REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

CITY TREASURER OF MANILA, *Petitioner,*	**CTA *EB* NO. 1342** (CTA AC No. 122)
– versus –	Present: ***Del Rosario,*** P.J., ***Castañeda, Jr.,*** ***Bautista,*** ***Uy,*** ***Casanova,*** ***Fabon-Victorino,*** ***Mindaro-Grulla,*** and ***Ringpis-Liban,*** JJ.
PHILIPPINE BEVERAGE PARTNERS, INC., substituted by COCA-COLA BOTTLERS PHILIPPINES, INC., *Respondent.*	Promulgated: DEC 22 2016 11:15 a.m.

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DECISION

BAUTISTA, J:

This is a Petition for Review pursuant to *Section 3(b)*[1], *Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")* filed by petitioner City Treasurer of Manila before the Court of Tax Appeals ("CTA") *En Banc* praying for the reversal of the Decision[2] promulgated

[1] *Section 3(b), Rule 8 of the RRCTA* provides:

Sec. 3. *Who May Appeal; Period to File Petition.* — xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[2] *Records, CTA AC No. 122, Decision,* pp. 145-159; penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring.

on May 8, 2015 (the "Assailed Decision") and Resolution[3] promulgated on July 20, 2015 (the "Assailed Resolution") of the CTA Second Division (the "Court in Division"), which affirmed the Decision[4] promulgated on November 18, 2013 and Order[5] promulgated on July 4, 2014 of the Regional Trial Court of Manila, Branch 47 ("RTC") in the case entitled *Philippine Beverage Partners, Inc. v. City of Manila and Liberty M. Toledo (City Treasurer of the City of Manila)*[6] granting the claim for refund of erroneously/illegally collected local business tax ("LBT") and regulatory fees of respondent Philippine Beverage Partners, Inc. ("PBPI") in the amount of Php2,424,158.93 for the first quarter of calendar year ("CY") 2007.

The Parties

The City of Manila is a municipal corporation created and organized under its own charter, *Republic Act ("RA") No. 409, as amended*[7], while petitioner is the duly appointed City Treasurer thereof[8].

Respondent PBPI, substituted herein by Coca-Cola Bottlers Philippines, Inc., is a corporation organized and operating under existing Philippine laws, with principal office at 822 Bagumbayan Street, Bacood, Manila.[9]

The Facts

On January 17, 2007, petitioner issued a Statement of Account ("SOA") under Bill No. 012007-33025 in favor of PBPI for LBT and regulatory fees in relation to the renewal of PBPI's business permits and license for the first quarter of CY 2007. Under the SOA, PBPI was found liable for LBT and regulatory fees in the total amount of Php2,930,239.82.[10]

PBPI filed a letter-protest with petitioner on January 19, 2007

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[3] *Records, CTA AC No. 122, Resolution*, pp. 185-188.
[4] *Id., RTC Decision*, pp. 24-34; penned by Presiding Judge Paulino Q. Gallegos.
[5] *Id., RTC Order*, pp. 35-37.
[6] Docketed as Civil Case No. 07-116880.
[7] An Act to Revise the Charter of the City of Manila [Revised Charter of the City of Manila] (1949).
[8] *Records, Decision*, p. 146.
[9] *Id.*
[10] *Id.*

requesting the withdrawal and revision of the SOA.[11] Thereafter, PBPI made a formal tender of payment to the City of Manila on January 22, 2007 for LBT and regulatory fees for the first quarter of CY 2007 in the amount of Php506,080.89.[12] The payment, which was based on PBPI's computation of its correct liabilities for the relevant period, was not accepted by the City of Manila.[13]

Subsequently, petitioner issued a letter to PBPI on February 2, 2007, which was received by the latter on February 6, 2007, denying PBPI's request for the withdrawal and revision of the SOA.[14]

On February 13, 2007, PBPI was constrained to pay the total amount of Php2,930,239.82[15] stated in the SOA in order to meet the deadline for the payment of its liabilities.[16]

PBPI then filed a written claim for refund of erroneously/illegally collected tax with petitioner on March 2, 2007 in the amount of Php2,424,158.93 computed, as follows:[17]

Amount paid *per* OR No. BAI-008505	Php	2,930,239.82
Tax due based on PBPI's computation		506,080.89
Overpayment	**Php**	**2,424,158.93**

Further, PBPI filed a Complaint for the Revision of SOA (Preliminary Assessment) and for Refund or Credit of LBT Erroneously/Illegally Collected with the RTC, which was docketed as *Civil Case No. 07-116880*, on March 8, 2007.[18]

On November 18, 2013, the RTC promulgated a Decision ordering the refund of the overpayment made by PBPI.[19] The dispositive portion of the RTC's Decision reads:

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[11] *Records, Decision*, p. 148.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 149.
[15] The Court in Division's Decision mistakenly lifted the amount of Php2,930,239.22 from the RTC Decision; see Records, CTA AC No. 122, p. 27.
[16] *Records, Decision*, p. 149; *Records, Complaint, Annex "G,"* p. 73.
[17] *Records, Decision*, p. 149.
[18] *Records, Decision*, p. 149; *Records, Petition for Review, Annex "C," Complaint*, pp. 38-48.
[19] *Records, RTC Decision*, pp. 24-34.

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering defendants City of Manila and Liberty M. Toledo to refund to the plaintiff the taxes paid hereunder in the amount of Php2,424,158.93 and to pay the cost of suit.
>
> **SO ORDERED.**[20]

In its Decision, the RTC held that considering that the case is for the refund/tax credit of erroneously/illegally paid taxes and fees, and the SOA was not issued pursuant to *Section 195*[21] *of the Local Government Code of 1991, as amended (the "1991 LGC")*[22], the applicable provision is *Section 196*[23] *of the 1991 LGC.* According to the RTC, the SOA was not a deficiency tax assessment, but a mere computation of the current tax liabilities of PBPI based on PBPI's own certification of gross sales during the preceding year. The RTC further held that PBPI not only exhausted the requisite administrative remedy, it also filed the case before the RTC on time, *i.e.*, within two (2) years from the payment of the taxes erroneously/illegally collected. Finally, the RTC found that PBPI was subjected to double taxation when its business

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[20] *Records, RTC Decision*, p. 34.

[21] *Section 195 of the LGC* provides:

> Sec. 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. 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 cancelling 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 the 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.

[22] An Act Providing for a Local Government Code of 1991, Republic Act No. 7160 (1991).

[23] *Section 196 of the LGC* 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.

was taxed under both *Sections 14*[24] *and 21*[25] *of the Revenue Code of the*

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[24] *Section 14 of the RCCM* provides:

Sec. 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 Annually	Quarterly
Less than Php10,000.00		300.00	75.00
10,000.00 or more but less than	15,000.00	413.00	103.25
15,000.00 or more but less than	20,000.00	564.00	141.50
20,000.00 or more but less than	30,000.00	826.00	206.50
30,000.00 or more but less than	40,000.00	1,200.00	300.00
40,000.00 or more but less than	50,000.00	1,500.00	375.00
50,000.00 or more but less than	75,000.00	2,250.00	562.50
75,000.00 or more but less than	100,000.00	3,000.00	750.00
100,000.00 or more but less than	150,000.00	4,131.00	1,032.75
150,000.00 or more but less than	200,000.00	5,220.00	1,305.00
200,000.00 or more but less than	300,000.00	7,401.00	1,850.00
300,000.00 or more but less than	500,000.00	10,907.00	2,726.75
500,000.00 or more but less than	750,000.00	15,972.00	3,993.00
750,000.00 or more but less than	1,000,000.00	20,263.00	5,065.75
1,000,000.00 or more but less than	2,000,000.00	30,889.00	7,722.25
2,000,000.00 or more but less than	3,000,000.00	40,016.00	10,004.00
3,000,000.00 or more but less than	4,000,000.00	49,995.00	12,498.75
4,000,000.00 or more but less than	5,000,000.00	59,977.00	14,994.25
5,000,000.00 or more but less than	6,500,000.00	69,360.00	17,340.00
6,500,000.00 or more		at a rate not exceeding fifty six and one fourth percent (56 1/4%) of one percent (1%)	

[25] *Section 21 of the RCCM* provides:

Sec. 21. *Tax on Business 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 to as NIRC, as amended, a tax of fifty percent (50%) of one percent (1%) per annum on the gross sales or receipts of the preceding calendar is hereby imposed:

A) On persons who sell goods and services in the course of trade of business, and those who import goods whether for business or otherwise, as provided for in sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code.
B) On the gross receipts of keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passengers or freight for hire, and common carriers 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) Exciseable goods subject to VAT
   1) Distilled spirits

City of Manila, as amended ("RCCM")[26].

Petitioner moved for the reconsideration of the RTC's Decision.[27] However, the RTC issued an Order dated July 4, 2014 upholding the refund of the overpayment made by PBPI.[28] The dispositive portion of the RTC's Order reads:

> WHEREFORE, premises considered, the instant Motion for Reconsideration is **DENIED**.
>
> Likewise, with the duly approved merger, plaintiff's Motion for Substitution is granted and it is considered substituted as such plaintiff by the surviving corporation, Coca-Cola Bottlers Philippines, Inc.
>
> SO ORDERED.[29]

In its Order, the RTC ruled that it cannot simply reconsider and set aside its Decision based on petitioner's belated claim and assertions that PBPI has tax deficiencies. Had petitioner alleged the tax deficiency

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2) Wines
3) Tobacco products (other than cigarettes, cigar and chewing tobacco)
4) Tobacco specially prepared for chewing
5) Fireworks
6) Cinematographic film
7) Saccharine
8) Coal and Coke
9) Fermented liquor, brewer's wholesale price, excluding the ad valorem tax
10) Automobiles, manufacturers or importers selling price
11) Non-essential goods based on the wholesale price, net of excise tax and VAT
    a) Jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitation thereof; goods made of, or ornamented, mounted or fitted with precious metals or imitation thereof or ivory (not including surgical and dental instruments. silver-plated wares, frames or mountings for spectacles of eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of teeth.)
    b) Perfumes and toilet waters.
    c) Yacht and other vessels intended for pleasure or sports.
12) Mineral products, based on actual market value of the annual gross output the time of removal

E) Excisable goods not subject to VAT
    1) Naptha when used as raw material for production of petrochemical products
    2) Asphalt

[26] Manila Ordinance No. 7988, January 1, 2000.
[27] *Records, Complaint, Annex "E," Motion for Reconsideration*, pp. 84-87.
[28] *Id., Annex "B," RTC Order*, pp. 35-37.
[29] *Id.* at 37.

as an affirmative defense or a permissive counterclaim in the Answer, the RTC could have validly considered the same. However, petitioner failed to do so. Further, the RTC held that unless the same has already prescribed, petitioner may still resort to its separate and subsequent plan of issuing a Notice of Assessment against PBPI for the alleged tax deficiency instead of having the RTC's Decision reversed.

Undaunted, petitioner filed a Petition for Review with the Court in Division, which was docketed as CTA AC No. 122, on August 14, 2014.[30]

On May 8, 2015, the Court in Division promulgated the Assailed Decision affirming the RTC's Decision and Order.[31] The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated November 18, 2013 and Order dated July 4, 2014 of the Regional Trial Court of Manila, Branch 47, are both **AFFIRMED**.
>
> **SO ORDERED**.[32]

In its Decision, the Court in Division held that the present case involves a claim for refund, and not a disputed assessment; and that PBPI complied with the requisites for claiming a refund of local taxes, fees, or charges, *i.e.* PBPI paid the local tax and fees on February 13, 2007, filed the written claim for refund or tax credit with petitioner on March 2, 2007, and filed the Complaint with the RTC on March 8, 2007. In addition, the Court in Division ruled that petitioner and the City of Manila are deemed to have waived their additional defenses when they did not invoke the same at the earliest possible time.

Consequently, petitioner moved for the reconsideration of the Assailed Decision.[33] However, the Court in Division issued the Assailed Resolution dated July 20, 2015 denying petitioner's Motion for Reconsideration.[34] The dispositive portion of the Assailed Resolution reads:

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[30] *Records, Petition for Review*, pp. 11-108, with annexes.
[31] *Id., Decision*, pp. 145-159.
[32] *Id.* at 158.
[33] *Records, Petitioner's Motion for Reconsideration*, pp. 160-167.
[34] *Id., Resolution*, pp. 185-188.

> **WHEREFORE**, premises considered, petitioners' Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[35]

Thereafter, petitioner City Treasurer of Manila filed the present Petition for Review with the Court *En Banc* on August 27, 2015 praying for the reversal and setting aside of the Assailed Decision and Resolution; and for a decision to be rendered ordering the reversal and/or modification of the RTC's Decision and Order, that PBPI pay deficiency taxes for CYs 2006 and 2007 in the amount of Php9,071,298.78 or Php6,647,139.85 (for the sake of equity and after deducting PBPI's claim for refund amounting to Php2,424,158.93).[36]

On October 7, 2015, respondent filed its Comment to the Petition for Review.[37] The Court *En Banc* resolved to give due course to the Petition for Review in a Resolution dated October 27, 2015.[38]

On January 14, 2016, the case was submitted for decision[39] in view of the filing of the parties' memoranda on December 9, 2015[40]; hence, this Decision.

The Issues

Based on the Petition for Review, the following are the issues to be resolved by the Court *En Banc*:

> WHETHER THE RTC AND THE COURT IN DIVISION GRAVELY ERRED IN UPHOLDING THE SELF-COMPUTATIONS OF LOCAL TAXES, FEES, AND CHARGES MADE BY PBPI AND TOTALLY DISREGARDED THE OFFICIAL COMPUTATIONS OF PETITIONER, AS REFLECTED IN THE SOA ISSUED TO PBPI BY PETITIONER AS WELL AS THE TAX DEFICIENCY ASSESSMENT FOR CYS 2006 AND 2007;

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[35] *Records, Resolution*, p. 188.
[36] *Rollo, CTA EB No. 1342, Petition for Review*, pp. 6-158, with annexes.
[37] *Id., Respondent's Comment*, pp. 163-166.
[38] *Id., Resolution*, pp. 168-169.
[39] *Id., Resolution*, pp. 202-203.
[40] *Rollo, Respondent's Memorandum*, pp. 170-184; *Rollo, Petitioner's Memorandum*, pp. 185-200.

> WHETHER THE TAX REFUND OR CREDIT, WHICH WAS ALLOWED/GRANTED BY THE RTC AND UPHELD BY THE COURT IN DIVISION, SHOULD BE RECONSIDERED IN VIEW OF THE FINDINGS OF PETITIONER THAT PBPI HAS TAX DEFICIENCY FOR CYs 2006 AND 2007 BASED ON THE 2006 AUDITED FINANCIAL STATEMENTS ("AFS") SUBMITTED BY PBPI TO THE RTC DURING THE HEARING ON THE MOTION FOR RECONSIDERATION FILED BY PETITIONER, A NEWLY DISCOVERED EVIDENCE;
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> WHETHER JUSTICE, EQUITY, AND FAIR PLAY SHOULD PREVAIL OVER TECHNICALITIES IN DECIDING THE RESPECTIVE CLAIMS OF RESPONDENT AND PETITIONER, THAT IS, TAX REFUND FOR RESPONDENT AND TAX DEFICIENCY FOR PETITIONER; AND
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> WHETHER THE RTC AND THE COURT IN DIVISION COMMITTED REVERSIBLE ERROR IN HOLDING THAT RESPONDENT'S CLAIM FOR REFUND OR TAX CREDIT IS THE CORRECT CAUSE OF ACTION UNDER *SECTION 196 OF THE 1991 LGC* INSTEAD OF APPEALING THE DENIAL OF ITS PROTEST WHICH IT FIRST AVAILED OF PURSUANT TO *SECTION 195 OF THE 1991 LGC*.[41]

Ultimately, the main issue to be resolved by the Court *En Banc* is whether respondent is entitled to a refund or tax credit of its erroneously/illegally paid LBT and regulatory fees in the amount of Php2,424,158.93 for the first quarter of CY 2007.

Petitioner's Arguments

Petitioner argues that it was erroneous for the RTC and the Court in Division to uphold the self-computations of local taxes, fees, and charges made by PBPI, and disregard the official computations of petitioner as reflected in the SOA as well as the tax deficiency assessment for CYs 2006 and 2007. According to petitioner, PBPI

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[41] *Rollo, Petition for Review*, pp. 11-12.

arrogated the functions of and acted as the City Treasurer of Manila when it insisted on paying the local taxes based on its own computation without regard to the computation of petitioner, who is legally tasked under the LGC to compute and collect local taxes, fees, and charges. Further, petitioner asserts that the deficiency tax assessment for CYs 2006 and 2007, which is newly discovered evidence, should be considered by the courts. Accordingly, there is a need to determine the liabilities of each of the parties, *i.e.*, the correct tax refund to be paid by petitioner *vis-à-vis* the tax liabilities of PBPI due to petitioner based on the deficiency tax assessment for CYs 2006 and 2007.

Petitioner likewise posits that considering that the RTC and the Court in Division allowed the self-computation of PBPI as the basis for the tax refund or credit, equity dictates that the newly discovered evidence (*i.e.*, correct gross income of PBPI for CYs 2005 and 2006 which PBPI deliberately failed to declare truthfully and were only discovered when the RTC ordered PBPI's submission of its 2006 AFS), and the computations for correct local taxes, fees, and charges for CYs 2006 and 2007 resulting in deficiency taxes amounting to Php9,071,298.78 should also be allowed in evidence. According to petitioner, the refund granted by the RTC and the Court in Division should be offset with PBPI's tax deficiency for CYs 2006 and 2007; thus, the balance of Php6,647,139.85 should be settled by PBPI.

Finally, petitioner argues that PBPI filed a letter of protest in response to the SOA. In view of petitioner's denial of PBPI's protest, PBPI should have appealed the denial following *Section 195 of the 1991 LGC*. However, instead of an appeal, PBPI filed a claim for refund pursuant to *Section 196 of the 1991 LGC*, which is the wrong cause of action. Having availed of the remedy of filing a protest under *Section 195 of the 1991 LGC*, PBPI should have exhausted all the remedies available thereunder; otherwise, the assessment becomes conclusive and unappealable.

Respondent's Counter-Arguments

On the other hand, PBPI counters that its 2006 AFS cannot be considered newly discovered evidence as the same can be easily obtained from the Securities and Exchange Commission. In fact, if after examining the books, accounts, and other pertinent records of PBPI, the City Treasurer finds that the correct taxes, charges, and fees were not paid, he could have issued a notice of assessment under *Section 195 of the 1991 LGC*, which was not done. Petitioner therefore did not exercise any reasonable diligence to locate the AFS. Furthermore, petitioner could have asked for the production of the AFS through Modes of Discovery under the Rules of Court or by requesting the issuance of a *subpoena duces tecum*.

PBPI also argues that under *Section 150*[42] *of the 1991 LGC*, only the sales by a branch or sales office located in a city or municipality can be taxed by such city or municipality. The sales or gross income reflected in PBPI's AFS covers the sales not only by its sales office located in the City of Manila, but also those located in the other cities or municipalities within Metro Manila. In addition, PBPI noted that its payments made for the second, third, and fourth quarters of CY 2007 as well as the four quarters of CY 2008 were not deducted from the

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[42] *Section 150 of the LGC* provides:

> Sec. 150. *Situs of the Tax*. – (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.
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> (b) The following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business:
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> > (1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located; and
> >
> > (2) Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.
>
> (c) In case of a plantation located at a place other than the place where the factory is located, said seventy percent (70%) mentioned in subparagraph (b) of subsection (2) above shall be divided as follows:
>
> > (1) Sixty percent (60%) to the city or municipality where the factory is located; and
> >
> > (2) Forty percent (40%) to the city or municipality where the plantation is located.
>
> (d) In cases where a manufacturer, assembler, producer, exporter or contractor has two (2) or more factories, project offices, plants, or plantations located in different localities, the seventy percent (70%) sales allocation mentioned in subparagraph (b) of subsection (2) above shall be prorated among the localities where the factories, project offices, plants, and plantations are located in proportion to their respective volumes of production during the period for which the tax is due.
>
> (e) The foregoing sales allocation shall be applied irrespective of whether or not sales are made in the locality where the factory, project office, plant, or plantation is located.

alleged deficiency tax. Clearly, the computation of petitioner is patently incorrect. Further, PBPI posits that its alleged deficiency tax is already barred by prescription under *Section 194[43] of the 1991 LGC.*

Finally, PBPI alleges that petitioner's claim of tax deficiency was not pleaded as a defense or as a counterclaim in the Answer or in a motion to dismiss. Thus, petitioner is deemed to have waived this defense due to failure to invoke the same at the earliest possible time. Moreover, PBPI argues that petitioner passed upon the opportunity of raising other factual and legal issues upon agreement to dispense with the pre-trial and submit the case for decision upon filing of the parties' respective memoranda, and petitioner opted not to file a memorandum - ultimately failing to offer and present any evidence to support his claims.

The Ruling of the Court En Banc

The Court *En Banc* rules in favor of respondent PBPI.

The claim involved in the present case arose from the SOA issued by petitioner in favor of PBPI. True, a "protest" was filed by PBPI to question petitioner's computation as stated in the SOA. However, this does not detract from the fact that the SOA was issued in connection

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[43] *Section 194 of the LGC* provides:

Sec. 194. *Periods of Assessment and Collection.* - (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: *Provided,* That taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.

(b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.

(c) Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period: *Provided, however,* That taxes, fees or charges assessed before the effectivity of this Code may be collected within a period of three (3) years from the date of assessment.

(d) The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which:

(1) The treasurer is legally prevented from making the assessment of collection;

(2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and

(3) The taxpayer is out of the country or otherwise cannot be located.

with PBPI's renewal of business permits and licenses for CY 2007. The SOA cannot be considered the notice of assessment required under *Section 195 of the 1991 LGC* as the notice of assessment contemplates a computation based on deficiency taxes, fees, and charges when the local treasurer finds that the correct taxes, fees, or charges were not paid. Accordingly, in the present case, the payment made by PBPI after petitioner denied its "protest" is the proper subject of a claim for refund for erroneously or illegally collected tax, fee, or charge in accordance with *Section 196 of the 1991 LGC*.

In this regard, the Supreme Court, in *Metro Manila Shopping Mecca Corp. v. Toledo*[44], enumerated the requisites for the entitlement to a refund/credit of local taxes as follows:

1. The taxpayer concerned must file a written claim for refund/credit with the local treasurer; and

2. The case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

Applying the foregoing to the present case, the Court *En Banc* affirms that PBPI was able to comply with the requisites for entitlement to a refund/credit of local taxes as: *(a)* PBPI filed a written claim for refund on March 2, 2007; and *(b)* PBPI filed the judicial claim on March 8, 2007, which is within two (2) years from payment of the tax on February 13, 2007.

Consequently, the Court *En Banc* upholds the finding of the RTC that PBPI is entitled to the claim for refund, thus:

> The Court agrees with the arguments of the plaintiff and so rules that, considering that the business being conducted by herein plaintiff-PBPI in the City of Manila is already subject to the tax under Section 14 of the RCM, the same should no longer be conducted to tax under Section 21, thereof. Collection of the tax imposed under Sec[tion] 21, in addition to the tax imposed [under] Section 14, both of the RCM, constitutes double taxation.[45]

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[44] G.R. No. 190818, June 5, 2013, 697 SCRA 425.
[45] *Records, RTC Decision*, p. 34.

On the other hand, anent the additional defenses raised by petitioner (*e.g.*, the alleged deficiency tax of PBPI for CYs 2006 and 2007, which petitioner seeks to offset against the amount PBPI is entitled to as tax refund or credit), suffice it to say that petitioner waived any additional defenses by his failure to raise the same in his Answer pursuant to *Section 1, Rule 9*[46] *of the Revised Rules of Court*. In any case, the proper recourse of petitioner, in order to collect the alleged deficiency tax, is the issuance of a notice of assessment against PBPI for the same, provided the assessment has not as yet been barred by prescription.

Accordingly, the Court *En Banc* upholds the following conclusion of the Court in Division:

> It should be noted that the aforementioned arguments were not advanced or submitted by petitioners in their Answer filed before the trial court on April 17, 2007, to wit:
>
> xxx xxx xxx
>
> Further, petitioners passed upon the opportunity of raising other factual and legal issues when they agreed to dispense with the pre-trial and to just submit the case for decision upon filing of the parties' respective memorandum. They, again, missed another chance to present other arguments or defenses when they opted not to file a Memorandum. Petitioners, instead, waited until the court *a quo* already rendered its Decision dated November 18, 2013, which granted the claim for refund or tax credit certificate of private respondent, before asserting in their Motion for Reconsideration the following issues which are closely similar to the above-cited remaining issues:
>
> xxx xxx xxx
>
> That being the case, the RTC of Manila, Branch 47, cannot be faulted in deciding the instant case based only on the legal

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[46] *Section 1, Rule 9 of the Revised Rules of Court* provides:

> Sec. 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

> issues submitted by the parties in the following pleadings: private respondent's [PBPI] Complaint, petitioners' Answer and private respondent's Memorandum.[47]

In view of the foregoing, the Court *En Banc* finds no cogent reason to set aside the findings and conclusions of the RTC and the Court in Division.

WHEREFORE, the instant Petition for Review is **DENIED** for lack of merit. The Decision promulgated on May 8, 2015 and the Resolution promulgated on July 20, 2015 by the Second Division are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[47] *Records, Decision*, pp. 154-158.

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice