REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

UNILEVER PHILIPPINES, INC.,
Petitioner,

-versus-

THE TREASURER OF THE CITY OF MANILA,
Respondent.

C.T.A. AC NO. 41
(Civil Case No. 05-115701)

Members:

ACOSTA, ***P.J.***
BAUTISTA, and
CASANOVA, ***JJ.***

Promulgated:

JUN 24 2008 ; 3:05pm

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DECISION

ACOSTA, PJ.:

Before Us is an appeal by Petition for Review from the Decision of the Regional Trial Court of Manila dated May 25, 2007, dismissing petitioner's Petition for Refund, and the August 31, 2007 Order denying petitioner's Motion for Reconsideration.

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

Respondent is the Treasurer of the City of Manila (City), and is being sued in such capacity, tasked with the implementation of the Manila Revenue Code, as amended, as well as the collection and assessment of business taxes, license fees, and permit fees within the City. Respondent may be served with summons and other court processes through the City Legal Officer of Manila at Manila City Hall.

On January 20, 2003, petitioner paid taxes under both Sections 14 and 21 of the Manila Revenue Code (MRC), as amended, corresponding to the first quarter of 2003.

Section 14 of the MRC, as amended, imposes tax on manufacturers, assemblers and other processors, while Section 21 thereof deals with tax on business subject to the excise, value-added or percentage taxes under the National Internal Revenue Code (NIRC) of 1997.

On January 5, 2005, petitioner filed a letter[1] claiming for the refund of P13,724,446.00, representing business taxes paid under Section 21 of the MRC, as amended.[2] Petitioner asserts that it is not questioning the validity of Section 21 of the said MRC; nonetheless, being taxed under both Sections 14 and 21 of the same Code constitutes double taxation prohibited by law.

For failure of respondent to act on petitioner's claim for refund, petitioner filed a Petition for Refund before the Regional Trial Court (RTC) of Manila on January 19, 2005.[3] On the other hand, respondent filed her Answer on May 17, 2005.[4]

During the pre-trial conference, it was agreed upon that the sole issue to be resolved by the RTC is whether petitioner is entitled to a refund of business taxes paid under Section 21 of the MRC, as amended, for the first quarter of 2003. The fact of payment, the claim for refund, the denial of the claim, and the capacity of petitioner to sue and be sued were all admitted.[5]

[1] Annex "D" of the Petition for Review
[2] Annex "C" of the Petition for Review
[3] Annex "E" of the Petition for Review
[4] Page 3 of Annex "A"
[5] Page 7 of Annex "A"

On May 25, 2007, the RTC rendered a Decision dismissing petitioner's claim for refund. The Decision partly reads as follows:

> "It is evident that the enforcement of Section 21 of Manila's Revenue Code against Unilever does not constitute double taxation in view of the taxes collected by the City of Manila under Section 14 of the same Code. Section 21 is not a tax on the business *per se*; rather, it is a tax on persons availing of the goods and services of the business.
>
> Upon careful examination of the Revenue Code of Manila, it will be deduced that Section 21 imposes indirect tax upon end users of the goods and services of the manufacturing business of Unilever. The tax under Section 21 is in the concept of an indirect tax in view of the modifying paragraph 'the tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering 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.'
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> xxx xxx xxx
>
> The tax imposed upon plaintiff under Section 14 is a tax on the manufacturing business. It is a direct tax which is demanded from plaintiff, burdened to pay the same, in contrast to Section 21 which is in the concept of an indirect tax.
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> xxx xxx xxx
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> In short, there is no double taxation, since there is an absence on the element of taxing twice on the same activity or subject matter."

Petitioner filed a Motion for Reconsideration on January 19, 2007 but was denied by the RTC in an Order dated August 31, 2007.[6]

Hence, the instant Petition for Review being filed on October 10, 2007 praying that We:

1. Give due course to the Petition;
2. After due consideration, render judgment reversing and setting aside the May 25, Decision and the August 31, 2007 Order of the Regional Trial Court and:

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[6] Annex "B" of the Petition for Review

(a.) Declaring that petitioner is not liable for business taxes under Section 21 of the MRC having already paid business taxes under Section 14 thereof; and

(b.) Refunding to petitioner taxes paid thereunder for the first quarter of the year 2003 in the amount of P13,724,446.00.

The instant Petition raised the sole ground:

The enforcement of Section 21 of the City of Manila's Revenue Code against petitioner constitutes double taxation prohibited by law in view of taxes collected by the City and paid by petitioner under Section 14 of the Revenue Code. Thus, the taxes collected by respondent being claimed in the proceedings a quo in the amount of P13,724,446.00 should be immediately refunded.

In a Resolution dated November 14, 2007, respondent was ordered to file a Comment to the instant Petition for Review. However, respondent failed to file the same. On January 15, 2008, the instant Petition for Review was given due course *sans* respondent's Comment. The parties were likewise ordered to file their respective Memoranda.

Respondent and petitioner filed their Memoranda on February 21, 2008 and February 22, 2008[7], respectively.

The case was submitted for Decision in a Resolution dated March 17, 2008.

Petitioner maintains that Section 14 of the MRC, as amended, takes root in Section 143(a) of the Local Government Code of 1991 (LGC), and Section 21 of the MRC, as amended, finds basis in Section 143(h) of the LGC. It claims that the City may impose taxes on business subject to the excise, value-added and percentage taxes, as allowed in Section 143(h) of the LGC. But the City cannot impose the same tax on a business already subject to taxes under Section 143(a) of the LGC. This is clearly expressed in Section 143(h) in the proviso, "*not otherwise specified in the preceding*

[7] Posted on February 18, 2008.

paragraphs." Applied to the MRC, as amended, the City cannot enforce Section 21 over businesses already subject to business taxes under Section 14.

Petitioner further avers that it is a manufacturer paying local taxes pursuant to Section 14, thus, the same sale of manufactured goods can no longer be subject to business tax under Section 21. Doing so constitutes a direct double taxation prohibited by law, as it violates the uniformity rule in taxation and equal protection.

For her part, respondent argues in her Memorandum that there is no direct double taxation. On the basis of the phrase "*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 taxes xxxx*" found in Section 21 of the MRC, as amended, the tax imposed is in the concept of indirect tax upon end-users of the goods and services of the business, not the establishment itself. The tax imposed under Section 21 has already been collected by petitioner (the payor) from the end users (the payee) the same having been added by petitioner to the basic prices of its goods or services. And, petitioner is merely a withholding agent, charged with the obligation to remit the tax collected to the City.

Respondent continues that Section 14, on the other hand, imposes tax on the business itself. Therefore, there are in *esse* two (2) objects of taxation in the dual facet of petitioner's business operations. There is no taxation on the same property or object by the same taxing authority, and the imposition under Sections 14 and 21 are not of the same kind and character, to infringe upon the constitutional injunction against double taxation.

We find the instant Petition for Review meritorious. Foremost, the power of the City of Manila to impose business tax finds basis in Section 143 of the LGC in relation to Section 151 of the same Code, *viz*:

> "SECTION 151. **Scope of Taxing Powers.** – Except as otherwise provided in this Code, the city, may levy taxes, fees, and charges which the province or municipality may impose: xxx

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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:*

xxx xxx xxx

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

xxx xxx xxx

(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:

xxx xxx xxx

(d) On retailers;

xxx xxx xxx

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

xxx xxx xxx

(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, insurance premium.

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

(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 supplied.)*

The aforequoted Section 143 enumerates the entities subject to business tax. Sub-section (h) is understood to be a "*catch-all*" provision as indicated on the phrase "*any business.*" The phrase, however, is qualified by the proviso "*not otherwise specified in the preceding paragraphs.*" It means that any business not mentioned in the preceding paragraphs, that is, sub-sections "*a*" to "*g*", can be taxed under sub-section (h). Verily, the intent is to authorize Local Governments to impose business tax under either one of the sub-sections but not under both or all, ultimately to avoid taxing the same entity for the same business tax. The provision is clear and leaves no room for more interpretation. It should be applied as it is, pursuant to the longstanding rule in statutory construction that if a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[8]

On the basis of Sections 151 and 143 of the LGC, the Manila Revenue Code (MRC) was enacted and became effective on July 1, 1993. The MRC was later on amended on September 30, 1993 through Ordinance No. 7807.[9] The following are the pertinent provisions, partly quoted:

"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 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:

[8] Huertas vs. Gonzalez, G.R. No. 152443, February 14, 2005
[9] Further amendments were introduced by Ordinance No. 7988. However, Ordinance Nos. 7988 was declared null and void by the Supreme Court in the case of Coca-Cola Bottlers Phils. vs. City of Manila, 493 SCRA 279 (2006).

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.

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."

A reading of the above shows, that Sections 14 and 21 are based from Section 143(a) and (h) of the LGC, respectively. Being so, Sections 14 and 21 should be interpreted in relation to Section 143 of the LGC. For the assumption is that whenever a law is enacted, the lawmakers has in mind the previous statutes relating to the same subject matter, and in the absence of express repeal or amendment, the new statute is enacted in accord with the legislative policy embodied in those prior statutes.[10] Appropriately, the intent behind Section 143 of *taxing a subject entity of business tax once* should likewise be applied in understanding and applying Sections 14 and 21 of the MRC, as amended. In other words, a subject entity held liable under Section 14 of the MRC, as amended, is debarred from being taxed under Section 21 of the same Code and *vice-versa*.

[10] Corona vs. Court of Appeals

Petitioner is being made liable of business tax under Section 14 as a manufacturer. A "*manufacturer*" is defined in Section 131(o) of the LGC as that which "*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 would not have been put in its original condition, or who by any process, alters the quality of any such raw material or manufactured or partially manufactured products so as to reduce it to a marketable shape or prepare it for any of the use in the industry, or who by any process, combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put and who in addition, alters such raw material or manufactured or partially manufactured products or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption.*" Simply put, a manufacturer sells its goods for a fee.

Petitioner is again taxed under Section 21(A) of the MRC, as amended, for being a business subject to "excise, value-added, and percentage tax" which sells goods in the course of trade or business.

Apparently, petitioner is being taxed twice of the same business tax for selling its goods in the course of its business. Such form of taxation is contrary to the policy of Section 143 of the LGC and consequently, to that of Sections 14 and 21 of the MRC, as amended.

Moreover, the phrase "*on any business subject to excise, value-added or percentage tax under the National Internal Revenue Code*" in Section 143(h) of the LGC merely qualifies or limits the rate of tax to be imposed on businesses already subject to excise, value-added or percentage tax under the NIRC of 1997, and does not authorize Local Governments to impose business tax upon an entity already

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subject to the same tax on the mere ground that such entity is subject to "*excise, value-added or percentage tax under the National Internal Revenue Code*."

The next question to fore is whether there is a case of double taxation, and in case there is, whether it is a prohibited double taxation.

The answer is in the affirmative. Double taxation is defined as taxing the same property twice when it should be taxed but once. It has also been defined as taxing the same person twice by the same jurisdiction over the same thing.[11] In general, it is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose.[12] Explicated in another way, double taxation in its obnoxious or prohibited sense is described as "d*irect 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 the same kind or character.[13] It is direct duplicate taxation that is not allowed in our jurisdiction for being violative of the equal protection clause.[14]

Based on the foregoing, double taxation is prohibited when the following elements are present:

a. Being taxed twice when it should be taxed only once;
b. both taxes are imposed on the same property or subject matter;
c. for the same purpose;
d. by the same state, Government, or taxing authority;
e. within the same jurisdiction or taxing district;
f. during the same the same taxing period; and
g. covering the same kind or character of tax.

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[11] Victorias Milling Co. vs. Municipality of Victorias, Negros Occidental, L-21183, September 27, 1968
[12] Pepsi-Cola Bottling Co. vs. Municipality of Tanauan, Leyte, 69 SCRA 460
[13] Commissioner of Internal Revenue vs. Solidbank Corp., G.R. No. 14819, November 25, 2003
[14] Constitutional Law by Justice Isagani Cruz, 1998 Edition, page 90

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Applying the aforecited definition and doctrines, petitioner is being taxed under Sections 14 and 21(A) of the MRC, as amended, for the same kind of tax, *that is*, business tax; by the City of Manila, being the same taxing authority; within the same taxing district of the City of Manila; for the same period of the first quarter of 2003; and for the same reason of regulating business within the City. This is a clear example of direct duplicate taxation.

In addition, We find erroneous, respondent's argument that there is no double taxation on the ground that Section 21 of the MRC, as amended, is not a direct tax on the petitioner but to its customers in view of the modifying proviso therein, which state 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 end of each quarter.*" Consequently, Section 14 of the MRC, as amended, being a direct tax on the business, and Section 21 of the same Code, an indirect tax, there are two taxes of different kinds or characters.

Under the doctrine of last antecedent, *qualifying words restrict or modify only the words or phrases to which they are immediately associated. They do not qualify words or phrases which are distantly or remotely located.*[15]

In line with this doctrine, We construe that the phrase: "*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 end of each quarter*" of Section 21 of the MRC, as amended, applies only to subparagraph (C), being the paragraph to which the subject qualifying/modifying phrase are immediately associated.

The doctrine of last antecedent is subject *to the exception that, where the intention of the law is to apply the phrase to all antecedents embraced in the provision, the same should be made extensive to the whole.*[16] The exception, however, failed to apply in this case. A perusal of Section 21 reveals that there is no

[15] Statutory Construction by Ruben Agpalo, 5th Ed., 2003, page 232
[16] *Supra*, page 234

legislative intent to apply the qualifying phrase to the whole provision. Thus, it is incoherent for respondent to extend the applicability of the qualifying phrase under Section 21(C) to subparagraph (A) in order to justify a plain case of direct duplicate taxation.

Furthermore, respondent's interpretation of Section 21 of the MRC, as amended, that what is being taxed is not the business itself but the "*purchasing power*" of the person paying for the services finds no basis in law. Section 21 is beyond doubt a *business tax* on entities subject to excise, value-added or percentage tax, and not on the "*purchasing power*" of the buyer, which is not a business pursuit. This is patent from a reading of Section 21. Also, it is worthwhile to reiterate that Section 21 is merely rooted on Section 143(h) of the LGC, and Section 143(h) is clear that it is a tax on the business itself.

Likewise, it is significant to stress at this juncture, that the NIRC of 1997 contains a counterpart provision, 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 services, 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.
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> (B) Exemptions. – The tax imposed by this Section shall not apply to:
>
> (1) Government xxx
> (2) Diplomatic Services xxx
> (3) International Organizations xxx
> (4) News Services xxx."

The similarities between Section 120 of the NIRC of 1997, and Section 21(C) of the MRC, as amended, are unmistakable. Both sections deals with tax on overseas

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dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services; both exempted similar entities from the tax, and both taxes are payable by the end users.

It is a well established rule that a statute should be so construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligent system. The rule is expressed in the maxim, *interpretare et concordare leges legibus est optimus interpretandi modus*, or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[17] Stated differently, every statute should be so construed in such way that will harmonize it with existing laws. To interpret and do it in such a way as to harmonize laws with laws is the best method of interpretation.[18]

Guided by the abovementioned rule, it is appropriate to comprehend that the phrase *"the tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering services who is required to collect and pay the tax within twenty (20) days after the end of each quarter"* applies only to Section 21 (C) of the MRC, as amended, just so to harmonize the said section with Section 120 of the NIRC of 1997.

For all the foregoing, since petitioner is already taxed under Section 14 of the MRC, as amended, it should no longer be held liable for the same tax under Section 21(A) thereof.

WHEREFORE, the instant Petition for Review is hereby **GRANTED** and the appealed Decision dated May 25, 2007, and the Order dated August 31, 2007 are **REVERSED**.

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[17] *Supra*, page 268
[18] Sps. Antonio and Lorencita Algura vs. LGU of The City of Manila, et al, G.R. No. 150135, October 30, 2006

[initials]

Accordingly, respondent, Treasurer of the City of Manila, is hereby **ORDERED TO REFUND** to petitioner, Unilever Philippines, Inc., the total amount of P13,724,446.00 representing petitioner's erroneously paid local business taxes for the first quarter of taxable year 2003.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate 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 in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice