computing the local business [tax]* ***ONLY if the taxpayer is unable to provide proof of its gross sales or receipts***. The PILAA may be used in estimating the gross sales or receipts ***provided that the PILAA is in the local tax ordinance*** and has undergone public hearings and publications. This is to ensure that the taxpayers are properly informed of the factors used in determining the presumptive income and for the taxpayers to agree to such level of presumptive income applicable to their industry. Absent such ordinance authorizing the use of the PILAA and embodying the presumptive income levels to be used by the Local Treasurer, the collection of additional local business taxes based on such PILAA is illegal and the petitioner may properly claim the refund of the excess business taxes collected.
>
> (Emphases and underscoring added)

From the foregoing, PILAA may be used to assess LBT when two conditions occur simultaneously: (1) the taxpayer is unable to provide proof of its gross sales or receipts; *and* (2) such use is permitted by the local tax ordinance.

Anent the first requirement, the Court *a quo* found that petitioner failed to actually submit the Certification of its gross sales or receipts to respondents:

> 3. The application of the Presumptive Income Level Assessment Approach (PILAA) in accordance with BLGF Memorandum Circular No. 01-001-17 in computing the local business tax due for 2019 in the amount of ₱2,613,286.45 is proper in the absence of

> proof of petitioner's gross sales or receipts. If it is true that the Certification dated January 11, 2019 of Holcim Philippines, Inc. certifying that the total gross receipts/sales of Holcim Philippines, Inc. – Manila Cement Terminal for the calendar year 2018 amounted to ₱895,983,662.64 is already existing on such date, petitioner should have presented evidence that the said Certification was submitted and received by the Office of the City Treasurer of Manila to be used in the computation of its local business tax due for 2019 but no proof was presented to substantiate such claim.

Petitioner raises no strong opposition to this finding. It neither identifies any evidence offered before the Court *a quo* to support its position nor explains *how* its Certification was "made available" to respondents. The Court thus finds that petitioner, indeed, failed to provide proof of its gross sales or receipts to respondents. The first requirement for the use of PILAA has been meet.

As for the second requisite, *Section 182 of the 2013 Omnibus Revenue Code of the City of Manila* (MRC) directly allows the use of PILAA, calling it "Presumptive Income Assessment," as follows:

> SEC. 182. Collection of Local Revenues by Treasurer — All local taxes, fees, and charges shall be collected by the City Treasurer, or his duly authorized deputies. The City Treasurer may designate his deputy to collect local taxes, fees or charges. In case a bond is required for the purpose, the city government shall pay the premiums thereon in addition to the premiums of bond that may be required under this Ordinance.
>
> In order to ensure and maximize the collection of proper taxes, fees and other charges, *the City Treasurer may use or adopt a Presumptive Income Assessment in cases where the taxpayer neglects or refuses to declare the amount of gross sales or receipts subject to tax* or such amount so declared appears inadequate, unrealistic or doubtful and the taxpayer fails to submit an Audited Financial Statement or other records. The City Treasurer is hereby authorized to issue the necessary Implementing Rules and Regulations in the use of the Presumptive Income Assessment.
> (Italics supplied.)

The above authorizes the use of the PILAA by respondents when a taxpayer "neglects or refuses to declare the amount of gross sales or receipts subject to tax," consistent with the second requirement under *BLGF Memorandum Circular No. 01-001-17*.

Both conditions for the use of PILAA were thus present when respondents assessed petitioner. Consequently, their use of PILAA was justified.

Petitioner is entitled to a refund of erroneously paid LBT in the amount of ₱1,306,643.23

To sum up the Court's findings, while respondents were justified in their use of PILAA, they should have assessed petitioner using the lower rates for manufacturers and/or wholesalers of essential commodities.

Under *Section 103 of the MPR*, manufacturers and/or wholesalers of essential commodities are to be taxed at a rate of ½ the rates for manufacturers and/or wholesalers of regular, non-essential commodities:

> SEC. 103. Tax on Essential Commodities. — A percentage tax at the rate of one half (1/2) of the rates prescribed under Sections 101, 102, and 104 is hereby imposed on exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder:
>
> ....
>
> (Italics supplied.)

Consequently, respondents should have assessed petitioner for only half of the ₱2,613,286.45 that they actually assessed, and petitioner should have been held liable for LBT for calendar year 2018 in the amount of ₱1,306,643.23 only.

Considering that (1) petitioner paid the full ₱2,613,286.45 assessed; and (2) it should only have been held liable for ₱1,306,643.23, petitioner is entitled to a refund of erroneously or illegally paid taxes in the amount of ₱1,306,643.22.

ACCORDINGLY, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. The dispositive portion of the Decision, rendered by the Regional Trial Court of the City of Manila– Branch 21 in Civil Case No. R-MNL-21-00369-CV on September 23, 2022, is hereby **MODIFIED** to read as follows:

> WHEREFORE, the instant Petition for Refund is hereby PARTIALLY GRANTED. Respondents The City of Manila and Ma. Jazmin N. Talegon, in her capacity as the Officer in-charge of the City Treasurer's Office of the City of Manila are hereby ORDERED to refund petitioner Holcim Philippines, Inc. in the total amount of ₱1,306,643.22, representing erroneously or illegally paid local business taxes for calendar year 2018.
>
> SO ORDERED.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Please see Concurring and Dissenting Opinion)
CORAZON G. FERRER-FLORES
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.

MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

HOLCIM PHILIPPINES, INC.,
Petitioner,

vs.

THE CITY OF MANILA AND JOSEPHINE D. DAZA, IN HER CAPACITY AS THE CITY TREASURER OF THE CITY OF MANILA,
Respondent.

CTA AC NO. 283
[RTC Civil Case No. R-MNL-21-00369-CV]

Present:

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, *JJ.*

Promulgated:

OCT 22 2024
1:05 p.m.

x - x

CONCURRING AND DISSENTING OPINION

FERRER-FLORES, J.:

Prefatorily, I concur with the *ponencia* of my esteemed colleague that the subject Statement of Account is not the "assessment" referred to in Section 195 of the Local Government Code of 1991 (LGC), and that petitioner Holcim Philippines Inc.'s cause of action appropriately falls under Section 196 of the LGC. Correspondingly, I agree with the *ponencia* in finding that petitioner timely filed its claim for refund under Section 196 of the LGC.

I do, however, express my dissent on the conclusion reached that petitioner is entitled to the preferential rate allowed for manufacturer/wholesaler of cement based on its corporate purpose as stated in its Articles of Incorporation (AOI). The *ponencia* stated as follows:

> In this case, the parties stipulated that petitioner'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." Thus, petitioner is a manufacturer

and/or wholesaler of cement, as defined by Section 131(o) of the LGC of 1991 and its Amended Articles of Incorporation.

While petitioner is undoubtedly a manufacturer of cement, it is *not*, as expressed in its AOI, *exclusively* engaged in such. Significantly, petitioner is authorized also to engage in the business of manufacturing, production, and merchandising, whether domestically or for export, of <u>cement products and by-products, including its derivatives, and any and all kinds of minerals and building materials.</u>

Section 143(c)(8) of the LGC specifically enumerates "cement" as an essential commodity.

Expressio unius est exclusio aterius. It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[1]

Congruent with the statutory construction principle above, I believe that the entitlement to the preferential rate must be strictly construed, and limited only to "cement" as specified in the LGC. Stated differently, the entitlement to preferential rate must not be extended to products other than cement.

As tackled in the *ponencia*, petitioner failed to provide its gross sales or receipts to respondents. Even assuming there is Certification of its gross sales or receipts, there is no way for the Court to determine whether the gross sales, wholly or partially, is attributable to the manufacture/wholesale of cement. Accordingly, for failure of petitioner to prove that its sales arose wholly from the manufacture/wholesale of cement, its claim for refund must be denied.

CORAZON G. FERRER-FLORES
Associate Justice

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[1] *Development Bank of the Philippines vs. Commissioner on Audit*, G.R. No. 221706, March 13, 2018.