**REPUBLIC OF THE PHILIPPINES**
***Court of Tax Appeals***
**QUEZON CITY**

***En Banc***

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| **INTERNATIONAL CONTAINER TERMINAL SERVICES, INC.,** *Petitioner,* | **CTA *EB* NO. 277** *(CTA AC No. 11)* |
| *-versus-* | Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **THE CITY OF MANILA, LIBERTY M. TOLEDO,** in her capacity as the **TREASURER OF MANILA** and **GABRIEL ESPINO,** in his capacity as **RESIDENT AUDITOR OF MANILA,** and the **CITY COUNCIL OF MANILA,** *Respondent.* | Promulgated: MAR 10 2021 4:05pm |

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# AMENDED DECISION

***MODESTO-SAN PEDRO, J.:***

## The Case

On 5 July 2019, this Court received a Transmittal Letter from the Supreme Court with attached copies of the following: (a) photocopy of the Decision, rendered by the Supreme Court on 17 October 2018, entitled ***"International Container Terminal Services, Inc., vs. The City of Manila, Liberty M. Toledo, in her capacity as Treasurer of Manila and Gabriel Espino, in his capacity as Resident Auditor of Manila, and City Councilor of Manila"***, and docketed as G.R. No. 185622 and (b) photocopy of the Entry of Judgment, stating that the abovementioned Supreme Court Decision had become final and executory and had been recorded in the Book of Entries of Judgment on 22 January 2019.

The dispositive portion of the Supreme Court Decision reads, as follows:

> **"WHEREFORE,** the Petition for Review on Certiorari is **GRANTED.** The September 5, 2008 Decision and December 12, 2008 Resolution of the Court of Tax Appeals En Banc in C.T.A. EB No. 277 are hereby **REVERSED** and **SET ASIDE.** The Court of Tax Appeals En Banc is **DIRECTED** to proceed with the resolution on the merits of C.T.A. EB No. 277 with due and deliberate dispatch.
>
> **SO ORDERED."**

Prior to this case reaching the Supreme Court, this Court *En Banc* initially denied the present Petition for Review and affirmed the Decision, dated 17 May 2006, of the Court of Tax Appeals ("CTA") Second Division, which ruled that petitioner is not entitled to a refund of erroneously and/or illegally paid taxes for the succeeding periods of the third ($3^{rd}$) quarter of taxable year ("TY") 1999.

On 17 February 2020, this Court received petitioner's Manifestation and Urgent Motion to Resolve Petition for Review.

After consideration, this Court resolves to **NOTE** petitioner's Manifestation and **GRANT** the Urgent Motion to Resolve Petition for Review.

## The Parties

Petitioner, International Container Terminal Services, Inc. ("ICTSI"), is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at ICTSI Administrative Building, Manila International Container Terminal, MICT South Access Road, Port Area, Manila.[1]

Respondent, City of Manila, is a public corporation created and existing pursuant to law. On the other hand, respondents Liberty M. Toledo and Gabriel Espino were the Treasurer and Resident Auditor, respectively, of the City of Manila when this case was instituted. Meanwhile, respondent the City Council of Manila is the law-making body of the City of Manila, vested by law with the power and authority to appropriate funds, among others.[2]

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[1] Records, p. 3.
[2] *Ibid.*

## The Facts

In ***International Container Terminal Services, Inc., vs. The City of Manila, Liberty M. Toledo, in her capacity as Treasurer of Manila and Gabriel Espino, in his capacity as Resident Auditor of Manila, and City Councilor of Manila***, the Supreme Court found for petitioner, ICTSI, as follows:[3]

> "If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.
>
> If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. 'Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.'
>
> On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.
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> Here, there is no dispute on the refund of P6,224,250.00, representing the additional taxes paid for the first three (3) quarters of 1999, as ordered by the Court of Tax Appeals Second Division in its May 17, 2006 Decision on the basis that there was a direct double taxation. The controversy here pertains to petitioner's entitlement to a refund of the taxes paid subsequent to the third quarter of 1999, which was denied by the Court of Tax Appeals Second Division on the ground that petitioner failed to comply with the requirements of Section 195.
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> When petitioner raised the applicability of Section 196 to the claim for refund of these subsequent payments, the Court of Tax Appeals Second Division, as affirmed by the Court of Tax Appeals En Banc, held that Section 196 cannot apply as petitioner previously anchored its claims under Section 195...

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[3] G.R. No. 185622, 17 October 2018.

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The nature of an action is determined by the allegations in the complaint and the character of the relief sought. Here, petitioner seeks a refund of taxes that respondents had collected. Following *City of Manila [v. Cosmos Bottling Corp.]*, refund is available under both Sections 195 and 196 of the Local Government Code: for Section 196, because it is the express remedy sought, and for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid. Whether the remedy availed of was under Section 195 or Section 196 is not determined by the taxpayer paying the tax and then claiming a refund.

What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state 'the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties.'...

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No such precondition is necessary for a claim for refund pursuant to Section 196.

Here, no notice of assessment for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first three (3) quarters of 1999...

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The 'assessments' from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila. While these receipts state the amount and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the 'notice of assessment' required under Section 195 of the Local Government Code.

When petitioner paid these taxes and filed written claims for refund before respondent City Treasurer, the subsequent denial of these claims should have prompted resort to the remedy laid down in Section 196, specifically the filing of a judicial case for the recovery of the allegedly erroneous or illegally collected tax within the two (2)-year period.

Petitioner appealed the denial of the protest against respondent City Treasurer's assessment and the action against the denial of its claims for refund. For both issues, petitioner's arguments are based on the common theory that the additional tax under Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is illegal double taxation. Hence, their joinder in one (1) suit was legally appropriate and avoided a multiplicity of suits.

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A tax refund or credit is in the nature of a tax exemption, construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Claimants of a tax refund must prove the factual basis of their claims with sufficient evidence.

To be entitled to a refund under Section 196 of the Local Government Code, the taxpayer must comply with the following procedural requirements: *first*, file a written claim for refund or credit with the local treasurer; and *second*, file a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.

As to the first requirement, the records show that the following written claims for refund were made by petitioner:

In its June 17, 2003 Letter to the City Treasurer, it claimed a refund of P27,800,674.36 for taxes paid from the fourth quarter of 1999 up to the second quarter of 2003.

In its August 18, 2005 Letter to the City Treasurer, it claimed a refund of P14,190,092.90 for taxes paid for the third quarter of 2003 up to the second quarter of 2005.

In her September 1, 2005 Response to the August 18, 2005 Letter, City Treasurer Liberty M. Toledo denied the claim...

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Thereafter, petitioner sent its January 10, 2007 Letter to the City Treasurer claiming a refund of taxes paid for the third quarter of 2005 until the fourth quarter of 2006, pursuant to the Court of Tax Appeals Second Division May 17, 2006 Decision.

As for the taxes paid thereafter and were not covered by these letters, petitioner readily admits that it did not make separate written claims for refund, citing that 'there was no further necessity' to make these claims. It argues that to file further claims before respondent City Treasurer would have been 'another exercise in futility' as it would have merely raised the same grounds that it already raised in its June 17, 2003 Letter...

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The doctrine of exhaustion of administrative remedies requires recourse to the pertinent administrative agency before resorting to court action. This is under the theory that the administrative agency, by reason of its particular expertise, is in a better position to resolve particular issues...

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Nonetheless, the failure to exhaust administrative remedies is not always fatal to a party's cause. This Court has admitted of several exceptions to the doctrine...

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If the party can prove that the resort to the administrative remedy would be an idle ceremony such that it will be absurd and unjust for it to continue seeking relief that evidently will not be granted to it, then the doctrine would not apply...

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As correctly pointed out by petitioner, the filing of written claims with respondent City Treasurer for every collection of tax under Section 21 (A) of Manila Ordinance No. 7764, as amended by Section 1(G) of Ordinance No. 7807, would have yielded the same result every time. This is bolstered by respondent City Treasurer's September 1, 2005 Letter, in which it stated that it could not act favorably on petitioner's claim for refund until there would have been a final judicial determination of the invalidity of Section 21 (A).

Further, the issue at the core of petitioner's claims for refund, the validity of Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is a question of law. When the issue raised by the taxpayer is purely legal and there is no question concerning the reasonableness of the amount assessed, then there is no need to exhaust administrative remedies.

Thus, petitioner's failure to file written claims of refund for all of the taxes under Section 21 (A) with respondent City Treasurer is warranted under the circumstances.

Similarly, petitioner complied with the second requirement under Section 196 of the Local Government Code that it must file its judicial action for refund within two (2) years from the date of payment, or the date that the taxpayer is entitled to the refund or credit. Among the reliefs it sought in its Amended and Supplemental Petition before the Regional Trial Court is the refund of any and all subsequent payments of taxes under Section 21 (A) from the time of the filing of its Petition until the finality of the case...

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> As acknowledged by respondent City Treasurer in her September 1, 2005 Letter, petitioner's entitlement to the refund would only arise upon a judicial declaration of the invalidity of Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807. This only took place when the Court of Tax Appeals En Banc dismissed respondents' Petition for Review of the May 17, 2006 Decision of the Court of Tax Appeals Second Division, rendering the judgment on the invalidity of Section 21 (A) final and executory on July 2, 2007. Therefore, the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition."

Following these guidelines enunciated in the Supreme Court Decision, dated 17 October 2018, this Court *En Banc* has been ordered by the High Court to rule on the merits of the present case with due and deliberate dispatch.

Hence, this Decision.

## The Issue

> Following the directive from the Supreme Court Decision, dated 17 October 2018, this Court *En Banc* is tasked to factually determine and rule on the merits whether petitioner, ICTSI, is entitled to a refund of illegally and/or erroneously paid local business taxes ("LBT").

## The Ruling of the Court En Banc

The instant Petition is granted.

### Petitioner is entitled to a full refund of the erroneously and/or illegally paid LBT for the first three (3) quarters of TY 1999.

There is no dispute that petitioner is entitled to a grant of refund of erroneously and/or illegally paid LBT for the first three (3) quarters of TY 1999. The CTA Second Division, indeed, aptly found that the City of Manila committed direct double taxation when it imposed LBT under ***Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Ordinance No. 7807 ("Section 21 (A)")***, in addition to the business tax already imposed under ***Section 18 of Manila Ordinance No. 7794, as amended ("Section 18")***.

As direct double taxation was committed when LBT was imposed under ***Section 21 (A)*** on top of the business tax already imposed under ***Section 18***, the excess LBT paid by petitioner, ICTSI, based on ***Section 21 (A)*** is an erroneously and/or illegally paid tax which should be refunded accordingly.

Following a detailed examination and scrutiny of the records of the case (which include, among others, official receipts representing payment of the illegally and/or erroneously imposed LBT),[4] this Court *En Banc* agrees with the finding by the CTA Second Division that petitioner is entitled to a full refund of erroneously and/or illegally paid LBT in the amount of Php6,224,250.00 for the first three (3) quarters of TY 1999.

**Petitioner is similarly entitled to a full refund of the erroneously and/or illegally paid LBT for the succeeding periods beyond the third (3rd) quarter of TY 1999.**

As to petitioner's claims for refund of erroneously and/or illegally paid LBT for the succeeding periods beyond the third (3rd) quarter of TY 1999, the Supreme Court, in the Decision, dated 17 October 2018, ruled that the applicable provision in determining the propriety of such claims is ***Section 196 of the Local Government Code ("LGC")***, considering that no notice of assessment was issued for these periods. On this note, the High Court laid several distinctive guidelines to assist this Court *En Banc* in determining the amount of tax refund to be granted.

First, the Supreme Court ruled that there is no need to comply with the requisite of a prior administrative claim of refund (filed before the local treasurer) as it would be a futile effort, considering that respondents would just deny the same. In fact, respondents have manifested their intention to continuously deny petitioner's claim for refund in their 1 September 2005 Response Letter.

Second, the judicial case for refund should have been filed within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit. In this case, the judicial claim shall be considered made from the filing of the Amended and Supplemental Petition for Review with the Regional Trial Court, *i.e.,* 11 July 2003. Moreover, the Supreme Court declared that petitioner became entitled to a refund or credit only when the invalidity of ***Section 21 (A)*** was judicially pronounced, and became final and executory. This took place when this Court *En Banc* dismissed respondents' Petition for Review of the 17 May 2006

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[4] See Exhibit "A", RTC Docket, p. 191.

Decision of the CTA Second Division, rendering the judgment on the invalidity of ***Section 21 (A)*** final and executory only on 2 July 2007. Following this, the High Court ruled that the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition since petitioner only became entitled to the present refund (*i.e.,* 2 July 2007) after such judicial claim has already been filed (*i.e.,* 11 July 2003).[5]

Following these guidelines, petitioner is fully entitled to its claim for refund of erroneously and/or illegally paid taxes for the periods succeeding the third ($3^{rd}$) quarter of TY 1999.

A thorough examination of the official receipts submitted by petitioner and made part of the judicial records would show that petitioner is entitled to a refund of erroneously and/or illegally paid taxes for the periods succeeding the third ($3^{rd}$) quarter of TY 1999 in the total amount of Php57,865,901.68, as follows:

| Exhibit/Annex | Taxable Period | License Receipt Number | Taxes Paid per ***Section 21 (A)*** | Date paid |
|---|---|---|---|---|
| Exhibit B of RTC Docket[6] | $4^{th}$ quarter of TY 1999 | SML-A-177276 | Php2,074,750.00 | 19 October 1999 |
| Exhibit C of RTC Docket[7] | 1st quarter of TY 2000 | L-A-110239 | Php2,605,000.00 | 13 January 2000 |
| Exhibit D of RTC Docket[8] | 2nd quarter of TY 2000 | SML-B-020564 | Php2,605,000.00 | 19 April 2000 |
| Exhibit E of RTC Docket[9] | 3rd quarter of TY 2000 | SML-B-072598 | Php2,606,000.00 | 19 July 2000 |
| Exhibit F of RTC Docket[10] | 4th quarter of TY 2000 | SML-B-141877 | Php2,605,000.00 | 19 October 2000 |
| Exhibit G of RTC Docket[11] | 1st quarter of TY 2001 | L-A-142856 | Php1,521,988.95 | 16 January 2001 |
| Exhibit H of RTC Docket[12] | 2nd quarter of TY 2001 | SML-B-206857 | Php1,521,988.95 | 19 April 2001 |
| Exhibit I of RTC Docket[13] | 3rd quarter of TY 2001 | SML-B-191566 | Php1,521,988.95 | 18 July 2001 |
| Exhibit J of RTC Docket[14] | 4th quarter of TY 2001 | SML-B-209945 | Php1,521,988.95 | 18 October 2001 |
| Exhibit K of RTC Docket[15] | 1st quarter of TY 2002 | MLA(b)0039562 | Php1,440,211.30 | 18 January 2002 |
| Exhibit L of RTC Docket[16] | 2nd quarter of TY 2002 | MLAs 0004165 | Php1,440,211.30 | 17 April 2002 |

[5] International Container Terminal Services, Inc. v. The City of Manila; Liberty M. Toledo, in her capacity as Treasurer of Manila; Gabriel Espino, in his capacity as Resident Auditor of Manila; and the City Council of Manila, G.R. No. 185622, 17 October 2018.
[6] RTC Docket, p. 192.
[7] *Id.*, p. 193.
[8] *Id.*, p. 194.
[9] *Id.*, p. 195.
[10] *Id.*, p. 196.
[11] *Id.*, p. 197.
[12] *Id.*, p. 198.
[13] *Id.*, p. 199.
[14] *Id.*, p. 200.
[15] *Id.*, p. 201.
[16] *Id.*, p. 202.

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| Exhibit M of RTC Docket[17] | 3rd quarter of TY 2002 | MLAs 0037389 | Php1,440,211.30 | 18 July 2002 |
| Exhibit N of RTC Docket[18] | 4th quarter of TY 2002 | MLAs 0052594 | Php1,440,211.30 | 16 October 2002 |
| Exhibit O of RTC Docket[19] | 1st quarter of TY 2003 | MLAs 0092841 | Php1,728,561.43 | 17 January 2003 |
| Exhibit P of RTC Docket[20] | 2nd quarter of TY 2003 | MLAs 0065867 | Php1,728,561.93 | 21 April 2003 |
| Exhibit Q of RTC Docket[21] | 3rd quarter of TY 2003 | MLAs 0084721 | Php1,728,561.93 | 17 July 2003 |
| Exhibit R of RTC Docket[22] | 4th quarter of TY 2003 | MLAs 0103475 | Php1,728,561.93 | 20 October 2003 |
| Exhibit S of RTC Docket[23] | 1st quarter of TY 2004 | MLA(b) 0121746 | Php1,786,724.17 | 16 January 2004 |
| Annex D of Motion for Partial Reconsideration – CTA Second Division[24] | 2nd quarter of TY 2004 | MLA(s) 0106453 | Php1,786,724.17 | 20 April 2004 |
| Annex E of Motion for Partial Reconsideration – CTA Second Division[25] | 3rd quarter of TY 2004 | MLA(s) 0147940 | Php1,786,724.17 | 16 July 2004 |
| Annex F of Motion for Partial Reconsideration – CTA Second Division[26] | 4th quarter of TY 2004 | MLA(s) 0147656 | Php1,786,724.17 | 15 October 2004 |
| Annex G of Motion for Partial Reconsideration – CTA Second Division[27] | 1st quarter of TY 2005 | O.R. No. 0004871 | Php1,793,036.16 | 20 January 2005 |
| Annex H of Motion for Partial Reconsideration – CTA Second Division[28] | 2nd quarter of TY 2005 | O.R. No. 0043668 | Php1,793,036.16 | 19 April 2005 |
| Annex I of Motion for Partial Reconsideration – CTA Second Division[29] | 3rd quarter of TY 2005 | O.R. No. 0050624 | Php1,793,036.16 | 18 July 2005 |
| Annex J of Motion for Partial Reconsideration – CTA Second Division[30] | 4th quarter of TY 2005 | O.R. No. 0079522 | Php1,793,036.16 | 19 October 2005 |
| Annex K of Motion for Partial | 1st quarter of TY 2006 | O.R. No. 0079486 | Php1,968,022.01 | 19 January 2006 |

[17] *Id.*, p. 203.
[18] *Id.*, p. 204.
[19] *Id.*, p. 205.
[20] *Id.*, p. 206.
[21] *Id.*, p. 304.
[22] *Id.*, p. 305.
[23] *Id.*, p. 306.
[24] Annex "D", Petition for Review, Records, p. 168.
[25] *Id.*, p. 169.
[26] *Id.*, p. 170.
[27] *Id.*, p. 171.
[28] *Id.*, p. 172.
[29] *Id.*, p. 173.
[30] *Id.*, p. 174.

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| Reconsideration – CTA Second Division[31] | | | | |
| Annex L of Motion for Partial Reconsideration – CTA Second Division[32] | 2nd quarter of TY 2006 | O.R. No. 0121362 | Php1,968,022.01 | 19 April 2006 |
| Annex G of Petition for Review - CTA En Banc[33] | 3rd quarter of TY 2006 | O.R. No. 0149699 | Php1,968,022.01 | 20 July 2006 |
| Annex H of Petition for Review - CTA En Banc[34] | 4th quarter of TY 2006 | O.R. No. 162138 | Php1,968,022.01 | 19 October 2006 |
| Annex I of Petition for Review – CTA En Banc[35] | 1st quarter of TY 2007 | O.R. No. 0178297 | Php2,207,987.05 | 18 January 2007 |
| Annex D of petitioner's Manifestation and Motion for Extension of Time to File Comment[36] | 2nd quarter of TY 2007 | O.R. No. 0208250 | Php2,207,987.05 | 19 April 2007 |
| | | **TOTAL** | **Php57,865,901.68** | |

All in all, petitioner is entitled to a refund of erroneously and/or illegally paid LBT under ***Section 21 (A)*** in the total amount of Php64,090,151.68, computed as follows:

| Taxable Period | Taxes Paid per ***Section 21 (A)*** |
|---|---|
| First 3 quarters of TY 1999 | Php6,224,250.00 |
| Succeeding periods | 57,865,901.68 |
| **Total** | **Php64,090,151.68** |

**WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. Accordingly, respondents are **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of Php64,090,151.68, representing erroneously and/or illegally paid LBT.

**SO ORDERED.**

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

[31] *Id.*, p. 175.
[32] *Id.*, p. 176.
[33] Annex "G", Petition for Review, Records, p. 200
[34] Annex "H", *id.*, p. 201
[35] Annex "I", *id.*, p. 202.
[36] Annex "D", Manifestation and Motion for Extension of Time to File Comment, *id.*, p. 295.

***WE CONCUR:***

*(On leave)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

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

**C E R T I F I C A T I O N**

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.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Acting Presiding Justice