REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE TREASURER OF THE CITY OF MANILA,
Petitioner,

C.T.A. EB No. 261
(C.T.A. AC No. 17)

Members:

Acosta, ***P.J.,***
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.:*

-versus-

ALCAN PACKAGING STARPACK CORPORATION (formerly STARPACK PHILIPPINES CORPORATION),
Respondent.

Promulgated:
JUL 3 0 2007

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DECISION

CASTAÑEDA, JR., J.:

On appeal are the Decision dated September 11, 2006 and the Resolution dated January 3, 2007 issued by the Court in Division in the case entitled, "Alcan Packaging Starpack Corporation(formerly Starpack Philippines Corporation) vs. The Treasurer of the City of Manila", docketed as C.T.A Case AC 17. The assailed Decision decrees that: 1) The Treasurer of the City of Manila refund the amount of P4,527,594.76 representing erroneously paid local business taxes for the fourth quarter of taxable year 1999, all the quarters of taxable year 2000 and the first three quarters of 2001, including the amount of P728,845.62 representing excess payment of local business taxes pursuant to Tax Ordinance 7988, as amended by Tax Ordinance 8011, or also known as the, "Manila Revenue Code (MRC), as amended"; and desist from further imposing business taxes under Sections 14 and 21(A) of the same Code.

The Resolution dated January 3, 2007 denied the Manila City Treasurer's Motion for Reconsideration for lack of merit.

The facts are undisputed:

> Petitioner, Alcan Packaging Starpack Corporation, is a domestic corporation duly organized under the laws of the Philippines with principal office address at Km. 22, Bo. Mapandan, Ortigas Avenue Extension, Cainta, Rizal while respondent, the Treasurer of the City of Manila, is tasked with the implementation of the City's Revenue Code, as well as the collection and assessment of business taxes, license fees and permit fees within the City.
>
> For the period beginning fourth quarter of 1999 to the third quarter of 2001, petitioner paid business taxes under Section 21 of the Manila Revenue Code (MRC) in the amount of P4,527,594.76 as evidenced by official receipts issued to it, as follows:

Quarter Covered	Amount	Date Paid	OR No.
4th Quarter 1999	530,949.92	18 Oct. 1999	199411
1st Quarter 2000	623,973.08	14 Jan.2000	019388
2nd Quarter 2000	623,973.08	18 Apr. 2000	012072
3rd Quarter 2000	623,973.08	18 Jul. 2000	092394
4th Quarter 2000	623,973.08	19 Oct. 2000	131108
1st Quarter 2001	500,250.84	20 Jan. 2001	139499
2nd Quarter 2001	500,250.84	19 Apr. 2001	202648
3rd Quarter 2001	500,250.84	18 Jul. 2001	189474

> The City of Manila collects business taxes from petitioner on the basis of Sections 14 & 21 of the MRC. However, the rates imposed under these Sections were amended through the issuance of Ordinance Nos. 7988 and 8011, approved by the City Mayor of Manila in the years 2000 and 2001, respectively.

On the bases that respondent had unlawfully collected the business taxes under Section 21 of the MRC which amounts to double taxation, as well as, under the increased rates which arose from the amendments to Sections 14 and 21 of the MRC by Ordinance Nos. 7988 and 8011, petitioner, on September 27, 2001, filed with the City Treasurer its claim for refund of the alleged excess payments of business taxes in the amounts of P4,527,594.76 and P728,845.62 covering the taxable years 2000 and 2001.

Having received no reply from the respondent, petitioner, on October 17, 2001, then filed a Petition for Refund before the Regional Trial Court of Manila. In her Comment, respondent submitted that there is no double taxation when the City collected from petitioner business taxes pursuant to Sections 14 and 21 of the MRC. Further, the rates prescribed under the amendments were issued within the powers of the City to impose.

After the pre-trial conference, both parties were directed to submit their respective memorandum considering that the issues raised were purely legal in nature, to wit:

a. Whether or not respondent legally collected business taxes under Section 21 of the Manila Revenue Code;
b. Whether or not petitioner is entitled to a refund;
c. Whether or not Ordinance Nos. 7988 and 8011 of Manila are valid and enforceable for lack of defective publication requirements; and
d. Whether or not petitioner is barred from questioning the constitutionality of Section 21 of the Manila Revenue Code and Ordinance Nos. 7988 and 8011.

In the assailed Decision of Judge Augusto T. Gutierrez of Branch 47 of the RTC of the City of Manila, petitioner's claim for refund was disallowed on the findings that there is no double taxation because unlike the tax imposed on Section 14 of the MRC, the tax under Section 21 of the same Code is a tax not on the petitioner as a manufacturer, but is rather a tax on the end-users of its products. Further, the lower court ruled that Ordinance Nos. 7988 and 8011 have substantially complied with the publications requirements under Republic Act No. 409 or the Revised Charter of Manila. Petitioner's Motion for Reconsideration filed on June 7, 2005 was likewise denied through the lower court's Order dated September 8, 2005.

Hence, this petition filed on October 21, 2005 based on the following grounds:

1. The enforcement of Section 21 of the City of Manila's Revenue Code against petitioner constitutes double taxation prohibited by law in view of taxes collected by the City and paid by petitioner under Section 14 of the Revenue Code. Thus, all taxes paid by petitioner to the City on the basis of Section 21 should be immediately refunded; and

2. Ordinance Nos. 7988 and 8011, amending the City's Revenue Code, violated the procedural and substantive rules of taxation for their effectivity and implementation; thus, all taxes collected by the City and

> paid by petitioner on the basis of these Ordinances should likewise be refunded.[1]

Acting on the Petition, the Court in Division issued a Decision dated September 11, 2006 reversing the Decision dated April 28, 2005 and Order dated September 8, 2005 issued by the Regional Trial Court, Branch 47 of the City of Manila declaring the MRC, as amended ineffective for failure to comply with the publication requirements as mandated by law. The Court in Division further ruled that taxing twice the sale of goods, in the course of its trade or business, by the same taxing authority, for the same taxing period, and for the purpose of raising revenue for the City, and regulating the conduct of the business bolsters the incidence of double taxation.

The respondent, now as the "petitioner" filed a Motion for Reconsideration of the Decision dated September 11, 2006 against the petitioner, now as the "respondent". In a Resolution dated January 3, 2007, the Court in Division subsequently denied the Motion for lack of merit.

Unfazed, the petitioner appealed by way of a Petition for Review with the Court En Banc, and interposed the following assignment of errors of the Court in Division:

> **I – Whether or not the Honorable First Division gravely erred in holding that there is prohibited double taxation in the imposition of Section 21 of the Manila Revenue Code.**
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> **II – Whether or not the Honorable First Division gravely erred in holding that the subject ordinances did not satisfy the requirements of publication.**

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[1] Rollo, pp. 160-163.

III – Whether or not the Honorable First Division gravely erred in holding that the 1991 Local Government Code prevails over Republic Act No. 409 or the City Charter of Manila.

IV – Whether or not the Honorable First Division gravely erred in ordering the refund of the taxes already paid.[2]

We shall address the assigned errors seriatim.

On Direct Duplicate Taxation

Petitioner asserts that the Court in Division erroneously ruled that the taxes imposed under Sections 14 and 21 of the MRC, as amended are tantamount to direct duplicate taxation. Section 14 is a tax upon the business establishment; while Section 21 is a tax on the end-user of respondent's product. As a withholding agent, the taxes collected by the respondent are remitted to the City Manila. Sections 14 and 21 clearly pertain to different objects of taxation.

The power of local government units (LGUs) to levy taxes, fees or charges extends to any other tax base, subject to the conditions stated in Section 186 of Republic Act 7160 or identified as, "the 1991 Local Government Code" which provides:

> 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.

Section 186 is a self-executing provision of R.A. 7160, and the imposition of additional tax under Section 21 of the MRC, as amended is within the ambit of

[2] Rollo, p. 14.

the authority of the City of Manila. Thus, the City Council of the Manila as a legislative body primarily determines the nature(kind), object(purpose), extent(rate), coverage(subjects) and situs(place) of taxation.

The plenary authority to tax is further supplemented by Section 143 (h) of R.A. 7160 granting LGUs the power to impose taxes "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 tax ("VAT") 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."

In the words of Section 143(h) of R.A. 7160, the only limitation, if there exists, on the imposition of tax under Section 21 of the MRC, as amended is that the rate shall not exceed 2% of the gross sales or receipts of the preceding calendar year. The limitation does not obtain in the case at bar because the MRC, as amended imposes, "a tax of 50% of the 1% per annum on the gross sales or receipts of the preceding calendar year."

The power of the LGUs to impose tax is no longer statutory, but is constitutional in scope directly conferred under Section 5, Article 10 of the 1987 Constitution allowing LGUs, to create its own sources of revenue and levy taxes, fees, and charges, subject to the guidelines and limitations, as Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, charges shall accrue exclusively to the LGUs.

In its Comment, respondent alleges that Section 21 of the MRC, as amended imposes taxes on business or articles of commerce subject to excise, VAT, or other percentage taxes under the 1997 National Internal Revenue Code ("NIRC"), as amended. The businesses or articles of commerce of manufacturers are likewise subject to business taxes under Section 14 of the MRC, as amended which does not distinguish between businesses that are and are not subject to excise, VAT, or other percentage taxes under the 1997 NIRC, as amended.

The definition of manufacturing covers not only manufacturing per se, but includes the sale of manufactured goods. A person that merely manufactures for own use or consumption cannot be subject to business taxes, since there is no activity where profit is generated. Notably, the taxes imposed on the business pertain to "gross sales or receipts", not "cost of sales or receipts".

Sections 14 and 21 of the MRC, as amended involve two 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, and to regulate the conduct of the business which accrue and become due on the same taxing period. Direct duplicate taxation is clearly operational in the case at bar.

The petitioner erroneously maintains that the respondent is a withholding agent for the City of Manila, and the person liable to pay the tax is the person paying for the goods. Since the person paying for the goods is the one liable, the business activity that is being taxed is the purchase of the goods. The act of "purchasing" is not a business activity.

Petitioner's arguments deserve scant consideration.

Double taxation means taxing the same property twice when it should be taxed only once. This means that the same person is taxed 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.[3]

It is imperative to ascertain if the taxes levied to by the City of Manila under Section 21 of the MRC, as amended, in addition to the taxes collected under Section 14 of the MRC, as amended constitute direct duplicate taxation.

Pursuant to Sections 143 and 151 of R.A. No. 7160, a city is authorized to levy the following taxes:

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

[3] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 147375, June 26, 2006, 492 SCRA 551 citing *Commissioner of Internal Revenue vs. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436.

xxx xxx xxx

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

xxx xxx xxx

(d) On retailers, xxx

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

xxx xxx xxx

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property 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.

<u>(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.</u> (Underscoring Ours for emphasis.)

The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

Sections 143(a) to (g) of R.A. No. 7160 specifically identify the entities liable to business taxes. The clause "on any business, not otherwise specified in the preceding paragraphs" referred to in Section 143(h) of the R.A. 7160 means that a city is permitted to levy taxes on businesses not enumerated under Sections 143 (a) to (g) of R.A. 7160.

Sections 14 and 21 of the MRC, as amended which emanate from Sections 143 (a) to (h) of R.A. 7160 empower the City of Manila to impose the following taxes:

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

With gross sales or receipts for the Preceding calendar year in the amount of:	Amount of Tax

xxx xxx xxx

Section 21. – *Tax on Business Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC* – On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter 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 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.

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The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.

A cursory examination of the aforesaid provisions shows that being a manufacturer, the respondent is taxed pursuant to Section 14 of the MRC, as amended, and as a business entity subject to excise, value-added or percentage tax under Section 21 of the same Code. Sections 14 and 21 essentially relate to the same business. Manufacturing cannot be delineated from the sale of a product. Section 4 (o) of the MRC, as amended defines a manufacturer, to wit:

Section 4. Words and Phrases – When used in this Ordinance:

xxx xxx xxx

o) **"Manufacturer"** – includes every person who by physical or chemical processes, alters the exterior texture of 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 or material or manufactured or partially

> manufactured product so as to reduce it to marketable shape or prepare it for any of the use of industry, or by who any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or different kinds and in such manner that the finished product 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 materials or manufactured or partially manufactured products or combines the same to produce such finished product for the purpose of their sale or distribution to others and not for his own use or consumption.

Logically, any business that is engaged in manufacturing sells the product it manufactures, and generally is subject to excise, value-added, or percentage taxes. Thus, the additional taxes imposed under Section 21 of the MRC, as amended defies Section 143 (h) of R.A. No. 7160 which prohibits the imposition of additional taxes on the same business enumerated in Sections 143 (a) to (g) of the said law.

Considering that the respondent already pays to the City of Manila, the business taxes on its gross receipts as a manufacturer under Section 14 of the MRC, as amended, the payment of the same taxes on gross receipts on its business subject to excise, VAT or percentage taxes under Section 21 involving the same period is tantamount to direct duplicate taxation.

Assuming arguendo that the end-users are those liable to tax under Section 21 of the MRC, as amended, the activity being taxed is the purchasing power of the consumers which is not a business activity.

On the publication of Tax Ordinance 7988, as amended byTax Ordinance 8011

It is the petitioner's stance that both Tax Ordinance 7988 and 8011 were published four times, in accordance with Republic Act 409 or the "Revised

Charter of the City of Manila". The Court in Division disregarded the overwhelming evidence that before its approval, Tax Ordinance 7988 was published twice on December 25, 1999 in the Manila Standard, and the Philippine Post, and after its enactment, the same was published on May 22, 2000 in the Philippine Post and May 24, 2000 in the Manila Standard.

Tax Ordinances 7988 and 8011 are no longer subject to the stringent requirements of Section 188 of R.A. 7160 because these tax ordinances are amendatory to Tax Ordinance 7794, the original "Manila Revenue Code".

Petitioner further points out that the respondent should have taken the opportunity to dispute the validity and enforceability of the ordinances by filing an appeal before the Secretary of Justice under Section 187 of R.A. 7160, a condition sine qua non in the filing of redress before the courts. The failure of a taxpayer to question the validity of a tax ordinance or revenue measure with the Secretary of Justice is fatal to its claim. These ordinances enjoy the presumption of validity, unless declared void by the courts.

Respondent argues that the publication of tax ordinances for three consecutive days in a newspaper of local circulation is mandatory.

The Court disagrees with the petitioner's contentions.

The publication of a tax ordinance for three consecutive days in a newspaper of local circulation is a requisite under Section 188 of R.A. 7160; while Section 17 of Republic Act 409 mandates that prior to the enactment of an ordinance, the publication thereof shall be undertaken in two daily newspapers of general circulation, and after its approval, the same shall be published, also in two newspapers of general circulation". Section 188 of R.A. 7160 vis-à-vis with Section 17 of R.A. 409 read:

> 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.
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> xxx xxx xxx
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> SECTION 17. *Legislative procedure.* — The Board shall hold two ordinary sessions for the transaction of business during each week on days which it shall fix by resolution, and such extraordinary sessions, as may be called by the Mayor. It shall sit with open doors unless otherwise ordered by an affirmative vote of the majority of all the members. It shall keep a record of its proceedings and determine its rules of procedure not herein set forth. A majority of all the members of the Board shall constitute a quorum for the transaction of business, and the affirmative votes of a majority of all the members shall be necessary for the passage of any ordinance or resolution. Ordinary motions may be approved by a majority of those present. The ayes and nays shall be taken and recorded upon the passage of all ordinances, upon all resolutions or motions directing the payment of money or creating liability, and, at the request of any member, upon any other resolution or motion. Each proposed ordinance shall be published in two daily newspapers of general circulation in the city, and shall not be discussed or enacted by the Board until after the third day following such publication. Each ordinance enacted by the Board, and each resolution or motion directing the payment of money or creating liability, shall be forwarded to the mayor for his approval. Within ten days after the receipt of the ordinance, resolution or motion, the mayor shall return it with his approval or veto. If he does not return it within that time, it shall be deemed to be approved. If he returns it with his veto, his reasons therefor in writing shall accompany it. It may then be again enacted by the affirmative votes of two-thirds of all members of the Board, and again forwarded to the mayor for his approval, and if within ten days after its receipt he does not again return it with his veto, it shall be deemed to be approved. If within said time he again returns it with his veto, it shall be forwarded forthwith to the President for his approval or disapproval, which shall be final. No partial veto of any ordinance, resolution or motion shall be allowed. Each approved ordinance shall be sealed with the city seal, signed by the book kept for the purpose; shall be published in two daily newspapers of general circulation in the city, within ten days after its approval; and shall take effect and be in force on and after the twentieth day following its publication, if no date is fixed in the ordinance. (Underscoring Ours for emphasis.)

In the case of *Coca-Cola Bottlers Philippines, Inc. vs. City of Manila,*[4] the Supreme Court finally put to rest on the nullity of the amendatory Tax Ordinance Nos. 7988 and 8011 for failure to comply with Section 188 of R.A. No. 7160 ratiocinating:

> x x x 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 to the City of Manila, thus, it had attained finality after the lapse of the period to appeal
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> 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 Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. <u>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.</u>
>
> Despite the nullity of Tax Ordinance No. 7988, the court *a quo*, in the assailed Order, dated 8 May 2002, went on to dismiss 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] <u>respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive.</u>* ***<u>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.</u>***<u>" Said Resolution of the DOJ Secretary had, as well, attained finality by virtue of the dismissal with finality by this Court of respondents' Petition for Review on Certiorari in G.R. No. 157490 assailing the dismissal by the RTC of Manila, Branch 17, of its appeal due to lack of jurisdiction in its Order, dated 11 August 2003.</u>
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> <u>Based on the foregoing, this Court must reverse the Order of the RTC of Manila, Branch 21, dismissing petitioner's case as there is no basis in law for such dismissal. The amending law, having been declared as null and void, in legal contemplation, therefore, does not exist. Furthermore, even if Tax Ordinance No. 8011 was not declared null and void, the trial court should not have dismissed the case on the reason that said tax ordinance had already amended Tax Ordinance No. 7988. As held by this Court in the case of *People v. Lim*, if an order or law sought to be amended is invalid, then it does not legally</u>

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[4] G.R. No. 156252, June 27, 2006, 493 SCRA 279.

> exist, there should be no occasion or need to amend it. (Underscoring Ours for emphasis.)
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> WHEREFORE, premises considered, the instant Petition is hereby GRANTED. The Orders of the RTC of Manila, Branch 21, dated 8 May 2002 and 5 December 2002, respectively, are hereby REVERSED and SET ASIDE.
>
> SO ORDERED.

Indubitably, the validity of a tax ordinance is contingent with due compliance of the publication requirements laid down in Section 188 of R.A. No. 7160.

Special provision of a general law versus general provision of a special law

According to the petitioner, the Court in Division wrongfully adjudged the supremacy of R.A. No. 7160 as against Republic Act 409. Republic Act 7160 is a general law affecting LGUs which should yield to the City Charter of Manila, Republic Act 409, a special law specifically providing for the organization of the City of Manila.

We are not persuaded.

A general law is defined affecting all of the people of the state or all persons or things of a particular class; while a special law is one which relates either to particular persons or things, or to particular persons or things of a class or which operates on a portion of a class instead of all the class.[5]

A general law and special law on the same subject must be harmonized to give effect to both. An irreconcilable conflict between the two would necessarily mean that the special law prevails over the general law, regardless of their dates

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[5] Ruperto Martin, *Statutory Construction*, Revised Edition (1984), p. 28.

of passage.[6] *GENERALIA SPECIALIBUS NON DEROGANT.*[7] This canon of statutory construction does not apply if the special statute refers to a subject in general, which the general statute treats in particular. Succinctly stated, a particular provision embraced in a general statute is favored, as against a general provision in a special law as enunciated in the case of *Liwayway Vinzons-Chato vs. Fortune Tobacco Corporation*[8], where the Supreme Court explained that:

> x x x There is no question that the Revised Charter of the City of Manila is a special act since it relates only to the City of Manila, whereas the Local Tax Code is a general law because it applies universally to all local governments. Blackstone defines general law as a universal rule affecting the entire community and special law as one relating to particular persons or things of a class. And the rule commonly said is that a prior special law is not ordinarily repealed by a subsequent general law. The fact that one is special and the other general creates a presumption that the special is to be considered, as remaining an exception of the general, one as a general law of the land, the other as the law of a particular case. However, the rule readily yields to a situation where the special statute refers to a subject in general, which the general statute treats in particular. Th[is] exactly is the circumstance obtaining in the case at bar. Section 17 of the Revised Charter of the City of Manila speaks of "ordinance" in general, i.e., irrespective of the nature and scope thereof, whereas, Section 43 of the Local Tax Code relates to "ordinances levying or imposing taxes, fees or other charges" in particular. In regard, therefore, to ordinances in general, the Revised Charter of the City of Manila is doubtless dominant, but, that dominant force loses its continuity when it approaches the realm of "ordinances leying or imposing taxes, fees or other charges" in particular. There, the Local Tax Code controls. Here, as always, general provision must give way to a particular provision. Special provision governs. x x x[9] (Underscoring Ours for emphasis.)

Applying the foregoing, although R.A. No. 409 is a special law intended exclusively for the City of Manila and R.A. No. 7160 the entire Philippines, the pertinent provision of Section 188 of R.A. No. 7160 particularly delves on the publication of tax ordinances, as contradistinguished with the provision of

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[6] *Lopez, Jr. vs. Civil Service Commission*, G.R. No. 87119, April 16, 1991, 195 SCRA 777.

[7] *Philippine National Oil Company vs. Court of Appeals*, G.R. Nos. 109976 and *Philippine National Bank vs. Court of Appeals*, G.R. No. 112800, April 26, 2005, 457 SCRA 32.

[8] G.R. No. 141309, June 19, 2007.

[9] Citing *Bagatsing vs. Ramirez*, G.R. No. L-41613, December 17, 1976, 74 SCRA 306.

Section 17 of R.A. No. 409 which comprehensively relates to the publication of any ordinance. Section 188 must prevail over Section 17 of R.A. No. 409, a general provision. Thus, the Court in Division correctly declared Section 188 as the appropriate provision governing the publication of tax ordinances.

In view of the existence of direct duplicate taxation, and the flawed publication of the MRC, as amended, the Court in Division correctly granted the refund of erroneously paid business taxes in the amount of P4,527,594.76 for the fourth quarter of 1999, all the quarters of 2000 and the first three quarters of 2001, and the amount of P 728,845.62 representing excess payment of local business taxes under the same Code.

WHEREFORE, premises considered, the Petition is **DISMISSED** for lack of merit. Accordingly, the Decision dated September 11, 2006 and Resolution dated January 3, 2007 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(With dissenting opinion)
OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

EN BANC

THE TREASURER OF THE CITY OF MANILA, ***Petitioner,***	**C.T.A. EB NO. 261** **(C.T.A. AC NO. 17)**
	Members:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
ALCAN PACKAGING STARPACK CORPORATION (formerly STARPACK PHILIPPINES CORPORATION), ***Respondent.***	**Promulgated:**
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DISSENTING AND CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

Dissenting

With due respect to the Majority Opinion, conformably with my Dissenting Opinions in the cases of *Liberty M. Toledo, in her Capacity as The Treasurer of the City of Manila vs. Unilever Philippines, Inc., C.T.A. AC No. 21,* promulgated on May 10, 2007, and *Unilever Philippines, Inc. vs. The Treasurer of the City of Manila, C.T.A. AC No. 25,* promulgated on June 18, 2007, I cannot agree that there is direct double taxation in the case at bench on the following ratiocinations:

The Taxes Imposed By *Sections 14 and 21 of the Revenue Code of Manila* are Two Different and Distinct Taxes

Section 14 of the Revenue Code of Manila provides:

> "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:
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> xxx xxx."

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. In other words, in *Section 14* the tax is imposed on the business establishment itself.

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

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"SEC. 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:

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.

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.

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

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(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.

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(2) Asphalt

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Pursuant to the above provision, the tax under *Section 21* is not a direct tax on manufacturers, assemblers, and other processors, but a tax payable by the consumers of the respondent in view of the modifying paragraph of *Section 21* which states 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". Respondent merely acts as the withholding or collecting agent of the tax paid by the persons paying for or availing of the manufacturing services of the respondent.

It bears stressing that the qualifying provision in *Section 21* applies to *subsections A, B, and C*, as shown by the fact that *subsections A, B, and C* enumerate business establishments that are subject to tax. The succeeding subsections D and E already classify the goods that are subject and not subject to Value Added Tax. The qualifying provision therefore was incorporated as a separate and concluding paragraph for business establishments enumerated in *subsections A, B, and C of Section 21*.

Moreover, the modifying provision provides a period when to pay the tax, to wit, "within twenty (20) days after the end of each quarter". It is clear that the period provided in the modifying provision is applicable to all business establishments enumerated in *subsections A, B, and C of Section 21* who have collected the taxes imposed therein from the persons availing of the services rendered by said establishments.

Clearly, respondent is obliged to pay the taxes it collected and withheld from its consumers under *Section 21*.

Basic is the rule in statutory construction that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum.* From the words of a statute, there should be no departure *(Del Mar vs. Philippine Amusement and Gaming Corp., 358 SCRA 781).*

<u>Elements of
Double Taxation</u>

Double taxation is sometimes known as "duplicate" taxation. Duplicate taxation may be direct or indirect. Direct duplicate taxation or double taxation in the objectionable or prohibited sense (also known as obnoxious) means that the same property is taxed twice when it should be taxed only once; and that both taxes are imposed on the same property or subject matter for the same purpose, by the same State, Government, or

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taxing authority within the same jurisdiction or taxing district during the same taxing period and covering the same kind or character of tax (*Villanueva vs. City of Iloilo, 26 SCRA 594*).

On the other hand, indirect duplicate taxation is permissible double taxation. This is allowed if the taxes are of different nature or character, imposed by different taxing authorities (*Tax Principles and Remedies by Japar B. Dimaampao, Second ed., p. 122*).

The elements of direct double taxation are as follows:

1) taxing twice;
2) same person/property or subject matter;
3) by the same taxing authority;
4) within the same jurisdiction or taxing district;
5) for the same purpose; and
6) in the same year or taxing period.

<u>No Double Taxation</u>

These elements do not obtain in the case of *Sections 14 and 21(A) of the Revenue Code of Manila.*

First, these two taxes are of two different kinds or characters. The tax imposed upon respondent under *Section 14* is a tax on manufacturers, assemblers and other processors, or a tax on business establishments. It is

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classified as a direct tax which is demanded from the respondent primarily burdened to pay the same, in contrast to *Section 21* which is imposed not on the respondent, but on persons availing of the manufacturing services of the respondent.

Second, the taxes in *Sections 14 and 21* are imposed on two entirely different and distinct entities. *Section 14* is assessed on the respondent by reason of engaging in business; on the other hand, *Section 21* is imposed on its customers.

Third, although the two taxes deal on one activity, the manufacturing activity, *Sections 14 and 21* are imposed on two different subject matters. The subject matter of *Section 14* is the privilege on engaging in the manufacturing business. The tax is imposed for the business of operating a manufacturing establishment. On the other hand, *Section 21* is imposed not on the establishment, but on its consumers and/or end-users.

Fourth, the element of taxing twice for the same purpose is not present. *Sections 14 and 21* are not for the same taxing purpose. Respondent, as manufacturer, is made liable to pay the business tax under *Section 14*, while it is the end-users of the establishment who are liable to pay the taxes under *Section 21*. Evidently, a tax on the establishment is

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different from the tax imposed on its customers. The lower court, therefore, correctly ruled that "the petitioner City Treasurer of Manila merely acts as withholding or collecting agent for the City", while the ones actually paying the tax are its customers/end-users. It is actually not a tax on the business of the respondent, but a tax on its consumers.

In sum, there is no double taxation, because there is no taxing twice, on the same person *(Procter & Gamble Philippines Manufacturing Corp., vs. Municipality of Jagna, 94 SCRA 903)*, or the same subject matter, by the same taxing authority, within the same jurisdiction, for the same purpose, in different taxing periods, some of the property in the territory *(Commissioner of Internal Revenue vs. Solidbank Corporation, 416 SCRA 464)*.

<u>Concurring</u>

However, to the extent that the *ponencia* rules that there is a flaw in the publication of *Tax Ordinance Nos. 7988 and 8011*, and finds that *Section 188 of R.A. No. 7160*, otherwise known as the Local Government Code, prevails over *Section 17 of R.A. No. 409*, otherwise known as the City Charter of Manila, I fully concur.

In fact, in the case of *Coca-Cola Bottlers Phils., Inc. vs. City of Manila, et al., 493 SCRA 291*, the Supreme Court ruled that the

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amendatory *Tax Ordinance Nos. 7988 and 8011* are null and void for lack of publication.

However, although the Supreme Court has already nullified the amendatory *Tax Ordinance Nos. 7988 and 8011* for lack of publication, it must be noted that the original ordinance, the *Revenue Code of the City of Manila,* otherwise known as *"Ordinance No. 7794"* and the first amendatory ordinance, *Ordinance No. 7807,* both containing *Sections 14 and 21,* subject of the present petition, still subsist. The City of Manila, therefore, has a legal basis to collect the taxes under *Sections 14 and 21* of the original *Ordinance No. 7794* and the first amendatory ordinance, *Ordinance No. 7807.*

IN VIEW OF THE FOREGOING, I concur with the Majority's Ruling nullifying *Tax Ordinance Nos. 7988 and 8011* for lack of publication, but I dissent with the Majority's Ruling that *Sections 14 and 21* constitute double taxation.

OLGA PALANCA-ENRIQUEZ
Associate Justice