REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

CITY OF MANILA and
MS. LIBERTY TOLEDO,
In her official capacity as the
CITY TREASURER OF MANILA,
Petitioner,

C.T.A. AC No. 61
(RTC Civil Case No. MC06-2975)

Members:

- versus-

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

COSMOS BOTTLING CORPORATION,
Respondent,

Promulgated:
NOV 09 2010
ABFernando 2:25 p.m.

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DECISION

COTANGCO-MANALASTAS, J.:

On appeal via Petition for Review is a Decision[1] of the Regional Trial Court dated February 11, 2009, ordering petitioner to refund to respondent the amount of local business tax excessively and unlawfully collected in the amount of P1,044,509.08 for the year 2006.

THE FACTS

Culled from the records[2], the facts are as follows:

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[1] *Rollo*, C.T.A. AC No. 61, pp. 33-51.
[2] *Rollo*, pp. 12-15, 33-36, and 54-56.

Petitioner City of Manila is a local government unit organized and existing under Republic Act No. 409 and is represented in this case by his Honor, Alfredo S. Lim, City Mayor of Manila.

Petitioner Liberty M. Toledo is of legal age, Filipino and is filing this case in her capacity as the City Treasurer of the City of Manila with office address at the Ground Floor, Manila City Hall, Taft Avenue, Manila.

Respondent Cosmos Bottling Corporation is a domestic corporation legally organized and existing under Philippine law with office address at SMPC Building, No. 7 St. Francis Street, Ortigas, Mandaluyong City.

To facilitate its payment of business taxes, permit fees, other fees and regulatory charges for the year 2006, respondent submitted its total sales within the City of Manila for the year 2005 pursuant to provisions of the Revenue Code of Manila.

Petitioner sent respondent assessments for year 2006 under Statement of Account (SOA) Nos. 0105158[3] and 0144258[4] with the following details:

Statement of Account Number	Date of Statement of Account	Line/Nature of Business	Period	Amount Assessed
0144258	January 13, 2006	Private warehouse	Full year	34,296.40
0105158	January 14, 2006	Mftr Sales/ Purchasing Office	Quarter 1	1,227,781.05

Upon review of the SOAs, respondent found that the assessments were based on Tax Ordinance No. 7988 and Tax Ordinance No. 8011. Respondent filed its letter-protest[5] to both SOAs with the petitioners on January 19, 2006. The protest argued that Tax Ordinance Nos. 7988 and 8011 upon which the assessments were based have

[3] *Rollo*, p. 64.
[4] *Rollo*, p. 63.
[5] *Rollo*, p. 67-70.

been declared null and void by the Department of Justice (DOJ) in its Resolution dated August 17, 2000. Respondent also argued that the collection of local business taxes and fees under the foregoing ordinances constituted double taxation.

Respondent tendered payment for its liabilities for business taxes and permits for the first quarter of 2006 computed based on the provisions of Tax Ordinance No. 7794, as amended by Tax Ordinance No. 7807, in the amount of P206,663.81. This tender of payment was refused by petitioners.

In answer to respondent's letter-protest, petitioners sent a letter[6] informing respondent of the following:

> "Considering that the grounds relied upon in your protest are the same issues raised in the Regional Trial Court, Branch 212, Mandaluyong City, in Civil Case No. MC04-2444 entitled Cosmos Bottling Corporation vs. Liberty M. Toledo and now pending before the Court of Tax Appeals, this Office, much to our regret, cannot act on your protest as any action or pronouncement thereon will be considered *subjudice*. Rest assured, however, that once a final decision had been issued by the court, this Office shall act immediately in accordance therewith."[7]

Based on this reply from petitioner, respondent was compelled to pay the taxes and fees assessed in SOA Nos. 0144258 and 0105158 in the amounts of P34,296.40 and P1,227,781.05, respectively, as evidenced by Official Receipt Nos. BAI-004422[8] and BAI-004421[9] dated February 4, 2006.

On February 27, 2006, respondent filed a claim for refund or tax credit with the Office of the City Treasurer of Manila in the amount of P999,056.14 for illegally and erroneously collected business taxes, fees and other charges for the first quarter of 2006 on the same grounds espoused in their filed letter-protest.

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[6] *Rollo*, p. 71.
[7] *Ibid.*
[8] *Rollo*, p.73.
[9] *Rollo*, p.72.

Respondent later discovered that the petitioners used its 2004 total sales in the City of Manila for computing its 2006 tax liabilities. Based on this information, respondent filed an amended letter-protest[10] on April 3, 2006, and an amended claim for refund[11] on April 7, 2006. Petitioner again replied stating that it cannot act on respondent's claims considering that the same grounds were subject of a pending case in court.[12]

On April 19, 2006, respondent filed its complaint[13] with the Regional Trial Court (RTC) of Mandaluyong City, praying for the issuance of a temporary restraining order (TRO) to direct the petitioners "to cease and desist from collecting the local business taxes under Sections 14 to 20 and Section 21 of the Revised Revenue Code of Manila, per amendments of City Ordinance Nos. 7988 and 8011 for the 2nd quarter of 2006 and all subsequent quarters thereafter."[14] Respondent also prayed for the refund of the overpaid taxes amounting to P1,044,509.08. The complaint was later amended to remove the prayer for issuance of a TRO and reiterated respondent's entitlement to refund of the taxes paid in excess of what was legally due.[15]

After trial, the RTC rendered judgment, dated February 11, 2009, in favor of respondent (then plaintiff), the dispositive portion of which is quoted below:

> "Wherefore, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, and declares that plaintiff is not liable for business taxes under Section 21 of the City of Manila Revenue Code considering that it has already paid business taxes under Section 14 thereof. The defendant City of Manila is hereby directed to refund in favor of the plaintiff the amount of P1,044,509.08 representing the sum overpaid by the

[10] *Rollo*, pp. 80-85.
[11] *Rollo*, pp. 86-93.
[12] *Rollo*, p. 94.
[13] Record, RTC Branch 208, Case No. MC06-2975, Vol. 1, pp. 2-13.
[14] *Ibid.*, p. 11.
[15] *Rollo*, pp. 53-62.

plaintiff which was excessively and unlawfully assessed and collected by the defendants."[16]

Petitioners' motion for reconsideration was denied in the RTC's order[17] dated August 25, 2009. Hence, this petition for review.

<u>THE ISSUES</u>

In its petition[18], the following issues were raised:

(I) The Honorable Court a quo gravely erred in upholding that the respondent is not liable to pay tax under Section 21 after it has paid tax under Section 14 of the Manila Revenue Code as amended.

(II) The Honorable Court a quo gravely erred when it considered that assessment and collection of taxes under Section 21 after the respondent has paid taxes under Section 14 constitutes double taxation in a prohibited sense.

(III) The Honorable Court a quo gravely erred when it considered that respondent should be assessed on the basis of 2005 gross sales receipts and not 2004 gross sales receipts.

(IV) The Honorable Court a quo gravely erred in its failure to consider that the questioned assessment became final and executory when the respondent failed to file an appeal under Section 195 of the 1991 Local Government Code.

(V) The Honorable Court a quo gravely erred when it has failed to consider that respondent has failed to exhaust administrative remedies before filing a case in court pursuant to Section 187 of the 1991 Local Government Code.

(VI) The Honorable Court a quo gravely erred that the City of Manila may be ordered to cease and desist from assessing, implementing and collection of taxes under Section 41 (*sic*) and 21 of the Manila Revenue Code, as amended.

The foregoing may be distilled into three distinct issues:

(a) Whether or not petitioners may collect local taxes under Section 21 of the Manila Revenue Code in addition to the taxes collected under Section 14 of the same Code, as amended;

[16] *Rollo*, p. 51.
[17] *Rollo*, p. 52.
[18] *Rollo*, pp. 12-29.

(b) Whether the amendments under Ordinance No. 7988 and 8011 to the Manila Revenue Code are valid and enforceable; and

(c) Whether or not petitioners may assess respondent for 2006 taxes on the basis of 2004 gross sales receipts.

THE RULING OF THE COURT

The petition is without merit.

Businesses taxed under Section 14 of the Revenue Code of Manila may no longer be taxed under Section 21 as the same constitutes double taxation

The points raised by the parties are not novel and have been settled by this Court in a long line of cases[19] where it was held that:

> "The foregoing issue is not one of first impression. This Court in fact already ruled in previous cases that the imposition of business taxes under Sections 14 and 21 of the Revenue Code of Manila, as amended, constitutes double taxation, as there would be taxation twice for the same subject or activity, which is the business of manufacturing; by the same public authority and within the same taxing jurisdiction, which is the City of Manila; for the same purpose, which is to generate revenue for the local taxing authority; and in the same year or taxing period."[20]

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[19] *Unilever Philippines, Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 56, June 2, 2010. Justice Uy listed the following cases in Footnote 8: "*Coca-Cola Bottlers Phils., Inc. vs. The City of Manila, et al.*, C.T.A. AC No. 38, January 22, 2009; *The City of Manila, Liberty M. Toledo, in her capacity as the Treasurer of Manila and Joseph Santiago, in his capacity as Chief License Division of City of Manila vs. Coca-Cola Bottlers Phils.*, C.T.A. AC No. 32, October 24, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 47, September 10, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 45, August 13, 2008; *Unilever Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 41, June 24, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC Nos. 46, 48, and 49, May 29, 2008; *Unilever Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A AC No. 26, May 26, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 33, May 21, 2008; *Ms. Liberty M. Toledo, in her official capacity as the City Treasurer of Manila and the City of Manila vs. Metro Manila Shopping Mecca Corp., and Warehouse Development Corp.*, C.T.A. AC No. 36, May 9, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 28, November 28, 2007; *The Treasurer of the City of Manila vs. Alcan Packaging Starpack Corp. (formerly Starpack Phils. Corp)*, C.T.A. EB No. 261, July 30, 2007; *Unilever Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 25, June 18, 2007; and *Swedish Match Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 15, July 21, 2006.

[20] Unilever Philippines, Inc. vs. The Treasurer of the City of Manila, C.T.A. AC No. 56, June 2, 2010.

The issue of double taxation arising from the amendments to the Manila Revenue Code by Tax Ordinance Nos. 7988 and 8077 was also discussed by the Supreme Court as follows:

> "Emphasis must be given to the fact that prior to the passage of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 by petitioner City of Manila, petitioners subjected and assessed respondent only for the local business tax under Section 14 of Tax Ordinance No. 7794, but never under Section 21 of the same. This was due to the clear and unambiguous *proviso* in Section 21 of Tax Ordinance No. 7794, which stated that "all registered business in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof." The "aforementioned tax" referred to in said *proviso* refers to local business tax. Stated differently, Section 21 of Tax Ordinance No. 7794 exempts from the payment of the local business tax imposed by said section, businesses that are already paying such tax under other sections of the same tax ordinance. The said *proviso*, however, was deleted from Section 21 of Tax Ordinance No. 7794 by Tax Ordinances No. 7988 and No. 8011. Following this deletion, petitioners began assessing respondent for the local business tax under Section 21 of Tax Ordinance No. 7794, as amended.
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> The Court easily infers from the foregoing circumstances that petitioners themselves believed that prior to Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent was exempt from the local business tax under Section 21 of Tax Ordinance No. 7794. Hence, petitioners had to wait for the deletion of the exempting *proviso* in Section 21 of Tax Ordinance No. 7794 by Tax Ordinance No. 7988 and Tax Ordinance No. 8011 before they assessed respondent for the local business tax under said section. xxx xxx xxx.
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> Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character.
>
> Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the

same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.

The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that when a municipality or city has already imposed a business tax on manufacturers, etc. of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, etc. to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "**not otherwise specified in the preceding paragraphs.**" In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC]."[21](*Emphasis in the original*)

<u>Ordinance Nos. 7988 and 8011 have been declared null and void for failure to publish in accordance with Section 188 of R.A. No. 7160</u>

The Supreme Court has already ruled that Ordinance Nos. 7988 and 8011 are void and unenforceable. In the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila*[22], the Supreme Court stated:

"It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.

Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local

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[21] *The City of Manila, et al., vs. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 181845, August 4, 2009.
[22] G.R. No. 156252, June 27, 2006.

> Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.
>
> Despite the nullity of Tax Ordinance No. 7988, the court *a quo*, in the assailed Order, dated 8 May 2002, went on to dismiss the petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that "*[I]nstead of amending Ordinance No. 7988, (herein) respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive.* ***The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, any way, does not legally exist.***" Said Resolution of the DOJ Secretary had, as well, attained finality xxx xxx xxx." (*Emphasis in the original*)

Thus, petitioner cannot validly assess local business tax under said ordinances after the same have been declared null and void and of no legal effect.

The 2005 gross sales receipts should have been used in computing the 2006 business taxes and permits

The petitioner used respondent's 2004 gross sales receipts as basis for computing the local business tax due, pursuant to the provisions of Section 14 and 21 which imposes the tax on the gross sales or receipts of the "preceding calendar year". The petitioner believes that since the tax due is for year 2005, then the same should be based on the gross receipts of the preceding calendar year, which is 2004.[23]

This Court does not agree with petitioner's position.

The Local Government Code provides for the accrual of tax, as follows:

> "Sec. 165. **Tax Period and Manner of Payment**. – Unless otherwise provided in this Code, the tax period of all taxes, fees and charges shall be the calendar year. Such taxes, fees and charges may be paid in quarterly installments.

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[23] *Rollo*, p. 24-25.

> Sec. 166. **Accrual of Tax.** – Unless otherwise provided in this Code, all local taxes, fees, and charges shall accrue on the first (1st) day of January of each year. However, new taxes, fees or charges, or changes in rates thereof, shall accrue on the first (1st) day of the quarter next following the effectivity of the ordinance imposing such new levies or rates."

As provided in the LGC, local business tax accrues or accumulates "on the first day of January of each year." However, for purposes of computing the local business tax, the LGC also provides the tax base which is the "gross sales or receipts for the preceding calendar year".[24] Thus, in the instant case, respondent's local business tax liability for calendar year 2006 accrued on January 1, 2006. And as required by the LGC, the tax shall be computed on the basis of the gross sales or receipts for year 2005, which was the preceding calendar year.

Based on the foregoing, the respondent's local business tax should have been computed based on its declared 2005 gross receipts of P465,103,496.78 instead of its 2004 gross receipts.

Respondent is thus entitled to a refund of local business tax in the amount of P1,044,259.08 computed as follows[25]:

PARTICULARS	Otis, Paco	Balut, Tondo	Total Amount Due
2006 Business Taxes, Permit and Service Fees and Charges:			
Gross Sales of Preceding Year (2005)	252,605,529.78	212,497,967.00	465,103,496.78
Business Tax (Sec. 14)			
First P100,000,000			279,000.00
Over P100,000,000 x 10% of 1%			365,103.50
Annual Business Tax Combined			**644,103.50**
Quarterly Business Tax	161,025.87		161,025.87

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24 *Republic Act No. 7160*, Section 143.
25 *Rollo*, p. 92-93, with corrected amount of Tax on Delivery Vehicle to reflect P750.00 instead of P500.00, in accordance with Section 13 of Tax Ordinance No. 7794 as amended by Tax Ordinance No. 7807.

Quarterly Garbage Service Charges	750.00	750.00	1,500.00
Tax on Delivery Vehicle	750.00		750.00
Business Permit Fee – Manufacturer	3,000.00	3,000.00	6,000.00
Business Permit Fee – Delivery Vehicle	100.00		100.00
Sanitary Inspection Fee	800.00	800.00	1,600.00
Occupational Tax	9,120.00	1,200.00	10,320.00
OCC/PC/HC	17,860.00	2,350.00	20,210.00
Plumbing Inspection Fee	7.50	7.50	15.00
Electrical Inspection Fee	50.00	50.00	100.00
Building Inspection Fee	50.00	50.00	100.00
Signboard Inspection Fee	40.00	40.00	80.00
Business Registration Plate	1,000.00	300.00	1,300.00
Business Registration Sticker	60.00	60.00	120.00
Total Amount Due for 2006	**194,613.37**	**8,607.50**	**203,220.87**
2005 Business Taxes, Permit and Service Fees and Charges:			
Business Permit Fee – Manufacturer		3,000.00	3,000.00
Sanitary Inspection Fee		800.00	800.00
Garbage Service Charges		3,000.00	3,000.00
Sub-Total		6,800.00	6,800.00
Surcharge/Interest		3,740.00	3,740.00
Occupational Tax		1,200.00	1,200.00
OCC/PC/HC		2,350.00	2,350.00
Plumbing Inspection Fee		7.50	7.50
Electrical Inspection Fee		50.00	50.00
Building Inspection Fee		50.00	50.00
Signboard Inspection Fee		40.00	40.00
Business Registration Plate		300.00	300.00
Business Registration Sticker		60.00	60.00
Total Amount Due for 2005		**14,597.50**	**14,597.50**
Total Amount Due	**194,613.37**	**23,205.00**	**217,818.37**
Payment made under SOA 0144258			(34,296.40)
Payment made under SOA 0105158			(1,227,781.05)
Amount to be refunded			**(1,044,259.08)**

WHEREFORE, finding no merit in the instant Petition for Review, the same is hereby DENIED. The assailed Decision and Order dated February 11, 2009 and August 25, 2009, respectively of the Regional Trial Court of Mandaluyong City, Branch 208 in Civil Case No. MC06-2975 are hereby AFFIRMED. Accordingly, respondent is hereby ORDERED to REFUND to petitioner the amount of P1,044,259.08, representing excess business taxes collected for the first quarter of year 2006.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice