REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

THE CITY OF MANILA and MS. LIBERTY M. TOLEDO, in her official capacity as the City Treasurer of Manila,
Petitioners,

-versus-

METRO MANILA SHOPPING MECCA, INC., WAREHOUSE DEVELOPMENT CORP., SHOPPING CENTER MANAGEMENT CORP., SPORTS CENTRAL (MANILA), INC., WONDERFOODS, INC., and WEST AVENUE THEATERS CORP.,
Respondents.

C.T.A. AC NO. 54
(Civil Case No. 06-116063)

Members:

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

Promulgated:
MAY 28 2009; 3:07pm

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DECISION

BAUTISTA, J.:

The Case

Before the Court is a Petition for Review[1] filed pursuant to Republic Act No. 9282, praying for the reversal of the Decision[2] dated May 28, 2008 of Branch 36 of the Regional Trial Court of Manila ("Court *a quo*") in Civil Case No. 06-

[1] *Rollo*, C.T.A. AC No. 54 (Civil Case No. 06-116063), pp. 1 - 135 with Annexes.
[2] *Id.*, pp. 29 - 37, penned by *Judge Emma S. Young*.

116063, entitled *"Metro Manila Shopping Mecca, Inc., Warehouse Development Corp., Shopping Center Management Corp., Sports Central (Manila), Inc., Wonderfoods, Inc., and West Avenue Theaters Corp. v. The City of Manila and The City Treasurer of Manila,"* and its Order[3] dated September 3, 2008 denying petitioners' "Motion for Reconsideration" thereon.

The dispositive portion of the assailed Decision reads:

> "WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiffs[4] and against the defendants[5] ordering the latter:
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> 1. to refund or issue tax credit certificates to the plaintiffs in the total amount of P13,579,621.99 representing overpayment of taxes under Section 21 of the RCM, as amended, for the period fourth quarter of taxable year 2004 and to the fourth quarter of 2005, broken down as follows:

MMSMI	P12,816,270.56
WDC	78,702.58
SCMC	161,412.26
SCMI	262,923.37
WI	146,271.99
WATC	114,041.99
TOTAL	P13,579,621.99

> 2. to refund or issue a tax credit to plaintiffs in the total amount of P2,727,897.60 representing payment of taxes under Sections 17, 18 and 19 for the taxable period fourth quarter of 2004 to the fourth quarter of 2005 collected by defendants under increase tax rates set forth in Ordinance Nos. 7988 and 8011, broken down as follows:

MMSMI	P2,581,817.37
WDC	11,678.30
SCMC	43,598.06
SCMI	55,803.42
WI	0.00
WATC	35,000.45
TOTAL	P2,727,897.60

> 3. ENJOINING and PROHIBITING defendants and their agents from assessing and collecting from plaintiffs additional business

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[3] *Rollo*, p. 38.
[4] Herein Respondents.
[5] Herein Petitioners.

taxes under Section 21 of RCM and the increased tax rates set forth in Ordinances Nos. 7988 and 8011.

SO ORDERED."[6]

Antecedent Facts

The relevant facts, based on the records, are as follows:

Petitioner City of Manila is a local government unit organized and existing under Republic Act No. 409, and is represented in this case by the City Mayor of Manila, Alfredo S. Lim.[7]

Petitioner Liberty M. Toledo is the duly appointed City Treasurer of Manila, tasked to asses and collect taxes, and to issue business permits and licenses to all the business establishments operating within the territorial jurisdiction of the City of Manila.[8] She holds office at the ground floor, Manila City Hall, Taft Avenue, Manila.[9]

Respondents are domestic corporations organized and existing under the laws of the Philippines, with principal address at the SM Building, Roxas Boulevard Extension, Pasay City.[10] They conduct business operations within the territorial jurisdiction of the City of Manila.[11]

Respondent Metro Manila Shopping Mecca, Inc. ("MMSMI") is engaged in the business of trading goods on wholesale or retail basis. It retails garments, shoes, toys, and prepaid cards. It offers credit commission services and serves as a foreign exchange dealer and a collecting agent by processing bills payments. Its

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[6] *Rollo*, pp. 36 – 37.
[7] *Id.*, p. 3.
[8] *Id.*, p. 30.
[9] *Id.*, p. 3.
[10] *Id.*
[11] *Id.*, p. 29.

office is located in SM City, Manila.[12] As such, it is subject to local business taxes under Sections 17, 18, and 19 of the Revenue Code of Manila ("RCM").[13]

Respondent Warehouse Development Corp. ("WDC") is engaged in the business of leasing out shopping mall spaces and cash registers, with office address at 658 C. Palanca Sr. Street, San Miguel, Quiapo, Manila.[14] It is subject to local business taxes under Sections 18 and 24 of the RCM.[15]

Respondent Shopping Center Management Corp. ("SCMC") is engaged in the business of providing management services, with office at the SM Building, Roxas Blvd. Extension, Pasay City.[16] Due to its business operations in the City of Manila, it is subject to the local business tax under Section 18 of the RCM.[17]

Respondent Sports Central (Manila), Inc. ("SCMI") is engaged in the business of trading, importing, and exporting goods and other general merchandise on wholesale or retail basis. Its office address is located at SM Supercenter-Sucat, Dr. A. Santos Ave., Brgy. San Dionisio, Parañaque City.[18] Since it conducts business operations within the jurisdiction of the City of Manila, it is subject to the local business tax under Section 17 of the RCM.[19]

Respondent Wonderfoods, Inc. ("WI") is engaged in the business of operating restaurants and fast food centers, with office address at 5/F Iran Street cor. EDSA, Brgy. Pinagkaisahan, Makati City.[20] Due to its business operations in

[12] *Rollo*, pp. 29 - 30.
[13] *Id.*, p. 41.
[14] *Id.*, p. 30.
[15] *Id.*, p. 41.
[16] *Id.*, p. 30.
[17] *Id.*, p. 42.
[18] *Id.*, p. 30.
[19] *Id.*, p. 42.
[20] *Id.*, p. 30.

the City of Manila, it is subject to local business tax under Section 23 of the RCM.[21]

Finally, respondent West Avenue Theater Corp. ("WATC") is primarily engaged in the business of operating movie houses, and holds office in Quezon City.[22] It is subject to the local business tax under Section 18 of the RCM, as it conducts business operations within the jurisdiction of the City of Manila.[23]

For the 4th quarter of taxable year 2004 to the 4th quarter of taxable year 2005, respondents paid the following amounts pursuant to the RCM:[24]

	Actual Tax Paid Under Ord. Nos. 7988 and 8011	Tax Computed Under Ord. Nos. 7794 and 7807
Metro Manila Shopping Mecca, Inc.	P7,835,775.62	P5,253,958.25
Warehouse Development Corp.	131,982.16	120,303.86
Shopping Center Management Corp.	288,528.95	244,930.89
Sports Central (Manila), Inc.	189,097.77	133,294.35
Wonderfoods, Inc.	292,542.50	292,542.50
West Avenue Theaters Corp.	211,688.39	176,687.94

Since the RCM was amended by Ordinance No. 7988 dated February 25, 2000 and Ordinance No. 8011 dated February 22, 2001, the rates of the local business taxes applicable to respondents under the RCM were increased, resulting in the payment of additional taxes to petitioners in the aggregate amount of P2,727,897.60, broken down as follows:[25]

Metro Manila Shopping Mecca, Inc.	P2,581,817.37
Warehouse Development Corp.	11,678.30
Shopping Center Management Corp.	43,598.06
Sports Central (Manila), Inc.	55,803.42

[21] *Rollo*, p. 42.
[22] *Id.*, p. 30.
[23] *Id.*, p. 42.
[24] *Id.*, p. 43.
[25] *Id.*, pp. 43 – 44.

Wonderfoods, Inc.	0.00
West Avenue Theaters Corp.	35,000.45
TOTAL:	P2,727,897.60

In addition, for the 4th quarter of taxable year 2004 to the 4th quarter of taxable year 2005, respondents paid additional local business taxes to petitioners under Section 21 of the RCM, as amended by Ordinance Nos. 7988 and 8011, in the total amount of P13,579,621.99, broken down as follows:[26]

Metro Manila Shopping Mecca, Inc.	P12,816,270.56
Warehouse Development Corp.	78,702.58
Shopping Center Management Corp.	161,412.26
Sports Central (Manila), Inc.	262,923.37
Wonderfoods, Inc.	146,271.23
West Avenue Theaters Corp.	114,041.99
TOTAL:	P13,579,621.99

On December 20, 2004, respondents filed with petitioner City Treasurer their individual protests of payment and requests for refund or tax credit, all dated November 30, 2004, of the local business taxes erroneously paid under Section 21 of the RCM for the 4th quarter of taxable year 2004, in the following amounts:[27]

Metro Manila Shopping Mecca, Inc.	P2,359,758.18
Shopping Center Management Corp.	28,126.50
Sports Central (Manila), Inc.	30,118.57
Wonderfoods, Inc.	28,196.00
West Avenue Theaters Corp.	22,066.36

Respondents, however, did not receive any response from petitioner City Treasurer.[28]

On various dates from 2005 to 2006, the SM Group of Companies, which includes respondents, jointly protested payments of local business taxes under

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[26] *Rollo*, pp. 44 - 46.
[27] *Id.*, p. 48.
[28] *Id.*, p. 49.

Sections 15, 17, 18, 19, 21, 24 and 25 of the RCM, as increased by Ordinance Nos. 7988 and 8011. Requests for refund or tax credit of the protested amounts were likewise filed. The protests of payments and requests for refund were filed on the following dates:[29]

DATE	DOCUMENT FILED
March 18, 2005	Protests for payment and requests for refund or tax credit of local business taxes paid under Sections 15, 17, 18, 19, 24, and 25 of the RCM, as increased by Ordinance Nos. 7988 and 8011, and under Section 21 of the RCM, for the 4th quarter of taxable year 2004 to the 1st quarter of taxable year 2005
June 15, 2005	Protests for payment and requests for refund or tax credit of local business taxes paid under Sections 15, 17, 18, 19, 24, and 25 of the RCM, as increased by Ordinance Nos. 7988 and 8011, and under Section 21 of the RCM, for the 2nd quarter of taxable year 2005
September 20, 2005	Protests for payment and requests for refund or tax credit of local business taxes paid under Sections 15, 17, 18, 19, 24, and 25 of the RCM, as increased by Ordinance Nos. 7988 and 8011, and under Section 21 of the RCM, for the 3rd quarter of taxable year 2005
December 16, 2005	Protests for payment and requests for refund or tax credit of local business taxes paid under Sections 15, 17, 18, 19, 24, and 25 of the RCM, as increased by Ordinance Nos. 7988 and 8011, and under Section 21 of the RCM, for the 4th quarter of taxable year 2005

In separate letters dated April 8, 2005 and June 28, 2005, petitioner City Treasurer denied respondents' protests and claims for refund of excess local business taxes paid for the 4th quarter of taxable year 2004 to the 1st quarter of taxable year 2005 and for the 2nd quarter of taxable year 2005.[30]

Thereafter, in separate letters dated September 27, 2005, October 11, 2005, January 12, 2006, petitioner City Treasurer acknowledged receipt of respondents'

[29] *Rollo*, pp. 49 - 56.
[30] *Id.*, pp. 50 - 52.

letters formally protesting and claiming refund of the excess local business taxes paid for the 3rd and 4th quarters of taxable year 2005.[31]

On October 18, 2006, respondents filed a Complaint[32] for refund, docketed as Civil Case No. 06-116063, against petitioners. In the Complaint, respondents prayed for a refund of the Section 21 taxes paid for the 4th quarter of taxable year 2004 to the 4th quarter of taxable year 2005 in the total amount of P13,579,621.99, and the excess local business taxes paid for the 4th quarter of taxable year 2004 to the 4th quarter of taxable year 2005 in the total amount of P2,727,897.60. Respondents likewise prayed that petitioners be enjoined or prohibited from collecting from them additional business taxes under Section 21 of the RCM and the increased tax rates set forth in Ordinance Nos. 7988 and 8011.

On March 28, 2007, respondents filed a "Motion to Declare Defendants in Default" [33] for failing to file an Answer within the prescribed period.

On April 3, 2007, petitioners filed a "Motion to Admit Answer,"[34] attaching thereto their Answer.[35] Petitioners admitted the material allegations of the Complaint, in so far as the payments made by respondents, the existence of their protests and claims for refund, and the letters issued by petitioner City Treasurer. As an affirmative and special defense, petitioners interposed lack of cause of action. They argued that the declaration in the case of ***"Coca-Cola Bottlers Philippines, Inc. v. City of Manila, et. al."***[36] is not doctrinal. And assuming that Ordinance Nos. 7988 and 8011 have been declared invalid,

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[31] *Rollo*, pp. 53 – 57.
[32] *Id.*, pp. 39 – 85.
[33] *Records*, Civil Case No. 06-116063, pp. 235 – 238.
[34] *Id.*, pp. 240 - 243.
[35] *Id.*, pp. 244 – 268.
[36] G.R. No. 156252, 493 SCRA 279, June 27, 2006.

petitioners claimed that the assessments of taxes on respondents are still valid, as these are anchored on Ordinance No. 7807. Petitioners further averred that respondents have no personality to claim for a refund because they are mere withholding agents. They likewise pointed out that there is no double taxation, and assuming there is, it is still permissible.

On June 7, 2007, the Court *a quo* issued an Order[37] denying the "Motion to Declare Defendants in Default" given that petitioners have already filed an Answer. Accordingly, the case was set for Pre-Trial on July 11, 2007. In compliance with the "Notice of Pre-Trial Conference,"[38] the parties submitted their respective Pre-Trial Briefs.[39]

During the Pre-Trial Conference on July 11, 2007, the Court *a quo* issued an Order[40] referring the case to the Philippine Mediation Center for mediation proceedings.[41] Unfortunately, no amicable settlement was reached.[42]

Hence, trial ensued.

The Ruling of the Court A Quo

On May 28, 2008, Judge Emma S. Young issued a Decision in favor of respondents. Following the resolutions of the Department of Justice dated August 17, 2000, July 5, 2001, and March 12, 2002, the ruling of the Court of Tax Appeals *En Banc* in the case of ***"The Treasurer of the City of Manila v. Alcan Packaging Starpack Corporation (formerly Starpack Philippines***

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[37] *Records*, p. 287.
[38] *Id.*, p. 288.
[39] *Id.*, pp. 289 - 552; and pp. 553 - 558.
[40] *Id.*, p. 560.
[41] *Id.*, p. 561.
[42] *Id.*, p. 576.

Corporation),"[43] and the ruling of the Supreme Court in the ***Coca-cola*** case,[44] which declared Ordinance Nos. 7988 and 8011 void, the Court *a quo* granted respondents' claim for refund or tax credit in the amounts of P13,579,621.99, representing overpayment of taxes under Section 21 of the RCM, as amended, for the 4th quarter of taxable year 2004 to the 4th quarter of taxable year 2005, and the amount of P2,727,897.60, representing payment of taxes under Ordinance Nos. 7988 and 8011 for the 4th quarter of taxable year 2004 to the 4th quarter of taxable year 2005. In addition, the Court *a quo* enjoined and prohibited petitioners and their agents from assessing and collecting from respondents additional business taxes under Section 21 of the RCM and the increased tax rates set forth in Ordinance Nos. 7988 and 8011.

Aggrieved, petitioners filed a "Motion for Reconsideration"[45] on June 19, 2008. Respondents, in turn, filed an Opposition[46] thereto.

On September 3, 2008, the Court *a quo* issued an Order[47] denying the "Motion for Reconsideration" for lack of merit.

Dissatisfied with the Order, petitioners took the present recourse.

The Issues

Petitioners ascribe to the Court *a quo* the following errors:

> "i. The Honorable Court *a quo* gravely erred in holding that defendants' imposition of tax under Section 21 of the Manila Revenue Code, as amended, against the plaintiff[s][48] is illegal double taxation, and [in] ordering the refund of taxes already paid.

[43] C.T.A. EB No. 261 (C.T.A. AC No. 17), July 30, 2007.
[44] *Supra*, at note 36.
[45] *Records*, pp. 1252 - 1273.
[46] *Id.*, pp. 1276 - 1292.
[47] *Rollo*, p. 38.
[48] Herein respondents.

> ii. The Honorable Court *a quo* gravely erred in not dismissing the case despite failure of plaintiffs to observe a condition *sine qua non* before resort to court may be had."[49]

The Ruling of the Court

The Petition for Review is devoid of merit.

The Court shall first resolve the second issue raised by petitioners inasmuch as it deals with a jurisdictional question.

The Court a quo has jurisdiction over the case

Petitioners maintain that the Court *a quo* has no jurisdiction over the claims of respondents. According to them, Section 187 of the Local Government Code ("LGC") is a condition *sine qua non* before resort to judicial action may be had. And since respondents failed to appeal the revenue measures within 30 days from their enactments, respondents may no longer file a complaint for refund.

Petitioners further contend that respondents are barred from challenging the assessments of petitioner City Treasurer as the same has become final and unappealable, pursuant to Section 195 of the LGC.

The Court is not persuaded.

Section 187 of the LGC reads:

> "Sec. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearing*. — xxx : Provided further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: xxx : Provided, finally, That within thirty (30) days

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[49] *Rollo*, p. 7.

> after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file the appropriate proceedings with a court of competent jurisdiction."

The Court has consistently ruled that an appeal to the Secretary of Justice pursuant to Section 187 of the LGC is not necessary where there is no question on the constitutionality or legality of a tax ordinance or revenue measure.[50]

In this case, respondents are merely asking for a refund of local business taxes erroneously assessed and collected under Ordinance Nos. 7988 and 8011. Respondents are not questioning the validity or constitutionality of the subject Ordinances. As a matter of fact, the issue of the constitutionality of Ordinance Nos. 7988 and 8011 has already been resolved in the ***Coca-Cola*** case,[51] where the Supreme Court declared the said Ordinances void for failure to comply with the publication requirements. As the Court sees it, Section 187 of the LGC does not apply.

Anent the argument of petitioners that respondents are *estopped* from claiming a refund because they failed to protest or appeal the assessments as required in Section 195 of the LGC, the Court finds the same untenable. Section 195 of the LGC provides:

> "Sec. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that the correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he

[50] The Treasurer of the City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 28, November 28, 2007; City of Manila, et. al. v. Columbia Pictures Industries, Inc., C.T.A. AC No. 29, August 30, 2007; and Zarcon Development Corporation v. The City Treasurer of Manila, C.T.A. AC No. 24, May 16, 2007.
[51] *Supra*, note 36.

> 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-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction, otherwise the assessment becomes conclusive and unappealable."

In ***Alcan Packaging Starpack Corporation (formerly Starpack Philippines Corporation) v. The Treasurer of the City of Manila***,[52] it has been held that Section 195 of the LGC pertains to protests on the assessments issued by the local treasurer against a taxpayer who has been found not to have paid its correct taxes, fees, or charges. In other words, the said provision does not apply when the case involves a claim for refund of taxes paid under the RCM.[53]

Corollary thereto, the contention of petitioners that respondents failed to exhaust all administrative remedies provided for by law, must likewise fail.

What is applicable in claims for refund is Section 196 of the LGC, which states that:

> "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."

Pursuant to the aforequoted provision, to successfully sue in court for a refund of any local tax, fee, or charge, two things must be done, to wit:

1) the taxpayer concerned must file a written claim for refund or tax credit with the local treasurer; and

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[52] C.T.A. AC No. 17 (Civil Case No. 01-102097), September 11, 2006.

[53] The Treasurer of the City of Manila v. Unilever Philippines, Inc., *supra*, note 50; City of Manila, et. al. v. Columbia Pictures Industries, Inc., *supra*, note 50; and Liberty M. Toledo, in her capacity as The Treasurer of The City of Manila v. Unilever Philippines, Inc., C.T.A. AC No. 21, May 10, 2007.

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.[54]

In the instant case, respondents complied with both requisites. First, respondents filed letters of protests of payment and claims for refund or tax credit with petitioner City Treasurer. This fact was admitted by petitioners in their Answer. Second, respondents timely filed with the Court *a quo* their Complaint for refund or tax credit of the local business taxes they paid for the 4th quarter of taxable year 2004 to the 4th quarter of taxable year 2005 on October 18, 2006. In view of the foregoing, the Court *a quo* did not err in taking cognizance of this case.

Having resolved the jurisdictional issue, the Court shall now resolve the issue of double taxation.

The tax under Section 21 of the RCM constitutes illegal double taxation

Petitioners assert that even with the nullity of Ordinance Nos. 7988 and 8011, the collection of taxes under Section 21 are still proper as Ordinance No. 7794, as amended by Ordinance No. 7807, remains in full force and effect. Petitioners insist that there is no double taxation because the tax imposed under Section 21 of the RCM is different from the taxes imposed under Sections 17, 18 and 19 of the same Code. Petitioners contend that the tax imposed under Section

[54] China Banking Corporation v. City Treasurer of Manila, C.T.A. E.B. No. 182 (RTC Civil Case No. 04-108990), July 27, 2006.

21 of the RCM is not a tax on the business *per se*, rather, it is a tax on the person availing the goods and services of the business. Along this line, petitioners maintain their stand that respondents have no personality to claim for a refund or tax credit since they are mere withholding agents. As a final argument, petitioners counter that even if there is double taxation, there is no constitutional prohibition against it.

Again, the Court does not agree.

Section 21 of the RCM, as amended by Ordinance No. 7807, provides:

> "SEC. 21. *Tax on Businesses Subject to the Excise, Value Added or Percentage Taxes Under the NIRC* — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as 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.
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> 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 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."

On the other hand, Sections 17, 18, 19, 23, and 24 of the same Code state:

"Sec. 17. *Tax on Retailers* — There is hereby imposed a graduated tax on Retailers in accordance with the following schedule:

xxx xxx xxx"

"Sec. 18. *Tax on Contractors.* — A percentage tax is hereby imposed on contractors and other independent contractors, in accordance with the following schedule:

xxx xxx xxx"

"Sec. 19. *Tax on Banks, Insurance Companies and Other Financial Institutions* — A percentage tax is hereby imposed on banks, insurance companies and other financial institutions, at the rate of TWENTY PERCENT (20%) OF ONE PERCENT (1%) on the gross receipts from all sources of the preceding calendar year derived from interests, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property and other investments.

However, on premiums received by insurance companies a flat rate of eleven percent (11%) of one percent (1%) is hereby imposed."

"Sec. 23. *Caterer's Tax* — On gross receipts of proprietors and operators of cafes, cafeterias, ice cream and other refreshments parlors, restaurants, soda fountains, carinderias or food caterers including clubs and caterers, an annual tax on the gross sales or receipts of the preceding calendar year is hereby imposed as follows, from:

1. The sale of food, soft drinks or refreshment at one percent (1%);

2. The sale of beer, wines and other liquor at three percent (3%);

3. The sale of cigarettes and other tobacco products at three percent (3%).

On newly established business, a tax of one-half (1/2) of one percent (1%) of the capital investment is hereby imposed."

"Sec. 24. *Tax on Real Estate Developers, Dealers and Lessors* — On real estate developers dealers, lessors or sub-lessors of real estate including accessorias, apartels, pension inns, apartments, condominia, houses for lease, rooms and spaces for rent, a tax of SEVENTY FIVE PERCENT (75%) OF ONE PERCENT (1%) per annum on the gross receipts for the preceding calendar year is hereby imposed.

For newly started business, the initial tax shall be one-half (1/2) of one percent (1%) of the capital investment."

A perusal of the above-quoted provisions clearly shows that the tax imposed under Section 21 of the RCM is no different from the taxes imposed under Sections 17, 18, 19, 23 and 24 of the same Code.

The taxes under Sections 17, 18, 19, 23, and 24 of the RCM are local business taxes imposed on respondents as retailers, contractors, banks, insurance and other financial institutions, caterers, and real estate developers, dealers and lessors. These local business taxes are the counterpart provisions of Section 143 (c), (e) and (f) of the LGC,[55] to wit:

"Sec. 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:

xxx xxx xxx

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities xxx

(e) On contractors and other independent contractors, xxx

[55] City of Manila, et. al. v. ACE Hardware Phils., Inc., C.T.A. AC No. 52, September 29, 2008.

(f) On banks and other financial institutions, xxx

xxx xxx xxx"

Likewise, Section 21 which taxes entities subject to excise, value-added or percentage tax is a business tax. It is rooted on Section 143 (h) of the LGC, which is a tax on business. Section 143 (h) of the LGC reads:

> "Sec. 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
>
> xxx xxx xxx"

In fact, in a plethora of cases, the Court has declared that businesses taxed under Sections 14, 15, 17, 18 and 24 of the RCM can no longer be taxed under Section 21 of the same Code.[56] This ruling is anchored on Section 143 (h) of the LGC, which requires that the business tax that may be imposed on "any business" must not be otherwise specified in the preceding paragraphs. Pursuant to this provision, the city shall only impose a tax in either one of the paragraphs but not both.[57]

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[56] Liberty M. Toledo and the City of Manila v. Metro Manila Shopping Mecca, et. al., C.T.A. AC No. 36, May 9, 2008; The Treasurer of the City of Manila v. Unilever Philippines, Inc., *supra*, at note 50; Unilever Philippines, Inc. v. The Treasurer of the City of Manila, C.T.A. AC No. 25, June 18, 2007; Zarcon Development Corp. v. The City Treasurer of the City of Manila, *supra*, at note 50; Liberty M. Toledo, in her capacity as the Treasurer of the City of Manila v. Unilever Philippines, Inc., *supra*, at note 53; Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila, C.T.A. AC No. 15, July 21, 2006; and International Container Terminal Services v. The City of Manila, et al., C.T.A. AC No. 11, May 17, 2006.
[57] City of Manila, et. al. v. Columbia Pictures Industries, Inc., *supra*, at note 50.

As to whether double taxation is prohibited under Philippine jurisdiction, the Court in the case of ***Unilever Philippines, Inc. v. The Treasurer of the City of Manila,***[58] explained:

> "The answer is in the affirmative. Double taxation is defined as taxing the same property twice when it should be taxed but once. It has also been defined as taxing the same person twice by the same jurisdiction over the same thing. In general, it is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States. Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose. Explicated in another way, **double taxation in its obnoxious or prohibited sense is 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 the same kind or character. It is direct duplicate taxation that is not allowed in our jurisdiction for being violative of the equal protection clause.**" *(Emphasis supplied)*

All told, the Court finds no reason to reverse the ruling of the Court *a quo.*

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated May 28, 2008 and the Order dated September 3, 2008 rendered in Civil Case No. 06-116063 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

[58] C.T.A. AC No. 41, June 24, 2008.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached after due consultation with the members of the Division of the Court of Tax Appeals before the case was assigned to the writer of the opinion of the Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division