REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

THE TREASURER OF THE CITY OF MANILA,
Petitioner,

- versus -

UNILEVER PHILIPPINES, INC.,
Respondent.

C.T.A. AC NO. 28

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

NOV 28 2007; 1:00 PM

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DECISION

CASANOVA, *J.*:

The Case

Before this Court is a Petition for Review of the Decision dated October 3, 2006 and Order dated December 12, 2006 of the Regional Trial Court ("RTC"), Branch 33, Manila in *Unilever Philippines, Inc. vs. Office of the City Treasurer, City of Manila* (docketed as Civil Case No. 06-114255).

Petitioner filed the present case in her official capacity as the treasurer of the City of Manila tasked with the implementation of the City's Revenue Code, as well as the collection and assessment of business taxes, license fees and permit fees within said City; and has office address at the Ground Floor, Manila City Hall, Taft Avenue, Manila.

Respondent is a domestic corporation duly registered and existing by virtue of the laws of the Philippines; with principal office address at 1351 United Nations Avenue, Manila.

On October 17, 2003, the Office of the Treasurer assessed the respondent an amount of P20,763,116.53, as business taxes for the first quarter of 2004 based on Section 21 of Ordinance No. 7794, as amended ("Manila Revenue Code").[1]

On January 20, 2004, respondent paid the amount of P20,763,116.53, which included the amount of P14,046,216.61 sought to be refunded.[2]

On January 4, 2006, respondent, through its counsel *Law Offices of Siguion Reyna Montecillo & Ongsiako*, filed a claim for refund of business taxes paid in the amount of P14,046,216.61 under Section 21 of the Manila Revenue Code for the first quarter of 2004.[3]

On January 5, 2006, petitioner wrote to respondent denying the claim for refund.[4]

On January 17, 2006, respondent filed before the Regional Trial Court, Branch 33, Manila ("RTC") a Petition for Refund of business taxes paid in the amount of P14,046,216.61.[5]

On October 3, 2006, after petitioner filed her Answer[6] on February 14, 2006 and after the parties filed their respective memoranda, the RTC rendered the assailed Decision declaring that the act of petitioner in imposing the taxes under Sections 14 and 21 of the Manila Revenue Code constitutes direct double taxation prohibited by law and that respondent is not liable for business taxes under Section 21 of the Manila Revenue Code. The decretal portion of the assailed Decision reads:[7]

> "WHEREFORE, judgment is hereby rendered declaring petitioner Unilever not liable for business taxes under Section 21 of the City of Manila's Revenue Code having already paid business taxes under Section 14 thereof; and to REFUND to Petitioner taxes paid there under for the first quarter of the year 2004 in the amount of Php14,046,216.61.
>
> SO ORDERED."

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[1] Annex A of the Petition for Refund filed before the RTC.
[2] *Ibid.*
[3] Annex B of the Petition for Refund filed before the RTC.
[4] Annex C of the Petition for Refund filed before the RTC.
[5] Annex A of the Petition for Review.
[6] Annex B of the Petition for Review.
[7] Annex F of the Petition for Review.

On December 12, 2006, the RTC issued an Order denying respondent's Motion for Reconsideration. The dispositive portion reads:[8]

> "WHEREFORE, the motion for reconsideration is DENIED for lack of merit.
>
> SO ORDERED."

Hence, on February 12, 2007, petitioner filed the present Petition for Review seeking for the reversal of the Decision dated October 3, 2006 and Order dated December 12, 2006.

On July 27, 2007, respondent filed its Opposition thereto and alleged that:

> "I. The imposition of both Sections 14 and 21 on Unilever constitutes direct duplicate taxation.
>
> II. The Petition for Refund was filed under Section 196 of the Local Government Code, and not under Section 195; hence, the latter is not applicable.
>
> III. Unilever is not questioning the validity or constitutionality of Section 21; hence, Section 187 is not applicable.
>
> IV. Unilever is not guilty of forum-shopping as each petition for refund it had filed seeks a refund of a different payment made.
>
> V. Atty. Danilo Cruz was authorized to file the Petition for Refund, as shown by the Secretary's Certificate attached thereto.
>
> VI. Unilever has capacity to sue and be sued, and this was stated in the Petition for Refund. In fact, petitioner City Treasurer admitted the existence of such capacity."

On August 9, 2007, this Court issued a Resolution declaring the present case as deemed submitted for decision.

The Issues

Petitioner raised the following issues for this Court's decision:

> "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.

[8] Annex G of the Petition for Review.

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."

This Court's Ruling

In granting respondent's claim for refund, the RTC ruled:

> "It is clear under Section 143(h) of the LGC to which Section 21 is based that the respondent cannot enforce Section 21 over business already subject to business taxes under Section 143(a) of the LGC. It is expressly stated in Section 143(h) 'On any business, <u>not otherwise, specified in the preceding paragraphs</u> xxx' (emphasis supplied). There is no doubt that the act of the respondent in imposing the taxes under Section 14 and 21 constitutes direct double taxation prohibited by law. It is unjust and oppressive. Significantly, the Bureau of Local Government Finance, Department of Finance has consistently opined that the 'xx imposition of local taxes under Section 21 and Section 14, 15 and 18 of the subject ordinance no. 7794 as amended is tantamount to double taxation.'
>
> "The claim of the respondent that there is no double taxation because the tax is on the end-user and not on the business of the petitioner has no legal basis since such tax on the end-user amounts to a sales tax which is expressly prohibited by Section 133 of the LGC.
>
> "The allegation of the respondent that the petitioner failed to comply with Section 195 of the LGC is not correct. The law does not apply to the Petitioner because there is no finding of deficiency payment made by the respondent. Much less will Section 187 apply to the Petitioner because it is not questioning the validity or constitutionality of Section 21 of Revenue Code of Manila. It is the enforcement that is being questioned by the Petitioner."

After weighing the arguments of both parties and review of the records of the case, this Court finds the petition to be without merit.

Foremost, the Manila Revenue Code was amended by Ordinance No. 7807 in the year 1993. Subsequently, Manila Revenue Code was amended by Ordinance No. 7988 in the year 2000 and Ordinance No. 8011 in the year 2001. In *Coca-Cola Bottlers Philippines,* *Inc. vs. City of Manila*,[9] the Supreme Court declared that Ordinance No. 7988 and Ordinance No. 8011 were void. It ruled:

> "It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.
>
> Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. **From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.**
>
> Despite the nullity of Tax Ordinance No. 7988, the court *a quo,* in the assailed Order, dated 8 May 2002, went on to dismiss petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. **Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that "[I]nstead of amending Ordinance No. 7988, [herein] respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive. The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, any way, does not legally exist." Said Resolution of the DOJ Secretary had, as well, attained finality by virtue of the dismissal with finality by this Court of respondents' Petition for Review on Certiorari in G.R. No. 157490 assailing the dismissal by the RTC of Manila, Branch 17, of its appeal due to lack of jurisdiction in its Order, dated 11 August 2003.**
>
> Based on the foregoing, this Court must reverse the Order of the RTC of Manila, Branch 21, dismissing petitioner's case as there is no basis in law for such dismissal. The amending law, having been declared as null and void, in legal contemplation, therefore, does not exist. Furthermore, even if Tax Ordinance No. 8011 was not declared null and void, the trial court should not have dismissed the case on the reason that said tax ordinance had already amended Tax Ordinance No. 7988. As held by this Court in the case of *People v. Lim,* if an order or law sought to be amended is invalid, then it

[9] 493 SCRA 279, June 27, 2006.

does not legally exist, there should be no occasion or need to amend it." (Emphasis supplied.)

Now, petitioner assessed and collected from respondent business taxes for the year 2001 based on Section 21 of the Manila Revenue Code, as amended by Ordinance Nos. 7988 and 8011. As Ordinance Nos. 7988 and 8011 were declared void, this Court shall focus on Section 21 of the Manila Revenue Code (Tax Ordinance No. 7794, as amended by Ordinance No. 7807).

Sections 14 and 21 of the Manila Revenue Code, as amended, read:[10]

> "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:
>
> xxx xxx xxx
>
> 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 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 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 passenger 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

[10] See Acevedo, *Handbook on Manila Taxation*, 1993.

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, brewer's 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 or 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) Naphtha when used as raw materials for production of petro-chemical products.
(2) Asphalt.

PROVIDED, that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof."

In a number of instances, this Court has already ruled that businesses taxed under Sections 14, 18 and 24 of the Manila Revenue Code can no longer be taxed under Section 21 thereof.[11] In *Liberty M. Toledo, in her capacity as The Treasurer of the City of Manila vs. Unilever Phils., Inc.,*[12] this Court ratiocinated that the imposition of the business taxes under Sections 14 and 21 of the Manila Revenue Code, as amended, upon respondent constitutes double taxation, as there was taxation twice for the same subject or activity, which was the business of manufacturing; by the same public authority and within the same taxing jurisdiction, which was the City of Manila; for the same purpose, which was to generate revenue for the local taxing authority; and in the same year or taxing period, which was for taxable year 2004.

In *Unilever Phils., Inc. vs. The Treasurer of the City of Manila,*[13] this Court elucidated that taxation of respondent under both Sections 14 and 21 of the Manila Revenue Code is expressly prohibited under Section 143(h) of the Local Government Code. Section 14 of the Manila Revenue Code is based on Section 143 (a) of the Local Government Code and Section 21 of the Manila Revenue Code is based on Section 143 (h) of the Local Government Code. The clear tenor of Section 143(h) of the Local Government Code prohibits double taxation of businesses taxes under paragraphs (a) to (g) thereof. It allows the imposition of new business taxes only in cases "not otherwise specified in the preceding paragraphs [(a) to (g)]xxx." It reads:

> "Section 143. *Tax on Business.-* The municipality 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

[11] *Unilever Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 25, June 18, 2007; *Swedish Match Phils., Inc. vs. The Treasurer of the City of Manila*, C.T.A. AC No. 15, July 21, 2006; *International Container Terminal Services vs. The City of Manila, et al.*, C.T.A. AC No. 11, May 17, 2006; *Zarcon Development Corp. vs. The City Treasurer of the City of Manila*, C.T.A. AC NO. 24, May 16, 2007; *Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila vs. Unilever Phils., Inc.*, C.T.A. AC No. 21, May 10, 2007

[12] C.T.A. AC No. 21, May 10, 2007.

[13] C.T.A. AC No. 25, June 18, 2007.

> manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:
>
> 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:
>
> 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 exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:
>
> xxx xxx xxx
>
> (d) On retailers,
>
> 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 tax rates but in no case to exceed the rates prescribed herein."

As both Sections 14 and 21 of the Manila Revenue Code impose business taxes on petitioner, there is prohibited double taxation. Double taxation means taxing the same property twice when it should be taxed only once; that is, "x x x taxing the same person twice by the same jurisdiction for the same thing."[14] It is obnoxious when the taxpayer is taxed twice, when it should be but once.[15] 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.[16]

As regards the second issue, this Court rules in the negative. While the City of Manila has the power to create its own sources of revenue and to levy taxes, fees and charges, Section 133 of the Local Government Code clearly provides the common limitations on such power.

Finally, as regards the last issue, this Court likewise rules in the negative. Section 195 of the Local Government Code pertains only to instances when a taxpayer has incorrectly paid taxes and the local treasurer issues a notice of assessment for the payment of correct taxes; in which case, the taxpayer shall file a written protest and follow the procedure set forth therein. In the present case, there was no notice of assessment for the payment of unpaid taxes. More applicable is Section 196 of the Local Government Code, which provides for the filing of a claim for refund or credit. Thus:

> "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."

Furthermore, Section 187 of the Local Government Code is not applicable as respondent does not question the constitutionality or legality of the Manila Revenue Code. Respondent filed its claim for refund as it was not liable to pay business taxes under Section 21 of the Manila Revenue Code.

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[14] *Afisco Insurance Corp. v. Court of Appeals*, 361 Phil. 671, January 25, 1999.
[15] *San Miguel Brewery, Inc. v. City of Cebu*, 43 SCRA 275, 280, February 26, 1972. See also *Villanueva v. City of Iloilo*, 135 Phil. 572, 588, December 28, 1968, and *Commissioner of Internal Revenue v. Lednicky*, 120 Phil. 586, 593, July 31, 1964
[16] *Villanueva v. City of Iloilo*, 135 Phil. 572, 588, December 28, 1968.

From the foregoing, this Court finds no reversible error committed by the Regional Trial Court of Manila, Branch 33, that would merit a reversal of the assailed Decision and Order.

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated October 3, 2006 and Order dated December 12, 2006 rendered in Civil Case No. 06-114255 are **AFFIRMED**.

Accordingly, petitioner, the Treasurer of the City of Manila, is hereby **ORDERED TO REFUND** to respondent, Unilever Philippines, Inc., the amount of ₱14,046,216.61 representing the erroneously paid local business taxes for the year 2004.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division