REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

UNILEVER PHILIPPINES, INC.,
Petitioner,

- versus -

THE TREASURER OF THE CITY OF MANILA,
Respondent.

C.T.A. AC NO. 34

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
AUG 26 2008 ; 1:30pm

x - x

DECISION

CASANOVA, *J.*:

Nature of the Case

This is an appeal, by way of a Petition for Review, under Section 11 of Republic Act No. 1125 as amended by RA No. 9282, in relation to Section 42 of the Revised Rules of Court, questioning the Decision dated November 9, 2006 (herein referred to as the Decision)[1] and the Order dated March 28, 2007 (herein referred to as the Order)[2], both rendered by the Regional Trial Court of Manila, Branch 39.

Statement of the Facts

The facts as culled from the records of the case:

---

[1] Pages 25-36, CTA Records; Annex A
[2] Pages 37-40, CTA Records; Annex B

Petitioner, Unilever Philippines, Inc., is a domestic corporation duly organized under the laws of the Philippines with principal office address at 1351 United Nations Avenue, Manila.[3]

Respondent, on the other hand, is the Treasurer of the City of Manila and is being sued in such capacity. She is tasked with the implementation of the City's Revenue Code, as well as the collection and assessment of business taxes, license fees and permit fees within said City.[4]

Petitioner paying business taxes to the City of Manila, paid on April 15, 2003, taxes under Sections 14 and 21 of the Manila Revenue Code (MRC), corresponding to the second quarter of 2003.[5]

Section 14 of the MRC states:

> "**SECTION 14.** *Tax on Manufacturers, Assemblers and Other Processors* — There is hereby imposed a graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule xxx"

While Section 21 of the same code, provides:

> "**SECTION 21.** *Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC.* — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of fifty percent (50%) of one percent (1) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code. xxx"

---

[3] Page 2, Petition for Review; Page 2, CTA Records
[4] Ibid
[5] Page 3, Petition for Review; Page 3, CTA Records

However, with amendments introduced to the MRC by Ordinance No. 7988 in the year 2000 and Ordinance No. 8011 in the year 2001, the rates have been modified.

As a consequence, petitioner paid a total of P13,724,446.00 under Section 21 for the second quarter of 2003.[6]

On March 8, 2005, petitioner filed a claim for refund of business taxes assessed and collected under Section 21 of the MRC.[7] However, due to respondent's inaction, and to toll the running of the two (2) year prescriptive period within which to file its claim, petitioner filed a Petitioner for Review for Refund before the Regional Trial Court of Manila on April 14, 2005.[8]

Respondent filed his Answer[9] dated May 17, 2005.

During the pre-trial conference on June 27, 2006, the parties agreed that the only matter to be resolved by the trial court is whether petitioner is entitled to a refund of business taxes paid under Section 21 of the MRC for the second quarter of 2003.[10]

Respondent filed its Memorandum on July 26, 2006[11]; while petitioner filed its memorandum on August 10, 2006[12].

On November 9, 2006, the Regional Trial Court resolved as follows:[13]

> "**WHEREFORE,** Civil Case No. 05-112373 entitled, "Unilever Philippines, Inc., vs. The Treasurer of the City of Manila" for tax refund is hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED.**"

---

[6] Annex C, Page 41, CTA Records
[7] Annex D, Pages 42-45, CTA Records
[8] Annex E, Pages 47-56, CTA Records
[9] Annex F, Pages 70-81, CTA Records
[10] Pages 4-5, Petition for Review; Pages 4-5, CTA Records
[11] Annex H, Pages 114-138, CTA Records
[12] Annex G, Pages 94-113, CTA Records
[13] Annex A, Pages 25-36, CTA Records

Petitioner then filed a Motion for Reconsideration on December 12, 2006.[14] Respondent filed its Opposition on March 12, 2007.[15]

The Regional Trial Court, on March 28, 2007, resolved as follows:[16]

> "**WHEREFORE,** the Motion for Reconsideration of the Court's Decision dated November 9, 2006 filed by petitioner through counsel is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Thus, the present Petition for Review filed on May 25, 2007.

In a Resolution dated September 5, 2007, respondent's Urgent Motion for Extension of Time was granted by this Court. Thus, respondent was ordered to file a Comment to the Petition for Review within a non-extendible period of fifteen (15) days from August 23, 2007, or until September 7, 2007.[17]

However, no Comment was filed by respondent. Thus, in a Resolution dated October 18, 2007, this Court ordered the Branch Clerk of Court of the Regional Trial Court, Branch 39, City of Manila, to forward all the records of Civil Case No. 05-112373.[18]

Having transmitted the entire records on January 24, 2008, the case was submitted for decision, on February 4, 2008.[19]

Hence, this decision.

The Issue

The sole issue to be resolved by the Court:[20]

---

[14] Annex I, Pages 177-194, CTA Records
[15] Annex J, Pages 258-266, CTA Records
[16] Annex B, Pages 37-40, CTA Records
[17] Page 301, CTA Records
[18] Pages 303-304, CTA Records
[19] Page 310, CTA Records
[20] Page 7, Petition for Review; Page 7, CTA Records

> Whether the enforcement of Section 21 of the City of Manila's Revenue Code against petitioner constitutes double taxation prohibited by law in view of taxes collected by the City and paid by petitioner under Section 14 of the revenue code and consequently whether the taxes collected by respondent being claimed in the proceedings *a quo* in the amount of P13,724,446.00 should be immediately refunded.

The Court's Ruling

Authority of the City of Manila to impose taxes

Under the 1987 Constitution, Section 5, Article X, titled "Local Government", states:

> "**SECTION 5.** Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such fees, taxes, and charges shall accrue exclusively to the local governments."

Pursuant to such mandate, Congress enacted the Local Government Code of 1991 (LGC) which set forth the guidelines and limitations on the power to tax of local governments, like the City of Manila, to wit:

> "**SECTION 128.** *Scope.* – The provisions herein shall govern the exercise by provinces, cities, municipalities, and barangays of their taxing and other revenue-raising powers.
>
> **SECTION 129.** *Power to Create Sources of Revenue.* - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units."

Consequently, through the Revised Revenue Code of the City of Manila, otherwise known as Tax Ordinance No. 7988, as amended by Ordinance No. 8011, the City of Manila imposes and collects taxes on people, transactions and businesses found within its jurisdiction.

Petitioner as a manufacturer

As a manufacturer, petitioner pays taxes to the City of Manila by virtue of Sections 14 and 21 of the Tax Ordinance No. 7988, as amended. Section 131 of the LGC provides:

> **SECTION 131.** *Definition of Terms.* - When used in this Title, the term:
>
> xxx
>
> (o) "Manufacturer" includes every person who, by physical or chemical process, alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured products so as to reduce it to marketable shape or prepare it for any of the use of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished products of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption;

Based on the definition, a manufacturer is any person that changes, modifies or combines any product to take the form of another product or finished product for the purpose of selling or distributing them to others for a fee.

Section 14 of Ordinance No. 7988, as amended, imposes a percentage tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines, or manufacturers of any article of commerce of whatever kind or with the gross sales or receipts for the preceding calendar year in accordance with the schedule provided therein.

Section 21, on the other hand, entitled "Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes under the NIRC", provides for the imposition of a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts on the business and articles of commerce subject to excise, value added or percentage taxes under the National Internal Revenue Code (NIRC).

Double taxation

Petitioner is being taxed as a manufacturer of goods under Section 14 of the ordinance. Likewise, petitioner is being taxed under Section 21 (a) on its business of selling manufactured goods.

Both Sections 14 and 21 of the MRC are business taxes based on petitioner's sales as a manufacturer.

The Court notes that Sections 14 and 21 of Ordinance No. 7988 bears semblance to Section 143 (a) and (h) of the LGC. To illustrate:

LGC	Ordinance No. 7988
"Section. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses: (a) **On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:**	Section 14. "Tax on Manufacturers, Assemblers, and Other Processors - There is hereby imposed a graduated tax **on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:**
Section 143. Tax on Business – The municipality may impose taxes on the following businesses: xxx	Section 21. Tax on Businesses Subject to Excise, Value-Added or Percentage Taxes Under the NIRC. –

(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, **That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended,** the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year. The sanggunian concerned may prescribe a schedule of graduated tax rates by in no case to exceed the rates prescribed herein. (Emphasis Ours)	**On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereafter referred to as NIRC, as amended,** a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed: (A) On persons who sell goods and services in the course of trade or business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of said code. (Emphasis Ours)

Sections 14 and 21 of the Ordinance No. 7988, as amended, are founded under Section 143 of the LGC. Unquestionably, the enumerated businesses in the aforementioned provisions in the LGC and the MRC are the same.

Among the limitations contained in the LGC on local government units, like the City of Manila, is specified in Section 143 (h), which reads:

> "**SECTION 143.** *Tax on Business*- The municipality may impose taxes on the following businesses:
>
> xxx
>
> (h) **On any business, not otherwise specified in the preceding paragraphs**, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
>
> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein." (Emphasis supplied)

From the above provision, paragraph (h) explicitly provides that the taxes therein may no longer be imposed on businesses subjected to tax under the preceding paragraphs. The preceding paragraphs are Section 143 (a) to (g) of the same section, which provides:

> "**SECTION 143.** *Tax on Business.* - The municipality may impose taxes on the following businesses:
>
> (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule: With gross sales or receipts for the Amount of Tax preceding calendar year in the amount of:
>
> xxx
>
> (b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule: With gross sales or receipts for the Amount of Tax preceding calendar year in the amount of:
>
> 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:
>
> (1) Rice and corn;
> (2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;
> (3) Cooking oil and cooking gas;
> (4) Laundry soap, detergents, and medicine;
> (5) Agricultural implements, equipment and post- harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;
> (6) Poultry feeds and other animal feeds;
> (7) School supplies; and
> (8) Cement.
>
> (d) On retailers, With gross sales or receipts Rate of tax for the preceding calendar year of:
>
> xxx

> Provided, however, That barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (P=50,000.00) or less, in the case of cities, and Thirty thousand pesos (P=30,000.00) or less, in the case of municipalities.
>
> (e) On contractors and other independent contractors, in accordance with the following schedule:
>
> With gross receipts for the preceding calendar year in the amount of:
>
> xxx
>
> (f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.
>
> (g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually. "

Clearly, the intention of the framers of the LGC to include in subsection (h) those businesses or persons not covered in subsections (a) to (g).

Petitioner has already been taxed on business tax on manufacturers under Section 14 of the MRC. Further subjecting petitioner to "the business tax of manufacturers subject to excise tax, value-added tax or percentage tax under NIRC" under Section 21 of the same code is an apparent violation of Sec. 143 (h) of the LGC.

Not in a few instances did this Court consistently hold that the imposition of business taxes under Sections 14 and 21 of the MRC, as amended, upon a manufacturer constitutes double taxation.[21]

---

[21] Unilever Philippines, Inc. vs. The Treasurer of Manila, CTA AC No. 25, June 18, 2007; Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila vs. Unilever Philippines, Inc. , CTA A.C. No. 21, May 10, 2007; Alcan Packaging Starpack

Double taxation is defined as:

> "Taxing the same property twice when it should be taxed only once; that is, x x x taxing the same person twice by the same jurisdiction for the same thing. It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character. [22]

Moreover, in the Pepsi-Cola case, the Supreme Court likewise said:

> Double taxation, in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality."[23]

There was taxation twice, for the same activity (*i.e.* manufacturing), by the same public authority within the same taxing jurisdiction (City of Manila) for the same purpose (*i.e.* to generate revenue for the City of Manila) for the same taxable period (second quarter of 2003).

Ordinance No. 7988

In **Coca Cola Bottlers Philippines, Inc. vs. City of Manila, et. al.,** [24] Tax Ordinance 7988, as amended by Tax Ordinance No. 8011 of the City of Manila, was declared null and void for failure to comply with the publication requirements of ordinances as prescribed by the LGC, to wit:

Corporation (formerly Starpack Philippines Corporation) vs. The Treasurer of the City of Manila, CTA AC No. 17, September 11, 2006; Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila, CTA AC No. 15, July 21, 2006;

[22] Commissioner of Internal Revenue vs. Solidbank Corporation, G.R. No. 148191, November 25, 2003.

[23] Pepsi-Cola Bottling Co. of the Philippines, Inc. vs. Municipality of Tanauan, Leyte, No. L-31156, February 27, 1976, 69 SCRA 466-467

[24] G.R. No. 156252, June 27, 2006

"**SECTION 188.** *Publication of Tax Ordinances and Revenue Measures.* – Within ten (10) days after their approval, certified true copies of all provincial, city and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation; Provided, however, that in provinces, cities, and municipalities where there are no newspapers or local circulations the same may be posted in at least two (2) conspicuous and publicly accessible places."

Applying the doctrine of *stare decisis,* the Coca Cola case is analogous with the subject of this petition, Sections 14 and 21 of Ordinance No. 7988, as amended by Ordinance No. 8011.

Stare decisis is defined as:

"*Stare decisis et non quieta movere.* Stand by the decision and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[25]"

"Under the doctrine of *stare decisis*, once a point of law has been established by the court, that point of law will, generally, be followed by the same court and by all courts of lower rank in subsequent cases where the same legal issue is raised.[i] *Stare decisis* proceeds from the first principle of justice that, absent powerful countervailing considerations, like cases ought to be decided alike.[26]"

Thus, Ordinance No. 7988, as amended by Ordinance 8011, is null and void.

An invalid ordinance does not, in legal contemplation, exist.

A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery

[25] Grand Placement and General Services Corporation vs. Court of Appeals, et.al., G.R. NO. 142358,January 31, 2006.
[26] Ayala Corporation vs. Rosa-Diana Realty and Development Corporation, G.R. No. 134284, December 1, 2000.

of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people.[27]

However, the authority of the City of Manila to impose taxes by virtue of the Local Government Code of 1991 is not absolute.

Respondent merely derived its authority to tax petitioner from an invalid ordinance. Respondent cannot impose taxes that constitute a violation of the constitutional principle of uniformity and equal protection in taxation.

WHEREFORE, the Petition for Review is hereby **GRANTED**. The assailed Decision promulgated on November 9, 2006 and the Order dated March 28, 2007, both issued by the Regional Trial Court, are hereby **REVERSED** and **SET ASIDE**.

Accordingly, respondent is **ORDERED TO REFUND** to petitioner the amount of P13,724,446.00 representing erroneously paid local business taxes for the second quarter of taxable year 2003.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

[27] Reyes vs. Court of Appeals, 320 SCRA 486.

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice