REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

HOLCIM PHILIPPINES, INC.,
Petitioner,

CTA AC NO. 251

- versus -

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

THE CITY OF MANILA AND JOSEPHINE D. DAZA, IN HER CAPACITY AS THE CITY TREASURER OF THE CITY OF MANILA,
Respondents.

Promulgated:
NOV 18 2022
8:15 a.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Holcim Philippines, Inc. (**petitioner/HPI**) on 17 May 2021, pursuant to Section 3(a)(3), Rule 4[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**) against respondents City of Manila (**respondent city**) and its City Treasurer, Josephine D. Daza (**respondent treasurer/Daza**). The petition seeks the reversal of the Decision dated 11 December

---

[1] Division Docket, pp. 6-29.

[2] **Sec. 3**. *Cases within the jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
…
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction[.]
…

2020[3] (**assailed Decision**) and Order dated 01 March 2021[4] (**assailed Order**) issued by the Regional Trial Court (**RTC**), Branch 21, Manila, in Civil Case No. R-MNL-18-12812-CV. The dispositive portion of the assailed Decision reads:

> ...
>
> WHEREFORE, the instant Petition for Refund is hereby DISMISSED for failure of the Petitioner to prove its claim by preponderance of evidence.
>
> SO ORDERED.
>
> ...

PARTIES OF THE CASE

Petitioner is a domestic corporation existing by virtue of laws of the Republic of the Philippines, with principal office located at 7th floor, Venice Corporation Center, Mckinley Town Center, Fort Bonifacio, Taguig City.

Respondent city is a local government unit (**LGU**) vested with authority to impose taxes and fees within its jurisdiction in accordance with the Local Government Code (**LGC**) of 1991.

Respondent treasurer, on the other hand, is the incumbent Treasurer of the City of Manila empowered to perform the duties of her office which, among others, includes the power to collect local taxes, fees, and charges.

FACTS OF THE CASE

On 10 January 2018, petitioner executed a Certification[5] stating its gross sales for calendar year (**CY**) 2017 amounting to ₱1,186,126,910.78 in connection with the renewal of its business permit.

[3] RTC Records, Volume I, pp. 388-397.
[4] Id., pp. 415-416.
[5] Id., p. 33.

On 15 January 2018, respondent city, through respondent treasurer, issued petitioner a Statement of Account for the 1st Quarter of CY 2018[6] (**Q1 SOA**), holding the latter liable for local business tax (**LBT**) amounting to ₱660,483.32. Petitioner paid the same to guarantee its continuous operations. However, in a letter dated 15 March 2018[7], petitioner sought a partial refund of the amount of ₱331,204.67 deeming the same to have been collected illegally.

Thereafter, on 27 March 2018, respondent city issued against petitioner a SOA for the 2nd Quarter of CY 2018[8] (**Q2 SOA**) amounting to ₱660,483.32. Petitioner again paid but, in a letter dated 22 May 2018, requested a refund of the amount of ₱331,204.67.[9]

Lastly, on 27 June 2018, respondent city issued a SOA for the 3rd Quarter of CY 2018[10] (**Q3 SOA**) for a similar amount of ₱660,483.32. After payment, petitioner, through a letter dated 02 August 2018, again requested a partial refund of the amount of ₱331,204.67.[11]

In the *interim*, through its Licensing Division's Officer-in-Charge (**OIC**), Atty. Rogel C. Gatchalian (**Atty. Gatchalian**), respondent city wrote petitioner a letter (**letter request**) dated 03 April 2018 which the latter received on 17 May 2018.[12] It requested the latter to provide certain financial documents to the Office of the City Treasurer for the latter to determine the correct amount of its tax liability.

On 05 November 2018, petitioner filed a Petition for Refund[13] with the RTC.

During the trial of the case, petitioner offered the testimony of Marion D. Castañeda (**Castañeda**) who, since December 2018, has been HPI's Tax and Business Permits Manager. *Via* his Judicial

6 Id.., p. 280.
7 Id., pp. 286-290.
8 Id., p. 281.
9 Id., pp. 291-295.
10 Id., p. 282.
11 Id., pp. 296-300.
12 Exhibit "1", id., p. 327.
13 Id., pp. 2-13.

Affidavit[14] , he testified to the fact of petitioner's receipt of the SOAs, payment of assessed LBT, and its subsequent partial claim for refund of LBT paid for the 1st, 2nd, and 3rd quarters of CY 2018. He further testified that HPI's sales as a manufacturer and wholesaler of cement, an essential commodity under Section 143(c)(8)[15] of the LGC of 1991, should be subject to ½ of the rates specified under subsections (a), (b) and (d)[16] of the aforementioned Section. In connection with his testimony, Castañeda also identified the following pieces of documentary evidence:

Document	Exhibit
Holcim Philippines Amended Articles of Incorporation (**AOI**)	"A"[17]
Business Permit dated 20 January 2018	"B"[18]
Business Permit dated 20 January 2017	"C"[19]
Q1 SOA	"D"[20]
Q2 SOA	"E"[21]
Q3 SOA	"F"[22]
Official Receipt (**OR**) No. U033034344B	"G"[23]
OR U032044167B	"H"[24]
OR U040031499B	"I"[25]
Protest Letter dated 15 March 2018	"J"[26]

14 Amended Judicial Affidavit of Marion D. Castañeda, id., pp. 208-219,

15 SEC. 143. Tax on Business. – The municipality may impose taxes on the following businesses:

...

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section:

...

(8) Cement.

...

16 SEC. 143. Tax on Business. – ...

(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:

...

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

...

(d) On retailers[.]

...

17 RTC Records, Volume I, pp. 266-277.

18 Id., p. 278.

19 Id., p. 279.

20 Id., p. 280.

21 Id., p. 281.

22 Id., p. 282.

23 Id., p. 283.

24 Id., p. 284.

25 Id., p. 285.

26 Id., pp. 286-290.

Protest Letter dated 22 May 2018	"K"[27]
Protest Letter dated 02 August 2018	"L"[28]

After petitioner rested its case, respondents' witness Magdalena Q. Afuang (**Afuang**), its Local Treasury Operations Officer III, took the witness stand and testified through her Judicial Affidavit.[29] According to Afuang, *per* petitioner's business permit, it has been registered as a mere wholesaler and not a wholesaler of essential commodities. As such, it was not to be entitled to the preferential rate of LBT under Section 103[30] of the 2013 Omnibus Revenue Code of the City of Manila[31] (**ORCCM**).

Later in her testimony, Afuang also attested to petitioner's receipt of the letter request on 17 May 2018[32], requesting the latter to produce certain financial documents to verify its claim of refund. Since petitioner immediately raised its claim for refund to the Court without complying with such request, respondents were denied the opportunity to act on petitioner's claim.

The said letter request dated 03 April 2019 (which petitioner received on 17 May 2018) was admitted into evidence as respondent's Exhibit "1" to "1-b".

After the trial, the RTC promulgated the assailed Decision[33] and essentially found petitioner to have failed in proving that it has registered as a wholesaler of an essential commodity which, in this case, is cement *per* its business permit for CY 2018 and the preceding years. Following the Supreme Court's ruling In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[34] (**Total Gas**), the RTC also found petitioner's judicial action for refund dismissible for its failure to substantiate its claim at the administrative level (when it ignored respondents' request for the production of financial documents relevant to its claim for refund).

27 Id., pp. 291-295.
28 Id., pp. 296-300.
29 Judicial Affidavit of Magdalena Q, Afuang, id., pp. 318-321.
30 **SEC. 103**. *Tax on Essential Commodities*. – ...
31 Manila City Ordinance No. 8331.
32 Supra at note 12.
33 Supra at note 3.
34 G.R. No. 207112, 08 December 2015.

Aggrieved, petitioner filed a Motion for Reconsideration[35] (**MR**) of the assailed Decision. However, the RTC was unperturbed and denied the same as contained in its similarly assailed Order dated 01 March 2021.[36]

Having been consistently denied of relief by the RTC, petitioner then filed this present petition.[37]

In a Resolution dated 27 May 2021[38], the Court ordered respondents to file a comment/opposition to the instant petition. On 25 June 2021, respondents filed their Comment.[39] Subsequently, on 12 July 2021, petitioner filed its "Reply (Re: Respondents' Comment dated June 21, 2021 filed through registered mail on June 23, 2021)"[40] (**Reply**).

In yet another Resolution dated 14 July 2021[41], the Court noted petitioner's Reply. On 04 October 2021, respondents filed a Manifestation[42] wherein it adopted the contents of their Comment as their Memorandum. On 27 October 2021, petitioner filed its Memorandum[43] and reiterated the contents of the instant petition. Finally, in a Resolution dated 23 November 2021[44], the Court submitted herein case for decision.

ISSUES

Before Us, petitioner assigns the following errors to the RTC's assailed Decision dated 11 December 2020 and Order of 01 March 2021, respectively, to wit:

[35] Filed on 21 January 2021, RTC Records, Volume I, pp. 398-408.
[36] Supra at note 4.
[37] Supra at note 1.
[38] Division Docket, p. 172.
[39] Id., pp. 173-179.
[40] Id., pp. 183-189.
[41] Id., p. 190.
[42] Id., pp. 192-193.
[43] Id., pp. 196-218.
[44] Id., p. 224.

I.

THE REGIONAL TRIAL COURT ERRED IN HOLDING THAT PETITIONER HOLCIM PHILIPPINES, INC. MUST FIRST PROVE ITS REGISTRATION WITH RESPONDENT CITY OF MANILA AS A MANUFACTURER AND/OR WHOLESALER OF CEMENT, AN ESSENTIAL COMMODITY UNDER THE LOCAL GOVERNMENT CODE (LGC), BEFORE IT MAY BE ENTITLED TO REFUND OF THE TOTAL CLAIM FOR REFUND.

II.

THE REGIONAL TRIAL COURT ERRED WHEN IT DID NOT GRANT PETITIONER HOLCIM PHILIPPINES, INC.'S CLAIM FOR REFUND DESPITE EVIDENCE PROVING PETITIONER'S ENTITLEMENT TO REFUND AND RESPONDENTS THE CITY OF MANILA AND JOSEPHINE D. DAZA, IN HER CAPACITY AS THE CITY TREASURER OF THE CITY OF MANILA'S ADMISSION/STIPULATION THAT PETITIONER IS A MANUFACTURER AND/OR WHOLESALER OF CEMENT, AN ESSENTIAL COMMODITY UNDER THE LOCAL GOVERNMENT CODE (LGC) OF 1991.

III.

THE REGIONAL TRIAL COURT ERRED WHEN IT DID NOT CONSIDER RESPONDENTS THE CITY OF MANILA AND JOSEPHINE D. DAZA, IN HER CAPACITY AS THE CITY TREASURER OF THE CITY OF MANILA'S VIOLATION OF PETITIONER HOLCIM PHILIPPINES, INC.'S RIGHT TO DUE PROCESS WHEN THEY ILLEGALLY AND ERRONEOUSLY COLLECTED FROM PETITIONER THE TOTAL CLAIM FOR REFUND.

ARGUMENTS

In support of the above, petitioner argues that it does not need a separate business permit deeming it a manufacturer or wholesaler of essential commodities before it could take advantage of the preferential rate of LBT under Section 143(c)[45] of the LGC of 1991. It stresses that such principle is unfounded in jurisprudence and in the LGC, and all it needs to comply with are the reglementary periods laid down in Section 196[46] of the LGC of 1991.

[45] Supra at note 15.
[46] **Sec. 196**. *Claim for Refund of Tax Credit. – ...*

Petitioner further contends that, following the parties' stipulation, the fact that it is a manufacturer and wholesaler of cement is already beyond dispute. Thus, it argues that the RTC has erred in its conclusions in the assailed Decision and Order.

Lastly, petitioner claims that the issuance of the SOAs did not specify the nature of the amount being assessed hence the same violated its right to due process.

Respondents, on the other hand, contend that aside from the periods provided in Section 196[47] of the LGC of 1991, petitioner is still bound to prove the fact of erroneous or illegal collection which for the former, the latter failed to do. They add that petitioner is not a wholesaler of an essential commodity and the fact that the latter renewed its business permit as a mere wholesaler of an unspecified commodity since 2004 bolster their claim.

Respondents also maintain that despite petitioner's allegations that the SOAs did not contain a statement as regards the nature of the tax being levied, the same are itemized and indicated in the said documents.

RULING OF THE COURT

Summing up the errors assigned to the RTC's actions, We find the resolution of one singular issue more encompassing and appropriate, *i.e.*, whether the RTC erred in denying petitioner's claim for refund?

Before the Court proceeds to address the above issue, the Court shall first determine whether it has jurisdiction over the subject matter presented before it as jurisdiction over subject matter is conferred by law and any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[48]

---

47 Supra.
48 *Bernadette S. Bilag, et al. v. Estela Ay-ay, et al.*, G.R. No. 189950, 24 April 2017.

Section 196 of the LGC of 1991 provides:

> ...
> **Sec. 196.** *Claim for Refund of Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
> ...

To be entitled to a refund under the foregoing provision, the taxpayer must comply with the following procedural requirements: ***first***, file a written claim for refund or credit with the local treasurer; and ***second***, file a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.[49]

In the instant case, it is undisputed that petitioner wrote respondent treasurer three (3) protest letters on 15 March 2018[50], 22 May 2018[51] and 02 August 2018[52], respectively, seeking for the refund of its Q1, Q2 and Q3 2018 LBT, in compliance with the first requirement.

Petitioner also complied with the second requirement as shown below:

Period Covered	Payment Date	Last Day to File Judicial Claim	Actual Date of Filing of Judicial Claim
1st Quarter of 2018	20 January 2018[53]	20 January 2020	05 November 2018[54]
2nd Quarter of 2018	20 April 2018[55]	20 April 2020	
3rd Quarter of 2018	18 July 2018[56]	18 July 2020	

49 *International Container Terminal Services, Inc. v. The City of Manila, et al.*, G.R. No. 185622, 17 October 2018.
50 Exhibit "J", supra at note 26.
51 Exhibit "K", supra at note 27.
52 Exhibit "L", supra at note 28.
53 Exhibit "G", supra at note 23.
54 RTC Records, Volume I, p. 2.
55 Exhibit "H", supra at note 24.
56 Exhibit "I", supra at note 25.

Clearly, petitioner's appeal before the RTC was filed in accordance with Section 196 of the LGC of 1991.

As to this Court's jurisdiction to take cognizance of this instant petition, Section 7(a)(3) of Republic Act (**RA**) No. 9282[57] states:

> ...
> **SEC. 7.** *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
> ...
>
> (3) **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases** originally decided or resolved by them in the exercise of their original or appellate jurisdiction.[58]
>
> ...

The above provision is implemented by Section 3(a)(3), Rule 4 of the RRCTA, to wit:

> ...
> **SEC 3.** *Cases within the jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
> ...
>
>> (3) **Decisions, resolutions or orders of the Regional Trial Courts in local tax cases** decided or resolved by them in the exercise of their original jurisdiction[.][59]
>
> ...

With regard to the filing of an appeal with the Court, Section 3 (a), Rule 8 of the RRCTA, in part, provides:

---

57 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

58 Emphasis supplied.

59 Emphasis supplied.

> ...
>
> **SEC. 3.** *Who may appeal; period to file petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed **within thirty days after receipt of a copy of such decision or ruling**, or expiration of the period fixed by law or the Commissioner of Internal Revenue to act on the disputed assessments. ...[60]
>
> ...

Per the Court's records, petitioner received the RTC's assailed Decision on 07 January 2021[61] and it subsequently filed an MR thereto on 21 January 2021.[62] Thereafter, the RTC issued the assailed Order on 01 March 2021[63] denying the MR. Petitioner received notice thereof on 16 April 2021.[64] On 17 May 2021[65] (since 16 May 2021 fell on a Sunday), petitioner filed the present petition before the Court. Petitioner thus has timely filed its appeal, giving this Court the requisite jurisdiction to rule on the issue raised herein.

THE REQUIREMENT OF SPECIFYING THE NATURE OF TAX IS NOT REQUIRED UNDER SECTION 196 OF THE LOCAL GOVERNMENT CODE (LGC) OF 1991.

To recall, petitioner claims that respondents' failure to specify the nature of the tax, fee or charge being collected from petitioner in the SOAs violated petitioner's right to due process.

We disagree.

---

60 Emphasis supplied.
61 Petition for Review, Division Docket, p. 7.
62 Supra at note 35.
63 Supra at note 4.
64 Petition for Review, Division Docket, p. 7.
65 Supra at note 1.

The SOAs in the instant case were issued in connection with petitioner's renewal of business permits and licenses for CY 2018[66] by respondent City's License Division[67] and not by the City Treasurer.

A review of Section 196[68] of the LGC of 1991 reveals that it does not require that the nature of tax or fee levied to be specified. In stark contrast thereto, Section 195[69] of the LGC of 1991 provides such degree of specificity as regards the issuance of a notice of assessment (**NOA**). In the case of *City Treasurer of Manila v. Philippine Beverage Partners, Inc., substituted by Coca-Cola Bottlers Philippines*[70], the Supreme Court discussed lengthily the difference between Sections 195 and 196 of the LGC of 1991, to wit:

> ...
>
> **Section 195**. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that 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. ...
>
> ...
>
> **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...
>
> ...
>
> The first provides the procedure for **contesting an assessment issued by the local treasurer**; whereas, the second provides the procedure for the **recovery of an erroneously paid or illegally collected tax, fee or charge**. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired

---

66 Par. 14, Petition for Review, Division Docket, p. 10.
67 Exhibits "D", "E" and "F", supra at notes 20 to 22.
68 Supra at p. 9.
69 **Sec. 195.** *Protest of Assessment.* – ...
70 G.R. No. 233556, 11 September 2019; Emphasis supplied and italics in the original text.

relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

Obviously, the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may *appeal* with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

On the other hand, Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.

...

Surely, the SOAs issued in connection with the renewal of petitioner's business permit are distinct from a NOA issued in connection with Section 196 of the LGC of 1991. Noteworthy is the fact that the purpose of requiring tax authorities to properly inform the taxpayer of both the legal and factual bases, including the nature of the tax, fee or charge, of the assessment is to aid the taxpayer to make an effective and reasonable protest.

The rationale behind the requirement conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law.[71] Such is not the case in actions falling under Section 196 of the LGC of 1991 where no assessment is involved. Under the said provision, the taxpayer is not under investigation or audit by the LGU. In fact, aside from compliance with

[71] *Commissioner of Internal Revenue v. Fitness by Design Inc.*, G.R. No. 215957, 09 November 2016.

the jurisdictional periods, Section 196 of the LGC of 1991 only requires to prove that the LGU illegally or erroneously collected a tax and that a refund thereof is the express remedy sought.

Clearly, petitioner lost sight of the difference between the two foregoing provisions. On one hand, it grounded its whole case on Section 196 of the LGC of 1991; and on the other, based respondents' violations on Section 195 of the LGC of 1991 which deals with a completely separate matter.

Now, even assuming *arguendo* that the requirements of Section 195 need to be satisfied in this case, the Court finds respondents to have substantially complied therewith. A perusal of the SOAs expressly state that petitioner was being billed as "WHOLESALER" which can be reasonably assumed to fall under Section 102[72] of the ORCCM.

PETITIONER FAILED TO PROVE WITH PREPONDERANT EVIDENCE THAT IT IS ENTITLED TO THE PREFERENTIAL RATE.

An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[73]

Section 143(c)(8) of the LGC of 1991, as amended, provides:

> ...
>
> SEC. 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:
>
> ...
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential

[72] **SEC. 102.** *Tax on Wholesalers, Distributors, or Dealers.* — There is hereby imposed a graduated tax on wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule[.]

[73] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 25 April 2012.

commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section:

...

(8) **Cement.**[74]

...

Meanwhile, Sections 102 and 103 of the ORCCM, state:

...

SEC. 102. *Tax on Wholesalers, Distributors, or Dealers.* — There is hereby imposed a graduated tax on wholesalers, distributors, or dealers in **any article of commerce of whatever kind or nature...**

...

SEC. 103. *Tax on Essential Commodities.* — A percentage tax at the rate of one half (1/2) of the rates prescribed under Sections 101, 102, and 104 is hereby imposed on exporters, and on **manufacturers**, millers, producers, **wholesalers**, distributors, dealers or retailers **of essential commodities enumerated hereunder**:

...

(8) **Cement.**[75]

...

At this juncture, it is important to remember that LGUs impose LBT on the *privilege of doing business within their territorial jurisdictions.*[76] The phrase "doing business" refers to engaging in some sort of "trade or commercial activity frequently as a means of subsistence or with an eye toward profit.[77] Thus, in order for petitioner to be entitled to the discounted tax rate under Section 103[78] of the ORCCM[79], it is incumbent upon petitioner to prove that it is engaged in business as a manufacturer, miller, producer, wholesaler, distributer, dealer or retailer of cement or other essential commodities.

---

74 Emphasis supplied.
75 Emphasis supplied.
76 *City of Davao, et al. v. ARC Investors, Inc.*, G.R. No. 249668 (Resolution), 13 July 2022.
77 Section 131(d) of the LGC of 1991.
78 Supra at p. 15.
79 Supra at note 31.

To prove that it is a manufacturer and/or wholesaler of cement, petitioner proffered as evidence its Amended AOI[80] and the testimony[81] of its witness, Castañeda. As shown in its Amended (**AOI**), petitioner's primary business purposes are as follows:

> ...
>
> To engage in the **business of manufacture, production and merchandising, whether domestically or for export**, of **<u>cement</u>**, **<u>cement products</u>** and **<u>by-products</u>**, **<u>including its derivatives</u>**, and **<u>any and all kinds of minerals and building materials</u>**. (As amended on March 31, 2011 by the Board of Directors and on May 12, 2011 by the Shareholders)[82]
>
> ...

Indubitably, from the nature of its business, petitioner is *not exclusively* engaged in the sale and/or manufacture of cement. According to its Amended AOI, it may engage in the sale and/or manufacture of all kinds of minerals and building materials. In connection with this, petitioner's Certification[83] of its total gross receipts/sales for the CY 2017 does not indicate that its sales were derived *solely* from the sale of cement.

Moreover, as regards this matter, the testimony of Castañeda bears glaring inconsistencies. In Castañeda's Amended Judicial Affidavit[84], he testified thusly:

> ...
>
> 11. Question: Is HPI **engaged in cement manufacturing in the <u>City of Manila</u>?**
>
> Answer: **Yes**. Apart from the actual manufacturing and production of cement, the storage, warehousing, transportation, merchandising, <u>and wholesaling</u>, form part of the cement manufacturing business of HPI. In the City of Manila, HPI has a terminal, known as the "Holcim Philippines, Inc. - Manila Cement Terminal" located in L10 B2 Manila Harbor

---

80 Exhibit "A", supra at note 17.
81 Supra at note 14.
82 Emphasis and underscoring supplied.
83 RTC Records, Volume I, p. 290.
84 Id., p. 212.

Center, Tondo, Manila, which serves and acts as an **entry point of cement manufactured by Holcim from outside of Luzon.**

12. Question: Can you state the registered line of business of HPI in the City of Manila for 2018 and prior year?
Answer: For years 2017 and 2018, HPI was registered as a "WHOLESALER" and "WAREHOUSING".[85]

...

During the cross-examination[86], he further testified that:

...
ATTY. DEL MUNDO:
Q In Question 11, you were asked if petitioner (*sic*) engaged in cement manufacturing in the City of Manila, your answer was, "yes", do you confirm that?
A Yes, sir.

Q Cement manufacturing in the City of Manila and when you were asked where is this cement manufactures (*sic*), **in Manila**?
A **No, sir.**

COURT:
Q So, the answer is not consistent?
A What I mean in this, sir, your honor, is that the cement is being manufactured by Holcim, but **it is not manufactured in Manila itself** but in **other manufacturing plants, in other locations.**

...

ATTY. DEL MUNDO:
Q So, **the manufacturing business is done outside of Luzon**?
A **Outside of Manila.**

Q Let me confront you to Question and Answer No. 11, you said that the Manila Cement Terminal located in Manila Harbour Center serves and [acts] as an entry point of cement, **manufactured by Holcim from outside of Luzon**, am I correct or am I reading it correctly?

---

[85] Underscoring in the original text, emphasis and underscoring supplied.
[86] TSN dated 02 April 2019, pp. 19 and 21; Emphasis supplied.

A **Yes, sir.**

...

Finally, on re-direct examination, he stated:

...

ATTY. PATAWARAN:
Re-direct, your honor.

Q Mr. witness, may I clarify, how does Holcim Manila Terminal which operates in the City of Manila, how does it relate to the cement manufacturing process of Holcim Philippines?

A As I mentioned earlier, it is a **port terminal of cement products manufactured outside of Luzon.**[87]

...

Moreover, it was revealed during the cross-examination that Castañeda only started working for petitioner in December of 2018 or after the issuance of SOAs, payment of the subject LBT, petitioner's protests and the subsequent filing of the judicial claim for refund before the RTC, to wit:

...

ATTY. DEL MUNDO:

Q Just to be clarified, Mr. witness. **In all these instances for the first, second, third and even the fourth quarter payment[s] of Holcim Philippines, you were never involved**, correct?

A **No, sir.**

COURT:

Q [When] were you employed again?

A I was **hired back in December 2018**, your honor.

Q **December 2018 only**?

A **Yes, your honor**.

ATTY. DEL MUNDO:
Just a few months ago.

---

[87] Id., p. 23; Emphasis supplied.

> ATTY. PATAWARAN:
> Your honor, we would like to manifest that the **Business Manager who handle this account is no longer connected with the company.**
>
> ...
>
> ATTY. PATAWARAN:
> Your honor, nevertheless he has custody and safekeeping of the original documents.
>
> COURT:
> Based on records, but he cannot question the reason why those documents were issued, **he has no personal knowledge.** So, based on records these documents were asked by Holcim cement and issued by the City Treasurer of Manila. Proceed.[88]
>
> ...

As it is, petitioner's sole witness has no personal knowledge of the factual allegations in its original petition before the RTC. The only piece of evidence that may somehow substantiate petitioner's status as a seller and/or manufacturer of an essential commodity would be its Amended AOI. *However*, as previously discussed, petitioner's Amended AOI also authorizes it to deal in other building materials which may or may not fall within the scope of the essential commodities enumerated under Section 143[89] of the LGC of 1991 and Section 103[90] of the ORCCM. Since petitioner's Certification does not also itemize which among its gross sales pertains to the sale of cement; the Court has no way to determine whether the preferential rate of LBT may be applied to even a portion of its petitioner's revenue. Taking into consideration these circumstances (and the declaration of petitioner's own witness that HPI's business, at least in Manila, is registered as "WHOLESALER" in general and "WAREHOUSING"), the Court thus is left to conclude that petitioner is indeed *not* to be entitled to a preferential rate of LBT.

Even assuming *arguendo* that petitioner is not required to register as a wholesaler and/or manufacturer of cement to avail of the preferential rate, petitioner's evidence remains severely lacking to even prove that it deserves a partial refund of the collected LBT.

---

88 Id., pp. 15-16; Emphasis supplied.
89 Supra at pp. 14-15.
90 Supra at p. 15.

Additionally, there is still the unrebutted testimony[91] of respondents' witness (Afuang) that petitioner applied for a permit to conduct business in the City of Manila as a WHOLESALER from 2004 to present as shown by its Business Identification Number (**BIN**) and 2017 and 2018 business permits[92], to wit:

...

Q3: What are your duties and functions as LTOO III, Ms. Witness?

A3: *I assess <u>the business taxes, regulatory fees and charges</u> and prepare the corresponding Statements of Account of individual taxpayers engaged in business or trade in Manila and also corporate taxpayers doing business situated in Manila to verify and assess deficiency local business taxes.*

Q4: Can you tell the Honorable Court what was the nature of business which petitioner Holcim is engaged in?

A4: *Based on its Business Permit, Holcim Philippines Inc. is a WHOLESALER, Sir;*

Q5. Can you take a look at petitioner's Business Permits, marked as Exhibits "B" & "C", do you find any indication that it is engaged in the <u>wholesale of an essential commodity - Cement</u>?

A5: <u>*No Sir;*</u>

Q6: According to Petitioner Holcim, it is entitled to a preferential business tax rate, is this true?

A6: *No Sir, to be given a preferential discounted rate, Holcim must <u>apply</u> for and secure a Business Permit as **Wholesaler/ Essential** Commodity and not just as a Wholesaler, Sir;*

Q7: In connection with petitioner Holcim, can you explain to the Court the proper business tax rate that is applicable to petitioner?

A7: *Pursuant to City Ordinance No. 8331, the Omnibus Revenue Code of Manila, the applicable local business tax rate is that imposed under Sec. 102 - **Tax on Wholesalers**, Distributors, or Dealers since that is <u>the Business Permit that it had applied for ever since</u>;*

---

91 Supra at note 29.
92 Exhibits "B" and "C", supra at notes 18 and 19.

Q8: Had petitioner Holcim applied for and secured a Business Permit as **Wholesaler/Essential Commodity**, would there have been any difference in respect to the taxes it pays?

A8: *Yes, Sir. The local business tax rate would be that which is based on Sec. 103 of the Revenue Code - Tax on Essential Commodities, a percentage tax at the rate of one-half (½) of the rates prescribed under Sec. 102;*

Q9: Madam Witness, for how long has petitioner engaged in business as wholesaler in Manila, if you know?

A9: *Based on <u>the BIN (Business Identification Number) issued to the taxpayer "117-00-2004-0044421"</u>, it would appear that it has been <u>doing business and paying its local business taxes just as a Wholesaler since 2004</u> or maybe even earlier since it was only in <u>2004 when the City Treasurer's Office started to implement the B-I-N for computerization purposes</u>*[.][93]

...

In cases where only preponderance of evidence is needed to grant relief to the claimant, the parties' opposing evidence are necessarily pitted against each other. The standard is met if the evidence is able to prove that **the proposition is more likely to be true than not true or more probable than improbable.** Stated differently, it is more likely to be true or more probable than what the opposing pieces of evidence prove, *i.e.*, the proof generated by the evidence is **any value greater than fifty percent chance that the proposition is true as against what the opposing evidence sought to establish.**[94]

It cannot be gainsaid enough that a tax refund is in the nature of a tax exemption, construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Based on the foregoing, the Court finds that petitioner has failed to prove, with preponderant evidence, that it is entitled to the preferential rate under Section 103 of the ORCCM. The Court perforce finds no reversible error in the RTC's denial of petitioner's claim for refund.

---

93 Emphasis and italics in the original text and underscoring supplied.

94 Associate Justice Amy C. Lazaro-Javier's Concurring Opinion, in *Philip Hernandez Piccio v. House of Representatives Electoral Tribunal, et al.*, G.R. No. 248985, 05 October 2021, citing *Miller v. Minister of Pensions* [1947] 2 All ER 372.

WHEREFORE, the foregoing premises considered, the Petition for Review of petitioner Holcim Philippines, Inc. filed on 17 May 2021 is hereby **DENIED** for lack of merit. Accordingly, the Decision and Order of the Regional Trial Court of the City of Manila, Branch 21, in Civil Case No. R-MNL-18-12812-CV on 11 December 2020 and 01 March 2021, respectively, are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice