REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

LAFARGE HOLDINGS (PHILIPPINES), INC.,

Petitioner,

- versus -

THE CITY OF TAGUIG AND ATTY. J. VOLTAIRE L. ENRIQUEZ, IN HIS CAPACITY AS THE CITY TREASURER OF THE CITY OF TAGUIG,

Respondents.

CTA AC NO. 227
(Civil Case No. 446)

Members:

UY, *Chairperson*
RINGPIS-LIBAN, and
MODESTO-SAN PEDRO, JJ.

Promulgated:
FEB 18 2021 2:06 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court's is Respondents' "Motion for Reconsideration"[1] filed through registered mail on October 12, 2020 and received by this Court on August 26, 2020, with Petitioner's "Comment/Opposition (Re: Motion for Reconsideration dated November 4, 2019 [sic])" ("Comment/Opposition") filed on December 01, 2020.

On July 24, 2020, this Court promulgated a Decision granting Petitioner's prayer to reverse and set aside the Orders dated May 10, 2019[2] and July 22, 2019[3] of Regional Trial Court ("RTC") of Taguig – Branch 153 in Civil Case No. 446, entitled *"Lafarge Holdings (Philippines), Inc., Petitioner, versus The City Of Taguig and Atty.*

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1 Docket, pp.155-168.
2 *Id.*, pp. 36-40; RTC Docket (Civil Case No. 227), pp. 87-91.
3 *Id.*, pp. 41-44; RTC Docket (Civil Case No. 227), pp. 112-115.

J. Voltaire L. Enriquez, in his capacity as the City Treasurer of the City of Taguig, Respondents", which dismissed Petitioner's claim for refund of local business tax ("LBT").

The dispositive portion of the Decision reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. The Orders dated May 10, 2019 and July 22, 2019 in Civil Case No. 446 are **REVERSED** and **SET ASIDE**. Let this case be **REMANDED** to Regional Trial Court of Taguig – Branch 153 for further proceedings on the merits of the refund claim.
>
> **SO ORDERED.**"

In their motion, Respondents pray that the above Decision be reconsidered and that the case be dismissed. Respondents anchor their prayer fundamentally on the following grounds in support of their arguments, *viz.*:

A. The Billing Statements issued by the Business Licensing Division of the City of Taguig are valid assessments.

B. Petitioner failed to file a petition for refund within the time given by law, making the assessment final and unappealable.

As to the first ground, Respondents argue that the power to issue an assessment is not exclusively lodged in the City Treasurer. Section 195[4] of the Local Government Code ("LGC") of 1991 expressly allows that "a duly authorized representative" may also make a finding that the correct taxes, fees, or charges have not been paid.

With regard to the second ground, Respondents cite the case of *City of Manila, et. al. v. Cosmos Bottling Corporation*[5] ("*Cosmos Bottling case*") wherein the Supreme Court held that there are two conditions to be satisfied in order to successfully prosecute an action for refund. First is to pay the tax and administratively assail within sixty (60) days the assessment before the local treasurer. Thereafter, file a judicial claim for refund within thirty (30) days from decision or inaction by the local treasurer. However, in the present case, Respondent alleges that Petitioner failed to do so.

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[4] All provisions shall pertain to the Local Government Code of 1991, unless specified otherwise.
[5] G.R. No. 196681, June 27, 2018.

On the other hand, Petitioner in its Comment/Opposition asserts that there is no merit in Respondents' argument that there was a valid assessment. Petitioner maintains that the Billings Statements in the instant case are not the Notices of Assessment indicated under Section 195, for they were issued against Petitioner pursuant to its application for renewal of business permit for the year. Petitioner further claims that Respondents impute that the Business Licensing Division of the City of Taguig was duly authorized by Respondent City Treasurer to issue an assessment without any basis or evidentiary support to warrant the same.

Moreover, Petitioner disputes Respondent's reliance on the *Cosmos Bottling case* is misplaced considering that the application of Section 195 is hinged on the existence of a prior valid assessment made by the local treasurer against the taxpayer. Finally, Petitioner points out that the filing of claim for refund for the first quarter of 2018 is irrelevant to the instant case which involves claim for refund of erroneously paid LBT during the second and third quarters of 2018.

The Court finds Respondents' "Motion for Reconsideration" bereft of merit.

The language of Section 195 clearly shows that before a notice of assessment may be issued, there must be a finding first by the local treasurer that the correct taxes, fees, or charges have not been paid, to wit:

> "SEC. 195. *Protest of Assessment.* – **When the local treasurer or his duly authorized representative <u>finds that correct taxes, fees, or charges have not been paid</u>, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties.** Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of

competent jurisdiction otherwise the assessment becomes conclusive and unappealable."[6]

Perforce, it is with emphasis that a notice of assessment must be triggered by a finding of the local treasurer or his duly authorized representative **that there was an incorrect amount of tax that was paid**. Additionally, this finding presupposes that an examination or inspection of the books or records of Petitioner must first be made by the local treasurer.

In the present case, the Billing Statements were issued pursuant to Petitioner's application for renewal of business permit in 2018, not after an examination of the books and records of Petitioner and a finding by the local treasurer that incorrect taxes were paid. Such being the case, the Billing Statements issued by the Business Licensing Division of the City of Taguig are not the assessments contemplated under Section 195 which must be protested by Petitioner to keep them from being final and executory. Additionally, the remedy to be resorted by Petitioner shall fall under Section 196, and not Section 195.

As to Respondents' other argument that Petitioner failed to satisfy the twin requirements in order to successfully prosecute an action for refund, this Court is not convinced.

As correctly pointed out by Petitioner, a careful reading of the *Cosmos Bottling case* reveals that the ruling therein necessitates that there is a formal assessment issued by the local treasurer against the taxpayer. In fact, the clause cited by Respondents in their "Motion for Reconsideration" evidently provides that there was an assessment made in the doctrine laid down in the *Cosmos Bottling case*, to wit:

> "Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund **in case the taxpayer had <u>received an assessment</u>**. One, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. Two, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax."[7]

6 *Emphasis and underscoring supplied.*
7 *Emphasis and underscoring supplied.*

Going back to the present case, Petitioner is not required to follow the procedure laid down under Section 195, along with the directive in the *Cosmos Bottling case*, for there was no assessment to speak of. Rather, the remedy under Section 196 shall apply.

On a final note, Respondent is thoroughly mistaken in stating that there should be a prior claim for refund for the first quarter of 2018; otherwise, Petitioner cannot claim a refund for its second and third quarters of 2018. For one, there is no such prerequisite indicated under the LGC of 1991. More importantly, the claim for refund for the first quarter of 2018 is unrelated and immaterial for the refund for the second and third quarters of 2018, for the dates of their payment are distinct and separate from one another.

Hence, in view of the foregoing disquisition, there is no cogent reason to disturb or modify the assailed Decision.

WHEREFORE, premises considered, Respondent's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice