REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

THE TREASURER OF THE CITY OF MANILA, Petitioner,	**C.T.A. AC NO. 44**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
UNILEVER PHILIPPINES, INC., Respondent.	**Promulgated:** FEB 18 2009 4:00 p.m.

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DECISION

CASTAÑEDA, JR., J.:

The instant Petition for Review seeks the reversal and setting aside of the Decision dated November 3, 2006 and the Order dated July 12, 2007 rendered by Branch 21 of the Regional Trial Court of Manila in Civil Case No. 02-103237 as part of the consolidated case docketed as Civil Case Nos. 01-102052, 01-102676, 02-103237, 02-104045, 02-104955, 03-108165, 04-108907, and 04-109703 entitled *Unilever Philippines, Inc. vs. The Treasurer of the City of Manila*, which granted herein respondent's claim for refund.

The Treasurer of the City of Manila (Petitioner) is the official charged with the implementation of the Manila Revenue Code, as well as the collection and assessment of business taxes, license and permit fees within the City of

Manila. She holds office at the Ground Floor, Manila City Hall, Taft Avenue, Manila.

Unilever Philippines, Inc. (Respondent) is a domestic corporation duly registered and existing by virtue of the laws of the Philippines, with principal address at 1351 United Nations Avenue, Manila.[1]

Petitioner collects business taxes from respondent on the basis of Sections 14 and 21 of the Manila Revenue Code (MRC). Section 14 of the MRC provides for the tax on manufacturers, assemblers and other processors of articles of commerce; while Section 21 of the same Code imposes tax on businesses subject to excise, value-added or percentage taxes under the National Internal Revenue Code (NIRC).

Inasmuch as respondent believed that its payment of business taxes under Sections 14 and 21 of the MRC amounts to double taxation, it filed claims for refund of its tax payments in 1999, 2000, fourth quarter of 2001, and first and second quarters of 2002, with petitioner City Treasurer *via* letters dated October 4, 2001, October 8, 2001, October 12, 2003, January 12, 2004, and March 26, 2004.[2] Petitioner later denied respondent's claims for refund.

On April 11, 2002, respondent filed a Petition for Refund of its local tax payments of P6,403,030.62 made during the second quarter of 2000 with the Regional Trial Court (RTC) of Manila, Branch 21. The case was docketed as *Unilever Philippines, Inc. vs. The Treasurer of the City of Manila*, Civil Case No. 02-103237 and was later consolidated with seven other Petitions for

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[1] Annex "F", Petition for Review.
[2] Page 4 of the Decision of RTC of Manila, Branch 21, Docket, p. 89.

Refund and docketed as Civil Case Nos. 01-102052, 01-102676, 02-103237, 02-104045, 02-104955, 03-108165, 04-108907, and 04-109703.

Petitioner filed her Answer[3] on October 9, 2002.

After trial on the merits, the RTC of Manila, Branch 21 granted the refund claim in its assailed Decision[4] dated November 3, 2006, the dispositive portion of which states:

> "WHEREFORE, premises considered, the petitions are hereby GRANTED. The application to petitioner of Sec. 21 of the Tax Ordinance No. 7988 as amended by Tax Ordinance No. 8011 is hereby declared VOID. Respondent is hereby ordered to REFUND/CREDIT petitioner the taxes paid under Sec. 21 of the said ordinance. With costs against respondents.
>
> SO ORDERED."

A Motion for Reconsideration[5] was filed by herein petitioner on November 27, 2006, which was subsequently denied through an Order[6] promulgated on July 12, 2007; the pertinent parts of which read:

> "Assessing the allegations of the contending parties, the Court believes and so holds that no new matters of significance have been raised that could convince the Court of the cogency of the reversal of the decision.
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> Accordingly, the Motion for Reconsideration is hereby DENIED.
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> SO ORDERED."

On October 22, 2007, petitioner filed a Motion for Extension of Time to File Petition for Review, praying for a fifteen-day extension to file her Petition

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[3] Annex "B", Petition of Review.
[4] Annex "F", Petition for Review.
[5] Annex "G", Petition for Review.
[6] Docket, pp. 94-95.

for Review from October 10, 2007 or until October 25, 2007; which this Court granted in a Resolution dated November 12, 2007.

On October 25, 2007, from the said consolidated cases, petitioner only filed a Petition for Review for Civil Case No. 02-103237.

Petitioner claims that the lower court erred in finding respondent entitled to the refund of the taxes it paid under Section 21 of the MRC, considering that the imposition of taxes under Sections 21 and Section 14 of the MRC does not amount to double taxation. She explains that the thrust of Section 143(a) of the LGC, which is the basis of Section 14 of the MRC is to tax respondent as a business engaged in manufacturing; while Section 143(h) of the LGC, which is the basis of Section 21 of the MRC is levied on the establishment subject to the excise, value-added or percentage taxes.

At first blush, an impression of double taxation is created on tax assessments under Sections 14 and 21 of the MRC. This, however, is nothing but an impression on account of the fact that Section 14 is a tax imposed upon respondent's business while Section 21 is not. There are in essence two objects of taxation in the dual facet of respondent's business operations. There is therefore no taxation on the same property or object by the same taxing authority, to infringe upon the constitutional injunction against double taxation.

Petitioner further argues that Section 21 is actually not a tax on the business of respondent but on the end-users; whereas under Section 14, the tax is specifically levied on the business of respondent as a manufacturer. The tax imposed under Section 21 had already been collected by respondent (the payor) from the end-users (the payee), the same having been added by respondent to the basic prices of its goods or services. In a way, respondent acts as a withholding agent of the City Government of Manila, who must remit to the latter the taxes collected under Section 21. The tax imposed on petitioner under Section 21 of the MRC is in the concept of indirect tax upon end-users of the goods and services of the business, not the establishment itself, for in the language of Section 21 they are specifically levied on *business subject to excise, value-added or percentage tax under the National Internal Revenue Code*. In other words, Sections 14 and 21 of the MRC refer to different tax objects and they are not of the same kind and character.

Petitioner likewise asserts that the lower court should have dismissed the case due to the procedural flaws that attended the Petition, such as respondent's alleged violation of the prohibition on forum-shopping and its failure to prove its capacity to sue and Atty. Danilo Cruz's authority to file the Petition on behalf of respondent.

Respondent counters that since it already pays business taxes under Section 14 as a manufacturer, the sale of the same manufactured goods should no longer be subject to business tax under Section 21 of the MRC; otherwise, such double imposition would amount to double taxation prohibited by law.

In addition, respondent argues that it is not guilty of forum-shopping or the other alleged violations that make its Petition for Review filed before the lower court procedurally flawed. Contrary to petitioner's bare assertion and consistent with the ruling of the lower court, respondent is not guilty of forum-shopping as each Petition sought a refund of different tax payments and that

Atty. Danilo Cruz was authorized to file the Petition and it has capacity to sue.[7]

On February 8, 2008, respondent filed its Memorandum; while petitioner failed to file her Memorandum despite notice. The instant case was then submitted for decision on March 6, 2008.

Petitioner raised the following issues[8] for this Court's resolution:

> "i. Whether or not the Honorable Regional Trial Court gravely erred in holding that there is double taxation in the imposition of Section 21 of the Manila Revenue Code, as amended.
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> ii. Whether or not the Honorable Regional Trial Court gravely erred in holding that Section 21 is expressly prohibited by Section 133 of the Local Government Code.
>
> iii. Whether or not the Honorable Regional Trial Court gravely erred in holding that Sections 195 and 187 of the Local Government Code do not apply in the instant case."

The first and second issues, which pertain to the question of whether the enforcement of Section 21 of the MRC against respondent constitutes double taxation prohibited by law in view of the tax already being collected from respondent under Section 14, is not novel to this Court. In fact, this Court in a long line of cases[9] had consistently held that the imposition of business taxes under Sections 14 and 21 of the MRC constitutes double taxation, since there would be taxation twice for the same subject or activity, which is the business of manufacturing; by the same public authority and

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[7] Opposition (re: Petition for Review dated October 25, 2007), Docket, pp. 109-138.

[8] Par. 11, Petition for Review, Docket, p. 9.

[9] *Treasurer of the City of Manila vs. Unilever Philippines*, CTA AC No. 28, November 28, 2007; *Treasurer of the City of Manila vs. Alcan Packaging Starpack Corporation*, CTA EB No. 261, July 30, 2007; *Unilever Philippines vs. Treasurer of the City of Manila*, CTA AC No. 25, June 18, 2007; *Alcan Packaging Starpack Corporation vs. The Treasurer of the City of Manila*, CTA AC No. 17, September 11, 2006; *Liberty M. Toledo vs. Unilever Philippines*, CTA AC No. 21, May 10, 2007; *Zarcon Development Corporation vs. City Treasurer of the City of Manila*, CTA AC No. 24, May 16, 2007; *Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila*, CTA AC No. 15, July 21, 2006.

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. The Court, considering the factual and legal circumstances of the present case, will not deviate from these previous decisions.

Under the 1987 Philippine Constitution, the power of the local government units to tax is subject to such guidelines and limitations as Congress may provide.[10] In line with this Constitutional mandate, the Legislature set forth such guidelines and limitations by enacting the "Local Government Code of 1991" (LGC). One of such limitations is found in Section 143(h) of the LGC, which states:

> "SEC. 143. Tax on Business. — The municipality[11] may impose taxes on the following businesses:
>
> (a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:
>
> | With gross sales or receipts for the preceding calendar year in the amount of: | Amount of Tax Per Annum |
> |---|---|
>
> xxx xxx xxx
>
> (b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:
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> xxx xxx xxx
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not

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[10] Section 5, Article X, Local Government, 1987 Philippine Constitution.

[11] Under Section 151 of the Local Government Code, cities may also impose the same taxes which a municipality may impose.

exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Sections:

xxx xxx xxx

(d) On retailers,

xxx xxx xxx

(e) On contractors and other independent contractors, in accordance with the following schedule:

xxx xxx xxx

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually.

(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 rates but in no case to exceed the rates prescribed herein." (*Emphasis supplied*)

A perusal of Section 143(h) of the LGC would reveal that it prohibits double taxation such that businesses taxed under paragraphs (a) to (g) thereof can no longer be taxed unless it falls in cases "not otherwise specified in the preceding paragraphs", *viz*., paragraphs (a) to (g).

"Double taxation" means taxing the same property twice when it should be taxed only once; that is, '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."[12]

In the instant case, respondent was taxed under both Sections 14 and 21 of the MRC.

Section 14 of the MRC provides in pertinent part:

> "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.
>
> With gross sales or receipts for the preceding calendar year in the amount of: — Amount of Tax
>
> xxx xxx xxx"

On the other hand, Section 21 of the MRC, as amended states:

> "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 the 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

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

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, 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, brewers' 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 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) Naptha when used as raw materials for production of petro-chemical products.

(2) Asphalt

xxx xxx xxx" (*Emphasis supplied*)

A comparison of the foregoing provisions reveals that Section 14 of the MRC was patterned after Section 143(a) of the LGC; while Section 21 of the MRC was based on Section 143(h) of the LGC. Based on Section 143(h) of the LGC, a taxpayer who is already paying the tax under Section 143(a) to (g) can no longer be made to pay the tax under Section 143(h). Since respondent had already paid taxes under Section 14, which was based on Section 143(a), it can no longer be made to pay the tax under Section 21 of the MRC, which was based on Section 143(h).

It must be pointed out that both Sections 14 and 21 of the MRC subject respondent to business tax based on its sales as a manufacturer. Section 14 of the MRC imposes a tax on manufacturers based on gross sales for the preceding year in accordance with the schedule found therein, *i.e.*, it is a sales tax on manufacturers. On the other hand, Section 21 subjects "businesses and articles of commerce subject to excise, value added or percentage taxes under the National Internal Revenue Code" to a percentage "tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar year". It thus imposes a sales tax on businesses subject to excise, value-added tax or percentage taxes under the NIRC. *ge*

Both sales taxes imposed under Sections 14 and 21 of the MRC are payable by manufacturers like respondent in this case. This is in direct contravention of Section 143(h) of the LGC which prohibits the imposition of taxes on manufacturers already taxed under paragraph (a) thereof.

Section 131(o) of the LGC defines the term "manufacturer" in the following manner:

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

Also, in the case of *Swedish Match Philippines, Inc. vs. The Treasurer of the City of Manila*[13], this Court held:

> "Pursuant to the above definition, 'a manufacturer' is any person that changes or modifies any product to take the form of another, either to prepare it for special uses or to transform it to

[13] CTA AC No. 15, July 21, 2006.

some marketable shape, for the purpose of selling or distributing them to others for a fee."

In the instant case, respondent is being taxed under Section 14 as a manufacturer of goods, and additionally taxed under Section 21 on its business of selling said manufactured goods. And based on the aforesaid definition of manufacturer, it includes the sale of the manufactured product. Since respondent was taxed twice as a manufacturer, it constitutes a clear case of prohibited double taxation which this Court will not countenance.

Petitioner's allegation that Section 21 does not constitute double taxation because it only taxes the person availing of the goods and services of the business, not the business itself, is untenable. A careful reading of Section 21 of the MRC reveals that it is only in the second paragraph of Section 21(C), that the phrase "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" is found. This statement immediately follows the first paragraph of Section 21(C) pertaining to "every overseas dispatch, message or conversation transmitted from the Philippines", and it cannot be found elsewhere in Section 21 of the MRC.

Applying the rule on statutory construction that "relative words refer to the nearest antecedent, unless it be prevented by the context (*ad proximum antecedens fiat relatio nisi impediatur sentencia*)", the Court finds that the *proviso* that states that "the tax shall be payable by the person paying for the services rendered and shall be paid to the person rendering the services" applies only to Section 21(C), which is its nearest antecedent and not to the other subsections of Section 21, such as subsection (A). Jr

The said opinion is corroborated by the fact that a similar provision involving tax on overseas dispatch, messages and communications is found in Section 120 of the NIRC of 1997, to wit:

> "**SEC. 120. Tax on Overseas Dispatch, Message or Conversation Originating from the Philippines.** —
>
> **(A) Persons Liable.** — There shall be collected upon every overseas dispatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication equipment services, a tax of ten percent (10%) on the amount paid for such services. The tax imposed in this Section 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."

Ergo, the *proviso* is not meant to qualify Section 21(A) of the MRC; which means that the tax imposed pursuant to Section 21 is not a tax on end-users but a tax on the business of manufacturing and respondent is not a withholding agent of petitioner.

Assuming *arguendo* that Section 21 of the MRC is a tax on end-users and that respondent is constituted as a withholding agent, this would make Section 21 illegal. It would violate Section 130(c) of the Local Government Code, which provides:

> "**Section 130.** *Fundamental Principles*. - The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:
>
> xxx xxx xxx
>
> (c) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;
>
> xxx xxx xxx"

Thus, respondent cannot legally be made a withholding agent of its clients since it would make respondent responsible for the collection of local business taxes allegedly imposed on its clients.

Anent the third issue, Sections 195 and 196 of the LGC are pertinent to its proper resolution and are hereunder quoted for ready reference, to wit:

> "Section 195. Protest of Assessment. – When the local treasurer or his duly authorized representative finds that the correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."
>
> "Section 196. Claim for Refund or 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."

From the foregoing, in local taxation, Section 195 applies when there is protest of assessment; while Section 196 applies when claim for refund is present. Since in the instant case, respondent did not question the validity of the assessment but instead paid the imposition, and petitioner admitted that respondent paid taxes under Sections 14 and 21 of the MRC,[14] the instant claim is one for refund. Accordingly, the applicable law in the present case is Section 196.

Based on Section 196 of the LGC, there are two requisites for a refund claim or tax credit of local taxes, namely: (1) a written claim for refund or credit must be filed with the local treasurer before filing an action for refund with the appropriate court; and (2) a refund claim or tax credit must be filed before the court within two years from the date of payment of the tax, fee or charge.

A review of the records of the instant case reveals that respondent satisfied both requirements. On October 4, 2001, respondent filed its written claim to the Office of the City Treasurer of Manila[15] and on April 11, 2002, respondent filed its Petition for Refund before the lower court within the two year period.[16] Hence, petitioner's allegation on this ground must also fail.

Finally, We take note that in the Order of the court *a quo* in the Consolidated Cases Nos. 02-104045; 02-102052; 02-102676; 02-104955; **02-103237**[17], the Motion to Admit filed by Unilever Philippines, Inc., as petitioner in said cases on September 23, 2004 was granted and its Secretary's Certificate authorizing Mr. Danilo Cruz to initiate the tax refund cases therein in its behalf was admitted. Hence, this finding of the court *a quo* settles once and for all the authority of Danilo Cruz to initiate the subject tax refund case, among other cases filed before the Regional Trial Court of Manila.

[14] Annex "F", Petition for Review, Docket, p. 89.
[15] Annex "B", Petition for Review, Docket, pp. 46-48. Admitted in the Answer, docket, p. 61 (par. 1).
[16] Annex "A", Petition for Review, Docket, pp. 32-41.
[17] See Order dated September 27, 2004, Civil Case No 02-102676, records, pp.104-105.

In recapitulation, petitioner's imposition of sales tax under Section 21 of the MRC on respondent is a violation of the prohibition on double taxation under Section 143(h) of the LGC, since respondent is already subject to sales tax under Section 14 of the MRC.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the appealed Decision dated November 3, 2006 and the Order dated July 12, 2007 of the RTC of Manila, Branch 21, in Civil Case No. 02-103237, is hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

See attached Dissenting & Concurring Opinion
OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

THE TREASURER OF THE CITY OF MANILA, ***Petitioner,***	**C.T.A. AC NO. 44**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
	Promulgated:
UNILEVER PHILIPPINES, INC., ***Respondent.***	FEB 1 8 2009 4:00 p.m.

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DISSENTING AND CONCURRING OPINION

PALANCA-ENRIQUEZ, J.:

Dissenting

With due respect to the Majority, after taking a second hard look at the pertinent facts of the case, in relation to applicable laws and jurisprudence, and consistent with my Dissenting Opinions in the cases of *Liberty M. Toledo, in her Capacity as The Treasurer of the City of Manila vs. Unilever Philippines, Inc., C.T.A. AC No. 21,* promulgated on May 10, 2007; *Unilever Philippines, Inc. vs. The Treasurer of the City of Manila, C.T.A. AC No. 25,* promulgated on June 18, 2007; *Treasurer of*

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the City of Manila vs. Alcan Packaging Corporation (formerly Starpack Philippines Corporation), C.T.A. EB No. 261, promulgated on July 30, 2007; *City of Manila vs. Columbia Pictures Industries, Inc., C.T.A. EB No. 337*, promulgated on August 5, 2008, *International Container Terminal Services, Inc. vs. The City of Manila, C.T.A. EB No. 277,* promulgated on September 5, 2008, *City of Manila vs. Coca-cola Bottler's Philippines, C.T.A. AC No. 32*, promulgated on October 24, 2008, *The City Treasurer of the City of Manila vs. Zarcon Development Corporation*, promulgated on December 18, 2008, and *Coca-cola Bottlers Philippines, Inc. vs. The City of Manila, et al., C.T.A. AC No. 38*, promulgated on January 22, 2009, I find it difficult to agree with the Majority that there exists a direct duplicate taxation between *Sections 14 and 21 of the Manila Revenue Code (MRC)*, for the following ratiocinations:

The Taxes Imposed By *Sections 14* and *21 of the Revenue Code of Manila* are Two Different and Distinct Taxes, as they Embrace Two Different Subject Matters

Section 14 of *Ordinance No. 7794* provides:

> "SEC. 14. *Tax on Manufacturers, Assemblers and other Processors.* – There is hereby imposed a graduated tax

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> 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."

Section 14 imposes a percentage tax on manufacturers, assemblers, and other processors on their gross sales or receipts for the preceding calendar year in the schedule provided therein. In other words, in *Section 14* the taxes are imposed on such business establishments for being engaged in manufacturing, assembling or processing business.

On the other hand, *Section 21 of Ordinance No. 7794*, as amended by *Ordinance No. 7807,* provides:

> "*Section 21* of *Manila Revenue Code* provides:
>
> SEC. 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 the 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

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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, 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, brewers' 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 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) Naptha when used as raw materials for production of petro-chemical products.

(2) Asphalt

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Pursuant to the above provision, the tax under *Section 21(A)* is imposed on businesses subject to excise, value-added or percentage taxes under the NIRC. Therefore, a manufacturer whose business is not subject to value added tax is beyond the contemplation of *Section 21.* To illustrate, a manufacturer whose gross receipts do not exceed P550,000.00 under the *NIRC of 1997, as amended,* or P1,500,000.00 under *RA 9337* is VAT exempt. Applying *Section 21*, it is not subject to local business tax thereunder. However, such manufacturer may be liable to pay the local business tax under *Section 14.* From the foregoing illustration, it is evident that *Sections 14 and 21* of the Manila Revenue Code are imposed on two distinct and different subject matters.

Considering that the taxes imposed under *Sections 14 and 21 of the Manila Revenue Code* embrace distinct and different subject matters, on this basis alone, it is clear that there is no double taxation between *Sections 14 and 21* of the same Code.

Further, *Section 21* is not a direct tax on persons who sell goods and services, but a tax payable by the persons paying for the services rendered by the respondent, in view of the modifying paragraph of *Section 21,* which states that "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)

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days after the end of each quarter". Respondent, being engaged in manufacturing service, acts as the withholding agent of the tax paid by the persons paying for the services rendered, which tax must be paid within 20 days after the end of each quarter.

A careful examination and scrutiny of *Section 21 of Ordinance No. 7794, as amended by Ordinance No. 7807,* clearly shows that the qualifying provision on who is required to pay the tax applies to *subsections A, B and C,* as shown by the fact that *subsections A, B and C* enumerate business establishments that are subject to tax. The succeeding *subsections D and E* already classify the goods that are subject and not subject to Value Added Tax.

The fact that said qualifying provision applies to *subsections A, B, and C of Section 21* is clear from *Section 21* itself considering that said qualifying provision was embodied and incorporated in *Section 21,* as a separate and concluding paragraph for business establishments enumerated in *subsections A, B and C of Section 21.* It is bolstered by the fact that said modifying provision provides a period when to pay the tax, to wit, "within twenty (20) days after the end of each quarter", which is applicable to all consumers/end-users of business establishments enumerated in *subsections A, B and C of Section 21,* including those who manufacture, like respondent.

It is clear, categorical, and needs no further interpretation or construction. Settled is the rule in statutory construction that "when the law is clear, the function of the courts is simple application" *(Woodridge School, Inc. vs. ARB Construction Co., Inc., 516 SCRA 185).*

Moreover, with due respect to the Majority, it is my considered view that *Section 143 (h) of the Local Government Code ("LGC")* is a catch-all provision which gives discretion to the Sanggunian Bayan of any municipality or city to impose a business tax "On any business, not otherwise specified in the preceding paragraphs" (viz. paragraphs (a) to (g)). This only means that the power to impose business tax of the Sanggunian Bayan of a municipality or city is not limited to business establishments enumerated in paragraphs (a) to (g) of *Section 143*, but to any other business not enumerated therein, which it may deem proper to tax.

This is bolstered by *Section 186 of the LGC*, which provides:

> "SEC. 186. Power to Levy Other Taxes, Fees or Charges. – Local government units may exercise the power to levy taxes, fees or charges on any base or subject not

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> otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the ordinance levying such taxes, fees, or charges shall not be enacted without any prior public hearing conducted for the purpose."

A reading of *Section 143 (h) of the LGC,* in conjunction with the above provision, clearly shows that *Section 143 (h) of the LGC* cannot be construed as a limitation of the Sanggunian Bayan's power to impose another tax on the same businesses enumerated in *paragraphs (a) to (g) of Section 143* on the basis of a different subject matter, such as a tax on establishments engaged in manufacturing business, and another tax on businesses subject to excise, value added or percentage taxes. To construe that the imposition of two distinct and different taxes on the same establishment by reason of being engaged in manufacturing business, and by reason of being subject to excise, value added or percentage tax, is prohibited by *Section 143 (h) of the LGC*, as the same constitutes double taxation, is to expand the meaning of *Section 143 (h)* beyond the contemplation of the law. The courts may not, in the guise of interpretation, enlarge the scope of a statute and embrace situations, the legislature intended separability, rather than complete nullity of the statute *(Tatad vs. Secretary of the Department of Energy, 281 SCRA 361)*.

The modifying provision contested by respondent merely provides on who will pay the tax, to whom it will be paid and when the same will be paid. However, even without said modifying provision, *Section 21 (A)* is explicit and categorical that a tax of 50% of 1% per annum on the gross sales or receipts of the preceding calendar year is imposed on persons subject to excise, valued added or percentage tax, who sell goods and services. *Section 21* does not contravene any provision of the LGC. Although *Section 133 of the LGC* prescribes common limitations on the taxing power of the local government units, *Section 21* does not transgress any limitation imposed therein. While *Section 133 (h)* prohibits provinces, cities, municipalities and barangays to levy percentage or value added tax on sales, barters or exchanges or similar transactions on goods or services, the same however is subject to exception, to wit: "except as otherwise provided herein". This proviso refers to *Section 143 (h) of the LGC*, which grants the Sanggunian Bayan the power to levy tax on businesses subject to excise, value-added or percentage tax under the NIRC, which is the basis of *Section 21 of the Manila Revenue Code*.

Considering that *Section 21* was not declared invalid, the same is also presumed valid. After all, such provision transgresses no inherent and constitutional prohibitions. Neither is it antithetical to any of the fundamental principles of local taxation. A *fortiori*, the local business taxes under *Sections 14 and 21* are taxes on two distinct and different subject matters, thereby negating the presence of direct double taxation.

Elements of
Double Taxation

Double taxation is sometimes known as "duplicate" taxation. Duplicate taxation may be direct or indirect. Direct duplicate taxation or double taxation in the objectionable or prohibited sense (also known as obnoxious) means that the same property is taxed twice when it should be taxed only once; and that both taxes are imposed on the same property or subject matter for the same purpose, by the same State, Government, or taxing authority within the same jurisdiction or taxing district during the same taxing period and covering the same kind or character of tax (*Villanueva vs. City of Iloilo, 26 SCRA 594*).

On the other hand, indirect duplicate taxation is permissible double taxation. This is allowed if the taxes are of different nature or character, imposed by different taxing authorities (*Tax Principles and Remedies by Japar B. Dimaampao, 2nd ed., p. 122*).

The elements of direct double taxation are as follows:

1) taxing twice;
2) same person/property or subject matter;
3) by the same taxing authority;
4) within the same jurisdiction or taxing district;
5) for the same purpose; and
6) in the same year or taxing period.

<u>No Double Taxation</u>

These elements do not obtain in the case of *Sections 14 and 21 of Ordinance No. 7794*, as amended by *Ordinance No. 7807*. First, these two (2) taxes are of two (2) different kinds or characters. The tax imposed upon respondent under *Section 14* is a tax on manufacturers. It is classified as a direct tax, which is demanded from respondent primarily burdened to pay the same, in contrast to *Section 21,* which is payable not by respondent itself, but by the persons availing of the manufacturing

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business of respondent. Respondent only acts as the withholding agent of the City of Manila of the tax imposed on its customers.

Even if I will follow the Majority view that respondent cannot act as a withholding agent of the tax collected under *Section 21* as the same would contravene *Section 130 (c) of the LGC,* still *Section 21* is a tax totally distinct and different from *Section 14. Section 21* is a tax on business establishments subject to excise, value added or percentage tax, thus the same may be imposed as an indirect tax to respondent's customers, which, as previously discussed, is not prohibited under *Section 133 of the LGC*, being an exception in *Section 133 (j)*.

Second, the taxes in *Sections 14* and *21* are payable by two entirely different and distinct entities. *Sections 14* is payable by respondent, as a manufacturer. On the other hand, *Section 21* is payable by respondent's customers, or the persons availing of respondent's manufacturing business.

Third, although the two taxes deal on one activity, the manufacturing activity, *Sections 14* and *21* are imposed on entirely different subject matters. The subject matter of *Section 14* is the privilege on engaging in the manufacturing business. The tax is imposed for the business of operating a manufacturing establishment. On the other hand, *Section 21* is imposed on establishments subject to excise, value-added or percentage taxes under the NIRC, which may not be subject to *Section 21*, if said business establishment is exempt from excise, value-added or percentage taxes under the NIRC, as previously illustrated. It is payable by the persons availing of the services of such business establishments.

Evidently, a tax on respondent, as a manufacturer is entirely different from the tax imposed on businesses subject to excise, value added or percentage tax, payable by their customers. Under *Section 21*, respondent merely acts as the withholding agent of the City of Manila and passes on the tax to its customers/end-users, which are the ones that indirectly pay the tax.

In sum, there is no double taxation, because there is no taxing twice, on the same person *(Procter & Gamble Philippines Manufacturing Corp. vs. Municipality of Jagna, 94 SCRA 903)*, or the same subject matter, by the same taxing authority, within the same jurisdiction, in different taxing periods, some of the property in the territory.

Considering that the taxes sought to be refunded herein were imposed under *Section 21 of Ordinance No. 7794,* the original ordinance, *as amended* by the first amendatory *Ordinance No. 7807*, which still both subsist, and considering further that the ruling in *Coca-Cola Bottlers Phils., Inc. vs. City of Manila, et al., 493 SCRA 291*, declared null and void the amendatory *Ordinance Nos. 7988 and 8011* only, I reiterate that respondent is covered by *Section 21*. Respondent, cannot, therefore, be exempted from the imposition of *Section 21*.

It has always been the rule that those seeking tax refunds or credits bear the burden of proving the factual bases of their claims and of showing, by words too plain to be mistaken, that the legislature intended to entitle them to such claims [*Commissioner of Internal Revenue vs. Seagate Technology (Philippines), 451 SCRA 152; Atlas Consolidated Mining and Development Corporation, 518 SCRA 428*].

<u>Concurring</u>

However, as to the third issue raised by petitioner Treasurer of the City of Manila, I fully concur with the Majority that *Section 196*, and not *Sections 195 and 187, is applicable*, the instant claim being one for refund.

WHEREFORE, premises considered, I therefore vote to reverse and set aside the Decision dated November 3, 2006 and Order dated July

12, 2007 of the Regional Trial Court of Manila, Branch 21, in Civil Case No. 02-103237. Accordingly, I vote to **GRANT** the present Petition For Review on the ground that there is no double taxation between *Sections 14 and 21 of the Manila Revenue Code*.

OLGA PALANCA-ENRIQUEZ
Associate Justice