REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF CALOOCAN AND HON. ANALIZA E. MENDIOLA, IN HER CAPACITY AS THE CITY TREASURER OF CALOOCAN CITY,
Petitioners,

CTA EB NO. 2446
(CTA AC No. 224)

-versus-

Present:

Del Rosario, *P.J.,*
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, *and*
Cui-David, *JJ*

LIGHT RAIL MANILA CORPORATION,
Respondent.

Promulgated:
JUN 30 2022 1:00 pm

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner to seek nullification of the Decision[1] dated September 2, 2020 (assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, the foregoing considered, petitioner Light Rail Manila Corporation's Petition for Review filed on 19 July 2019 is **GRANTED**. The assailed Decision of the Regional Trial Court (RTC), Branch 232 of Caloocan City, dated 10 June 2019, is hereby **REVERSED** and **SET ASIDE**.
>
> Accordingly, petitioner's Application for a Writ of Prohibition is **GRANTED**. Respondents are therefore

[1] Rollo, CTA EB Case No. 2446, pp. 38-67.

ORDERED to DESIST from further assessing petitioner for local business taxes on its gross receipts. Likewise, Section 311 of the Updated Caloocan Revenue Code is found violative of Republic Act No. 7160 or the Local Government Code of 1991 and hence, declared **NULL** and **VOID**.

SO ORDERED."

and the Resolution[2] dated January 29, 2021 (assailed Resolution) of the same Second Division of the Court (Court in Division) denying petitioner's Motion for Reconsideration, the dispositive portion thereof reads:

"**WHEREFORE**, the foregoing considered, "Motion for Reconsideration (of the Decision dated 02 September 2020)" filed by respondents City of Caloocan and Hon. Analiza E. Mendiola, in her capacity as the City Treasurer of Caloocan City, is **DENIED**. Accordingly, the assailed Decision dated 02 September 2020, is hereby **AFFIRMED**.

SO ORDERED."

THE PARTIES

Petitioner City of Caloocan is a local government unit created under Republic Act No. 3278. Petitioner Analiza E. Mendiola is the City Treasurer of the City of Caloocan (CTO) and is impleaded in her official capacity as such, and represents the city as well.[3]

Respondent Light Rail Manila Corporation is a corporation duly organized and existing under Philippine Laws with business address at the Mezzanine, Engineering Building, Light Rail Transport Authority (LRTA) Compound, Aurora Boulevard, Pasay City.[4]

THE FACTS

The facts of the case as found by the Court in Division are as follows:

"Light Rail Transit Line 1 (LRT1) was originally under the management of the LRTA, an entity created by Executive Order (EO) No. 603, as amended. It is primarily responsible for the

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[2] Rollo, pp. 69-71.
[3] Petition for Review, p. 3.
[4] Ibid. p. 1.

construction operation, maintenance and/or lease of light rail systems in the Philippines.

Subsequently, LRTA decided to cede the operation of LRT1 to private corporation and conducted a public bidding where petitioner participated and eventually won for the Manila LRT1 Extension, Operations and Maintenance Project. It was thereafter given a Notice of Award (**NOA**) to undergo the construction of the Manila LRT1 Cavite Extension.

Later on, petitioner and the Department of Transportation and Communication (**DOTC**), now Department of Transportation (**DOT**) signed a Concession Agreement (**agreement**) regarding the LRT's management and operation. On 11 September 2015, DOT issued an Operating Franchise (**franchise**) in petitioner's[5] favor, effectively turning over to the latter the operation of LRT1.

Thereafter, respondents[6] began to assess petitioner for business taxes on the gross receipts for its transportation services, pursuant to their authority to impose the same under RA 7160 or the Local Government Code of 1991 (**LGC**) and Section 311 of the CURC.

Aggrieved, petitioner continuously protested against respondent's imposition of business tax against it. It argued that, as a common carrier (or at the very least, a transportation contractor), it is exempted from the payment of business tax under Section 133(j) of the LGC. Likewise, it challenged the requirement of payment under protest in Section 311 of the CURC, finding the same to be contradictory to the LGC.

Despite its efforts to avert the continuous assessments against it (through meetings with respondents and timely protests to their quarterly assessments), respondents were undeterred. Later, respondents assessed petitioner's liability for the fourth (4th) quarter of 2018 in the amount of P1,417,185.90.

Claiming to be unsuccessful in obtaining any relief, petitioner filed a Petition for Injunction, Prohibition, Mandamus, and Declaration of Nullity of Section 311 of the Caloocan City Tax Ordinance with Application for Temporary Restraining Order and Writ of Preliminary Injunction with the RTC.[7] During

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[5] Respondent herein.

[6] Petitioners herein.

[7] Regional Trial Court, Branch 232, Caloocan City.

the pendency of the case, it paid its business tax for the first (1st) quarter of 2019 in order to secure the necessary business permits for two stations. It also continued to protest the quarter after quarter assessments made against it.

Before the RTC, petitioner and respondents agreed to only submit questions of law for the court a quo's determination and thereafter, submitted their respective memoranda. Petitioner maintained that it is a common carrier which gross receipts for the conduct of its business are exempt from the local business tax.

In the assailed 10 June 2019 Decision, the RTC found the grounds for the issuance of the writs of mandamus, injunction, and prohibition against respondents wanting. It also found petitioner guilty of forum shopping due to the several "similar" cases filed before different courts in Caloocan City. xxx xxx xxx"[8]

On July 19, 2019, respondent filed a Petition for Review before the Court in Division, docketed as CTA AC No. 224, entitled *"Light Rail Manila Corporation vs. City of Caloocan and Hon. Analiza E. Mendiola, in her capacity as the City Treasurer of Caloocan City."* [9]

On August 7, 2019, the Court in Division issued a Resolution setting the case for hearing on respondent's "Application for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, contained in the Petition for Review, on August 15, 2019, at 1:30 p.m. The Court in Division also ordered petitioner to file a Comment on the Petition for Review, within ten (10) days from notice.

The hearing scheduled on August 15, 2019 proceeded as scheduled. During the hearing, Atty. Philip Miguel I. Ranada was presented as respondent's witness. Thereafter, respondent's counsel orally offered Exhibits P-1, P-2, P-3, P-4, P-5, P-6, P-6-1, P-6-2, P-6-3 & P-7 in support of the Motion for Suspension Collection of Taxes. Since there was no objection from petitioner's counsel, all the Exhibits were admitted by the Court in Division. The Court in Division ordered the amendment of the August 7, 2019 Resolution requiring petitioners to file their comment to the Petition for Review, and instead ordered the parties to file their respective memoranda within thirty (30) days from notice or until September 14, 2019. Thereafter, the Court in Division deemed submitted for resolution the Motion for Suspension of Collection of Taxes.

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[8] Decision, pp. 3-4. Citations omitted.
[9] Docket, CTA AC NO. 224, pp. 10-48.

On September 4, 2019, the Court in Division issued a Resolution denying for lack of merit respondent's Application for Issuance of Temporary Restraining Order and/or Preliminary Injunction.[10]

The Court in Division received the parties' respective Memoranda[11] on September 16, 2019.

In the Resolution[12] dated September 18, 2019, the Court in Division deemed the case submitted for decision.

On September 2, 2020, the Court in Division rendered the assailed Decision.[13]

On September 24, 2020, petitioners filed a "Motion for Reconsideration."[14]

On November 3, 2020, respondent filed its "Comment/Opposition (Re: Motion for Reconsideration dated 24 September 2020)."[15]

On January 29, 2021, the Court in Division issued the questioned Resolution.[16]

Aggrieved, petitioners filed within the extended period before the Court *En Banc* this Petition for Review[17] on March 17, 2021.

In the Resolution[18] dated May 28, 2021, respondent was directed by the Court *En Banc* to file its comment in this case.

On July 7, 2021, respondent filed its "Comment (Re: Petition for Review dated 17 March 2021)."[19]

In the Resolution[20] dated January 5, 2021, the Court noted respondent's "Comment (Re: Petition for Review)." Accordingly, the instant case was deemed submitted for decision.

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[10] Ibid., pp. 783-787.
[11] Ibid., pp. 788-825, and pp. 826-852.
[12] Ibid., p. 853.
[13] Ibid., pp. 865-895.
[14] Ibid., pp. 896-924.
[15] Ibid., pp. 933-953.
[16] Ibid., pp. 983-985.
[17] Rollo CTA EB Case No. 2446, pp. 8-35, with Annexes.
[18] Ibid., pp. 73-74.
[19] Ibid., pp. 84-109.
[20] Ibid., pp. 390-391.

THE ISSUE

The main issue in this case is ***whether or not the Court in Division erred when it reversed the Decision of the RTC and ordered petitioners to desist from further assessing respondent for local business taxes on its gross receipts.***

THE ARGUMENTS

Petitioners argue as follows: That the Petition for Prohibition and Mandamus was improper since Section 195 of the Local Government Code (LGC) provides respondent a plain, adequate and speedy remedy to challenge the assessment made by the City Treasurer's Office; that the Petition was prematurely filed before the court a quo since respondent did not allow the City Treasurer's Office to resolve the protest; that the Court of Tax Appeals has no jurisdiction over the subject matter of the case; that respondent is not a common carrier or a transportation contractor within the purview of taxation laws; that respondent failed to support its claim that it is exempt from local business tax; that the imposition of "refuse fees" in the Caloocan City Revenue Code is valid; and that Section 311 of the Caloocan City Revenue Code is not capricious, whimsical, prejudicial and undue exercise of taxing powers.

On the other hand, respondent counter-argues that the Court in Division correctly ruled that a Petition for Prohibition and Mandamus is the proper remedy available to respondent under the circumstances; that respondent has a cause of action against petitioners; that the Court of Tax Appeals correctly assumed jurisdiction over the instant case; that the Court in Division correctly ruled that respondent is a common carrier exempt from payment of local business tax on gross receipts derived from transportation services; and that the Court in Division correctly ruled that Section 311 of the Caloocan Updated Revenue Code (CURC) is void.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition

On September 9, 2020, petitioners received the Decision of the Court in Division. On September 24, 2020, petitioners filed a Motion for Reconsideration[21] of the said Decision. On January 29, 2021, the Court in Division issued the assailed Resolution[22] denying petitioners' motion. Said Resolution was received by petitioners on February 15, 2021.

[21] Docket, CTA AC No. 224, pp. 896-923.
[22] Ibid., pp. 983-985.

From receipt of the said Resolution on February 15, 2021, petitioners have until March 2, 2021 within which to file the Petition for Review. On March 2, 2021, petitioners filed a "Motion for Extension of Time to File Petition for Review"[23] praying for an extension of fifteen (15) days from March 2, 2021 or until March 17, 2021 within which to file the Petition for Review. On March 3, 2021, the Court *En Banc* issued a Minute Resolution[24] granting petitioners' motion.

On March 17, 2021, petitioners filed the instant Petition for Review.[25] Hence, this Petition for Review was timely filed.

We shall now proceed to determine the merits of the Petition for Review.

A careful review of the arguments raised by the parties in the Petition for Review and the Comment (Re: Petition for Review dated 17 March 2021) shows that they merely rehashed the very same arguments in their previous pleadings all of which have been thoroughly discussed and passed upon by the Court in Division in the assailed Decision of September 2, 2020, and, similarly, in the assailed Resolution of January 29, 2021. The Court *En Banc* sees no compelling reason to deviate from the ruling of the Court in Division.

Nonetheless, the Court *En Banc* shall pass upon petitioners' arguments and will elucidate the conclusions of the Court in Division.

Whether the Court of Tax Appeals has jurisdiction over the case

Petitioners insist that the Court cannot assume jurisdiction over the case since the issue "whether respondent is a common carrier" is not within the jurisdiction of the Court.

We disagree.

The petition was filed to question the application of Section 133(j) of the LGC[26] and the validity of Section 311 of the CURC.

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[23] Rollo, CTA EB No. 2446, pp.1-6.
[24] Ibid., p. 7.
[25] Ibid., pp. 8-35.
[26] "**Common Limitations on the Taxing Powers of Local Government Units.-** Unless otherwise provided herein, the exercise of **the taxing powers of** provinces, **cities**, municipalities and barangays **shall not extend to the levy of the following**:

xxx xxx xxx

For a proper determination and ruling on the propriety of the application of petitioners' local tax ordinance, it is necessary to resolve the issue of whether respondent is a common carrier.

Section 7(a)(3) of Republic Act No. 1125, as amended by Republic Act No. 9282 provides that:

> "Section 7. Jurisdiction. – The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> 3. Decisions, ordered or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction."

It is clear from the above-quoted provision that this case is a local tax case, and is therefore within the jurisdiction of this Court.

Whether or not the Court in Division erred in reversing the Decision of the RTC thereby ordering petitioners to to desist from further assessing respondent of local business tax on gross receipts

In its Petition for Injunction, Prohibition, Mandamus, and Declaration of Nullity of Section 311 of the Caloocan City Tax Ordinance with Application for Temporary Restraining Order and Writ of Preliminary Injunction before the RTC, respondent claims that it should not be taxed, because as a common carrier, it is exempted from payment of business tax under Section 133(j) of the LGC. The RTC denied respondent's petition on the ground of improper remedy.

On appeal to the Court in Division, the latter reversed the RTC's ruling and found that respondent is entitled to the relief it prayed for.

Article 1732 of the New Civil Code of Philippines provides:

> "Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting

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(j) **Taxes on gross receipts of transportation contractors and persons engaged in transportation of passengers of freight by hire and common carriers by air, land or water**, except as provided in this Code;" *(Emphasis supplied)* passengers or goods or both, by land, water, or air, for compensation, offering their services to the public."

Respondent is "engaged in the development, construction, operation, maintenance, repair, management and other allied businesses involving railways and railroad projects and other transport systems for the private and public sector, including investing in such projects (whether as shareholder, partner or otherwise) and binding and negotiating for such projects."[27]

Respondent actually operates the LRT1. Thus, respondent definitely falls under the definition of a common carrier.

The Court *En Banc* adopts with approval the ruling of the Court in Division in the assailed Decision, when it ruled as follows:

> "By the above definition, the Supreme Court has set parameters to ascertain the character of a common carrier. For one, in *Bascos v. Court of Appeals and Cipriano* (**Bascos**), the Supreme Court, quoting the legal author Aguedo Agbayani held that, "[t]he test to determine a common carrier is whether the given undertaking is a part of the business engaged in by the carrier which he has held out to the general public as his occupation rather than the quantity or extent of the business transacted."
>
> Applying the test in *Bascos*, the next important query is whether petitioner holds itself out publicly to be engaged in the business of transportation.
>
> A careful review of the records could only yield an affirmative response.
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> First, before the DOT's grant of petitioner's[28] Operation Franchise, the Concession Agreement gave the latter a choice of whether it would opt to procure a facility operator or operate LRT1 itself. Section 18.2.g of the Concession Agreement states:
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> ...
>
> Sec.18.2.g Where the Concessionaire elects to operate the System itself it shall:
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> 18.2.g (1) itself apply for an Operating Franchise at the time and in the manner prescribed in Section 18.2.a (Facility Operator)[.]

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[27] Amended Articles of Incorporation of Light Rail Manila Corporation, Exhibit "P-2," Docket, CTA AC No. 224, p. 516.
[28] Respondent herein.

...

While under Section 1.1 thereof, a "Facility Operator" is defined as "any person appointed as such pursuant to Section 18.2 (Facility Operator) or any replacement thereof being the person responsible for the operation and maintenance of the System."

Prior to the exercise of this option, it is clear that petitioner was only a construction and maintenance contractor pursuant to the Concession Agreement and its NOA. However, it is undisputed that it elected to take on the operation and management of LRT1 itself as shown by its successful procurement of an Operating Franchise. Now, what the words "operation" and "management" mean as regards a facility operator is concerned should be understood in its ordinary usage seeing that EO 603 did not even define these terms when it created the LRTA as shown in Paragraph 1, Section 2, thereof which states:

...

Sec. 2. *Creation of Authority.* – To carry out the foregoing transportation policy, there is hereby created a corporate body to be known as the LIGHT RAIL TRANSIT AUTHORITY, hereinafter called the "AUTHORITY", which shall be primarily responsible for the construction, operation, maintenance, and/or lease of light rail transit system in the Philippines giving due regard to the reasonable requirements of the public transportation system of the country. The principal office of the Authority shall be in the Metropolitan Manila Area, but it may establish branches and agencies elsewhere within the Philippines, as may be necessary for the proper conduct of its business and the discharge of its functions. The Authority shall be attached to the Ministry of Transportation and Communication.

...

In interpreting the import of these items, Article 1370 of the Civil Code is instructive as regards the foregoing matter:

...

Art. 1370. If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear contrary to the evident intention of the parties, the latter shall prevail over the former.

...

Likewise, as regards EO 603, the primary and basic rule in statutory construction applies, that is, where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

With that said, it is beyond doubt that a vital part of the LRT1's operation involves the safe transport of passengers between all railway stations along its current route. The obligation to serve this mandate of the LRTA is, at present, the burden of petitioner while the ceding of such function in favor of the latter is within the LRTA's powers under EO 603, to wit:

> ...
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> Sec. 4. General Powers. – The Authority, through the Board of Directors, may undertake such action as are expedient for or conducive to the attainment of the purposes and objectives of the Authority, or of any purpose reasonably incidental to or consequential upon any of these purposes. As such, the Authority shall have the following general powers:
>
> ...
>
> (5) to contract any obligation or enter into, assign or accept the assignment of, and vary or rescind any agreement, contract of obligation necessary or incidental to the proper management of the Authority;
>
> ...
>
> (9) To carry on any business, either alone or in partnership with any other person or persons;
>
> (10) To employ an agent or contractor or perform such things as the Authority may perform[.]
>
> ...

Granted that according to respondents,[29] the LRTA does not shed its character as a common carrier by the grant of petitioner's franchise, nothing prohibits the consideration that petitioner may be a common carrier by the sheer exercise of its functions which as previously stated, involves the transport of passengers along the LRT1's route. Neither does the fact of the national government's continuous ownership through the LRTA of the LRT1 constitute any bar to the nation that petitioner could be deemed a common carrier.

In *Pedro De Guzman v. Court of Appeals, et al.,* the Supreme Court held:

> ...
>
> So understood, the concept of "common carrier" under Article 1732 may be seen to coincide neatly with the notion of "public service," under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, "public service" includes:
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> > ... every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its

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[29] Petitioners herein.

> classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire and wireless communications systems, wire or wireless broadcasting stations and other similar public services...
> ...

Applying the foregoing, to simply equate the concept of a common carrier to ownership of a facility or vehicle used for transportation restricts its definition as contemplated under Article 1732 of the Civil Code as well as the notion of "public service" under Section 13 of Commonwealth Act (CA) 146 or the (Public Service Law, when both the law and jurisprudence have made it so that the full determination of what a common carrier is, should not be resolved by checking off a closed list of legal requirements but rather , by looking at the prevailing realities of each case.

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Additionally, respondents' argument that petitioner needs a legislative franchise to be a common carrier is misplaced. As respondents admit, the LRTA was granted the power to operate the LRT1 by legislative act through the enactment of EO 603. However, as earlier discussed, the same law also provides that the LRTA has the authority to employ an agent or contractor to perform such things as it [the authority] may perform without the need of any subsequent legislative ratification.

As can be recalled, Article 1732 of the Civil Code does not even provide for such a requirement, neither does it makes any distinction between one whose principal business activity is carrying of persons or goods or both, and one who does such carrying only as an ancillary activity. The Supreme Court states further that:

> ...
> ... Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis. Neither does Article 1732 distinguish between a carrier offering its services to the "general public," i.e., the general community or population, and one who offers services or solicits business only from a narrow segment of the general population...
> ...

Given the foregoing, the Court finds petitioner to have satisfied all the requirements for it to be considered a common

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carrier and thus, it is **exempt from the payment of local business taxes under Section 133(j) of the LGC**. This conclusion is further bolstered by its continuous filing of quarterly percentage tax returns or the so-called "common carriers tax" to the national government. The exemption of common carriers from payment of percentage tax in the LGC is rooted precisely from the fact that the national government already imposes and collects their quarterly gross receipts by virtue of Section 117 of the National Internal Revenue Code (**NIRC**) of 1997, as amended which states:

> ...
>
> **Sec. 117**. Percentage Tax on Domestic Carriers and Keepers of Garages. – Cars for rent or for hire driven by the lessee, transportation contractors, including persons who transport passengers for hire, and other domestic carriers by land, air or water, for the transport of passengers, except owners of bancas and owner of animal-drawn two wheeled vehicle, and keepers of garages shall pay a tax equivalent to three percent (3%) of their quarterly gross receipts.[30]

Based on the foregoing, the Court *En Banc* finds that the Court in Division is correct when it granted the petition for issuance of a writ of prohibition in favor of respondent.

Section 2, Rule 65 of the Rules of Court provides:

> "Sec. 2. *Petition for prohibition.* – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
>
> The petition shall likewise be accompanied by a certified true copy of the judgment or order subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46."

[30] Decision, pp. 13-19, citations omitted.

The elements for the issuance of a writ of prohibition are as follows:

> 1. It must be directed against a tribunal, corporation, board or person exercising functions, judicial or ministerial;
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> 2. The tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and
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> 3. There is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[31]

Records show that all the elements for the issuance of a writ of prohibition are present. *First,* the action is directed against a public corporation, herein petitioner City Government of Caloocan. *Second,* petitioners acted in excess of their jurisdiction when they assessed respondent of business taxes despite its clear exemption under Section 133(j) of the LGC. *Lastly,* there is no other available remedy to respondent to bar petitioners from the continuous assessments.

As regards the validity of Section 311 of the CURC, the Court *En Banc* finds the same contrary to the provisions of the LGC.

Section 311 of the CURC provides:

> "*Payment under Protest.* – (a) **No protest on the computation of the tax shall be entertained by the City Treasurer unless the taxpayer first pays the tax.** The tax receipts acknowledging the tax payments shall bear the words "paid under protest." **The protest in writing must be filed within thirty (30) days from the payment of the tax to the City Treasurer**, who shall decide the protest within sixty (60) days from receipt." *(Emphasis supplied)*

On the other hand, Section 195 of the LGC provides:

> *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, 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

[31] *Esperanza S. Longino vs. Atty. Lina A. General, OIC, Commissioner Member III; Atty. Noel A. GAlarosa, OIC, Commissioner Member III; Atty. Luz Sarmiento, OIC, Office of the Executive Director, all of COSLAP; Judge Jaime F. Bautista of the Regionasl Trial Court, Branch 75, Valenzuela City; and Elsa P. Serrano,* G.R. No. 147956, February 16, 2005.

> 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 partially meritorious, he shall issue a notice cancelling 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 which to appeal the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable. *(Emphasis supplied)*

Section 311 of the CURC is contrary to the provisions of the LGC on two (2) grounds:

First, Section 311 of the CURC provides a requirement of "payment under protest" as a condition precedent to the exercise of a remedy under the LGC. While Section 195 of the LGC does not require payment of the assessed business tax before a taxpayer can file a protest. Section 195 merely requires that "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."

Second, Section 311 shortens the period and alters the reckoning point within which a taxpayer may protest an assessment. The 60-day period from receipt of the notice of assessment, within which a taxpayer may file a written protest was changed to within 30 days from the payment (payment under protest) of the tax.

Likewise, the Court *En Banc* finds that petitioners cannot require respondent to pay the "Refuse Fee" since there is no legal basis for petitioners to impose the said "Refuse Fee."

In view of the foregoing discussions, it is clear that Section 311 of the CURC should be struck down as *ultra vires* for requiring payment under protest and for shortening the period within which to file a protest.

Well-settled is the rule that an ordinance which is incompatible with any existing law or statute is ultra vires, hence, null and void.[32]

There being no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the

[32] *Manila Electric Company vs. City of Muntinlupa and Nelia A. Barlis*, G.R. No. 198529, February 9, 2021.

Court in Division, hence, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and assailed Resolution.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED for lack of merit**. The assailed Decision dated September 2, 2020 and the assailed Resolution dated January 29, 2021 are **AFFIRMED.**

Accordingly, for being void, the subject assessments issued against respondent Light Rail Manila Corporation for the fourth (4^{th}) quarter of 2018 are **CANCELLED** and **SET ASIDE**.

Consequently, petitioners are hereby **ENJOINED** and **PROHIBITED** from collecting the said amount from respondent corporation.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

Maria Rowena Modesto-San Pedro

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice