REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

# SPECIAL SECOND DIVISION

**HOLCIM PHILIPPINES, INC.,**
Petitioner,

CTA AC No. 251

- versus -

Members:

**BACORRO-VILLENA,** *Acting Chairperson,*
**CUI-DAVID,** *JJ.*

**THE CITY OF MANILA AND JOSEPHINE D. DAZA, IN HER CAPACITY AS THE CITY TREASURER OF THE CITY OF MANILA,**
Respondents.

Promulgated:
MAY 11 2023
2:05 p.m.

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# RESOLUTION

***BACORRO-VILLENA, J.:***

For the Court's resolution is petitioner's "Motion for Reconsideration (Re: Decision dated November 18, 2022)"[1] **(MR)** filed on 07 December 2022, with respondents' "Comment (To Petitioner's Motion for Reconsideration)"[2] filed on 06 January 2023. The MR prays for the reversal of this Court's Decision[3] dated 18 November 2022 **(assailed Decision)**. The dispositive portion of which reads, thusly:

> ...
>
> **WHEREFORE,** the foregoing premises considered, the Petition for Review of petitioner Holcim Philippines, Inc. filed on 17 May 2021 is hereby **DENIED** for lack of merit. Accordingly, the Decision and Order of the Regional Trial Court of the City of Manila,

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1 Division Docket, pp. 262-275.
2 Id., pp. 278-281.
3 Id., pp. 239-261.

Branch 21, in Civil Case No. R-MNL-18-12812-CV on 11 December 2020 and 01 March 2021, respectively, are hereby **AFFIRMED.**

**SO ORDERED.**

...

In the assailed Decision, the Court held:

...

As it is, petitioner's sole witness has no personal knowledge of the factual allegations in its original petition before the RTC. The only piece of evidence that may somehow substantiate petitioner's status as a seller and/or manufacturer of an essential commodity would be its Amended AOI. *However*, as previously discussed, petitioner's Amended AOI also authorizes it to deal in other building materials which may or may not fall within the scope of the essential commodities enumerated under Section 143 of the LGC of 1991 and Section 103 of the ORCCM. Since petitioner's Certification does not also itemize which among its gross sales pertains to the sale of cement; the Court has no way to determine whether the preferential rate of LBT may be applied to even a portion of its petitioner's revenue. Taking into consideration these circumstances (and the declaration of petitioner's own witness that HPI's business, at least in Manila, is registered as "WHOLESALER" in general and "WAREHOUSING"), the Court thus is left to conclude that petitioner is indeed *not* to be entitled to a preferential rate of LBT.

Even assuming *arguendo* that petitioner is not required to register as a wholesaler and/or manufacturer of cement to avail of the preferential rate, petitioner's evidence remains severely lacking to even prove that it deserves a partial refund of the collected LBT.

Additionally, there is still the unrebutted testimony of respondents' witness (Afuang) that petitioner applied for a permit to conduct business in the City of Manila as a WHOLESALER from 2004 to present as shown by its Business Identification Number (**BIN**) and 2017 and 2018 business permits...[4]

...

Essentially, the Court denied petitioner's appeal on three (3) grounds. *First*, it failed to prove that it was a wholesaler of an essential commodity (in this case, cement) and entitled to a preferential rate of

4 Id., pp. 257-258; Citations omitted and italics in the original text.

Local Business Tax (**LBT**) on sales thereof under Sections 102[5] and 103[6] of the 2013 Omnibus Revenue Code of the City of Manila (**ORCCM**) considering that though such function was reflected in petitioner's Amended Articles of Incorporation (**AOI**) it was not registered as such with the City of Manila from 2004 to present. As seen in petitioner's business registration, it is registered as a mere "wholesaler" without stating which products it was selling. Neither did its registration reflect that it was engaged in the manufacturing or warehousing of cement within the City of Manila.

*Second*, even assuming that such registration was not necessary to be entitled to the preferential rate, petitioner failed to substantiate whether the refund claimed were all attributable to its wholesale of cement as according to its AOI and business registration, and if it may engage in the wholesale of other building materials that may not be subject to preferential rates of LBT in accordance with Section 143(c)(8)[7] of the Local Government Code in relation to the provisions of the ORRCM.

Considering the absence of evidence to show that petitioner's sales were actually attributable to the wholesale of cement, the Court had no ground to grant the appeal and grant petitioner's claim for refund of LBT.

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5 **SEC. 102**. *Tax on Wholesalers, Distributors, or Dealers.* — There is hereby imposed a graduated tax on wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature...

...

6 **SEC. 103**. *Tax on Essential Commodities.* — A percentage tax at the rate of one half (1/2) of the rates prescribed under Sections 101, 102, and 104 is hereby imposed on exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder:

...

(8) Cement.

...

7 SEC. 143(c)(8) of the LGC of 1991, as amended, provides:

...

**SEC. 143**. *Tax on Business.* — The municipality may impose taxes on the following businesses:

...

(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 (½) of the rates prescribed under subsection (a), (b) and (d) of this Section:

...

(8) Cement.

...

In its present MR, petitioner argues that: (1) it is entitled to a refund of LBT; and, (2) its registration as a mere wholesaler is irrelevant to its claim for refund. In their Comment, respondents point out that petitioner's arguments are nothing more than a rehash of its previous arguments.

**We resolve.**

We find nothing in the present MR that cures the inherent defects of petitioner's position.

While petitioner vehemently asserts that it is an exporter, manufacturer, warehouser, and/or wholesaler of cement, all that it was able to support its claim in its Articles of Incorporation (**AOI**) and nothing more. Furthermore, its claim that the details of its business registration is wholly irrelevant to its claim for refund finds no basis in law. This is evident in petitioner's MR wherein no legally sound argument is offered to support its contention except its reassertion of the local government unit's taxing power as non-inherent which, of course, is elementary in our jurisdiction.

Contrary thereto, the Supreme Court's Decision in *Hon. Mylyn P. Cayabyab, et al. v. Jaime C. Dimson*[8] expresses the necessity of obtaining business permits when it categorically stated that, "[a] business permit must be secured from the [city] business permits and licensing office in order for the business to legally operate in the locality". This is not to say that petitioner was remiss in obtaining a business permit from the City of Manila but its business permit does not reflect its alleged business activities on which it grounds its right to a preferential tax rate. The Court finds it difficult to agree with petitioner's insistence (to be entitled to benefit from engaging in its activities) when there is no evidence that is even permitted to do so as its business permit only identified petitioner as a wholesaler in general and not as petitioner claims itself to be (manufacturer, warehouser, and/or wholesaler of cement).

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[8] G.R. No. 223862, 10 July 2017.

With the foregoing, the Court finds no further reason to belabor itself with another discussion on petitioner's arguments as We find the same that the same have been squarely and clearly addressed in the assailed Decision.

At this juncture, petitioner is reminded of its duty as movant to sufficiently substantiate his claim to event warrant consideration of his arguments. The Supreme Court's ruling in *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[9] is instructive on this matter, to wit:

> ...
>
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought.
>
> ...

**WHEREFORE**, the foregoing considered, petitioner's "Motion for Reconsideration (Re: Decision dated November 18, 2023)" filed on 07 December 2022, is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

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9 G.R. No. 159938, 22 January 2007; Citation omitted.

## I CONCUR:

**LANEE S. CUI-DAVID**
Associate Justice