REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CITY OF PARAÑAQUE AND DR. ANTHONY I. PULMANO, in his capacity as CITY TREASURER OF PARAÑAQUE,	**CTA *EB* NO. 2130** *(CTA AC No. 189)* *(Civil Case No. 07-0370)*
Petitioners,	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
	Promulgated:
KUEHNE + NAGEL, INC., *Respondent.*	JUL 17 2020 3:54 p.m.

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D E C I S I O N

MODESTO-SAN PEDRO, J.:

The Case

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")** filed last 4 October 2019[1] with respondents' **COMMENT/OPPOSITION (Re: Petition for Review dated October 3, 2019) ("Comment")** filed on 18 November 2019.[2]

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[1] See Petition, Records, Vol. 1, pp. 31-59.
[2] See Comment, Records, Vol. 1, pp. 218-239.

The Parties

Petitioner **CITY OF PARAÑAQUE** is a local government unit created by Republic Act No. 8507, otherwise known as the "Charter of the City of Parañaque" ("RA 8507").[3]

Petitioner **DR. ANTHONY L. PULMANO** is the current duly appointed City Treasurer of the City of Parañaque, empowered to perform the duties stated in Section 23 of RA 8507 and Section 470 of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" ("LGC"), including, *inter alia,* the collection of all taxes, fees, and charges.[4]

Both petitioners may be served with notices and other court processes through the City Legal Office, 2nd Floor, Paranaque City Hall, San Antonio Drive, San Antonio Valley I, Brgy. San Antonio, Parañaque City.[5]

Respondent **KUEHNE + NAGEL, INC.** is a domestic corporation engaged in the business of international freight and/or cargo consolidation and forwarding by means of air and sea transport with principal office at 5th Floor Unit 501-H, 507-508-H, Harbor Drive, Five E-Com Center, Pacific Drive Extension, Mall of Asia Complex, Pasay City.[6]

The Facts

On 25 July 2007, respondent received a Notice of Assessment from petitioners assessing the former deficiency local business tax ("LBT") for taxable years ("TY") 2001 to 2005 in the total amount of Php37,695,480.70, inclusive of surcharges and interests, broken down as follows:[7]

Base Year/Taxable Year	Gross Receipts per Audited Financial Statements ("AFS")	Gross Receipts as declared by petitioner	Tax Due	Tax Paid	Deficiency
2000/2001	400,000.00	57,144,484.00	2,001,500.00	287,222.42	1,714,277.58
2001/2002	400,000.00	62,852,932.00	2,001,500.00	315,764.66	1,685,735.34
2002/2003	475,960,816.97	66,001,879.00	2,381,304.08	331,509.40	2,049,794.69
2003/2004	1,223,860,625.00	62,358,270.00	6,120,803.13	313,291.35	5,807,511.78
2004/2005	1,516,279,002.00	167,054,600.00	7,582,895.01	836,773.00	6,746,122.01
Total					18,003,441.39
Surcharge					4,500,860.35
Interest					15,191,178.95
TOTAL					**37,695,480.70**

3 See Petition, Records, Vol. 1, p. 32.
4 *Ibid.*
5 *Ibid.*
6 See Decision by this Court's Special First Division, CTA AC No. 189, Records, Vol. 1, p. 13.
7 *Id.*, at pp. 13-14.

The deficiency LBT assessment arose from the difference between the Gross Receipts per AFS and Gross Receipts as declared by respondent.[8]

On 4 September 2007, respondent filed a Protest dated 3 September 2007 before the Office of petitioner Treasurer arguing that payments made for arrastre, wharfage fees, documentation, trucking, handling charges, storage fees, duties, and taxes, among others, which were advanced on behalf of its customers should not be considered as part of the gross receipts for purposes of computing LBT, fees, and charges. In a Letter dated 10 September 2007, petitioner Treasurer required respondent to submit all relevant documents, which the latter complied with. In addition to such documents, respondent also submitted a copy of a ruling issued by the Ministry of Finance in favor of NAKUFREIGHT (Philippines), respondent's former name, which provided that respondent's gross receipts do not include the clients' reimbursement for advances made by respondent on their behalf.[9]

In a Letter dated 23 October 2007, respondent's Protest was denied by petitioner Treasurer. [10]

On 13 November 2007, respondent filed a Petition for Review before the Regional Trial Court of Parañaque City ("RTC-Parañaque").[11] In the Pre-Trial Order dated 20 October 2007, the parties agreed on the following issues:[12]

> "For respondent:
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> a. Whether or not the LBT of respondent from TY 2001 to 2005 should be computed based on the net receipt of the company (*i.e.*, excluding payment that the company received for arrastre, documentation, trucking handling charges, storage, fees, duties and taxes among others, which are only considered reimbursable expenses);
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> b. Whether or not the act of respondent in computing the LBT based on the net proceeds is not under declaration of its gross receipts for purposes of the LBT based on charges;
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> c. Whether or not petitioners had lost its right to assess the LBT due to prescription of the TY 2001 assessment; and
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> d. Whether or not the TY 2001 LBT assessment issued by petitioners has already prescribed.

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[8] *Id.*, at p. 14.
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Id.*, at p. 15.

For petitioners:

a. Whether or not respondent is liable for LBT from TY 2001 to 2005 computed based on its gross receipts per AFS amounting to Php37,695,480.70, including surcharges and interests; and

b. Whether or not the alleged reimbursable expenses are part of respondent's gross receipts in assessing LBT."

On 8 February 2017, RTC-Parañaque dismissed respondent's Petition for Review for lack of merit.[13] Respondent filed a Motion for Reconsideration, but this was later denied in a Resolution dated 8 June 2017.[14]

On 7 August 2017, respondent filed a Petition for Review before the Court in Division. On 15 November 2018, the Court in Division granted the Petition for Review, *viz:*[15]

> "**WHEREFORE**, the petition is **GRANTED**. The Decision of the Regional Trial Court of Parañaque City, Branch 257, in Civil Case No. 07-0370 dated February 8, 2017, and its Order dated June 8, 2017, are **REVERSED AND SET ASIDE**. The Assessments for local business tax for taxable years 2000 to 2004 are hereby **CANCELLED AND/OR WITHDRAWN**."

Petitioners filed a Motion for Reconsideration which was denied in a Resolution dated 15 August 2019.[16]

On 18 September 2019, petitioners filed a Motion for Extension of Time to File Petition for Review ("Motion for Extension") before this Court *En Banc*.[17] On 18 September 2019, petitioners filed a Manifestation that they made an error in the caption of the Motion for Extension.[18] In a Resolution dated 20 September 2019, this Court *En Banc* granted the Motion for Extension and noted the Manifestation.[19]

On 4 October 2019, petitioners filed the instant Petition.[20]

On 21 October 2019, this Court *En Banc* issued a Resolution directing respondent to file a Comment.[21] On 7 November 2019, respondent filed a

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[13] See Annex "I", Petition, Records, Vol. 1, pp. 136-139.
[14] See Annex "J", Petition, Records, Vol. 1, pp. 140-154; See Annex "K", Petition, Records, Vol. 1, p. 155.
[15] See Decision by this Court's Special First Division, CTA AC No. 189, Records, Vol. 1, p. 26.
[16] Records, Vol. 1, p. 10.
[17] Records, Vol. 1, pp. 1-3.
[18] Records, Vol. 1, pp. 28-29.
[19] Records, Vol. 1, p. 30.
[20] Records, Vol. 1, pp. 31-59.
[21] Records, Vol. 1, pp. 210-212.

Motion for Extension of Time to File Comment,[22] which was granted by this Court *En Banc* on 11 November 2019.[23]

On 18 November 2019, respondent filed the Comment.[24]

In a Resolution dated 5 December 2019, this Court *En Banc* submitted the Petition for decision.[25]

The Assigned Errors

In the Petition, petitioners raised the following issues:[26]

"A.

WHETHER OR NOT THE SPECIAL FIRST DIVISION ERRED IN RULING THAT BY VIRTUE OF SECTION 133(J) THE CITY OF PARAÑAQUE CANNOT IMPOSE LOCAL BUSINESS TAX ON RESPONDENT KUEHNE NOTWITHSTANDING THE FACT THAT IT WAS NOT RAISED DURING TRIAL BY KUEHNE NAGEL THEREBY DEPRIVING THE PETITIONERS OF ITS RIGHT TO DUE PROCESS;

B.

WHETHER OR NOT THE SPECIAL FIRST DIVISION ERRED IN RULING THAT THE TAX BASE FOR LOCAL BUSINESS TAX PURPOSES ON INCOME PAYMENTS TO ENTITIES INVOLVED IN THE FREIGHT FORWARDING BUSINESS IS THE GROSS COMMISSION RECEIVED BY SUCH ENTITIES."

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22 Records, Vol. 1, pp. 213-216.
23 Records, Vol. 1, pp. 217-239.
24 See Comment, Records, Vol. 1, pp. 218-239.
25 Records, Vol. 1, pp. 240-242.
26 See Petition, Records, Vol. 1, pp. 38-39.

Arguments of the Parties

In the Petition, petitioners alleged the following:

1. Respondent's exemption from LBT under ***Section 133(j) of the LGC*** was never raised as an issue in the Protest, Petition for Review before the RTC-Parañaque, and Petition for Review before the Court in Division;[27]

2. Under ***Section 7 of Rule 18 of the 1997 Revised Rules of Civil Procedure,*** a Pre-Trial Order shall define and limit the issues to be tried. It shall control the course of action, unless modified before trial to prevent manifest injustice;[28]

    a. In the proceedings before the RTC-Parañaque, the Pre-Trial Order therein[29] was never modified. Following said provision, the issues to be tried should be limited only to whether reimbursable expenses are part of respondent's gross receipts in assessing LBT, and whether the right to assess LBT has already prescribed;[30]

    b. Respondent never raised the issue of its non-taxability based on the inherent limitation of local governments;[31]

3. Even assuming that the issue of respondent's non-taxability was made an issue in the present Petition, this Court *En Banc* still cannot take cognizance of the same. ***Chinatrust (Phils) Commercial Bank v. Philip Turner***[32] provides that issues not raised during trial cannot be instituted for the first time on appeal to ensure fairness in proceedings;[33]

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27 See Petition, Records, Vol. 1, p. 39.
28 See Petition, Records, Vol. 1, p. 40.
29 For respondent:
a. Whether or not the LBT of respondent from TY 2001 to 2005 should be computed based on the net receipt of the company (*i.e.*, excluding payment that the company received for arrastre, documentation, trucking handling charges, storage, fees, duties, and taxes among others, which are only considered reimbursable expenses);
b. Whether or not the act of respondent in computing the LBT based on the net proceeds is not under declaration of its gross receipts for purposes of the LBT based on charges;
c. Whether or not petitioners had lost its right to assess the LBT due to prescription of the TY 2001 assessment; and
d. Whether or not the TY 2001 LBT assessment issued by petitioners has already prescribed.
For petitioners:
a. Whether or not respondent is liable for LBT from TY 2001 to 2005 computed based on its gross receipts per AFS amounting to Php37,695,480.70, including surcharges and interests; and
b. Whether or not the alleged reimbursable expenses are part of respondent's gross receipts in assessing LBT.
30 See Petition, Records, Vol. 1, p. 41.
31 *Ibid.*
32 G.R. No. 191458, 3 July 2017.
33 See Petition, Records, Vol. 1, p. 41.

4. Apart from the fact that the Court in Division reversed the Decision of RTC-Parañaque on findings of fact which were not established and proven during trial, it also disregarded various rules, *viz*:[34]

   a. The rule on estoppel;
   b. The rule which states that defenses not included in the cause of action are deemed waived;
   c. The rule that the assessment and the ordinance must be put in issue;
   d. The rule that issues raised during Pre-Trial shall govern the trial itself;
   e. The rule on relevance of evidence in applying irrelevant administrative issuances to LBT;
   f. The rule on strict construction of tax exemptions; and
   g. The rule that only issues raised shall be subject of review;

5. ***City of Manila, et al. v. Hon. Angel Valera Colet, et al.***[35] is not applicable to the case at bar. The petitioners in said case initiated a direct attack against the assessment and ordinance of the City of Manila. This presupposes that petitioners have sufficiently established that:[36]

   a. they are common carriers;
   b. they are paying common carrier's tax;
   c. they have instituted a direct attack against petitioners' Revenue Code;
   d. they have initiated a direct attack against the validity of the assessment made by petitioners; and
   e. through law, rules and regulations, they are exempt from taxation of local government units ("LGUs");

6. Respondent failed to establish these matters considering that it neither put in issue its alleged exemption from LBT nor raised the constitutionality of the assessment and respondent's Revenue Code as an issue; [37]

7. The Court in Division easily believed respondent's contention that all of the Php37 Million LBT assessment and corresponding tax base pertain to reimbursements without even verifying the facts. The said

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34 See Petition, Records, Vol. 1, p. 42.
35 See Petition, Records, Vol. 1, pp. 79-82.
36 See Petition, Records, Vol. 1, pp. 43-44.
37 See Petition, Records, Vol. 1, p. 44.

contention is self-serving and premature to rule on considering that these should have been raised in trial;[38]

8. This Court recognizes the LGU's power to tax in ***KUEHNE + NAGEL, Inc. v. City of Parañaque.***[39] In said case, this Court affirmed the RTC-Parañaque's dismissal of respondent's Petition for Review contesting the LBT assessment for TY 2009-2013 on the ground that prescription already set in when the complaint was filed with RTC-Parañaque. By implication, this Court recognized the authority of petitioners to assess and collect LBT; [40]

9. The Court in Division erroneously ruled that the tax base for LBT purposes on income payments to freight forwarders is the gross commission;[41]

10. The supports used by the Court in Division in ruling the same (*i.e.*, ***Revenue Memorandum Circular No. 35-2006 ("RMC 35-06")*** and ***BIR Ruling Nos. DA-005-07 and DA-511-06)*** are inapplicable to the LBT considering that they involve national taxes while LBT is a local tax;[42]

    a. ***RMC 35-06*** is a guideline on how to treat transactions of freight forwarders for purposes of paying value-added tax ("VAT") and expended withholding tax ("EWT");[43]

    b. ***BIR Ruling Nos. DA-005-07 and DA-511-06*** suggests that reimbursements are not taxable income and not subject to VAT and EWT;[44]

11. The term "gross receipts" should be applied as it is explicitly defined under the ***LGC,*** which provides:[45]

    a. "(n) 'Gross Sales or Receipts' include the total amount of money or its equivalent **representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits** or advance payments actually or constructively received during the taxable quarter <u>for the services performed or to be performed for</u>

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38 *Ibid.*
39 C.T.A. AC No. 206, 18 July 2019.
40 See Petition, Records, Vol. 1, pp. 44-45.
41 See Petition, Records, Vol. 1, p. 45.
42 See Petition, Records, Vol. 1, p. 46.
43 See Petition, Records, Vol. 1, pp. 49-52.
44 See Petition, Records, Vol. 1, pp. 52-53.
45 *Ibid.*

another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT)";[46]

b. Equating gross receipts to mean gross commissions for freight forwarders may be correct for the income taxation perspective, but for LBT, it is not;[47]

c. Under ***Section 131 (n) of the LGC,*** gross receipts include the total amount of money representing the contract price including the amounts charged and materials supplied with these services and shall exclude only the following:[48]

   i. Discounts;
   ii. Sales Returns;
   iii. Excise Tax; and
   iv. VAT;

12. Nowhere in said provision does it provide that the reimbursements identified by respondent may be deducted from gross receipts. In accordance with ***Commissioner of Internal Revenue v. Bank of the Philippine Islands,***[49] gross receipts should mean the entire receipts without any deduction;[50]

13. Under the ***LGC,*** respondent's LBT is based on gross sales or receipts unlike in income tax and VAT wherein the petitioner may validly claim deductions for reimbursable expenses. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation;[51] and

14. Tax exemptions are strictly construed against the taxpayer. Before respondent can validly claim exemption due to the exclusion of reimbursements for purposes of LBT, it must sufficiently prove to the taxing authority its entitlement to such exemption or exclusion in consonance with the principle that claims for tax exemption is strictly construed against the taxpayer.[52]

In their Comment, respondents alleged the following:

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46 ***Section 131 (n), LGC.***
47 See Petition, Records, Vol. 1, p. 46.
48 See Petition, Records, Vol. 1, p. 47.
49 G.R. No. 147375, 26 June 2006.
50 See Petition, Records, Vol. 1, p. 47.
51 See Petition, Records, Vol. 1, p. 48.
52 See Petition, Records, Vol. 1, pp. 53-57.

1. Petitioners failed to attach the proof of authority of petitioner Treasurer to file the Petition;[53]

    a. In ***City Government of Tagum v. National Transmission Corp.,***[54] this Court dismissed a Petition for Review filed by the City Government of Tagum due to the absence of a *Sangguniang Panglungsod* Resolution authorizing the City Treasurer to initiate the filing of the same;

2. This Court has authority to rule on issues not raised during trial if the same is necessary in reaching a just conclusion of the case; [55]

    a. In ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc,***[56] and ***Nippon Express (Philippines) Corp. v. CIR,***[57] the Supreme Court ruled that this Court is not confined to the issues raised by the parties during trial but may likewise rule upon related issues necessary to achieve an orderly disposition of the case; [58]

    b. Disallowing arguments or issues not raised in trial as it would be "unfair to the adverse party who would have no opportunity to present further evidence material to the new theory," is only applicable if the new issue raised is one of fact or mixed issues of fact and law, and not purely legal in nature;[59]

    c. The issue on respondent's taxability for LBT under ***Section 133 (j) of the LGC*** is purely legal. Petitioners already admitted in page 2 of their Memorandum that respondent is "engaged in the business of international freight and/or cargo consolidation and forwarding by means of air and sea transportation." Hence, it was well within the jurisdiction of this Court to settle such issue without violating due process;[60]

3. This Court correctly utilized existing laws, jurisprudence, and rulings to accurately and justifiably define the term "gross receipts" that serves as basis for the imposition of LBT; [61]

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[53] See Comment, Records, Vol. 1, pp. 220-221.
[54] C.T.A. AC No. 190 (UDK-SP 015), 14 November 2018.
[55] See Comment, Records, Vol. 1, pp. 222-225.
[56] G.R. No. 183408, 12 July 2017.
[57] G.R. No. 191495, 23 July 2018.
[58] See Comment, Records, Vol. 1, pp. 222-223.
[59] See Comment, Records, Vol. 1, p. 224.
[60] See Comment, Records, Vol. 1, pp. 224-225.
[61] See Comment, Records, Vol. 1, pp. 225-235.

a. The Supreme Court expounded in ***City of Manila, et al. v. Hon. Angel Valera Colet, et al.***[62] the limitations of an LGU's power to tax. Hence, its use in the Court in Division's Decision was well founded since it was similarly premised on the taxing power of petitioners; [63]

b. Petitioners' argument that the Court in Division committed an error (in ruling that all of the Php37 Million LBT assessment is by way of reimbursement without even verifying the facts) is unfounded since respondent adequately proved such matter through Exhibits "Z-1" to "Z-57." All the necessary factual antecedents, such as respondent's type of business and the nature of the expenses, have either been admitted by petitioners or sufficiently proven by respondent;[64]

c. This Court's recognition of the LGU's power to tax does not necessarily mean that petitioners may impose LBT on respondent;[65]

d. The Court in Division did not err in utilizing ***RMC 35-06,*** and ***BIR Ruling Nos. DA-005-07 and DA-511-06*** in determining what constitutes "gross receipts";[66]

   i. In defining "gross receipts" under the ***LGC,*** Congress enumerated inclusions and exclusions, *viz:*[67]

   Inclusions:

   1. contract price;
   2. compensation or service fee;
   3. amount charged or materials supplies with the services; and
   4. deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed;

   Exclusions

   1. discounts if determinable at the time of sales;
   2. sales return;
   3. Excise tax; ⱱ

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[62] See Petition, Records, Vol. 1, pp. 79-82.
[63] See Comment, Records, Vol. 1, p. 229.
[64] *Ibid.*
[65] See Comment, Records, Vol. 1, p. 230.
[66] *Ibid.*
[67] See Comment, Records, Vol. 1, p. 231.

4. VAT;

ii. Based on this parsed definition of "gross receipts," reimbursable expenses do not fall under any of the enumerated inclusions;[68]

1. Reimbursable expenses do not constitute "contract price" since respondent is not privy to the delivery of services or production of goods by third-party suppliers. It merely arranges for the execution of a contract between the parties;[69]

2. Reimbursable expenses do not form part of "compensation or service fee" since respondent is not the provider of the service or goods to which these reimbursable expenses pertain;[70]

3. Reimbursable expenses do not form part of "amount charged or materials supplied with the services" and "deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed" as these were not incurred by respondent for its clients, but incurred by its clients that were advanced by respondent and paid to third party service provider;[71]

iii. The Court in Division's use of rulings and issuances pertaining to national taxes simply provide guidance in the proper interpretation of "gross receipts";[72]

1. Petitioners use of ***Commissioner of Internal Revenue v. Bank of the Philippine Islands***[73] to buttress their contention is similarly a ruling on national taxes and not local taxes;[74]

iv. The Bureau of Local Government Finance ("BLGF") Opinion dated 18 January 2016 is instructive of what

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68 *Ibid.*
69 *Ibid.*
70 See Comment, Records, Vol. 1, p. 232.
71 *Ibid.*
72 *Ibid.*
73 G.R. No. 147375, 26 June 2006.
74 See Comment, Records, Vol. 1, p. 233.

constitutes gross income (*i.e.,* it does not include reimbursements for costs);[75]

v. To include reimbursable expenses in respondent's gross receipts runs contrary to the fundamental principles of local government taxation under ***Section 130 of the LGC;***[76]

4. Petitioners confused the term "exemption" with "inapplicability"; [77]

   a. Respondent is not invoking a tax exemption; rather, it is arguing that the term "gross receipts" does not apply to reimbursable expenses;[78] and

   b. Considering the foregoing, the legal principle applicable is that tax statutes are strictly construed against the government and liberally construed in favor of the taxpayer. [79]

The Ruling of the Court En Banc

Following a studied review of the arguments, we ***DENY*** *the Petition for lack of merit.*

Petitioner Treasurer failed to present proof of his authority to file the present Petition.

Section 22 of the LGC provides LGUs with the power to sue, *viz:*

"SEC. 22. *Corporate Powers.* –

(a) Every local government unit, as a corporation, shall have the following powers:

(1) To have continuous succession in its corporate name;
(2) To sue and be sued;
(3) To have and use a corporate seal;
(4) To acquire and convey real or personal property;
(5) To enter into contracts; and
(6) To exercise such other powers as are granted to corporations, subject to the limitations provided in this Code and other laws."

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75 See Comment, Records, Vol. 1, pp. 233.-234
76 See Comment, Records, Vol. 1, p. 234.
77 See Comment, Records, Vol. 1, pp. 235-237.
78 See Comment, Records, Vol. 1, pp. 235-236.
79 See Comment, Records, Vol. 1, p. 236.

(Emphasis and underscoring, Ours)

Section 458 (a) (1) (vii) of the LGC implements this provision, *to wit:*

"SEC. 458. - *Powers, Duties, Functions and Compensation.* –

(a) **The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions** and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and **in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code,** and shall:

(1) **Approve ordinances and pass resolutions** necessary for an efficient and effective city government, and in this connection, shall:

xxx xxx xxx

(vii) Subject to the provisions of this Code and pertinent laws, **determine the powers and duties of officials and employees of the city;"**

(Emphasis and underscoring, Ours)

Based on these provisions, the Sangguniang Panglungsod, as the legislative body of a city, is mandated to approve resolutions to delineate the manner by which it exercises its power to sue. Moreover, the Sangguniang Panglungsod shall also pass resolutions determining the powers and duties of city officials, such as herein petitioner Treasurer. Thus, before a city official can exercise the City's power to sue, a law granting such prerogative must first be passed (*i.e.*, the City's Charter). Otherwise, a city official can only exercise such power if a resolution is passed by the Sangguniang Panglungsod authorizing him to sue on behalf of the City.

The City of Parañaque's Charter does not provide an express grant of power to respondent Treasurer to initiate and prosecute suits. ***Section 23 of RA 8507*** provides, *to wit:*

"**Section 23.** *The City Treasurer.—*

(a) The city treasurer shall be appointed by the Secretary of Finance from a list of at least three (3) ranking eligible recommendees of the city mayor, subject to Civil Service Law, rules and regulations.

(b) The city treasurer shall be under the administrative supervision of the city mayor, to whom he shall report regularly on the tax collection efforts of the City.

(c) No person shall be appointed city treasurer unless he is a citizen of the Philippines, a resident of the City of Parañaque, of good moral character, a holder of a college degree preferably in commerce, public administration or law from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in treasury or accounting service for at least five (5) years.

(d) The city treasurer shall receive such compensation, emoluments and allowances as may be determined by law.

(e) The city treasurer shall take charge of the treasury office, and shall:

(1) Advise the city mayor, the sangguniang panlungsod, and other local government and national officials concerned regarding disposition of local government funds and on such other matters relative to public finance;

(2) Take custody and exercise proper management of the funds of the City;

(3) Take charge of the disbursement of all funds of the City and such other funds the custody of which may be entrusted to him by law or other competent authority;

(4) Inspect private commercial and industrial establishments within the jurisdiction of the City in relation to the implementation of tax ordinances, pursuant to the provisions of the Local Government Code of 1991;

(5) Maintain and update the tax information system of the City; and

(6) Perform such other duties and functions and exercise such other powers as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991, and those that are prescribed by law or ordinance."

Nothing in said provision authorizes petitioner Treasurer to file and prosecute suits on behalf of petitioner City of Parañaque. Nonetheless, petitioner Treasurer could have been authorized to file the present Petition by a resolution issued by the Sangguniang Panglungsod of petitioner City of Parañaque. However, no such resolution was presented by petitioners as proof of petitioner Treasurer's authority to exercise petitioner City of Parañaque's power to sue.

In ***Social Justice Society (SJS), et al. v. Hon. Jose L. Atienza,***[80] the Supreme Court had a chance to rule that local ordinances are not subject to mandatory judicial notice of the courts, *viz:*

> "While courts are required to take judicial notice of the laws enacted by Congress, the rule with respect to local ordinances is different. Ordinances are not included in the enumeration of matters covered by mandatory judicial notice under Section 1, Rule 129 of the Rules of Court."

If the courts are not obligated to mandatorily take judicial notice of local ordinances, then the more that courts are not required to take judicial notice of mere resolutions issued by a Sangguniang Panglungsod. Hence, in order for a court to consider an LGU resolution in deciding a case, the same must first be presented before the court.

Petitioners' failure to present a resolution by the Sangguniang Panglungsod of petitioner City of Parañaque authorizing petitioner Treasurer to file and prosecute the Petition only shows that petitioner Treasurer has no authority to file a case on behalf of petitioner City of Parañaque. Consequently, this case should be dismissed as the person who initiated the Petition, petitioner Treasurer, **DR. ANTHONY L. PULMANO,** has no authority to do so.

Respondent is a freight forwarder, the gross receipts of which cannot be subjected to LBT.

Even assuming that petitioner Treasurer was duly authorized to file and prosecute the present case, the Petition still lacks merit.

Petitioners argue that the Court in Division cannot rule on respondent's alleged tax exemption under ***Section 133 (j) of the LGC*** considering that this matter was never raised as an issue in the Protest, Petition for Review before the RTC-Paranaque, and Petition for Review before the Court in Division.

This is misplaced.

In ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,***[81] the High Court ruled that this Court may resolve issues not raised by the parties, *viz:*

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80 G.R. No. 156052, 13 February 2008.
81 G.R. No. 183408, 12 July 2017.

> "On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.
>
> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **<u>the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.</u>** The text of the provision reads:
>
>> 'SECTION 1. *Rendition of judgment.* - x xx
>>
>> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.'
>
> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."
>
> (Emphasis and Underscoring, Ours)

The issue of whether respondent is exempt from LBT on its gross receipts is an issue necessary for the orderly disposition of the present Petition. If indeed respondent's gross receipts are exempt from LBT, then the LBT assessment will be nullified. Consequently, this matter may be ruled upon by this Court despite the parties' failure to raise the same as an issue to be tried upon.

Crucial to this issue is whether respondent is indeed a freight forwarder, hence qualified under ***Section 133 (j) of the LGC,*** which provides, as follows:

> "SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> xxx xxx xxx
>
> **<u>(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;"</u>**
>
> (Emphasis and Underscoring, Ours)

This limitation provided by the cited provision on an LGU's power to tax was expounded by the Supreme Court in ***City of Manila, et al. v. Hon.***

Angel Valera Colet, et al.; Maersk-Filipinas, et al. v. City of Manila, et al.; Eastern Shipping Lines v. City Council of Manila, et al.; William Lines, Inc. v. Regional Trial Court of Manila, Branch 32, et al.; PNOC Shipping and Transport Corporation v. Han. Juan T. Nabong, Jr.; Maersk-Filipinas, Inc., et al. v. City of Manila, et al.; Casco Container Lines, et al. v. City of Manila, et al.; Sulpicio Lines, Inc. v. Regional Trial Court of Manila, Branch 32, et al.; Association of International Shipping, Lines, Inc., in its own behalf and in representation of its Members v. City of Manila, et al.; Dongnama Shipping Co., Ltd., et al. v. Court of Appeals, et al.,[82] *viz:*

> "Section 133(j) of the LGC prevails over Section 143(h) of the same Code...
>
> xxx xxx xxx
>
> First, Section 133(j) of the LGC is a specific provision that explicitly withholds from any LGU, i.e., whether the province, city, municipality, or barangay, the power to tax the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water.
>
> xxx xxx xxx
>
> The succeeding proviso of Section 143(h) of the LGC, viz., '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[,]' is not a specific grant of power to the municipality or city to impose business tax on the gross sales or receipts of such a business. Rather, the proviso only fixes a maximum rate of imposable business tax in case the business taxed under Section 143(h) of the LGC happens to be subject to excise, value added, or percentage tax under the NIRC.
>
> The omnibus grant of power to municipalities and cities under Section 143(h) of the LGC cannot overcome the specific exception/exemption in Section 133(j) of the same Code. This is in accord with the rule on statutory construction that specific provisions must prevail over general ones. A special and specific provision prevails over a general provision irrespective of their relative positions in the statute. Generalia specialibus non derogant. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.
>
> In the case at bar, the sanggunian of the municipality or city **<u>cannot enact an ordinance imposing business tax on the gross receipts of transportation contractors, persons engaged in the</u>**

[82] G.R. Nos. 120051, 121613, 121675, 121704, 121720-28, 121847-55, 122333, 122335, 122349, 124855, 10 December 2014.

<u>transportation of passengers or freight by hire, and common carriers by air, land, or water, when said sanggunian was already specifically prohibited from doing so. Any exception to the express prohibition under Section 133(j) of the LGC should be just as specific and unambiguous.</u> Second, the construction adopted by the Court gives effect to both Sections 133(j) and 143(h) of the LGC. In construing a law, care should be taken that every part thereof be given effect and a construction that could render a provision inoperative should be avoided, and inconsistent provisions should be reconciled whenever possible as parts of a harmonious whole.

xxx xxx xxx

And fourth, the construction adopted by the Court is in accordance with the consistent intention of the laws to withhold from the LGUs the power to tax transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water.

Even prior to Section 133(j) of the LGC, Section 5(e) of Presidential Decree No. 231, otherwise known as The Local Tax Code, as amended, already limited the taxing powers of LGUs as follows:

> SEC. 5. Common limitations on the taxing powers of local government. – The exercise of the taxing powers of provinces, cities, municipalities and barrios shall not extend to the imposition of the following:
>
> x x x x
>
> (e) Taxes on the business of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carries by air, land or water except as otherwise provided in this Code, and taxes or fees for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof;
>
> The Court, in First Philippine Industrial Corp. v. Court of Appeals, expounded on the lawmakers' reason for exempting the gross receipts of common carriers from the taxing powers of the LGUs:
>
> From the foregoing disquisition, there is no doubt that petitioner is a 'common carrier' and, therefore, exempt from the business tax as provided for in Section 133 (j), of the Local Government Code x x x
>
> x x x x
>
> The deliberations conducted in the House of Representatives on the Local Government Code of 1991 are illuminating:
>
> 'MR. AQUINO (A). Thank you, Mr. Speaker.
> Mr. Speaker, we would like to proceed to page 95, line 1. It states: 'SEC. 121 (now Sec. 131). Common Limitations on the Taxing Powers of Local Government Units.' . . .
>
> MR. AQUINO (A.). Thank you Mr. Speaker.
> Still on page 95, subparagraph 5, on taxes on the business of transportation. This appears to be one of those being deemed to be exempted from the taxing powers of the local government units. May we know the reason why the transportation business is being excluded from the taxing powers of the local government units?

> MR. JAVIER (E.). Mr. Speaker, there is an exception contained in Section 121 (now Sec. 131), line 16, paragraph 5. It states that local government units may not impose taxes on the business of transportation, except as otherwise provided in this code.
>
> Now, Mr. Speaker, if the Gentleman would care to go to page 98 of Book II, one can see there that provinces have the power to impose a tax on business enjoying a franchise at the rate of not more than one-half of 1 percent of the gross annual receipts. So, transportation contractors who are enjoying a franchise would be subject to tax by the province. That is the exception, Mr. Speaker.
>
> What we want to guard against here, Mr. Speaker is the imposition of taxes by local government units on the carrier business. Local government units may impose taxes on top of what is already being imposed by the National Internal Revenue Code which is the so-called 'common carriers tax.' We do not want a duplication of this tax, so we just provided for an exception under Section 125 (now Section 137) that a province may impose this tax at a specific rate.
>
> MR. AQUINO (A.). Thank you for that clarification, Mr. Speaker. . . .
>
> It is clear that the legislative intent in excluding from the taxing power of the local government unit the imposition of business tax against common carriers is to prevent a duplication of the so-called 'common carrier's tax.'

> Petitioner is already paying three (3%) percent common carrier's tax on its gross sales/earnings under the National Internal Revenue Code. To tax petitioner again on its gross receipts in its transportation of petroleum business would defeat the purpose of the Local Government Code. (Citations omitted.)
>
> Consistent with the foregoing legislative intent, Republic Act No. 7716, more popularly known as the Expanded Value-Added Tax (E-VAT) Law, which took effect after the LGC on May 28, 1994, expressly amended the NIRC of 1977 and added to Section 115 of the latter on 'Percentage tax on carriers and keepers of garages,' the following proscription: 'The gross receipts of common carriers derived from their incoming and outgoing freight shall not be subjected to the local taxes imposed under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.'"
>
> (Emphasis and Underscoring, Ours)

As duly found by the Court in Division, respondent is engaged in the business of freight forwarding.[83] Moreover, petitioners, on page 2 of the Memorandum which they filed before the Court in Division, admitted that respondent is engaged in international freight and/or cargo consolidation and forwarding by means of air and sea transportation. Thus, there is no question that respondent is a common carrier.

Following this factual finding, respondent's gross receipts are not subject to local business tax following the limitation provided in ***Section 133***

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[83] See Decision, Records, Vol. 1, p. 23.

(j) of the LGC on the LGUs power to tax. Consequently, petitioners' LBT assessment on respondent's gross receipts is void.

From the foregoing discussions, this Court *En Banc* deems it unnecessary to resolve the remaining issues.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 15 November 2018 and Resolution dated 15 August 2019 promulgated by the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
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.

ROMAN G. DEL ROSARIO
Presiding Justice