REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SUPER GROCERS, INC.,
Petitioner,

- versus -

THE MUNICIPALITY OF SAN PEDRO, LAGUNA and MS. ANALYN DS. ABAIGAR in her capacity as TREASURER of the Municipality of San Pedro, Laguna, and THE REGIONAL TRIAL COURT-BRANCH 31, SAN PEDRO, LAGUNA, Presided by the Honorable Judge Sonia T. Yu-Casano,
Respondents.

CTA AC NO. 86

Members:

UY, ***Acting Chairperson, and***
FABON-VICTORINO, *JJ.*

Promulgated:

FEB 25 2013 ; 2:49p.m.

x- x

DECISION

UY, *J.*:

This is an appeal by way of Petition for Review filed by petitioner Super Grocers Inc. seeking to reverse and revoke the Decision issued by the Regional Trial Court (RTC) Branch 31, San Pedro, Laguna in Civil Case No. SPL-1510-10 entitled "Super Grocers, Inc. vs. Municipal Government of San Pedro, Laguna, and Ms. Analyn DS. Abaigar in her capacity as Treasurer of the Municipality of San Pedro, Laguna".

Petitioner is a domestic corporation engaged in the business of retail of foodstuffs and other prime commodities. It maintains its head office at 1238 EDSA Balintawak, Quezon City. It operates a branch outlet in Pacita Complex, San Pedro, Laguna, utilizing the business name "Super Mightee Mart".[1]

[1] Par. 1, The Parties, Petition for Review, Docket, pp. 5-24, at p. 5

On the other hand, respondent Municipal Government of San Pedro, Laguna is a municipal corporation and a local government unit existing under Philippine laws, while respondent Analyn DS. Abaigar is being sued in her official capacity as the Treasurer of respondent municipality. The other respondent is the Regional Trial Court Branch 31 of San Pedro, Laguna, presided by the Honorable Judge Sonia T. Yu-Casano with station at the Hall of Justice, San Pedro, Laguna.[2]

THE FACTS

Culled from the records and as found by the court *a quo*[3], the facts of this case are as follows.

Petitioner Super Grocers, Inc., is a domestic corporation engaged in the business of retail of foodstuffs and other prime commodities. It operates a supermarket in San Pedro, Laguna. It opened in the year 2005 and was taxed in 2006 as retailer of grocery items selling both essential and non-essential commodities.

In 2005, it paid the fee for a "new business" while in 2006, it paid the municipality business taxes according to the rates provided in Section 143 paragraphs (c) and (d) of the Local Government Code, which read:

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

[2] Par. 3, The Parties, Petition for Review, Docket, pp. 5-6
[3] RTC Decision dated December 15, 2011, Docket, pp. 25-30

With gross sales or receipts for
the preceding calendar year of: Rate of Tax Per Annum

P400,000.00 or less	....	2%
more than P400,000.00	....	1% "

That means, for the gross receipts for essential items, petitioner was assessed two percent (2%) for the first P400,000.00 and one half of one percent (1%) for the excess as provided in Section 2(c) of Municipal Ordinance No. 2005-15; while the gross receipts for non-essential items, petitioner was assessed 2% for the first P400,000.00 and 1% for the excess pursuant to Section 2(d) of the same Municipal Ordinance.

On January 2, 2006, Municipal Ordinance No. 2005-15, otherwise known as the "2005 Revised and Consolidated Municipal Revenue Code of the Municipality of San Pedro, Laguna" ("Revenue Code of San Pedro, Laguna" for brevity), became effective. The said ordinance incorporated the enumeration of businesses taxable by the municipality and maintained the corresponding tax rates in Section 143, subsections (a), (b), (c), and (d) of the Local Government Code (LGC).

The said Revenue Code of San Pedro, Laguna, however, also introduced other business or classification not found in the Local Government Code, among which is the subject of this controversy, to wit: "owners or operators of privately-owned supermarkets, shopping centers and mini-marts" without making any distinction whether these supermarkets, shopping centers including mini-marts are selling both essential and non-essential commodities. Pertinent portion of the said tax ordinance is quoted as follows:

> "Section 2. Imposition of Tax. xxx
>
> xxx xxx xxx
>
> (p) on owners or operators of privately-owned supermarkets, shopping centers, including mini-marts:
>
> The computation will be based on gross sales of the retailed and wholesale products (including cigarette, beer, liquor) essential and/or non-essential commodities of the preceding year:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
P400,000.00 or less	2%
More than P400,000.00	1% "

In 2007, respondent municipality assessed petitioner for business taxes based on its gross receipts for 2006 and classified and taxed it under Section 2(p).

Thus, petitioner was assessed a total business tax of P1,837,777.47. According to petitioner, had the gross receipts for the essential commodities been assessed properly under Section 2 (c) with the lower rate, petitioner should have only paid the amount of P931,182.22 under the old scheme. The alleged overpayments amounted to P906,595.25.

In 2008, petitioner was similarly assessed under the classification of "owners or operators of privately-owned business supermarkets, shopping center, including mini-marts" and made to pay deficiency for the taxes it paid in 2006. The overpayments sum up to P1,617,197.50.

The same happened in 2009. Petitioner was assessed business taxes of P1,597,659.87. Petitioner claims an over-payment of P637,572.44 as it invokes a lower rate in the amount of P960,087.43. This time however, it paid said amount under protest through its Letter dated January 16, 2009.

In its letter dated May 27, 2009, petitioner filed for refund of its over-payment for the years 2007 and 2008 and demanded a re-computation of its 2009 business taxes.

Respondent municipality failed to act on petitioner's demand, while maintaining the same classification in computing petitioner's 2010 business tax, thereby, making, petitioner pay P547,430.11 more allegedly.

In view thereof, petitioner filed a Claim for Refund Under Sec. 196 of the Local Government Code before respondent court, the RTC

Branch 31 of San Pedro, Laguna on July 2, 2010[4], docketed as Civil Case No. SPL-1510-10. In said Petition, petitioner contends that it is arbitrary and capricious for respondent to re-classify its business under Section 2(p) of the ordinance when it has gained a vested right to the classification and tax rate under Section 2(c). It asserted that its right to be taxed under Section 143(c) of the Local Government Code was even recognized by respondent municipality when it re-enacted the same classification under Section 2(c) of the new ordinance and assessed petitioner in 2006 under the same classification. It further argued that in case of doubt on the application of a tax ordinance, it shall be construed strictly against the local government unit.

Respondents filed a Motion to Dismiss[5] on the ground that the claim of plaintiff therein (petitioner in this case) is proscribed by its failure to file an appeal to the Secretary of Justice questioning the legality of the ordinance.

Said motion was denied by respondent court in its Order[6] dated January 4, 2011 insofar as the claim for refund for the period from July 21, 2008 up to January 19, 2010. On the other hand, said court found the claim for tax refund of taxes paid for the period from January to April 2008 already barred by the Statute of Limitations.

The parties did not file any motion for reconsideration of the said Order. Instead, respondents filed their Answer.

During the pre-trial conference held on August 5, 2011, both parties' counsel conceded that the only issue for resolution is legal and not factual and jointly moved to submit the petition for resolution upon the filing of their simultaneous memoranda. The sole issue to be resolved was whether or not the petitioner had been previously taxed as a "retailer" under section 2 (c) and 2 (d) may be validly reclassified under section 2 (p) of Municipal Ordinance No. 2005-15.

Said motion was granted by the respondent in the Order dated August 5, 2011.[7]

[4] RTC Records, pp. 1-15
[5] Ibid, pp.. 79-89
[6] Ibid, pp. 117-118

[7] Order issued by the RTC dated August 5, 2011, RTC Records, p. 235

Subsequently, the assailed Decision was promulgated by the respondent RTC of San Pedro, Laguna on December 15, 2011, ruling that petitioner's re-classification and taxation under Section 2(p) of Municipal Ordinance No. 2005-15 is proper and valid inasmuch as the validity of Section 2(p) was not in doubt and petitioner was actually engaged in the operation of a supermarket. Accordingly, the petition filed before the RTC was dismissed.

Aggrieved, petitioner filed the instant Petition for Review on February 16, 2012 praying that judgment be rendered, as follows: (1) reversing or revoking the assailed Decision; (2) declaring petitioner to be a retailer selling both essential and non-essential commodities, and thus entitled to be assessed business tax in accordance with Section 2, par.(c) of Municipal Ordinance No. 2005-15, otherwise known as the "2005 Revised and Consolidated Municipal Revenue Code of the Municipality of San Pedro, Laguna; (3) ordering respondent municipality and treasurer to return all its overpayments and to pay costs of suit; and (4) directing respondent Municipality/Treasurer of San Pedro, Laguna, to assess petitioner's future business taxes (including the last 3 quarters of 2010) in accordance with Section 2, par. (c) of Municipal Ordinance No. 2005-15, otherwise known as the "2004 Revised and Consolidated Municipal Revenue Code of the Municipality of San Pedro, Laguna.

On April 12, 2012, respondent filed through registered mail its Comment to the Petition for Review, and received by this Court or April 19, 2012, praying for the denial of the instant Petition for lack of merit and legal basis.[8]

After giving due course to the instant Petition for Review, this Court granted both parties thirty (30) days within which to file their simultaneous memoranda.[9]

Petitioner filed its Memorandum[10] on May 24, 2012 while respondents filed their Memorandum[11] through registered mail on June 28, 2012. Thereafter, the instant case was submitted for the decision of the Court on July 24, 2012.[12]

[8] Comment to the Petition for Review, Docket, pp. 145-158
[9] Resolution dated April 25, 2012, Docket, p. 181
[10] Memorandum (As per Resolution Dated April 25, 2012; Received April 30, 2012), Docket, pp. 182-192
[11] Respondent's Memorandum, Docket, pp. 236-258
[12] Resolution dated July 24, 2012, Docket, p. 261

Hence, this Decision.

Petitioner's Arguments

Petitioner alleges that respondent municipality/treasurer cannot validly re-classify petitioner as "owners or operators of privately-owned supermarkets, shopping centers including mini-marts" when they have already previously classified petitioner as a "retailer of essential and non-essential commodities". According to petitioner, it is arbitrary and capricious to re-classify petitioner, when it was respondent itself that conferred petitioner the vested right both under the statute and the ordinance when it classified petitioner as a retailer.

Petitioner maintains that local government units do not have the inherent power to tax and so their authority to tax must always yield to a legislative act. Section 5(b) of the Local Government Code also provides that "a doubt on the application of a tax ordinance shall be construed strictly against the local government units". Since petitioner squarely falls under the category of "retailers selling both essential commodities and non-essential commodities", there is allegedly a legitimate doubt whether it should still be re-classified as an operator of supermarkets when respondent municipality re-enacted the classification and retained it in the new ordinance.

Petitioner argues that in the determination of whether the classification is arbitrary, its relation to the purpose must be examined. Under the "rational basis" test, the presence of any plausible legitimate objective for the classification, where the classification serves to accomplish that objective to any degree, no matter how tiny, would validate the classification.

And to invalidate a classification on constitutional grounds, the test allegedly requires that the classification must have one of the following traits: (1) it has absolutely no conceivable legitimate purpose; or (2) it is so unconnected to any conceivable objective, that it is absurd, utterly arbitrary, whimsical or even perverse. More so that respondent municipality/treasurer initially in year 2006, had already classified petitioner under Section 2(c) of the tax ordinance. Therefore, this doubt on petitioner's tax classification should be resolved against the local government unit and in favor of petitioner.

Petitioner likewise submits that respondent municipality/ treasurer violated the equal protection clause of the Constitution enshrined in Section 1 of Article III of the Philippine Constitution.

Lastly, as the action of respondent municipality/treasurer is more akin to an illegal taking of property without due process of law, the time-bar doctrine of two (2) years under the Tax Code must not be made applicable.

Respondent's Counter-Arguments

On the other hand, respondent contends that petitioner may not question the legality of Section 2(p) of Municipal Ordinance No. 2005-15 because the municipality allegedly has the power to impose other taxes as provided under Section 129 of the Local Government Code.

Furthermore, respondent points out that the new classification is directed against a taxpayer primarily engaged in the operation of supermarkets, shopping centers including mini-marts, which includes the business of petitioner, regardless of the articles being sold. It is essentially a tax on the business of petitioner and other business operating as such, which respondent has the power to impose as granted by the Local Government Code.

According to respondent, there is nothing in the Local Government Code that prohibits local government units (LGUs) from adding to the list of businesses that it may tax. The only limitations to the taxing power of the LGUs are allegedly those found in Sections 133 and 186 of the Local Government Code.

Moreover, respondent stresses that Section 2(p) of the Revenue Code of San Pedro, Laguna is clear and the refund should be strictly construed against the taxpayer. There is also no vested right from a previous classification of a taxpayer as such classification is not perfect, unconditional or absolute.

THE ISSUES

As raised by petitioner and respondent in their respective pleadings, the issues submitted for this Court's resolution are summarized as follows:

1. Whether or not respondent court erred in dismissing the petition filed by petitioner before respondent court and in resolving time bar to claim refunds (raised by petitioner in its Memorandum)[13];

2. Whether or not the classification of the petitioner as "owners or operators of privately-owned supermarkets, shopping centers including mini-marts" may be legally allowed (raised by respondent in its Memorandum)[14].

THE COURT'S RULING

The Court shall first resolve the issue of prescription as raised by petitioner. Thereafter, being inter-related, the Court shall resolve the issues assailing the dismissal of Civil Case No. SPL- 1510-10 and the propriety of the reclassification of petitioner by respondent.

The petition is partly meritorious insofar as petitioner's claim for refund of business taxes collected for the years 2008 to 2010 except for the period from January to April 2008.

Petitioner's claim for refund for payments made in January to April 2008 have prescribed.

In the Order dated January 4, 2011 rendered by the Regional Trial Court of San Pedro, Laguna, presided by Judge Sonia T. Yu-Casano, it was ruled that petitioner's refund claim pertaining to its payments made in January to April 2008 was filed beyond the two-year period provided under Section 196 of the Local Government Code. We quote the significant parts of the Order as follows:

> "However, the Court finds that the action of the petitioner seeking a refund of taxes paid in January up to April, 2008 already barred by the statute of limitations.
>
> Sec. 196 of the Local Government Code provides that:

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[13] Docket, p.183
[14] Docket, p. 238

> 'xx x x – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding should be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
>
> Having filed the instant claim for refund of the payments made in January to April, 2008 only on July 2, 2010 or clearly beyond the two (2) year period contemplated by the rules, the said claim has already prescribed.
>
> WHEREFORE, the motion to dismiss is DENIED insofar as the claim for refund of the July 21, 2008 up to January 19, 2010 is concerned and the respondents are given a non-extendible period of fifteen (15) days from receipt hereof within which to file their answer to the petition.
>
> January 4, 2011. San Pedro, Laguna.
>
> **SO ORDERED**. [15]"

Notably, no Motion for Reconsideration was filed by petitioner in Civil Case No. SPL 1510-10 to assail the said ruling of the lower court. Again, the court *a quo* reiterated this finding in its assailed Decision promulgated on December 15, 2011, stating that the claim for tax refund of taxes paid in January to April 2008 had been barred by the Statute of Limitations.

Apparently, petitioner again raises this issue in the instant petition for review, and submits that the time-bar doctrine of two (2) years under the law must not be made applicable as the action of respondent is allegedly more akin to an illegal taking of property without due process of law.

[15] Order issued by the RTC dated January 4, 2011, RTC Records, pp. 117-118

The Court is not persuaded.

Pertinently, and as quoted in the Order dated January 4, 2011 of the Court *a quo,* Section 196 of the Local Government Code provides that a taxpayer has only a period of two (2) years from date of payment of a tax, fee or charge, or from the date the taxpayer is entitled to a refund or credit, within which to file a case or proceeding in any court for refund or credit.

As correctly found by the respondent RTC, petitioner filed its claim for refund of the payments made on January to April 2008 only on July 2, 2010, or clearly beyond the two (2) year period contemplated by the rules, and has therefore already prescribed.

Thus, this Court finds no cogent reason to reverse the RTC's ruling that petitioner's refund claim for the payments made in January to April 2008 had already prescribed, applying the provision of Section 196 of the LGC of 1991.

Reclassification is invalid and therefore respondent court erred in dismissing Civil Case No. SPL-1510-10.

The controversy in Civil Case No. SPL-1510-10 arose from the re-classification of petitioner by respondent municipality of San Pedro, Laguna and its municipal treasurer, from a retailer of essential goods under Section 2 (c) of Municipal Ordinance No. 2005-15, as well as a retailer under Section 2 (d), into an owner or operator of privately-owned supermarkets, shopping center, and mini-marts, under Section 2 (p) of the same Ordinance. As mentioned earlier, respondent RTC of San Pedro, Laguna, Branch 31, dismissed said case and found the re-classification of petitioner to be valid.

Thus, in the instant Petition for Review, the issue centers around whether or not the re-classification of the petitioner as "owners or operators of privately-owned supermarkets, shopping centers including mini-marts" may be legally allowed. An affirmative answer would make the dismissal of Civil Case No. SPL 1510-10 proper, while a negative answer would make the dismissal improper.

According to petitioner, respondents failed to take into consideration the fact that it sells both essential and non-essential items and that it has already been classified as such under Section 2 (c) and (d) of the said ordinance. Petitioner also points out that this re-classification is arbitrary and capricious because it had allegedly gained a vested right both under the statute and the ordinance.

Respondents counter-argue that petitioner should actually be required to pay deficiency taxes because it was misclassified as a retailer of essential commodities and therefore, mistakenly assessed a lower business tax for the year 2006.

To resolve the validity of the assailed re-classification, it is important that We look into the power of a municipality to impose business taxes as delineated in the Local Government Code.

In the case of *Petron Corporation v. Mayor Tobias M. Tiangco and Municipal Treasurer Manuel T. Enriquez of the Municipality of Navotas, Metro Manila*[16], the Supreme Court said:

> "The power of the municipality to impose business taxes derives from Section 143 of the Code (referring to the Local Government Code) that specifically enumerates several types of business on which it may impose taxes, including manufacturers, wholesalers, distributors, dealers of any article of commerce of whatever nature;[17] those engaged in the export or commerce of essential commodities; [18] retailers, [19] contractors and other independent contractors; [20] banks and financial institutions;[21] and peddlers engaged in the sale of any merchandise or article of commerce.[22] This obviously broad power is further supplemented by paragraph (h) of Section 143 which authorizes the *sanggunian* to impose taxes on any other businesses not otherwise specified under Section 143 which the sanggunian concerned may deem proper to tax.

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[16] G.R. No. 158881, April 16, 2008
[17] See Section 143 (a) and (b), Local Government Code (LGC)
[18] See Section 143 (c)), LGC
[19] See Section 143 (d), LGC
[20] See Section 143 (e), LGC
[21] See Section 143 (f), LGC
[22] See Section 143 (g), LGC

Further, the Supreme Court said in the same Petron case, that in interpreting the provisions of the Local Government Code, Section 5(a) of the Code states that "(a)ny provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit." Then, somewhat conversely, the High Court said that Section 5(b) then proceeds to assert that **"(i)n case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer**." And this latter qualification has to be respected as a constitutionally authorized limitation which Congress has seen fit to provide.

Bearing this in mind, We find the subsequent re-classification of petitioner by respondent invalid as it failed to consider the limitation imposed under paragraph (h) of Section 143 of the LGC. Said paragraph pertinently states:

> " (h) On any business, **not otherwise specified in the preceding paragraphs,** which the sanggunian concerned may deem proper to tax:
> x x x x x x x x x

Relative thereto, We adopt the findings of the respondent court that on January 2, 2006, Municipal Ordinance No. 2005-15 otherwise known as "2005 Revised and Consolidated Municipal Revenue Code of the Municipality of San Pedro, Laguna" enacted by the respondent municipality became effective. The said ordinance incorporated the enumeration of businesses taxable by the municipality and maintained the corresponding tax rates in Section 143, subsections 2 (a), (b), (c) and (d) of the Local Government Code. It however, introduced other business or classification not found in the Local Government Code, among which is the one subject of this controversy, to wit: owners or operators of privately-owned supermarkets, shopping centers, including mini-marts.[23]

We quote the pertinent provisions of Section 143 (c) and (d) of the LGC for ready reference:

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

[23] Docket, p. 26

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,

With gross sales or receipts for the preceding calendar year of:	Rates of Tax Per Annum
P400,000.00 or less	2%
More than P400,000.00	1%"

Likewise, the pertinent portion of Municipal Ordinance No. 2005-15 as quoted by the lower court in the assailed Decision, specifically, Section 2 (p) reads:

"Section 2. Imposition of Tax. xxx

(p) on owners or operators of privately-owned supermarkets, shopping centers including mini-marts:

The computation will be based on gross sales of the retailed and wholesale products (including cigarette, beer, liquor) essential and/or non-essential commodities of the preceding year:

With gross sales or receipts for the preceding calendar year in the amount of:	Amount of Tax Per Annum
P400,000.00 or less	Two percent (2%)
More than P400,000.00	One percent (1%)"

Evidently, petitioner admitted that it is engaged in retail of essential and non-essential goods and that for the year 2006 it paid taxes using the rates provided in the Revenue Code of San Pedro, Laguna, particularly, Section 2(c) for essential goods and Section

2(d) for non-essential goods as adopted from Section 143(c) and (d) of the Local Government Code, respectively. In other words, prior to 2007, petitioner had been treated as a retailer both under Section 2(c) and (d) of the Revenue Code of San Pedro, Laguna.

In this regard, it is significant to cite Section 146 of the Local Government Code, which reads:

> "SEC. 146. *Payment of Business Taxes.* -
>
> (a) **The taxes imposed under Section 143 shall be payable for every separate or distinct establishment** or place where business subject to the tax is conducted and **one line of business does not become exempt by being conducted with some other business for which such tax has been paid**. The tax on a business must be paid by the person conducting the same.
>
> xxx xxx xxx
>
> (c) **In cases where a person conducts or operates two (2) or more businesses mentioned in Section 143 of this Code which are subject to different rates of tax, the gross sales or receipts of each business shall be separately reported for the purpose of computing the tax due from each business.**" *(Emphasis supplied)*

Likewise, Section 2 of the subject Municipal Ordinance reads:

> "**Section 2. Imposition of Tax.** Every person who operates within the Municipality of San Pedro, Laguna, any of the businesses mentioned in this Article shall pay a business tax in the amount prescribed herein. **The tax is payable for every distinct establishment** and one line of business activity does not become exempt by being conducted with some other business or activity for which a tax has been paid." *(Emphasis supplied)*

MS

Considering that petitioner is engaged in retail of essential and non-essential goods, it is clear that petitioner operates as both a retailer of essential goods under Section 143(c) of the Local Government Code as adopted by the Municipal Ordinance No. 2005-15, particularly Section 2(c), and as retailer in general under Section 143(d) of the Local Government Code, which was likewise adopted by the Municipal Ordinance No. 2005-15 under Section 2(d) thereof.

It must be noted however, that Congress, in the exercise of its constitutional authority to impose limitations on the power to tax of local government units, has set a limitation mentioned in paragraph (h) of Section 143 of the LGC. Under said paragraph, the power of the municipality to impose business tax on any other business within its territorial jurisdiction which it may deem proper, is limited to those businesses that are **<u>not otherwise specified in the preceding</u>** paragraphs of Section 143 of the same Code.

Contrary to the ruling of the lower court in the assailed Decision, it must be emphasized that the very phrase "retailers of essential commodities" under Section 143(c) of the LGC and "on retailers" under Section 143 (d) of the LGC, as adopted by the subject Municipal Ordinance under Section 2(c) and (d) thereof, are broad enough to include the business activities of operating privately-owned supermarkets, shopping centers, including mini-marts. Hence, the additional classification provided in Section 2 (p), being already within the scope of Section 2 (c) and (d) of the subject Municipal Ordinance is invalid.

Likewise, the records of this case failed to show the basis for respondent to re-classify petitioner as an owner or operator of privately-owned supermarkets, shopping centers, including mini-marts considering that the ordinance itself failed to identify the kind of activities which such kind of business operates to distinguish it from the business activities of retailers as specified under Section 143 of the Local Government Code.

Consequently, it is this Court's considered opinion that petitioner's business activities fall under the classification as retailer of both essential and non-essential goods under Section 143 (c) and (d) of the LGC as adopted by the subject Municipal Ordinance under Section 2(c) and (d). Therefore, its re-classification under Section 2(p) of the subject ordinance cannot be allowed as it violates the limitation provided under paragraph (h) of Section 143 of the LGC.

Again, it must be stressed that in case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it and liberally in favor of the taxpayer.

Nevertheless, while the Court finds petitioner liable to pay business taxes under Section 143(c) and (d) of the Local Government Code as adopted by the subject Municipal Ordinance, a determination of the exact amount of over-payment cannot be done considering that the parties jointly moved that the trial of the case in the lower court be dispensed with.

As no evidence was presented before the lower court to substantiate the actual amount of petitioner's refund claim, there is a need to remand the instant case to respondent court for the reception of evidence to prove petitioner's payments of it business tax liabilities, covering the period from July 21, 2008 to January 19, 2010, and for a re-computation of the same in accordance with its classification under Section 143, paragraphs (c) and (d) of the Local Government Code, as adopted by Section 2, paragraphs (c) and (d) of Municipal Ordinance No. 2005-15, in relation to Section 146 of the Local Government Code,

With regard to the rest of the arguments raised by petitioner concerning the constitutionality of Section 2(p) of the subject ordinance, it must be emphasized that during the proceedings in the lower court, petitioner indicated that it does not assail the legality of the tax ordinance. As stated in the assailed Decision, the validity of the municipal ordinance or any of its provisions is not disputed.[24] Thus, the Court finds it unnecessary to resolve the constitutionality and validity of the provisions of the ordinance.

WHEREFORE, in view of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED** and the assailed Decision in Civil Case No. SPL-1510-10 is hereby **REVERSED** and **SET ASIDE.** The assessment of business tax against petitioner under Section 2 par. (p) of Municipal Ordinance No. 2005-15, otherwise known as the "2005 Revised and Consolidated Municipal Revenue Code of the Municipality of San Pedro, Laguna" is declared **NULL** and **VOID**.

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[24] RTC Decision in Civil Case No. SPL-1510-10, Docket, p. 28

This case is **REMANDED** to the court of origin for further proceedings to determine petitioner's business tax liabilities, in accordance with its classification under Section 143 paragraphs (c) and (d) of the Local Government Code, as adopted by Section 2 paragraphs (c) and (d) of Municipal Ordinance No. 2005-15, in relation to Section 146 of the Local Government Code, covering the period from July 21, 2008 to January 19, 2010. Any overpayments for the said period is ordered refunded to petitioner.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERLINDA P. UY
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decisions were reached in consultation before the case was assigned to the writer of the opinion of the Court.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice