REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

SWEDISH MATCH PHILIPPINES, INC.,
Petitioner,

C.T.A. AC NO. 15

Members:

\- versus -

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

THE TREASURER OF THE CITY OF MANILA,
Respondent.

Promulgated:
JUL 2 1 2006

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DECISION

BAUTISTA, L., J.:

This Petition for Review filed pursuant to *Section 9 of Republic Act No. 9282* in relation to *Rule 42* of the *Rules of Court,* brought to question the April 11, 2005 Decision which dismissed petitioner's claim for refund for lack of merit and the July 19, 2005 Order which denied petitioner's Motion for Reconsideration, both rendered by Regional Trial Court Judge, Augusto T. Gutierrez, in Civil Case No. 01-102074.

The pertinent facts as culled from the records are as follows:

Petitioner is a domestic corporation duly organized under the laws of the Philippines, with principal office address at Phimco Compound, F. Manalo St., Sta. Ana, Manila. It is a manufacturer of disposable lighters. Respondent, on the other hand, is being sued in her official capacity as the Treasurer of the City of Manila charged with the duty to collect and assess business taxes, license fees and permit fees within the said City.

Pursuant to Sections 14 and 21 of the Manila Revenue Code ("MRC"), the City of Manila has been collecting business taxes from petitioner, which the latter has been paying, as evidenced by Official Receipts attached to the instant Petition as Annexes "C" to "K".[1]

Section 14 of the MRC provides for the tax on manufacturers, assemblers and other processors of articles of commerce. The rates for this type of tax has been changed by the amendments to the MRC brought by Ordinance Nos. 7988 in the year 2000 and 8011 in the year 2001.

On the other hand, Section 21 of the MRC, as amended by Ordinance Nos. 7988 and 8011, imposes tax on businesses subject to excise, value-added or percentage taxes under the National Internal Code ("NIRC").

Thus, for the period beginning the third quarter of 1999 up to the third quarter of 2001, petitioner made the following payments pursuant to Section 21 of the Manila Revenue Code:

OFFICIAL RECEIPT NO.	DATE PAID	AMOUNT	QUARTER COVERED
049392	13 July 1999	117,099.73	3rd Quarter 1999
102931	15 October 1999	117,099.73	4th Quarter 1999
017219	20 January 2000	148,418.81	1st Quarter 2000
101248	13 April 2000	148,418.81	2nd Quarter 2000
091210	20 June 2000	148,418.81	3rd Quarter 2000
123775	17 October 2000	148,418.81	4th Quarter 2000
080836	29 January 2001	164,552.04	1st Quarter 2001
207383	31 May 2001	164,552.04	2nd Quarter 2001
208246	19 July 2001	164,552.04	3rd Quarter 2001

[1] *Of the Petition for Review*

Petitioner filed three claims for refund with the Office of the City Treasurer dated August 2, 2001, August 13, 2001 and August 14, 2001. The first claim was made to seek the refund of penalties paid for the taxes due on the second quarter of 2001 amounting to P129,506.35.[2] The second claim was to request for the refund of business taxes assessed and collected for the period beginning the first quarter of 1997 up to the third quarter of 2001 on the basis of Section 21 of the Manila Revenue Code on the ground of double taxation in view of business taxes already been paid under Section 14 of the same Code.[3] The third letter-claim was for refund of business taxes paid and collected under Ordinance Nos. 7988 and 8011, which were amendments to the Manila Revenue Code, in the amount of P746,084.16.[4]

On August 17, 2001, in response to petitioner's claim for refund, the Office of the City Treasurer wrote a letter addressed to petitioner's counsels denying the claim for being without merit.[5]

Not in agreement with the stand of the City Treasurer, petitioner, on October 15, 2001, filed a Petition before the Regional Trial Court of Manila which was docketed as Civil Case No. 01-102074.[6] An *Amended Petition*[7] was subsequently filed by the petitioner.

On April 11, 2005, the Regional Trial Court rendered the assailed Decision dismissing the petition for lack of merit based upon the finding that no double taxation exists since the taxes imposed under Section 21 of the Manila Revenue Code are different from the taxes collected under Section 14 of the same Code.[8]

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[2] *Annex L, Petition for Review, Rollo, pages 55- 57*
[3] *Annex M, Petition for Review, Rollo, pages 58-72*
[4] *Annex N, Petition for Review, Rollo, pages 73-81*
[5] *Annex O, Petition for Review, Rollo, pages 82-83*
[6] *Annex P, Petition for Review, Rollo, pages 84 - 105*
[7] *Annex Q, Petition for Review, Rollo pages 141 - 165*
[8] *Annex A, Petition for Review, Rollo, pages 38 - 44*

On May 15, 2005, petitioner filed its Motion for Reconsideration[9] which the Regional Trial Court denied on July 19, 2005 there being no new matters raised.[10] Hence, this instant Petition for Review (with Prayer for Injunctive Relief) filed on August 26, 2005 on the grounds that:

(I) 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;

(II) Ordinance Nos. 7988 and 8011, amending the city's revenue code, violates the procedural and substantive rules of taxation for their effectivity and implementation; and

(III) Contrary to respondent's assertion, the amount of ₱129,506.35 actually represents penalties erroneously imposed on and collected from petitioner, and not business taxes. As such, respondent's grant of a tax credit in favor of petitioner in the amount stated above does not discharge her from her legal duty to refund to petitioner business taxes paid under Section 21 of the Manila Revenue Code, and under Ordinance Nos. 7988 and 8011.

Thus, petitioner seeks to reverse and set aside the April 11, 2005 Decision as well as the July 19, 2005 Order of the Regional Trial Court and prays that this Court after trial:

(1) DECLARE that petitioner is not liable for business taxes under Section 21 of the City of Manila's Revenue Code having already paid business taxes under Section 14 thereof and, therefore ORDER that petitioner be refunded of all taxes paid thereunder for the period beginning on the third quarter of 1999 to the second quarter of 2001, in the amount of P1,321,530.82;

(2) DECLARE Ordinance Nos. 7988 and 8011 void for failure to comply with the procedural and substantive rules for their effectivity, and therefore ORDER that petitioner be refunded of all excess business taxes paid under these Ordinances in the amount of P746,084.16 for the years 2000 and 2001 (third quarter);

(3) As an alternative to number 2 hereof:

(i) DECLARE that Section 14 of Ordinance Nos. 7988 and 8011 void for exceeding the maximum limits set by the Local Government Code in imposing business taxes on manufacturers,

[9] *Annex W, Petition for Review, Rollo, pages 238 -244*
[10] *Annex B, Petition for Review, Rollo, page 45*

(ii) DECLARE the retroactive implementation of Ordinance No. 8011 by the City of Manila as illegal, and thereafter,

(iii) ORDER the refund to petitioner of all taxes paid under Section 14 under Ordinance Nos. 7988 and 8011, amending the City's Revenue Code, and the corresponding increase in taxes paid under Section 16, in the amount of P746,084.16 for the years 2000 and 2001.

(4) DECLARE the imposition of penalties on petitioner in the amount of P129,506.35 illegal, and thereafter ORDER that petitioner be refunded of the same.

Petitioner likewise prays for the issuance of a Temporary Restraining Order upon the filing of the petition and afterwards, a preliminary injunction enjoining the defendants and their representatives from assessing and collecting taxes from the petitioner pursuant to Section 21 of the Manila Revenue Code and for the issuance of an order declaring the injunction as final and permanent.

In the hearing of September 16, 2005, this Court denied petitioner's prayer for a Temporary Restraining Order and Preliminary Injunction finding no urgency to the prayer sought for. Respondent was then ordered to file his Comment and not a Motion to Dismiss.[11]

With the admission of respondent's Comment on January 25, 2006 and the filing of her Memorandum on February 23, 2006, this case was submitted for decision on April 12, 2006 sans the Memorandum of the petitioner.

The issues in this case may be summed up into:

(1) Whether the imposition of tax under Section 21 of the Manila Revenue Code on petitioner constitutes double taxation in view of the taxes already collected by respondent from petitioner under Section 14 of the same Code;

(2) Whether Ordinance Nos. 7988 and 8011 violate procedural and substantive rules for their effectivity and implementation; and

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[11] *Rollo, page 264 and confirmed in a Resolution dated September 22, 2005.*

(3) Whether petitioner is barred from questioning the constitutionality of Section 21 of the Manila Revenue Code and Ordinance Nos. 7988 and 8011.

Petitioner submits that Section 21 of the MRC is not in itself invalid. The City of Manila may impose taxes on business subject to excise, value-added and percentage taxes, as allowed in Section 143(h) of the Local Government Code of 1991 ("LGC"). However, it cannot impose the same tax on a business already subject to taxes under Sec. 143(a) of the LGC because this is clearly expressed in Section 143(h) in the proviso *"not otherwise specified in the preceding paragraphs"*. Applied to the City's Revenue Code, the City cannot enforce Section 21 over businesses already subject to business tax under Section 14 as this clearly constitutes double taxation. Sections 14 and 21 are both local taxes, imposed on the same business activity by only one public authority, the City of Manila, enforced within the same taxing jurisdiction, for the purpose of raising revenues for the city government and to regulate the conduct of business, which accrue and become due on the same taxing period.

Petitioner further maintains that respondent failed to comply with the requirements provided by Section 188 of the LGC. Thus, the assailed ordinances are ineffective. To quote Section 188:

> ***SEC. 188. Publication of Tax Ordinances and Revenue Measures.*** – Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation; Provided however, That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

Moreover, during the second quarter of the year 2001, the City of Manila imposed on petitioner penalties amounting to P129,506.35 for allegedly paying its taxes late. Under protest, petitioner settled the amount as evidenced by Official Receipt No. SML-B0207383. Petitioner argues that with the enactment of Ordinance No. 8011, reducing the rates established in the latter Ordinance, its tax liability was significantly reduced. Its business tax liability under Ordinance No. 8011 for the first and second quarters of the year 2001 amounted to P941,864.45 which was P60,880.95 less than the amount of P1,002,745.40 already paid by petitioner to the city during the first quarter of 2001. In effect, petitioner had paid in advance in the first quarter of 2001 the taxes due for the second quarter of the same year.

Finally, petitioner claims that it is not questioning the constitutionality of the subject tax ordinances but merely claiming that the imposition of the tax on the basis of both Sections 14 and 21 of the Manila Revenue Code constitutes double taxation. Therefore, the petition is based not on Section 187 of the LGC but on Section 196 of the said Code.

For her part, respondent does not deny the amounts paid by petitioner but argues that petitioner is seeking a decree of exemption from the coverage of Section 21 the Manila Revenue Code as amended, which must not be granted there being no law exempting it from paying the subject tax. Further, respondent contends that the tax imposed under Section 14 is a tax on its business, while Section 21 is an indirect tax imposed upon end-users of the goods and services of the business, not the establishment itself and considerably, petitioner is merely a withholding agent of the City of Manila.

On the issue of the non-publication of the assailed Ordinances, respondent counters that there was substantial compliance with the requirement since the two Ordinances were published "four times in at least two newspapers of general circulation". Further, respondent maintains that petitioner presented no evidence to support its claim that the amount of P129,506.35 represent penalties and not taxes. Respondent posits that the document attached to the Petition as Annex "A-11" is not a proof of the alleged imposition of penalties but a mere receipt evidencing payment by petitioner of the tax under Section 21 for the second quarter of 2001. Besides, petitioner is now estopped from raising this issue since this was not raised in the Regional Trial Court. Respondent also avers that since the Amended Petition in Regional Trial Court case was filed on December 10, 2001, more than two years from the date of payment of the assailed tax on July 31, 1997, the claim is barred by virtue of Section 196 of the Local Government Code. Furthermore, respondent asserts that petitioner's failure to observe Section 187 of the 1991 Local Government Code is fatal to its cause, as it is already estopped to contest the constitutionality and legality of the ordinance, consequently the instant action is legally impermissible.

On the issue of double taxation, this Court rules in favor of the petitioner. The power of the City of Manila to tax is based on Sections 151 and 143 of the Local Government Code, to wit:[12]

> SEC. 151. **Scope of Taxing Powers.-** Except as otherwise provided in this Code, the City may levy the taxes, fees, and charges which the province or municipality may impose:xxx
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> 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 or nature, in accordance with the following schedule:
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> xxx xxx xxx
>
> (b) On wholesalers, distributors, or dealers in any article of commerce or whatever kind or nature in accordance with the following schedule:
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> 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:
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> xxx xxx xxx
>
> (d) On retailers, xxx
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> (e) On contractors, and other independent contractors, in accordance with the following schedule:

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[12] *Articles 237 and 232, Parts Four and Three, respectively of Rule XXX, Local Government Taxation Implementing Rules & Regulations*

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 and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding fifty pesos (₱50.00) 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 excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.*

The sanggunian concerned may prescribe a schedule of graduated tax rates but in case to exceed the rates prescribed herein.

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

Based on the above provisions of the Local Government Code, the City of Manila enacted the Manila Revenue Code, Ordinance No. 7794.[13] In this instant case, the involved provisions are:

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

Section 21. *Tax on Business Subject to Excise, Value-Added or Percentage Taxes Under the NIRC* – **On any of the following businesses and articles of commerce subject to excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC,** as amended, a tax of fifty (50%) of one

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[13] *Effective July 1, 1993.*

(1%) percent *per annum*[14] on the gross sales or receipts of the preceding calendar year is hereby imposed:

> A) **On persons who sell goods and services in the course of trade or business**; and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code.

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

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

In addition, an examination of Section 143(h) of the Local Government Code shows that the phrase "*on any business subject to excise, value-added or percentage tax under the*

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[14] *As amended by Ordinance No. 7808 (effective September 30, 1993) due to strong protests from taxpayers on the original rate of three percent (3%) per annum, Flores, Local Government Taxation, Book II, 1st Ed., pp.*

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

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

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

Pursuant to the above definition, a manufacturer is any person that changes or modifies any product to take the form of another, either to prepare it for special uses or to transform it to some marketable shape, for the purpose of selling or distributing them to others for a fee. In this case, petitioner is being taxed under Section 14 as a manufacturer of goods, and additionally taxed under Section 21(a) on its business of selling manufactured goods. This is a clear case of double taxation.

Double taxation or direct duplicate taxation in its "obnoxious" form means, the taxing twice of the same taxing authority, within the same taxing jurisdiction or district, for the same purpose and the same period, of the same property in the same territory.[15] All these elements exist in this case.

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

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

While there is some truth to respondent's claim that double taxation is not prohibited, it becomes "obnoxious" where a taxpayer is being taxed twice for the benefit of the same governmental entity, for the same purpose.[16] Thus, the Court cannot countenance this form of double taxation.

Anent the issue on the validity of Ordinance Nos. 7988 and 8011, Section 188 of the Local Government Code provides:

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[15] *De Leon and De Leon, Jr., The Fundamentals of Taxation, 2004 Edition, page 49*
[16] *Pepsi-Cola Bottling Company of the Philippines, Inc. vs. Municipality of Tanauan, Leyte, et al., 69 SCRA 460 (1976)*

> SEC. 188. *Publication of Tax Ordinances and Revenue Measures.* – Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures ***shall*** be published ***in full for three (3) consecutive days*** in a newspaper of local circulation: Provided however, That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

In the case at bar, respondent maintains that "Ordinance Nos. 7988 and 8011 were published four times in accordance with Section 17 of Republic Act No. 409, or the Manila City Charter" citing the case of Starpack Philippines vs. Treasurer of the City of Manila, Civil Case No. 01-102097. Therefore, the City of Manila has more than satisfied the requirement under Section 188 of the Local Government Code.

The *Starpack* case cited by respondent discloses that Ordinance No. 7988 was published on May 22 and 24, 2000, while Ordinance No. 8011 was published on February 28, 2001 and March 1, 2001, then again on March 8, 2001. Hence, respondent's claim that the Ordinances in question were published four times is unfounded, incorrect and not true. At any rate, with the publication of the Ordinance No. 7988 twice and Ordinance No. 8011 for three times both not consecutively as mandated by Section 188 of the Local Government Code, the Court is not persuaded that substantial compliance would suffice.

While there is no absolute test for determining whether a statutory direction is mandatory or directory, the primary object is to ascertain legislative intent. Legislative intent must be obtained from all surrounding circumstances and the determination does not depend on the form of the statute. Consideration must be given to the entire statute, its object, purpose, legislative history, and the consequences that would result from construing it one way or the other, and the statute must be construed in connection with other related statutes.[17] Thus, generally, the test employed to determine whether a statute is mandatory or directory is to ascertain the consequences that will follow in case what the statute prescribes is not done. If no substantial rights depend on it and no injury can result from ignoring it and the purpose of the legislature can be accomplished in a manner other than that prescribed and substantially the same results can be obtained, then the statute will be generally regarded as directory; but if not, it will be mandatory.[18]

In this case, the mandatory character of Section 188 is obvious from the Section itself when it provides that: "Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures ***shall*** be published ***in full for three (3) consecutive days*** in a newspaper of local circulation".

When the law requires that publication be made in three (3) consecutive days and in a particular manner, it does not mean that the local government can dispense with such required number of publication and manner. Otherwise, it would have been absurd, nay ridiculous, for the law to require publication for three consecutive days.

In common parlance and its ordinary signification, the term "shall" is a word of command, and one which has or which must be given compulsory meaning, and it is generally imperative and mandatory, particularly in this case where public interest is involved. The use of the word of command, "shall," indicates the legislative intent to make the law mandatory.

Another reason why the publication requirements should be strictly complied with is that any person who fails to file an action in a court of competent jurisdiction within the period provided in Section 187 of the Local Government Code, is barred from questioning the constitutionality or legality of the ordinance or revenue measure involved. Further, strict compliance with mandatory requirement of law is essential since the ordinance is a derogation of rights of taxpayers, as it imposes taxes on them. In view then of these adverse consequences on the rights of taxpayers, nothing short of strict compliance is demanded.

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[17] *Agpalo, Statutory Construction, 2003 Ed., pages 330 - 331*
[18] *Agpalo, supra, page 332*

In sum, the Court finds Ordinance Nos. 7988 and 8011 ineffective for failure to comply with the mandatory requirement set forth under Section 188 of the Local Government Code.

With respect to the issue of whether petitioner is barred from questioning the constitutionality of Section 21 of Manila Revenue Code and Ordinance Nos. 7988 and 8011, respondent contends that petitioner is estopped from contesting the constitutionality and legality of the ordinances for failure to observe Section 187 of the Local Government Code. Petitioner's cause of action is likewise barred due to its non-observance of Section 195 of the Local Government Code.

We are not persuaded.

Petitioner, at the outset, submits that Section 21 of the Manila Revenue Code is not in itself invalid. It only questions the enforcement thereof because it had already paid business taxes under Section 14 of the same Code. It is not asking for an exemption but a refund of overpaid taxes. Hence, Section 187 finds no application in this case.

With respect to the amendatory ordinances subject of this case, Section 187 specifically provides that *"any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the* ***effectivity*** *thereof to the Secretary of Justice who shall render a decision within sixty (60) days xxx".* However, as already discussed earlier, both Ordinance Nos. 7899 and 8011 failed to comply with the mandatory requirement of publication for their **effectivity.** Thus, the thirty (30)-day period within which to question their constitutionality or legality did not start to run.

As to petitioner's non-observance of Section 195, We reiterate that this is not an assessment case that petitioner must file a protest within the required period under Section 195 of the Local Government Code. By the very title alone of Section 195, "Protest of Assessment", it pertains to protest of the assessment/s issued by the local treasurer against a taxpayer who has been found to have not paid its correct taxes, fees or charges.

However, petitioner is claiming for the refund of alleged overpaid business taxes in this case. Thus, respondent's allegation is misplaced and the applicable provision is Section 196 of the Local Government. But respondent argues that petitioner's claim is already barred by virtue of Section 196 since petitioner's Amended Petition in the Regional Trial Court was only filed on December 10, 2001, more than two (2) years from the date of payment of the assailed tax on July 31, 1997.

The argument is bereft of merit. An amendment that merely supplements and amplifies facts originally alleged in the complaint relates back to the datė of the filing of the original pleading.[19] Consequently, as in this case where the original complaints states a cause of action imperfectly, and afterwards an amended complaint is filed correcting the defect, but nevertheless raises the same cause of action, prescription will relate to the date of the filing of the original complaint.

Section 196 and Article 286, Part Twelve, Rule XXX, Local Government Taxation, Implementing Rules & Regulations provide:

> ***SEC. 196. CLAIM FOR REFUND OF TAX CREDIT.***- No case or proceeding shall be maintained in any court for the recovery of any tax, fee or charge erroneously or illegally collected until a ***written claim*** for refund or credit has been filed with the local treasurer. ***No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment*** of such tax, fee, or charge, or from the date of the payment of such tax, fee, or charge, ***or from the date the taxpayer is entitled to a refund or credit.***

> ***ART. 286. Claim for Refund or Tax Credit.*** – All taxpayers entitled to a refund or tax credit under this Rule shall file with the local treasurer a claim in writing duly supported by evidence of payment (e.g., official receipts, tax clearance, and such other proof evidencing overpayment) ***within two (2) years from the payment of the tax, fee or charge. No case or proceeding shall be entertained in any court without this claim in writing, and after the expiration of two (2) years from the date of payment of such tax, fee or charge, or from the date the taxpayer is entitled to a refund of tax credit.***

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[19] *Pangasinan Trans. Co. vs. Phil. Farming Co., Ltd., 81 Phil. 273*

> The tax credit granted to a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligation payable to the LGU concerned during the year, his tax credits, if any, shall be applied in full during the first quarter of the next calendar year on the tax due from him for the same business of said calendar year.
>
> Any unapplied balance of the tax credit shall be refunded in cash in the event the he terminates operations of the business involved within the locality.

From the foregoing, it is required that the taxpayers seeking the refund of taxes, must file their claim first with the Local Government Unit concerned. For the claim however to be valid, the law further requires that it should be made in writing, filed together with supporting evidence and within the period prescribed therefor, *i.e.* two years from the date of payment. Further, any claim in court should be made only after the claim has been filed with the local government and also within two-year period counted from the date of payment thereof.

In this case, records show that petitioner made the following payments under Section 21 of the Manila Revenue Code:

OFFICIAL RECEIPT NO.	DATE PAID	AMOUNT	QUARTER COVERED
049392	13 July 1999	117,099.73	3rd Quarter 1999
102931	15 October 1999	117,099.73	4th Quarter 1999
017219	20 January 2000	148,418.81	1st Quarter 2000
101248	13 April 2000	148,418.81	2nd Quarter 2000
091210	20 June 2000	148,418.81	3rd Quarter 2000
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080836	29 January 2001	164,552.04	1st Quarter 2001
207383	31 May 2001	164,552.04	2nd Quarter 2001
208246	19 July 2001	164,552.04	3rd Quarter 2001

Counting two years from August 13, 2001, when the claim for refund was made with the Office of the City Treasurer[20] and October 15, 2001 when the claim was filed with the

[20] *Annex M, Petition for Review, Rollo, pages 58 - 72*

Regional Trial Court,[21] the payment made on July 13, 1999 covered by Official Receipt No. 049392 in the amount of P117,099.73[22] cannot be allowed due to prescription.

Also, with regard to the claimed amount of P129,506.35 categorized by the respondent as "other" business taxes and by petitioner as penalties, the same can no longer be refunded considering that respondent already granted the same to petitioner in a form of a tax credit and deducted from its total business assessment for calendar year 2001.[23]

IN VIEW OF THE FOREGOING, the assailed Decision and Order of the Regional Trial Court, Branch 47, Manila dated April 11, 2005 and July 19, 2005, respectively, are hereby **SET ASIDE** and the claim for refund is **PARTIALLY GRANTED**. In addition, Ordinance Nos. 7988 and 8011 are hereby **DECLARED INEFFECTIVE** and **INVALID** for failure to comply with Section 188 of the Local Government Code.

Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the reduced amount of **₱1,204,431.09** representing local business taxes erroneously paid under Section 21 of the Manila Revenue Code, as amended, from the fourth quarter of 1999 to the third quarter of 2001 and the amount of **₱746,084.16** representing excess business taxes paid under Ordinance Nos. 7988 and 8011 for the years 2000 and 2001.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[21] *Annex P, Petition for Review, Rollo, pages 84-104*
[22] *Rollo, page 65*
[23] *Annex O, Petition for Review, Rollo, pages 82 -83*

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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
Chairperson, First Division