

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

UNILEVER PHILIPPINES, INC.,
Petitioner,

C.T.A. AC NO. 56

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, and
PALANCA-ENRIQUEZ, JJ.

THE TREASURER OF THE CITY
OF MANILA,
Respondent.

Promulgated:

JUN 02 2010

11:05 A.M.

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DECISION

UY, J.:

The instant Petition for Review seeks the reversal of the Decision dated September 15, 2008¹ rendered by Branch 49 of the Regional Trial Court of Manila in Civil Case No. 03-105551 entitled "*Unilever Philippines, Inc., plaintiff, vs. The Treasurer of the City of Manila, defendant*" denying herein petitioner's subject claim for refund; and the Order dated November 7, 2008² denying herein petitioner's Motion for the Reconsideration of said Decision. Petitioner prays that it be declared not liable for business taxes under Section 21 of the City of Manila's Revenue Code having already paid business taxes under Section 14

¹ Decision rendered in Civil Case No. 03-105551, penned by the Hon. Judge Concepcion S. Alarcon-Vergara, Annex "A", Petition for Review, Docket, pp. 43-47.

² Order rendered in Civil Case No. 03-105551, Annex "B", Petition for Review, Docket, p 48.



thereof; and that it be refunded, or in the alternative, be entitled to a tax credit corresponding to the taxes paid thereunder for the first quarter of the year 2001 in the amount of P8,773,944.00.

THE FACTS

Unilever Philippines, Inc. (Petitioner) is a domestic corporation duly organized under the laws of the Philippines, with principal office address at 1351 United Nations Avenue, Manila. On the other hand, respondent is the Treasurer of the City of Manila and is being sued in such capacity. She is tasked with the implementation of the Manila Revenue Code, as well as the collection and assessment of business taxes, license and permit fees within said City.

On October 4, 2001, petitioner, through its counsel Siguion Reyna Montecillo & Ongsiako, wrote to respondent to seek refund of business taxes paid under Section 21 of the Manila Revenue Code.

As its claim for refund remained unacted upon, petitioner filed a Petition for Refund with an application for a temporary restraining order and/or writ of preliminary injunction before the Regional Trial Court of Manila, Branch 49, on January 17, 2003. It prayed, among others, for the court *a quo* to declare petitioner as not liable for business taxes under Section 21 of the Manila Revenue Code, having already paid business taxes under Section 14 thereof; and to refund to petitioner the taxes paid for the first quarter of taxable year 2001 in the amount of P8,773,944.00.

In her Answer filed on February 5, 2003, respondent prayed for the following: (1) the dismissal of the petition pursuant to Section 1(e), Rule 16 and Section 5, Rule 7 of the Revised Rules of Court; (2) the declaration of the



assessment against petitioner as valid, constitutional, legal, conclusive, and unappealable; and (3) the payment by petitioner of the costs of suit.

Instead of presenting testimonial evidence, both parties agreed to file their respective Memorandum and attached thereto documentary evidence. Thereafter, the case was deemed submitted for decision on April 25, 2007.³

On September 15, 2008, the lower court rendered a Decision, the significant portions of which read:

"In this case, the court has this to say. The tax that was imposed upon the establishment (petitioner) – was an indirect tax which is defined under the law as taxes levied upon commodities before they reached the consumer, and as paid by those upon whom they ultimately fall (the consumers) not as taxes, but as part of the market price of the commodity. It was imposed upon the consumers of the goods that they manufacture and if there would be a refund, there is no way to return the same to the consumers.

Not having introduced any evidence before this court to prove positively that they had been imposed and paid the tax for which in this case they are claiming for refund to the proper governmental agency in charged thereof;

WHEREFORE, premises considered, judgment is hereby rendered enjoining the respondent Treasurer of the City of Manila to refrain henceforth from imposing tax under section 21 of the Revenue Code of Manila if it had already imposed tax on manufacturers under Section 14 of the same Code. As to the prayer in the petition for refund, the same is denied.

Without pronouncement as to costs.

SO ORDERED."

Acting on herein petitioner's "Motion for Reconsideration (Re: September 15, 2008 Decision)," the court *a quo* issued an Order dated November 7, 2008 denying said motion.

³ Order dated April 25, 2007.



On January 7, 2009, petitioner filed the instant Petition for Review and raised one ground:

"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. THUS, THE TAXES COLLECTED BY RESPONDENT BEING CLAIMED IN THE PROCEEDINGS A QUO IN THE AMOUNT OF P8,773,944.00 SHOULD BE IMMEDIATELY REFUNDED OR ORDERED TO BE CREDITED TO PETITIONER."

Petitioner interposed the following supporting arguments⁴ in its Petition for Review:

"I. THE IMPOSITION OF BOTH SECTIONS 14 AND 21 ON UNILEVER CONSTITUTES DIRECT DUPLICATE TAXATION AND THIS HAS BEEN SETTLED BY NO LESS THAN THE SUPREME COURT IN G.R. NO. 175577, 'THE TREASURER OF THE CITY OF MANILA V. SWEDISH MATCH PHILIPPINES, INC.

II. THE FACT OF PAYMENT OF THE TAX BEING REFUNDED HAS ALREADY BEEN ADMITTED BY THE RESPONDENT, AND EVEN RECOGNIZED BY THE TRIAL COURT *A QUO*.

III. THIS HONORABLE COURT HAS ALREADY RULED WITH FINALITY IN NUMEROUS INSTANCES THAT THE IMPOSITION OF THE SECTION 21 TAX ON UNILEVER CONSTITUTES DOUBLE TAXATION, IN VIEW OF THE TAXES PAID UNDER SECTION 14. HENCE, SUCH RULING IS NOW THE 'LAW OF THE CASE.'

IV. RESPONDENT CITY TREASURER HERSELF ADMITTED THROUGH HER OCTOBER 02, 2007 LETTER THAT UNILEVER IS ENTITLED TO A REFUND OF THE SECTION 21 TAXES IT HAS PAID.

V. THE COCA-COLA CASE HAS DOCTRINAL VALUE IN THAT IT STRUCK DOWN ORDINANCE NOS. 7988 AND 8011 FOR BEING NULL AND VOID. HENCE, NO TAX MAY BE COLLECTED BY VIRTUE OF SAID ORDINANCES."

In its Memorandum, petitioner made the following additional allegations:⁵

⁴ Docket, pp. 5-6.

⁵ Docket, p. 606.



"VI. THE PETITION FOR REFUND WAS FILED UNDER SECTION 196 OF THE LOCAL GOVERNMENT CODE, AND NOT UNDER SECTION 195; HENCE, THE LATTER IS NOT APPLICABLE.

VII. UNILEVER IS NOT QUESTIONING THE VALIDITY OR CONSTITUTIONALITY OF SECTION 21; HENCE, SECTION 187 IS NOT APPLICABLE.

VIII. UNILEVER IS NOT GUILTY OF FORUM-SHOPPING AS EACH PETITION FOR REFUND IT HAD FILED SEEKS A REFUND OF A DIFFERENT PAYMENT MADE."

Respondent filed her Comment on March 9, 2009. She submitted, among others, that Section 21 of the Manila Revenue Code is in the concept of indirect tax upon *end-users* of the goods and services of the business, *not* the establishment itself as it is specifically levied on "businesses subject to excise, value-added or percentage tax under the NIRC;" while Section 14 of the said Code is a tax specifically levied on the business of petitioner being a manufacturer. The tax imposed under Section 21 has already been collected by petitioner from the end-users, the same having been added by petitioner to the basic prices of its goods or services. Thus, to refund the subject tax would amount to unjust enrichment on the part of petitioner as it was not the one who shouldered the burden of the tax, and would be an injustice to the City Government and its constituents considering that the tax paid was already used to defray the expenses of the government during the previous fiscal year. Besides, Sections 14 and 21 pertain to different tax objects as they are not of the same kind and character.

Petitioner filed its Reply on March 24, 2009.



After petitioner filed its Memorandum on May 18, 2009 and for failure of respondent to file her Memorandum despite notice, this case was deemed submitted for decision on June 4, 2009.⁶

THIS COURT'S RULING

The petition is meritorious.

***Imposition of business taxes
under Sections 14 and 21 of
the Manila Revenue Code
constitutes double taxation***

The pertinent portions of Sections 14 and 21 of the Manila Revenue Code, as amended, are hereunder quoted for ready reference, to wit:

"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

XXX

XXX

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.

B) On the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors,

⁶ Resolution dated June 4, 2009.



persons who transport passengers or freight for hire, and common carriers by land, air or water, except owners of bancas and owners of animal-drawn two-wheel vehicle.

C) On the amount paid on every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, except amounts paid by the government, its political subdivisions or instrumentalities; diplomatic services; public international organizations or any of their agencies based in the Philippines; and news services;

The tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services who is required to collect and pay the tax within twenty (20) days after the end of each quarter.

D) Excisable goods subject to VAT

- (1) Distilled spirits
- (2) Wines
- (3) Tobacco products (other than cigarettes, cigars and chewing tobacco)
- (4) Tobacco specially prepared for chewing
- (5) Fireworks
- (6) Cinematographic films
- (7) Saccharine
- (8) Coal and coke
- (9) Fermented liquor, brewer's wholesale price, excluding the *ad valorem* tax
- (10) Automobiles, manufacturers or importers selling price
- (11) Non-essential goods based on wholesale price, net of excise tax and VAT
 - (a) Jewelry, whether real and imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals



used in filling, mounting or fitting of the teeth.)

- (b) Perfumes and toilet waters.
- (c) Yachts and other vessels intended for pleasure or sports.

- (12) Mineral products, based on actual market value of the annual gross output at the time of removal

(E) Excisable goods not subject to VAT

- (1) Naphtha when used as raw materials for production of petro-chemical products
- (2) Asphalt"

The above-quoted Sections are based on Sections 143(a) and (h), respectively, of the Local Government Code of 1991⁷, which read:

"SEC. 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:

xxx

xxx

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*)

⁷ Republic Act No. 7160.



Section 14 of the Manila Revenue Code imposes tax on manufacturers. Similarly, Section 21 of the same Code imposes business tax on persons who sell goods and services in the course of trade or business, and those who import goods whether for business or otherwise. Simply put, both Sections 14 and 21 of the Manila Revenue Code impose business taxes.

The points raised by the parties are not novel and have been settled by this Court in a long line of cases.⁸ This Court consistently ruled as follows:

"The foregoing issue is not one of first impression. This Court in fact already ruled in previous cases that the imposition of business taxes under Sections 14 and 21 of the Revenue Code of Manila, as amended, constitutes double taxation, as there would be taxation twice for the same subject or activity, which is the business of manufacturing; by the same public authority and within the same taxing jurisdiction, which is the City of Manila; for the same purpose, which is to generate revenue for the local taxing authority; and in the same year or taxing period.

Under the Constitution, the power of local government units to tax is subject to such guidelines and limitations as Congress may provide. The Legislature set forth such guidelines and limitations by enacting the Local Government Code of 1991. Under the Local Government Code, the power to tax of the local government units is strictly defined and delineated. One of such limitation is found in Section 143 (h) of the LGC, to wit:"⁹

⁸ *Coca-Cola Bottlers Phils., Inc. vs. The City of Manila, et al.*, C.T.A. AC No. 38, January 22, 2009; *The City of Manila, Liberty M. Toledo, in her capacity as the Treasurer of Manila and Joseph Santiago, in his capacity as Chief License Division of City of Manila vs. Coca-Cola Bottlers Phils.*, C.T.A. AC No. 32, October 24, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 47, September 10, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 45, August 13, 2008; *Unilever Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 41, June 24, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC Nos. 46, 48, and 49, May 29, 2008; *Unilever Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 26, May 26, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 33, May 21, 2008; *Ms. Liberty M. Toledo, in her official capacity as The City Treasurer of Manila and the City of Manila vs. Metro Manila Shopping Mecca Corp., and Warehouse Development Corp.*, C.T.A. AC No. 36, May 9, 2008; *The Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 28, November 28, 2007; *The Treasurer of the City of Manila vs. Alcan Packaging Starpack Corp. (formerly Starpack Phils. Corp.)*, C.T.A. EB No. 261, July 30, 2007; *Unilever Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 25, June 18, 2007; and *Swedish Match Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 15, July 21, 2006.

⁹ *Coca-Cola Bottlers Phils., Inc. vs. The City of Manila, et al.*, C.T.A. AC No. 38, January 22, 2009.



Section 143(h) of the Local Government Code of 1991 prohibits local government units, like the City of Manila, from imposing taxes twice on manufacturers, such as petitioner. It only allows the imposition of new business taxes in cases not otherwise specified in paragraphs (a) to (g) thereof. Thus, businesses taxed under Sections 14 of the Manila Revenue Code can no longer be taxed under Section 21 thereof. This is the literal import of the law. Also, subjecting respondent to tax under Section 21 of the RCM is prohibited as it will constitute the obnoxious type of double taxation.

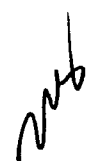
Furthermore, the Local Government Code of 1991 does not authorize local government units to impose taxes on end-users and/or to appoint withholding agents for purposes of collecting taxes. In the absence of such authority, there is no valid basis for the imposition of any tax on end-users or tax on purchases and for constituting petitioner as withholding agent for purposes of collecting such tax.

Double Taxation

"Double taxation" is defined by the Supreme Court in *Commissioner of Internal Revenue vs. Solidbank Corporation*, as follows:

"*Double taxation* means 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.**¹⁰" (*Emphasis supplied*)

¹⁰ G.R. No. 148191, November 25, 2003.



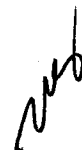
Applying the foregoing jurisprudence, there is direct duplicate taxation or the obnoxious type of double taxation in the present case. The imposition of business taxes under Section 14 and Section 21(A) of the Manila Revenue Code upon petitioner constitutes double taxation, as there was taxation twice for the same subject or activity, which is the business of manufacturing; by the same public authority, which is the City of Manila; within the same taxing jurisdiction, which is again the City of Manila; for the same purpose, which is to generate revenue for the City of Manila; and, in the same year or taxing period, which is the gross receipts for taxable year 2001.

There is no forum-shopping

The various petitions filed by petitioner to claim refund of taxes paid under Section 21 of the Manila Revenue Code involve different payments made by petitioner for different quarters of the same taxable year, or even different taxable years. Each payment made by petitioner creates a cause of action to file a claim for refund. Petitioner is therefore not guilty of forum-shopping whenever it files before a court of competent jurisdiction a petition to seek refund every time it pays taxes under Sections 14 and 21 of the Manila Revenue Code.

***Claim for refund has not
prescribed under Section 196
of the Local Government Code
of 1991***

The present case involves a claim for refund of taxes paid under Section 21 of the Manila Revenue Code. Hence, the applicable provision is Section 196 of the Local Government Code, which states:



"SEC. 196. *Claim for Refund of Tax Credit.* — 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 shall 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."

Records show that petitioner paid business tax under Section 21 of the Manila Revenue Code on January 19, 2001. Petitioner had until January 19, 2003 to file its petition before a competent court. As petitioner filed its Petition for Refund on January 17, 2003 before the court *a quo*, petitioner's claim for refund has not prescribed.

WHEREFORE, finding merit in the instant Petition for Review, the same is hereby **GRANTED**. The assailed Decision dated September 15, 2008 of the Regional Trial Court of Manila, Branch 49 in Civil Case No. 03105551 is hereby **REVERSED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of **EIGHT MILLION SEVEN HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED FORTY-FOUR PESOS (P8,773,944.00)**, representing business tax paid under Section 21 of the Manila Revenue Code.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

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
Chairperson, Former 2nd Division

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