REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

UNILEVER PHILIPPINES, INC., *Petitioner,*	**C.T.A. AC NO. 25** **(RTC Civil Case No. 03-107304)**
	Members:
	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
-versus-	
THE TREASURER OF THE CITY OF MANILA, *Respondent.*	**Promulgated:** JUN 18 2007

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DECISION

CASTAÑEDA, JR., J.:

Section 143(h) of the Local Government Code (LGC) explicitly prohibits double taxation imposed under Sections 14 and 21 of the Manila Revenue Code since the taxpayer is taxed twice by the same government entity for the same purpose.

THE CASE

This is an appeal by Unilever Philippines, Inc. (hereafter "petitioner") from the Decision, dated May 12, 2006, rendered by the Regional Trial Court of Manila, Branch 47 (hereafter the "lower court"), in Civil Case No. 03-107304, entitled "Unilever Philippines, Inc. vs. The Treasurer of the City of Manila", the dispositive portion of which reads as follows:

> "WHEREFORE, in view of the foregoing, the petitioner's claim for refund is disallowed and this petition is DISMISSED for lack of merit.
>
> SO ORDERED."

and the Order dated July 27, 2006, denying petitioner's "Motion For Reconsideration", the dispositive portion of which reads:

> "WHEREFORE, the Motion for Reconsideration filed by the Petitioner is DENIED.
>
> SO ORDERED."

THE FACTS

The facts of the case, as culled from the records, are as follows:

Petitioner is a domestic corporation duly organized under the laws of the Republic of the Philippines, with principal office address at 1351 United Nations Avenue, Manila, represented by its counsel, Siguion Reyna Montecillo Ongsiako Law Offices, with office address at the 4th and 6th Floors, Citibank Center, 8741 Paseo de Roxas, Makati City.

Respondent Treasurer of the City of Manila (hereafter "respondent") is tasked with the implementation of the Manila Revenue Code (hereafter "MRC"), as well as the collection and assessment of business taxes, license fees and permit fees within the

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City, represented by the City Legal Officer, with office address at the 2nd Floor, Manila City Hall, Taft Avenue, Manila.

On July 19, 2001, petitioner paid business taxes corresponding to the third quarter of 2001, collected from it by the City of Manila pursuant to Sections 14 and 21 of the MRC.

In a Letter dated October 4, 2001, petitioner filed with the Office of the City Treasurer a claim for refund of the business taxes assessed and collected on it on the basis of Section 21. However, said claim for refund was denied.

On July 18, 2003, petitioner filed a Petition for Refund with the lower court, seeking refund of business taxes for the third quarter of 2001 in the amount of P8,773,943.99 on the ground that the enforcement of Section 21 of the MRC constitutes double taxation in view of the payment already made by the petitioner under Section 14 of the same Code.

In her answer, respondent City Treasurer alleged by way of affirmative defenses that it is totally inconsistent for petitioner to admit the regularity and constitutionality of Section 21 of the MRC and its amendatory ordinances, and at the same time question the enforcement of Section 21 as it allegedly constitutes direct double taxation.

Issues having been joined, the case was set for pre-trial. During the scheduled pre-trial, the parties stipulated that there is only one issue: "whether or not the petitioner is entitled to a refund of taxes paid", and agreed to dispense with trial and moved that they be allowed to file their simultaneous memoranda in support of their respective positions, which the lower court granted.

Both parties having filed their respective memoranda, the case was deemed submitted for decision based on the following issue: "The only issue in this case is whether or not the imposition upon, and collection of taxes from the petitioner, on the basis of Sections 14 and 21 of the Revenue Code of the City of Manila constitutes double taxation prohibited by law which will entitle the petitioner to a refund of taxes paid on the basis of Section 21."

On May 12, 2006, the lower court rendered the assailed decision, dismissing petitioner's petition for lack of merit. On June 26, 2006, petitioner filed a Motion for Reconsideration, which was denied in the Order dated July 27, 2006.

On September 08, 2006, petitioner filed the instant Petition For Review raising the sole issue:

ISSUE

WHETHER OR NOT THE ENFORCEMENT OF SECTION 21 OF THE REVENUE CODE OF THE CITY OF MANILA 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 BEFORE THE COURT A QUO IN THE AMOUNT OF P8,773,943.99 SHOULD BE IMMEDIATELY REFUNDED.

Pursuant to Our September 25, 2006 Resolution, respondent filed her comment on November 02, 2006.

On December 21, 2006, We granted both parties thirty (30) days from notice to file their simultaneous memoranda. On March 12, 2007, the petitioner filed its "Memorandum", while respondent failed to file the same despite notice. On April 04, 2007, the case was deemed submitted for decision.

Petitioner Unilever Philippines, Inc.'s Theory

Claiming that the decision of the lower court is erroneous and not in accord with law and jurisprudence, petitioner contends that although Section 21 of the MRC is not in itself invalid, its enforcement against petitioner constitutes double taxation

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prohibited by law since it already pays business taxes under Section 14 thereof. Section 14 imposes business tax on manufacturers of goods, among others. Petitioner is a manufacturer paying local taxes, pursuant to Section 14. "Manufacturing" as defined in Section 131(o) of the Local Government Code of 1991 (hereafter "LGC") includes the sale of the manufactured goods. Since the business taxes under Section 14 were already paid for the sale of manufactured goods, the same sale of the manufactured goods can no longer be subject to business tax under Section 21.

Petitioner further argues that the tax collected by Section 21 is not a tax on the end-users, but a tax on manufacturers. It is a tax on the sale of the goods or services. It is a sales tax expressly prohibited by Section 133 of the LGC.

Petitioner further asserts that the basis for holding that the tax imposed by Section 21 is a tax on the end-users and not on the business is Section 21 itself which reads: "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 eaoh quarter", refers to the immediately preceding paragraph regarding overseas dispatch and overseas messaging transmission, which petitioner is not engaged in.

Respondent City Treasurer of Manila's Theory

On the other hand, respondent counter-argues that the tax imposed on petitioner under Section 21 of the MRC is in the concept of indirect tax upon end-users of the goods and services of the business, not the establishment itself, for in the language of Section 21, they are specifically levied on: "business subject to excise, value added or percentage tax under the NIRC"; that it represents additional amounts added by petitioner to the basic prices of its goods or services which are paid by the end-users to the business establishments; that Section 21 is actually not a tax on the business of petitioner but on the end-users, whereas under Section 14 (manufacturer's tax) the tax is specifically levied on the business of petitioner being a manufacturer; that 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; that petitioner is a withholding agent of the City Government of Manila charged to remit to the latter the taxes collected under Section 21; that assuming *arguendo* that Section 21 is a sales tax, the City of Manila is not *per se* prohibited to impose the same as it is authorized under Section 143, in conjunction with the residual power conferred upon it by Section 186 of the LGC; that the only limitation, if indeed there exists, is that the rate of tax must not be more than 2% of the gross sales. Section 21, therefore, considering that it imposes only 50% of 1% on petitioner's gross sales or receipts, is outside of the limitations provided for by Section 143(h) of the LGC; that Sections 14 and 21 obviously, pertain to different tax objects. In other words, respondent contends that the imposition under Sections 14 and 21 of the MRC is not of the same kind and character.

We rule for the petitioner.

Under the Constitution, it is Congress that provides the guidelines and limitations on the power to tax of local government units

Under Section 5, Article X, "LOCAL GOVERNMENT", of the 1987 Constitution of the Republic of the Philippines, Congress provides for the guidelines and limitations on the power to tax of local government units. The aforementioned section provides:

> Sec. 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. (*Underscoring ours.*)

In other words, Congress is empowered to define, delineate and delimit the power of local government units like the City of Manila to enact tax measures consistent with the basic policy of local autonomy. Congress provides both the guidelines and limitations on the power to tax of all local government units pursuant to the aforequoted section of the Constitution.

Pursuant to the Constitutional mandate, Congress enacted "The Local Government Code of 1991" setting forth guidelines and limitations on the taxing power of local government units

In accordance with Section 5 of Article X of the Philippine Constitution, Congress enacted "The Local Government Code of 1991" (hereafter "LGC"), which set forth guidelines and limitations on the power to tax of local government units like the City of Manila. Under the aforesaid law, the power to tax of local government units is strictly defined and delineated.

Section 143(h) of the LGC prohibits double taxation by local government units

Paragraph (h), Section 143 of the LGC, explicitly provides that taxes therein may no longer be imposed on businesses already subjected to tax under paragraphs (a) to (g) of the said section.

Taxation of petitioner under both Sections 14 and 21 of the Manila Revenue Code (MRC) is expressly prohibited under Section 143(h) of the LGC.

Section 14 of the MRC provides in pertinent part:

> SEC. 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.
>
> | With gross sales or receipts for the preceding calendar year in the amount of: | Amount of Tax |
> |---|---|
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> x x x

The above provision imposes a percentage 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 with the gross sales or receipts for the preceding calendar year in the schedule provided therein.

On the other hand, Section 21 of the MRC, as amended by City Ordinance Nos. 7807, 7988 and 8011, provides:

> Section 21. – Tax on Businesses 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 the NIRC, as amended, a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
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> 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.
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> 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 by land, air or water, except owners of bancas and owners of animal-drawn two-wheel vehicle.
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> 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.

D) Excisable goods subject to VAT

(1) Distilled spirits

(2) Wines
(3) Tobacco products (other than cigarettes, cigars and chewing tobacco)
(4) Tobacco specially prepared for chewing
(5) Fireworks
(6) Cinematographic films
(7) Saccharine
(8) Coal and coke
(9) Fermented liquor, brewers' wholesale price, excluding the ad valorem tax
(10) Automobiles, manufacturers or importers selling price
(11) Non-essential goods based on wholesale price, net of excise tax and VAT

(a) Jewelry, whether real and imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth.)

(b) Perfumes and toilet waters.

(c) Yachts and other vessels intended for pleasure sports.

(12) Mineral products, based on actual market value of the annual gross output at the time of removal.

E) Excisable goods not subject to VAT.

(1) Naptha when used as raw materials for production of petro-chemical products.

(2) Asphalt

x x x (*Underscoring ours.*)

Both Sections 14 and 21 of the MRC are based on Section 143 and 151 of the LGC, which provide in pertinent part:

Sec. 143. ***Tax on Business.*** – The municipality may impose taxes on the following businesses: (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

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With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum

x x x

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

x x x

(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 Sections:

x x x

(d) On retailers,

x x x

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

x x x

(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 (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 rates but in no case to exceed the rates prescribed herein. (*Underscoring ours.*)

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: x x x

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> 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.

The clear tenor of paragraph (h), Section 143 of the LGC, is to prohibit double taxation of businesses taxed under paragraphs (a) to (g) thereof. It allows the imposition of new business taxes only in cases "not otherwise specified in the preceding paragraphs (a) to (g). Section 14 of the MRC is specifically based on Section 143(a) of the LGC while Section 21 of the MRC is specifically based on Section 143(h) of the LGC.

This is not a case of first impression. In a number of occasions involving interpretations of the LGC vis-à-vis the MRC, this Court has ruled that businesses taxed under Section 14, 18 and 24 of the MRC can no longer be taxed under Section 21 thereof inasmuch as businesses taxed pursuant to paragraphs (a) to (g), Section 143 of the LGC can no longer be taxed under paragraph (h).

In *International Container Terminal Services v. The City of Manila, et al.*, CTA AC No. 11, May 17, 2006, the Second Division of this Court held that a contractor already taxed under Section 18 of the MRC in accordance with Section 143(e) of the LGC may no longer be taxed under Section 21 of the MRC in view of the prohibition on double taxation by Section 143(h) of the LGC.

More in point, the First Division of this Court in the case of *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*, CTA AC No. 15, July 21, 2006, held that a manufacturer taxed under Section 14 of the MRC in accordance with Section 143(a) of the LGC may not be taxed under Section 21 of the MRC in view of the prohibition on double taxation by Section 143(h) of the LGC.

To the same effect is the recent decision of the Second Division of this Court in a case involving the same parties in this case, *Liberty M. Toledo, in her capacity as The*

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Treasurer of the City of Manila v. Unilever Philippines, Inc., CTA AC No. 21, May 10, 2007, where our esteemed colleague Hon. Olga Palanca-Enriquez registered her dissent.

In the latest case of *Zarcon Development Corporation v. The City Treasure of the City of Manila*, CTA AC No. 24, May 16, 2007, the First Division of this Court ruled that a real estate lessor taxed under Section 24 of the MRC may no longer be taxed under Section 21 thereof in view of the express prohibition under Section 143(h) of the LGC as the same constitutes obnoxious double taxation.

Prohibited double taxation
clearly exists in this instance

Clearly, there is prohibited double taxation in this case where the City of Manila imposes taxes on the manufacturing business of the petitioner under both Sections 14 and 21 of the MRC in violation of Section 143(h) of the LGC, which limits local government units like the City of Manila from imposing taxes twice on manufacturers like petitioner, among others. In this regard, our Supreme Court has defined double taxation as follows:

> *Double taxation* means taxing the same property twice when it should be taxed only once; that is, "x x x taxing the same person twice by the same jurisdiction for the same thing. It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character. *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 462-463 (citations omitted).

Petitioner is being taxed twice under Sections 14 and 21 of the MRC by the City of Manila for the same period on its sales as manufacturer.

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Respondent posits that there is no prohibited double taxation inasmuch as Section 14 taxes petitioner as manufacturer while Section 21 is a tax on consumers, which it collects from petitioner manufacturer as withholding agent. It argues that there are different taxpayers and that the taxes imposed are of different kind and character.

It should be noted that both Section 14 and Section 21 tax the sales of the petitioner notwithstanding the respondent's poseur that Section 21 is a tax on the end consumer and that the petitioner is merely a withholding agent.

Section 21 of the MRC
<u>is clearly a business tax</u>

Section 21 of the MRC specifically provides for the imposition of "a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts" on "businesses and articles of commerce subject to excise, value added or percentage taxes under the National Internal Revenue Code" (NIRC). The title of the aforementioned section, "<u>Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes under the NIRC</u>", clearly expresses that what is being imposed is a business tax.

Purportedly, this is under authority of Section 143(h) in conjunction with Section 151 of the LGC, which allows cities to impose taxes on "any business, not otherwise specified in the preceding paragraphs" subject to the limitation that "on any business subject to excise, value added or percentage taxes 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."

Both Sections 14 & 21 of the MRC
<u>impose sales tax on manufacturers</u>

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Both Sections 14 and 21 of the MRC subject petitioner to business tax based on its sales as a manufacturer. Section 14 of the MRC imposes a tax on manufacturers based on gross sales for the preceding year in accordance with the schedule found therein. A sales tax on manufacturers is thus imposed under the aforesaid section. It does so under authority of Section 143(a) of the LGC, which allows the imposition of "Tax on Business" or business tax on manufacturers, like petitioner, among others.

On the other hand, Section 21 subjects "businesses and articles of commerce to subject to the excise, value added or percentage taxes under the National Internal Revenue Code, as amended," to a percentage "tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year". It thus imposes a sales tax on businesses subject to excise, value-added tax or percentage taxes under the National Internal Revenue Code (hereafter "NIRC"). It does so under authority of Section 143(h) of the LGC, which allows the imposition of "Tax on Business" or business tax, but only "(o)n any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax."

Both sales taxes imposed under Sections 14 and 21 of the MRC are payable by manufacturers like the petitioner in this case. This is in direct contravention of paragraph (h) of Section 143of the LGC which prohibits the imposition of taxes on manufacturers already taxed under paragraph (a) thereof.

Section 131(o) of the LGC defines the term "manufacturer" as follows:

> (o) "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 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 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. (*Underscoring ours.*)

Article 220(o), Part One (General Provisions), Rule XXX (Local Government Taxation), of the Rules and Regulations Implementing the Local Government Code of 1991 (hereafter "IRR"), replicates the aforementioned definition of the term "manufacturer."

In the case of *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila, supra*, which is directly in point, this Court held:

> 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.
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> 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. (*Citing in Footnote 15 - De Leon and De Leon, Jr., The Fundamentals of Taxation, 2004 Edition, page 49)*

Based on the aforementioned definition, a manufacturer is any person who alters, modifies or combines any product to make a finished product "for the purpose of their sale or distribution to others." Petitioner is being taxed on its sales as manufacturer under both Sections 14 and 21(a) of the MRC, which is a clear case of "obnoxious" double taxation.

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It should be noted that manufacturers like petitioner are subject to the value-added tax (VAT) or percentage tax under Sections 105, 106 and 116, respectively, of the 1997 NIRC, as amended by Republic Act No. 9337, (formerly, Sections 99, 100 and 112, respectively, of the 1977 NIRC, as amended by Executive Order No. 273, which adopted the VAT effective January 1, 1988).

Hence, when the petitioner is subjected to both the business tax on manufacturers under Section 14 of the MRC and the business tax under Section 21 on those subject to excise tax, value-added tax (VAT) or percentage tax under the NIRC, there is a clear violation of Section 143(h) of the LGC which prohibits the imposition of business taxes therein on those already subject to tax under paragraphs (a) to (g) of Section 143 of the LGC.

Under the LGC's implementing rules,
cities may not impose taxes already imposed

Article 237, Part Four "Cities", Rule XXX on "Local Government Taxation", of the Rules and Regulations Implementing the Local Government Code of 1991 (hereafter "IRR"), provides:

Part Four. Cities

> **ART. 237.** ***Scope of Taxing and Other Revenue-Raising Powers of Cities.*** – The city may:
> (a) Levy and collect any of the taxes, fees, charges and other impositions that the province and the 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; and
> (b) Levy and collect a percentage tax on any business not otherwise specified under paragraphs (a) to (g), Article 233 of this Rule, at rates not exceeding three percent (3%) of the gross sales or receipts of the preceding calendar year. (*Underscoring ours.*)

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Article 237(b) of the IRR provides that cities may only collect percentage taxes on businesses not otherwise specified under paragraphs (a) to (g) of Article 233 of the IRR.

Section 21 of the MRC cannot be a tax on the end-user and petitioner is not merely a withholding agent

Likewise, there is no validity to respondent's contention that Section 21 of the MRC is a tax on end-users and that the petitioner is merely designated as withholding agent under the second paragraph in Section 21(C). A cursory reading of Section 21 of the MRC reveals that it is only the tax on "every overseas dispatch, message or conversation transmitted from the Philippines" covered under Section 21(C) that "shall be payable by 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 x x x." In a case involving the same parties herein but with positions reverse, petitioner in this case being respondent in that case and vice-versa, *Liberty M. Toledo, in her capacity as The Treasurer of the City of Manila v. Unilever Philippines, Inc., supra*, this Court held:

> Petitioner argues that there is no double taxation in imposing taxes based on Sections 14 and 21 of the Manila Revenue Code, as amended, since there is no taxation on the same property or object by the same taxing authority. Petitioner claims that Section 14 refers to a tax imposed on business establishments, while Section 21 refers to a tax imposed on end-users; and that the second paragraph in Section 21 (C) stating 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 the end of each quarter*" also applies to paragraph (A) therein which imposes taxes on *"persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, x x x"*. Correspondingly, petitioner maintains that respondent is merely its withholding agent under Section 21.

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We find petitioner's arguments untenable.

Section 21 of the Manila Revenue Code in its entirety reads:

> "**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:
>
> 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.
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> 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.
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> 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.
>
> <u>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</u>.
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> D) Excisable goods subject to VAT
> (1) Distilled spirits
> (2) Wines
> (3) Tobacco products (other than cigarettes, cigar and chewing tobacco)
> (4) Tobacco specially prepared for chewing
> (5) Fireworks
> (6) Cinematographic film
> (7) Saccharine
> (8) Coal and Coke
> (9) Fermented liquor, brewer's wholesale price, excluding the *ad valorem* tax
> (10) Automobiles, manufacturers or importers selling price
> (11) Non-essential goods based on the wholesale price, net of excise tax and VAT

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(a) Jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitation thereof; goods made of, or ornamented, mounted or fitted with precious metals or imitation thereof or ivory (not including surgical and dental instruments. silver-plated wares, frames or mountings for spectacles of eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of teeth.)

(b) Perfumes and toilet waters.

(c) Yacht and other vessels intended for pleasure or sports.

(12)Mineral products, based on actual market value of the annual gross output the time of removal

E) Excisable goods not subject to VAT

(1) Naptha when used as raw material for production of petrochemical products

(2) Asphalt" *(Underscoring supplied)*

Applying the rule on statutory construction which states: "*ad proximum antecedens fiat relatio nisi impediatur sentencia* (*relative words refer to the nearest antecedent, unless it be prevented by the context*)", We find that the subject qualifying proviso stating that "the tax shall be payable by the person paying for the services rendered payable to the person rendering the services", refers only to the immediately preceding paragraph of the same subsection (C) of Section 21 which refers to "overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services", being the nearest antecedent thereto, and not to the other paragraphs of the same provision such as paragraph (A).

Moreover, a similar provision found under Section 120 of the National Internal Revenue Code of 1997 (NIRC) supports the finding that the subject *proviso* qualifies only paragraph (C), of Section 21 of the Manila Revenue Code, as amended, (refers to a tax imposed on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services), 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

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> 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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> In ascertaining the intention of the lawmaker, courts are permitted to look into prior laws on the same subject and to investigate the antecedents of the statute involved. This rule is especially applicable in the interpretation of codes, revised, or compiled statutes, for the prior laws which have been codified, compiled, or revised will show the legislative history that will clarify the intent of the law or shed light on the meaning and scope of the codified or revised statute. *(Agpalo, Ruben, Statutory Construction, 5th Edition, 2003, p. 98)*
>
> The court *a quo* aptly observed on pages 13-14 of its assailed Decision as follows:
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> "The portion therefore quoted by the respondent could only have been referring to the immediately preceding paragraph C, and not to the first paragraph, paragraph A, under which the petitioner was assessed Section 21 taxes. The alternative scenario could not have been possible because, as stated by the petitioner in its Memorandum, it is not involved in the business of overseas dispatch and overseas messaging transmission.
>
> This is further bolstered by the fact that a similar tax on businesses conducting overseas dispatch and messaging transmission is imposed by the National Revenue Code. This Court is referring to Section [120] of thereof which provides: x x x"
>
> Having established that the subject *proviso* indeed does not qualify paragraph (A) of Section 21, the tax imposed under the same provision is not a tax on end-users but a tax on the business of manufacturing. In short, respondent is not a withholding agent of petitioner.

Moreover, as previously noted, Section 21 of the MRC is a tax on business or a sales tax. It is not a tax on purchases since purchases is obviously not a business activity. Section 21 specifically provides for the imposition of taxes "(o)n any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code," which are clearly taxes on sales, not purchases. In this regard, Section 143 of the LGC, which is the legal basis for Section 21 of the MRC, imposes tax on business based on sales. In *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*, supra, this Court already ruled:

> 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 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.

Assuming *arguendo* that Section 21 of the MRC is indeed a tax on end-users and that the petitioner is constituted a mere withholding agent, Section 21 of the MRC would be illegal. The power of local government units like the City of Manila to impose taxes is governed and subject to limitations by the Local Government Code of 1991 (LGC). Section 128 of the LGC provides:

> **SEC. 128.** ***Scope.*** – The provisions herein shall govern the exercise by provinces, cities, municipalities, and barangays of their taxing and other revenue-raising powers.

Section 129 of the LGC provides:

> **SEC. 129.** ***Power to Create Sources of Revenue.*** – Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units. (*Underscoring ours.*)

The LGC does not authorize local government units to impose taxes on end-users or purchase taxes or for that matter, to appoint mandatory withholding agents for purposes of tax collection. In the absence of such authority, there is no legal basis for the imposition of any tax on end-users or tax on purchases. There is also no legal basis Jc for constituting the petitioner here as withholding agent for purposes of collecting such tax on purchases.

Section 186 of the LGC is not a valid basis for the imposition of tax on the end-user

There is no validity to respondent's contention that there is legal authority under Section 186 of the LGC for the imposition of tax on the end-user under Section 21 of the MRC.

Section 186 of the LGC does not qualify Section 143 thereof. In the aforecited case of *Liberty M. Toledo, in her capacity as The Treasurer of the City of Manila v. Unilever Philippines, Inc.*, this Court held:

> According to petitioner, when the court a quo ruled that a taxpayer already taxed under Section 143(a) to (g) of the LGC can no longer be taxed under Section 143(h) of the same Code, the latter failed to take into account Section 186 thereof, which provides:
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> > "SEC. 186. Power To Levy Other Taxes, Fees or Charges. — Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose."
>
> Petitioner further submits that the power of Local Government Units (LGUs) to levy taxes, fees or charges is not limited to those specifically enumerated under Section 143 of the LGC, but also extends to any other tax base or subject provided that the conditions set forth under Section 186 of the same code are complied with; and that the only limitation for the imposition of tax under Section 21 of the MRC is provided under Section 143 of the LGC, namely, that the rate to be imposed on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code (NIRC) of 1997 shall not exceed 2% of gross sales or receipts of the preceding calendar year.
>
> We find petitioner's interpretation erroneous and We disagree with its contention that Section 143 of the LGC should be qualified by Section 186

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of the same Code. An analysis of both provisions shows that Section 186 grants the general power of LGUs to levy taxes, fees or charges subject to the limitations provided therein, while Section 143 grants municipalities *(cities are included under Section 151)* the power to levy taxes on certain businesses likewise subject to the limitations provided therein. In other words, Section 186 is a general provision while Section 143 is a special provision. Relative thereto, We quote a principle in statutory construction, which provides that:

> "Where there is a particular or special provision and a general provision in the same statute and the latter in its most comprehensive sense would overrule the former, the particular or special provision must be operative and the general provision must be taken to affect only the other parts of the statute to which it may properly apply. In other words, the particular or special provision is construed as an exception to the general provision. In this way, all the provisions are given effect."[9]

Following the foregoing principle, Section 143 of the LGC (a special or particular provision) should be construed as an exception to Section 186 of the same Code (a general provision), not *vice-versa.* (Footnote 9 - Agpalo, Ruben, Statutory Construction, 5th Edition, 2003)

Moreover, Section 186 of the LGC expressly provides that: "Local government units may exercise the power to levy taxes, fees or charges on any base or subject <u>not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended,</u> or other applicable laws x x x." (*Underscoring ours.*)

Section 21 of the MRC expressly imposes "(o)n any of the following businesses <u>subject to the excise, value-added or percentage taxes under the National Internal Revenue Code</u> hereafter referred to as NIRC, as amended, a tax of fifty percent (50%) of one percent (1%)

Section 143 of the MRC does not merely limit the tax rate but also limits the <u>imposition of tax to businesses not already taxed</u>

Respondent's argument that paragraph (g), Section 143 of the LGC only limits the imposition of tax to a rate "shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year" is untenable in view of the express provision that in the said section that the tax may only be imposed on "any business, not otherwise specified in the preceding paragraphs," namely, paragraphs (a) to (g) of the aforesaid Section 143. The petitioner-manufacturer in this case has already been taxed under paragraph (a) of Section 143 in relation to Section 14 of the MRC; hence, to subject it to tax under Section 21 of the MRC would be in direct violation of the clear prohibition on double taxation under paragraph (h), Section 143 of the LGC.

When the law speaks in clear and categorical language, there is no reason for interpretation or construction but only for application. *Land Bank of the Philippines vs. Court of Appeals, et al. & Department of Agrarian Reform vs. Court of Appeals et al.*, G.R. Nos. 118712 & 118745, respectively, July 5, 1996 (258 SCRA 404).

The LGC provides for a strict interpretation against the imposition of any tax by local government units

As previously mentioned, it is abundantly clear that Section 143(h) of the LGC expressly prohibits double taxation under Sections 14 and 21 of the MRC.

However, assuming *arguendo* that there is doubt, Section 5(b) of the LGC resolves any doubt on the imposition of tax by local government units strictly against such local government units and liberally in favor of the taxpayer. Section 5(b) of the LGC provides:

> **Sec. 5.** ***Rules of Interpretation.*** – In the interpretation of the provisions of this Code, the following rules shall apply:
>
> x x x
>
> (b) In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer. Any tax exemption, incentive or relief granted by any

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> local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it. (*Underscoring ours.*)

The above quoted Section 5(b) of the LGC is reproduced verbatim in Article 5(e) of the IRR.

Based on the foregoing considerations, respondent obviously cannot impose sales tax under Section 21 of the MRC on petitioner since petitioner is already subject to sales tax under Section 14 of the MRC pursuant to the prohibition on double taxation under Section 143(h) of the LGC.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The appealed Decision dated May 12, 2006 and Order dated July 27, 2006 of the RTC of Manila, Branch 47, in Civil Case No. 03-107304 are hereby **REVERSED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** the petitioner the amount of Eight Million Seven Hundred Seventy Three Thousand Nine Hundred Forty Three and 99/100 pesos (P 8,773.943.99) representing business taxes erroneously paid under Section 21 of the Manila Revenue Code.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

(with Dissenting Opinion)
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.

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ERNESTO D. ACOSTA
Presiding Justice