REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ALABANG SUPERMARKET CORPORATION, Petitioner,	**C.T.A. E.B. No. 386 (C.T.A. AC No. 22)**
- versus -	Present:
CITY GOVERNMENT OF MUNTINLUPA, REPRESENTED BY MAYOR JAIME R. FRESNEDI, THE CITY TREASURER OF MUNTINLUPA, AND THE SANGGUNIANG PANLUNGSOD OF MUNTINLUPA CITY, Respondent.	**ACOSTA,** *P.J.* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
	Promulgated: **FEB 1 2 2009** 2:40 p.m.

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DECISION

UY, J.:

This is a Petition for Review filed before the Court of Tax Appeals *En Banc* on May 13, 2008 seeking a review of the Decision[1] and Resolution dated December 12, 2007 and April 4, 2008, respectively, rendered by the First Division of this Court (Court in Division), in the CTA AC No. 22 entitled "Alabang Supermarket Corporation vs. The City Government of Muntinlupa, represented by Mayor Jaime R. Fresnedi, The City Treasurer of Muntinlupa, and the Sangguniang Panlungsod of Muntinlupa City". The dispositive portions thereof read as follows:

[1] Ponencia of Presiding Justice Ernesto D. Acosta concurred by Associate Justice Lovell R. Bautista, and Associate Justice Caesar A. Casanova.

Decision promulgated on December 12, 2007:

"**WHEREFORE**, in view of the foregoing, this instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, this case is **REMANDED** back to the lower court for the proper recomputation of petitioner's business tax liability covering the period from January 2, 1999 to December 15, 2000 only, taking into consideration Section 191 of the LGC. Any excess on the amount already paid by petitioner shall then be refunded by way of a tax credit. Furthermore, respondents are likewise **ORDERED to DESIST** from further collecting the 3% fixed business taxes pursuant to Section 2 of Ordinance No. 98-015.

SO ORDERED."[2]

Resolution promulgated on April 4, 2008:

"In view of the foregoing, both Motions are hereby **DENIED** for lack of merit. The assailed Decision is upheld *in toto*.

SO ORDERED."[3]

THE FACTS

The facts[4], as found by the Court in Division, are as follows:

Petitioner, Alabang Supermarket Corporation, is a domestic corporation duly organized and existing under Philippine Laws. It operates the Alabang branch of the Makati Supermarket, a distributor and dealer of, among others, liquor, beer, wine, distilled spirits, cigarettes and tobacco products.

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[2] Docket, pp. 46 – 47; Decision pp. 15 – 16.
[3] Docket p. 58; Resolution p. 11.
[4] Docket, pp. ; Decision, pp. .

On the other hand, respondents City Treasurer of Muntinlupa, herein represented by Ms. Nelia A. Barlis; The City Government of Muntinlupa, herein represented by Mayor Jaime R. Fresnedi; and the Sangguniang Panglungsod of Muntinlupa, are the government offices which enacted and are tasked to implement the assailed Ordinance No. 98-015.

Pursuant to Section 5 (b), Article I, Chapter I of Title II of Ordinance No. 93-35, otherwise known as the Revenue Code of the City of Muntinlupa, petitioner pays the graduated business tax on its gross sales of liquor, beer, wine, distilled spirits, cigarettes and tobacco products. Such provision of the Revenue Code implements Section 143 (b) of the Local Government Code (LGC) of 1991.

On December 1, 1998, the City Government of Muntinlupa, through the approval of its City Mayor, enacted City Ordinance No. 98-015, or the "*Kautusan na Inaamyendahan ang Ordinansa Bilang 93-35 o Muntinlupa Revenue Code sa Pamamagitan ng Pagpapataw ng Buwis sa Pangangalakal (Business Tax) sa mga Produktong Alak (liquor, beer, wines, distilled spirits, etc.) at Sigarilyo/Tabako o anumang Kauri Nito*", which imposes a three percent (3%) business tax on the sale and distribution of alcoholic beverages and tobacco products.

In this regard, for the periods covering January 2, 1999 to September 15, 2002, petitioner allegedly paid the total amount of Three Million Six Hundred Ninety Six Thousand Five Hundred Fifty Seven and 06/100 Pesos (P3,696,557.06) in compliance with the aforementioned ordinance.

Aggrieved by the alleged erroneous collections made by respondents, petitioner, through its external auditor, wrote a letter to the Bureau of Local Government Finance (BLGF) of the Department of Finance seeking clarification on whether or not the City of Muntinlupa can legally impose the 3% business tax on gross receipts of wholesalers and retailers from their sale of liquor, beer, wine, distilled spirits, cigarette and tobacco products under City Ordinance No. 98-015 to which the BLGF issued its ruling in favor of petitioner.

In light of the ruling of the BLGF, petitioner wrote a letter dated March 20, 2001 addressed to the City Treasurer of Muntinlupa seeking the refund / tax credit of the amount of P1,630,047.57 representing the 3% business taxes paid on its gross sales of liquor, beer, wine distilled spirits, cigarettes and tobacco products for the period covering January 1999 to December 2000.

Subsequently, on March 21, 2001, petitioner filed its Complaint with the Regional Trial Court of Muntinlupa seeking the refund or issuance of a tax credit certificate of the same amount and covering the same period.

On January 6, 2003, petitioner filed with the same lower court a Supplemental Complaint with an application for the issuance of a temporary restraining order and/or a writ of preliminary injunction. Petitioner likewise sought the declaration of nullity of Section 2 of the Muntinlupa City Ordinance No. 98-015, as well as, a claim for the refund of the amount of P2,066,509.19 representing the payments made for the period from December 16, 2000 to December 15, 2002, in addition to the amount in the original Complaint thereby making a total of P3,637,552.06 allegedly erroneously paid business taxes for the period covering January 1999 to December 15, 2002; and for the payment of not less than P250,000.00 as litigation expenses, attorney's fees and cost of suit.

In the Order dated August 25, 2003, the Regional Trial Court (RTC) of Muntinlupa, Branch 256, denied petitioner's application for the issuance of the temporary restraining order for lack of merit, and subsequently set the case for pre-trial on November 14, 2003 wherein the parties were required to submit their respective pre-trial briefs. On said date, a pre-trial conference was held. As the respondents never denied the payment of taxes made by petitioner under the assailed Ordinance No. 98-105, and fully aware that the only issue in said case was purely legal in light of the admission by the respondents of the documentary exhibits attached to petitioner's Complaint and Supplemental Complaint, the RTC dispensed with the presentation of witnesses and documentary evidence and simply required the parties to file their respective memoranda.[5]

After the parties submitted their respective memoranda, the RTC rendered its Decision dismissing petitioner's Complaint and Supplemental Complaint, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, judgment is hereby rendered in favor of the defendant and as against the plaintiff. Accordingly, the instant complaint is hereby DISMISSED for lack of merit.
>
> **SO ORDERED.**

[5] Petition for Review, Paragraph 26, p. 8, Docket, p. 16

Muntinlupa, March 6, 2006."[6]

The RTC disallowed petitioner's claim for refund on the ground that Ordinance No. 98-015 was enacted and approved with the end purpose of applying its proceeds to support the existence of the local government and as an aid to pursue its governmental objectives and therefore, the public purpose character of the imposition was then justified; and that it was not shown, or there was failure of showing that the questioned imposition was oppressive, excessive nor prohibitive.

Aggrieved by the denial of its claim for refund, petitioner filed its Petition for Review with the Court in Division of the Court of Tax Appeals on April 11, 2006.

On December 12, 2007, the Court in Division promulgated the herein assailed Decision partially granting petitioner's claim for refund. However, due to the absence of any evidence or document to show or compute for the exact amount of business taxes that petitioner is liable to pay, the Court in Division remanded the case to the lower court for the proper determination of petitioner's business tax liability covering the period from January 2, 1999 to December 15, 2000 only, taking into consideration Section 191 of the LGC. Any excess on the amount already paid was ordered to be refunded by way of a tax credit.

[6] RTC Decision, Civil Case No. 01-096, Docket, pp. 154-158.

Furthermore, the Court in Division held that Section 2 of Ordinance No. 98-015 whereby the City of Muntinlupa collects from petitioner the 3% fixed business tax rate based on its gross sales or receipts of liquor and other distilled products and cigarette products as a wholesaler and retailer, is excessive and beyond the taxing power of respondent, pursuant to Section 191 of the LGC. However, a portion of petitioner's claim in the amount of P2,066,509.19 representing the 3% business taxes paid for the period of December 16, 2000 to December 15, 2002 was denied on the ground that records are wanting of any written administrative claim for refund filed with the local treasurer for said amount which formed part of petitioner's Supplemental Complaint.

In the same manner, the Court in Division, in the assailed Resolution[7] dated April 4, 2008 found no cogent reason to either modify or alter the assailed Decision, and correspondingly denied petitioner's Motion for Partial Reconsideration filed on January 3, 2008, and respondents' Motion for Reconsideration filed on January 7, 2008 – with Comment / Opposition by petitioner filed on January 21, 2008.

Hence, this recourse before the Court En Banc praying that the assailed Decision and Resolution dated December 12, 2007 and April 4, 2008, respectively, be partially reversed / modified and judgment be rendered granting petitioner's claim for refund, by way of tax credit, of business taxes paid during the period covering December 16, 2000 to December 15, 2002

[7] Docket pp. 48 – 59.

and all other business taxes illegally and unlawfully collected by the respondents on account of the subject invalid ordinance.

On July 17, 2008, in compliance with the Court's Resolution dated May 27, 2008[8], respondent filed out of time[9], its Comment to the Petition[10] in relation to petitioner's Petition for Review.

In a Resolution dated July 18, 2008 [11], the Court, in the paramount interest of substantial justice, albeit being filed out of time, admitted respondent's Comment and petitioner was informed that it may file its reply thereto within five (5) days from receipt of the Resolution.

Petitioner filed its Reply [To Respondent's Comment to the Petition] on August 4, 2008 raising the additional prayer that it be given a period of two (2) years FROM DATE OF FINALITY of the instant Decision within which to pursue its claim for refund (as stated in Section 196 of the LCG and as ruled in the Allied Bank case).[12]

In the Resolution dated August 12, 2008[13], the instant case was deemed submitted for resolution. Hence, this Decision.

THE ISSUE

[8] Docket, pp. 287 – 288.
[9] Respondent received a copy of the Court's Resolution requiring it to file Comment within ten (10) days from receipt on June 16, 2008. A Motion for Extension of Time to File Comment was filed on June 23, 2008 praying that it be granted an extension of fifteen (15) days, or until July 11, 2008, in order to comply with the Court's Resolution, however, Comment was filed only six (6) days late.
[10] Docket, pp. 293 – 301.
[11] Docket, pp. 302 – 303.
[12] Petitioner's Reply dated July 31, 2008, Docket, pp. 305-312, at p. 310.
[13] Docket, pp. 315 – 316.

The sole issue raised for the Court *En Banc*'s consideration is whether the Court in Division correctly denied petitioner's claim for refund of business taxes paid after December 15, 2000 simply on the basis of lack of an administrative claim for refund with the local treasurer notwithstanding the fact that the subject tax ordinance was declared excessive and contrary to law.

Petitioner's Arguments

Petitioner submits that the partial denial of its claim for refund of business taxes paid under respondent's illegal tax ordinance is unfair and contrary to law. It stresses that although Section 196 of the LGC requires the filing of a written claim for refund with the local treasurer prior to the filing of a judicial claim for refund within two (2) year period stated therein, it should be noted that, however, that the same provision does not state that the two (2) year period shall automatically commence exclusively from the date of the payment of the tax claimed to be refunded but instead, "from the date the taxpayer is entitled to refund or credit".

As such, petitioner alleges that, at the very least, the anticipated finality of this Court's judicial pronouncement that respondents' tax ordinance is excessive and contrary to law should be considered as a supervening cause entitling a taxpayer to a tax refund from which the date to file a claim for refund should be reckoned from. Thus, it opined that it could not be adjudged to have failed to file an administrative claim for refund since the two (2) year period from the finality of this Court's declaration that the respondents' tax ordinance is illegal thus entitling petitioner to a refund has yet to lapse.

Further, petitioner insists that its argument finds jurisprudential support in the recent case of *ALLIED BANKING CORPORATION vs. THE QUEZON CITY GOVERNMENT, et al.*[14] (Allied Bank case) whereby petitioner alleges that the Honorable Supreme Court after ruling that the local ordinance is null and void for being ultra vires and contrary to law thus acquiring no legal effect and conferring no rights from its inception held, in its September 15, 2006 Decision, that the refund may be pursued within two (2) years from the finality of the Court's decision nullifying the ordinance, that is within two (2) years from the finality of the said Decision.

Petitioner reiterates that the reason why it opted not to file an administrative case for refund with the local treasurer for business taxes paid after December 15, 2000 is due to the fact that it has already a pending case in court assailing Section 2 of Ordinance No. 98-105. Thus, it deemed it wise to simply file a supplemental complaint to the earlier complaint filed so that the same could be resolved at once. Moreover, petitioner reasoned that to file an administrative claim for refund would be a useless exercise since the local treasurer would deny it anyway, considering the fact that the City Government of Muntinlupa is continuously collecting business taxes under the assailed Ordinance No. 98-105.

In addition, petitioner argues that respondents never raised or pleaded as a defense and/or issue the alleged failure of the petitioner to file an administrative claim for refund for the business taxes it paid during the period

[14] G.R. No. 154126, October 11, 2005 and September 15, 2006.

from December 16, 2000 to December 15, 2002, therefore, the same defense and/or issue is already deemed waived; that the same issue should not have been considered by the Court in Division at a very late stage of the case without violating its fundamental right to due process and fair play as it is doctrinally well-settled that courts do not have the authority to rule on appeal matters not raised by the parties in their pleadings and during trial.

In its Reply[15] (To Respondent's Comment to the Petition), petitioner points out that the Court in Division's ruling declaring the ordinance subject of this case as excessive and contrary to law and therefore void, has long attained its finality considering that the respondents failed to file the appropriate appeal on the same. Thus, petitioner stresses that the present petition pertains only to the partial denial of claim for refund solely on the basis of the lack of administrative claim for refund with the local treasurer within two (2) years from the payment of the tax sought to be refunded.

Respondent's Counter-Arguments

Respondent on the other hand forward the argument that Section 196 of the LGC is explicit that it is necessary for the claimant of refund of any tax, fee or charge to file its claim with the local treasurer within two (2) years from the payment of the tax, fee or charge and no case shall be entertained in any court absent this written claim being shown or proven. Such period is set in the law to accomplish the intention of the legislature to give the taxpayer the time to question a tax imposed by the government at the earliest opportune

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[15] Docket, pp. 305 – 312.

time for it is basic in taxation that taxes collected is the lifeblood of the government.

It further argues that the interpretation of petitioner of the phrase "from the date the taxpayer becomes entitled to a refund or credit" to mean that it has been given the right to file for a refund after the court declared the tax law or ordinance as null and void without a timely claim for refund is bereft of utter merit, whimsical and arbitrary.

Respondent stresses that the reliance of petitioner in the Allied Bank case doctrine is misplaced and is not even squarely applicable in the present case for the reason that in that case, Allied Bank filed a claim for refund with the City Treasurer prior to the declaration of nullity of the provision imposing the real estate tax in the Quezon City tax ordinance while in the present case, petitioner did not file any claim for refund for the period December 16, 2000 to December 15, 2002 when it was able to file a timely administrative claim for the period covering January 2, 1999 to December 15, 2000. Moreover, petitioner admitted the fact that it did not file any claim for refund for the reason that it presupposes that it is futile to file a claim for refund since it will likewise be denied by the city treasurer.

Respondent maintains that the subject tax ordinance is valid for records show that petitioner is a "distributor / dealer" and likewise a "retailer" of non-essential liquor, beer, wines, distilled spirits, cigarettes and tobacco products, hence, Section 143(b) nor any other sub-paragraph of Section 143 of the LGC is not the applicable provision.

Not being covered under any of the subparagraphs of the said section, Article 237 of the Rules and Regulations Implementing (IRR) the LGC, in relation to Section 151 of the LGC allegedly comes into play, which grants cities, such as herein respondent LGU, the authority to levy and assess a percentage tax at a rate not exceeding 3% of the gross sales or receipt. Thus, respondent submits that it was well within the authority of respondent LGU, through the Sangguniang Panglungsod, to enact Ordinance No. 98-015 providing for a percentage tax of 3% on the gross sales or receipts of dealers / wholesalers or retailers of non-essential wines, liquor and tobacco products.

Respondent further argues that even assuming, for the sake of argument, that Article 237 of the IRR of the LGC, in relation to Section 151 of the LGC is inapplicable to the case at bar, as petitioner-corporation argued in all its pleadings, the imposition of the subject percentage tax still finds statutory basis in Section 143 (h) of the LGC, in relation to Section 151 of the same code since the imposition of 3% business tax is still within the fifty percent (50%) maximum increase from the 2% percentage tax allowed by law.

THE COURT EN BANC'S RULING

We find the petition to be bereft of merit.

A careful study of the arguments set forth by petitioner and respondent in the instant petition for review, and its annexes, would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of their previous arguments raised before the Court in Division that had already been thoroughly discussed and passed upon in the assailed Decision and

Resolution promulgated on December 12, 2007 and April 4, 2008, respectively.

As such, We reiterate the ruling made by the Court in Division, in relation to the applicability of the Allied Bank case, in its Resolution disposing of both parties' Motions for Reconsideration, to wit:

> "The Allied Banking Corporation case cited by petitioner cannot be made to apply to the case at bar, for the following reasons:
>
> First, the Supreme Court explained that the doctrine pronounced in that Allied Banking Corporation case applies only to the determination of real estate tax payable by owners or administrators of real property, thus, *pro hac vice*.
>
> Second, even granting for the sake of argument that there was no such pronouncement, the facts in the said case are not on all fours with the case at bar. In the case cited by petitioner, prior to the filing before the trial court of the petition for declaration of nullity of the proviso imposing the tax, Allied Banking Corporation filed a claim for refund with the City Treasurer. In the Allied Banking Case, the Supreme Court held that the trial court correctly dismissed therein petitioner's action for failure to exhaust administrative remedies; that considering the presence of factual issues still wanting to be threshed out at the administrative level, there is no actual case calling for judicial review. Further, in the Allied Banking case, the factual issues raised were set aside for failure to exhaust administrative remedies. The Supreme Court explained that the only crucial legal query in that case was 'the validity of the proviso fixing the appraised value of [a] property at the stated consideration at which the property was last sold'. The non-filing of an administrative claim was not an issue in that case. Clearly, nothing in the case cited by petitioner allows taxpayers to dispense with the exhaustion of administrative remedies.
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> The Court would like to state for emphasis that in the case at bar, no administrative claim for refund has been filed by petitioner on the portion denied by this Court.[16]"

[16] Docket, p. 55; Resolution, p. 8.

Relative thereto, We find that the Court in Division appropriately denied petitioner's claim for refund pertaining to the period from December 16, 2000 to December 2002, due to petitioner's failure to file an administrative claim for refund before the City Government of Muntinlupa as required under Section 196 of the LGC prior to judicial recourse. Said provision reads thus:

> "**Section 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." (*Emphasis Ours*)

Clearly from the above quoted provision, no case or proceeding may be entertained by any courts absent showing that petitioner has a written claim for refund of erroneous or excessive payment of any tax, free or charge filed with the local treasurer prior to its filing before any court.

Moreover, it should be noted that two reckoning periods are provided by law for the filing of a case or proceeding, that is from the date of payment of the tax, and from the date the taxpayer becomes entitled to the refund. However, petitioner's interpretation of the phrase "from the date the taxpayer becomes entitled to the refund" is not inconsonance with the intent of the law since Section 196 should not be read in isolation, but in relation with other provisions of the LGC. As exhaustively discussed by the Court in Division in its Resolution dated April 4, 2008, it held that:

> "Section 187 of the Local Government Code dictates the procedure for questioning the constitutionality or legality of tax

ordinances. It provides in part that: 'any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of the receipt of the appeal'. It further provides that 'such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee or charge levied therein.

A reading of Section 187 of the Local Government Code would show that the law intends that questions on the legality or constitutionality of an ordinance or tax measure be threshed out the soonest possible time. It should be raised within thirty (30) days from approval and such appeal should be resolved within sixty (60) days from receipt thereof. Section 187 states that any appeal on the legality or constitutionality of the ordinance does not suspend its effectivity. Thus, before any final declaration of its nullity, taxes accrue and should be paid accordingly.

In the same vein, the reckoning periods for the filing of a claim for refund in Section 196 of the Local Government Code should be interpreted so as to accomplish the evident purpose, *viz.*, the settlement of the rights of the taxpayer *vis-à-vis* the government, at the earliest opportunity. The phrase "from the date the taxpayer becomes entitled to a refund or credit" in Section 196 should not be interpreted to mean the finality of the decision of a court declaring the tax measure void, even without a timely claim for refund. Otherwise, claims for refund will be filed even after several years from payment of the tax due, merely because the tax ordinance was declared void. And the filing of administrative and judicial claims for refund shall be endless. This interpretation would give the taxpayer, who was not able to question the legality or constitutionality of the tax measure within the period provided in Section 187, the right to instead file a claim for refund with the court under Section 196, absent the filing of a timely administrative claim. In effect, the prescriptive periods provided by law would be rendered naught and meaningless.

This could not have been the intention of lawmakers. A taxpayer who believes that he has paid a tax imposed under a void ordinance should timely exhaust administrative remedies before resorting to the filing of a judicial claim or timely question its constitutionality and legality. Petitioner's failure to file the appropriate administrative claim for refund for the period

December 16, 2000 to September 2002, cannot be countenanced. More so, since it has been able to file a timely administrative claim for the 3% business tax it paid covering January 2, 1999 to December 15, 2000. It is clearly aware of the requirements for the filing of an administrative claim set forth by law. Its manifest error cannot be cured at this point.[17]"

On the argument raised pertaining to the validity of Section 2 of Ordinance No. 98-015, respondent insists that it was well within the authority of respondent LGU, through the Sangguniang Panglungsod, to enact Ordinance No. 98-015 providing for a percentage tax of 3% on the gross sales or receipts of dealers / wholesalers or retailers of non-essential wines, liquor and tobacco products under Article 237 of the IRR of the LGC or, if not, under Section 143(h) of the LGC both in relation to Section 151 of the LGC.

The above mentioned provisions of the LGC are hereunder quoted for easy reference:

> **SECTION 143. Tax on Business.** — The municipality may impose taxes on the following businesses:
>
> (a) 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.
>
> **SECTION 151. Scope of Taxing Powers.** — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

[17] Docket, pp. 56 – 57; Resolution, pp. 11 – 12.

> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

As thoroughly discussed by the Court in Division, We emphasize that respondent cannot base the adjustments on the business tax rates on the 2% tax rate provided for under Section 143(h) of the LGC.

It should be noted that petitioner has already been taxed as a distributor and dealer of liquor, beer, wine, distilled spirits, cigarettes and tobacco products by the respondents, based on the graduated rates provided for under Section 5(b) of the Revenue Code of Muntinlupa City based on Section 143(b) of the LGC that taxes "any article of commerce of whatever kind and nature", which is broad enough as to include products of petitioner. When the law evidently does not distinguish the articles of commerce subject to the business tax, thus, respondents' should not have done so.

In addition, a general provision that provides for the scope and extent of the city's taxing power like the above quoted Section 151 of the LGC cannot be made to apply. On the contrary, the proper provision in cases of amendment / increase of tax rates is:

> **SECTION 191. Authority of Local Government Units to Adjust Rates of Tax Ordinances.** — Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.

Based on the foregoing, the imposition of an amended / increased rate of business taxes to a fixed rate of 3%, which is more than 10% of the allowable increase as indicated in Section 191 of the LGC, provided under Section 2 of Ordinance No. 98-015, is excessive and contrary to law.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision and Resolution of the Court in Division dated December 12, 2007 and April 4, 2008, respectively, are hereby AFFIRMED.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice