REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

CITY OF TAGUIG AND J. VOLTAIRE ENRIQUEZ IN HIS CAPACITY AS TREASURER OF THE CITY OF TAGUIG, Petitioners,	**CTA EB NO. 2471** (CTA AC No. 227)
- versus -	Present: **DEL ROSARIO,** ***P.J.,*** **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** ***JJ.***
LAFARGE HOLDINGS (PHILIPPINES) INC., substituted by CEMCO HOLDINGS, INC., Respondent.	Promulgated: NOV 24 2023 4:20 pm

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DECISION

BACORRO-VILLENA, J.:

Assailing the Decision dated 24 July 2020[1] (**assailed Decision**) and Resolution dated 18 February 2021[2] (**assailed Resolution**), of the Court's Third Division[3] in CTA AC No. 227, entitled *Lafarge Holdings (Philippines), Inc. v. The City of Taguig and Atty. J. Voltaire L. Enriquez, in his capacity as the City Treasurer of the City of Taguig,* the City of

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1 *Rollo*, pp. 58-71.
2 Id., pp. 72-76.
3 Penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justice Erlinda P. Uy (Ret.) and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

Taguig (**petitioner Taguig City**) and J. Voltaire Enriquez[4] (**petitioner City Treasurer**) (**petitioners**) filed the instant Petition for Review[5] on 24 May 2021[6], pursuant to Section 3(b)[7], Rule 8, in relation to Section 2(a)(2)[8], Rule 4 of the Revised Rules of the Court of Tax Appeals[9] (**RRCTA**).

The assailed Decision and Resolution reversed and set aside the Orders dated 10 May 2019 and 22 July 2019 (**assailed Orders**), both rendered by the Regional Trial Court of Taguig - Branch 153 (**RTC Taguig-Branch 153**) in Civil Case No. 446, entitled *Lafarge Holdings (Philippines), Inc. v. The City of Taguig and Atty. J. Voltaire L. Enriquez, in his capacity as the City Treasurer of the City of Taguig.*

PARTIES OF THE CASE

Petitioner Taguig City is a local government unit[10] (**LGU**) created by law, with address at Taguig City Hall, General Antonio Luna St., Taguig City, Metro Manila. Co-petitioner, J. Voltaire L. Enriquez, is the incumbent Acting City Treasurer of Taguig City, empowered to perform the duties of said office, including *inter alia*, the collection of all local taxes, fees and charges. He holds office at the City Treasurer's Office, Taguig City Hall, General Antonio Luna St., Taguig City, Metro Manila.

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4 Also referred to in the records to be Atty. J. Voltaire L. Enriquez, see Petition for Review, *Rollo*, p. 36.

5 Id., pp. 34-54.

6 The *Petition for Review* was filed pursuant to the suspensions of the period of filing by Supreme Court Administrative Circulars (discussed further below) following the grant of the *Motion for Extension* per *En Banc* Resolution dated 30 June 2021, id., pp. 211-213.

7 **SEC. 3**. *Who may appeal; period to file petition.* — ...

...

(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.

...

8 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

...

(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction[.]

...

9 A.M. No. 05-11-07-CTA.

10 The Parties, Petition for Review, supra at note 5, p. 36.

On the other hand, respondent Lafarge Holdings (Philippines) Inc. (**LHPI**) is a domestic corporation organized and existing under the laws of the Philippines, with principal office located at Net Lima, Unit 10-A, The Net Metropolis, 5th Avenue corner 26th Street, E-Square Crescent Park West, Bonifacio Global City, Taguig City.

During the pendency of the case (as will be discussed further below), LHPI, as one of several constituent domestic[11] corporations absorbed in an approved plan of merger, was substituted[12] by Cemco Holdings, Inc. (**respondent/CHI**), the surviving corporation. Respondent has its principal office in Unit 15-A, ACT Tower, 135 H.V. Dela Costa St., Salcedo Village, Makati City.[13]

The instant case stems from a disagreement as to the application and scope of the remedies available to a taxpayer under Sections 195[14] and 196[15], of Chapter 6 *(Taxpayer's Remedies)* of the Local Government Code of 1991, as amended (**LGC of 1991**). Here, an alleged erroneous payments of local business tax for the second (2nd) and third (3rd) quarters of taxable year (**TY**) 2018 challenge the application of either provision.

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11 Articles of Merger, Annex "B" attached to the Comment/Opposition (Re: Manifestation with Motion to Grant Petition dated August 31, 2022) with Manifestation and Motion, *Rollo*, pp. 342-352.

12 See Resolution dated 04 November 2022, id., pp. 436-444.

13 Supra at note 11.

14 **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 canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from 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.

15 **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.

FACTS OF THE CASE

As culled from the assailed Decision, below are the factual antecedents[16]:

> ...
>
> On April 04, 2018, in connection with [respondent's] renewal of its business permit and licenses for calendar year 2018. [Petitioner] Taguig City, through its Business Permit and Licensing Office ("BPLO"), issued a Billing Statement assessing [respondent] of local business taxes ("LBT") amounting to Php1,030,846.84, based on a "2nd Quarter Gross" income of Php8,246,773,092.00 ("Second Quarter LBT"). [Respondent] paid the same on April 19, 2018, as evidenced by Official Receipt No. A-3919873 issued by [petitioner] City Treasurer.
>
> On May 30, 2018, [respondent] filed an administrative claim for refund with [petitioner] City Treasurer to contest the Second Quarter LBT.
>
> On June 11, 2018, [petitioner] Taguig City, through its BPLO, issued another Billing Statement assessing [respondent] of LBT amounting to Php1,030,846.84; based on a "3rd Quarter Gross" income of Php8,246,773,092.00 ("Third Quarter LBT"). [Respondent] paid the same on July 13, 2018, as evidenced by Official Receipt No. A-4001846 issued by [petitioner] City Treasurer.
>
> On August 03, 2018, [respondent] filed another administrative claim for refund with [petitioner] City Treasurer to contest the Third Quarter LBT.
>
> On November 08, 2018, [respondent] filed before the RTC a "Petition for Refund" for the Second Quarter LBT and Third Quarter LBT, amounting to a total of Php2,061,693.28, which was raffled to RTC of Taguig-Branch 153, and was docketed as Civil Case No. 446.
>
> On February 08, 2019, [petitioners] filed their "Motion to Dismiss," praying that the "Petition for Refund" be dismissed for the following grounds: (1) [Respondent] failed to satisfy the twin requirements imposed in *City of Manila, et al. v. Cosmos Bottling Corporation ("Cosmos Bottling")* — failure to assail within sixty (60) days the assessment before the local treasurer and to bring an action in court within thirty (30) days from decision or inaction of the local treasurer; (2) the petition has no cause of action; and (3) the claim set forth in the petition has been extinguished or abandoned.

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16 Supra at note 1, pp. 59-62; Citations omitted.

[Respondent] filed its "Comment/Opposition (Re: [Petitioners'] Motion to Dismiss dated February 5, 2019)" on February 22, 2019, arguing that the periods provided for under Section 195 of the Local Government Code ("LGC") of 1991 only apply in cases where there is an assessment made by the City Treasurer; that in the instant case, there was no assessment made or issued, but only billing statements which is not the "assessment" contemplated of under the law; that Section 196 is applicable in the instant claim for refund of erroneously paid LBT; and that [petitioners] may not lawfully levy LBT on the income of [respondent], including dividend income, of entities which are not banks or financial institutions.

[Petitioners] then filed a "Reply Re: Comment to Motion to Dismiss" on March 08, 2019.

On May 10, 2019, RTC of Taguig-Branch 153 rendered the assailed Order granting [petitioners'] "Motion to Dismiss." The court stated that for failure to pay the assessments within the six (6)[-]day period from their receipt, the assessments already became final and executory and it may no longer be disputed.

Not satisfied with the Order, [respondent] filed a "Motion for Reconsideration (Order dated May 10, 2019)" ("Motion for Reconsideration") on June 10, 2019. [Petitioners] filed their "Comment Re: Motion for Reconsideration" on July 08, 2019, while [respondent] filed its "Reply (Re: Comment dated July 1, 2019)" on July 22, 2019.

In the assailed Order dated July 22, 2019, the Court *a quo* denied [respondent's] Motion for Reconsideration for lack of merit. The court ruled that the grant of "Motion to Dismiss" was proper. [Respondent's] judicial claim was filed out of time, that is, beyond the thirty (30)[-]day period from inaction of the local treasurer.

Undeterred, [respondent] filed the instant "Petition for Review" with this Court on September 05, 2019, praying for: (1) reversal of the Orders dated May 10, 2019 and July 22, 2019, and (2) granting [respondent's] claim for refund of erroneously paid alleged deficiency LBT in the total amount of Php2,061,693.28.

Without necessarily giving due course to the said Petition, [petitioners] were directed by this Court to file their comment thereon, per Resolution dated September 25, 2019. In the same Resolution, the Branch Clerk of Court of RTC of Taguig-Branch 153 was directed to elevate the entire original records of Civil Case No. 446.

The Branch Clerk of Court of RTC of Taguig-Branch 153 transmitted the original records of the case on October 24, 2019, while [petitioners] filed their "Comment" on November 13, 2019.

On November 15, 2019, the instant case was submitted for decision.

...

As shown above, RTC Taguig-Branch 153 dismissed respondent's Petition for Refund after it found that the same was filed late. According to the RTC, based on the periods provided under Section 195 of the LGC of 1991, the assessments had already become final and executory by the time respondent's Petition for Refund was filed. It similarly denied respondent's Motion for Reconsideration (**MR**) for lack of merit, emphasizing that the petition was filed beyond the thirty (30)-day period from the local treasurer's inaction.

On 24 July 2020, the Third Division reversed and set aside the Orders of RTC Taguig-Branch 153 in its assailed Decision.[17] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. The Orders dated May 10, 2019 and July 22, 2019 in Civil Case No. 446 are **REVERSED** and **SET ASIDE**. Let this case be **REMANDED** to Regional Trial Court of Taguig-Branch 153 for further proceedings on the merits of the refund claim.
>
> **SO ORDERED.**
>
> ...

In the assailed Decision, the Third Division made a distinction between the prevailing rules on protest and/or refund of local business taxes where a notice of assessment (**NOA**) is issued following the promulgation of the cases of *City of Manila, et al. v. Cosmos Bottling Corporation*[18] (**Cosmos Bottling**) and *International Container Terminal Services, Inc. v. The City of Manila, et al.*[19] (**ICTSI**). It held thusly -

> ...
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> Indeed, the Supreme Court pronounced in *Cosmos Bottling and International Container Terminal Services, Inc. v. The City of Manila ("ICTSI, Inc.")* that whenever there is an assessment by the local treasurer, Section 195 applies, whether or not the taxpayer opts to pay the assessed tax. Yet, it must be emphasized that these cases

[17] Supra at note 1; Emphasis in the original text.
[18] G.R. No. 196681, 27 June 2018.
[19] G.R. No. 185622, 17 October 2018.

> were only promulgated in June 27, 2018 and October 17, 2018, respectively.
>
> Previously, the prevailing doctrine is that the taxpayer is free to choose which remedy (*i.e.*, Section 195 or Section 196) to enforce. Thus, in *City Treasurer of City of Caloocan v. Tigerway Facilities and Resources, Inc.*, this Court *En Banc* held:
>
> > *"A taxpayer assessed by the local treasurer for deficiency taxes, fees or charges has generally two (2) remedies to question the local treasurer's assessment, protest such assessment under Section 195 of the LGC or pay the tax under protest and, thereafter, file a claim for refund under Section 196 of the LGC.*
>
> In the case of *City of Manila and City Treasurer of the City of Manila vs. Rizal Commercial Banking Corporation*, the First Division of this Court categorically stated that **the taxpayer is free to choose which remedy to enforce.**"[20]
>
> ...

According to the Third Division, respondent could not be faulted for relying in good faith on the remedy available under Section 196[21] of the LGC of 1991 as the same was availed at a time when the decision in *Cosmos Bottling* was only recently promulgated (and while the decision in *ICTSI* was yet to be promulgated).

Nevertheless, the Third Division found that the Billing Statements that petitioner Taguig City's Business Permit and Licensing Office (**BPLO**) issued are not the same as the 'NOA' mentioned under Section 195[22] of the LGC of 1991. It deemed so since it was not the local treasurer (the proper party empowered under the law to issue such an assessment) who issued them. It also ruled that respondent's claim is not governed by Section 195 of the LGC of 1991 but by Section 196 on refunds. As such, the Third Division found that the dismissal of Civil Case No. 446, as was filed before RTC Taguig-Branch 153, was improper, considering that it was anchored on herein respondent's supposed failure to comply with the requirements of Section 195.

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20 Supra at note 1, pp. 69-70; Citations omitted, emphasis and underscoring in the original text and supplied.

21 Supra at note 15.

22 Supra at note 14.

Aggrieved, on 12 October 2020, petitioners filed their MR[23] to which respondent filed its Comment[24] thereto on 01 December 2020. Subsequently, the Third Division promulgated the assailed Resolution[25] of 18 February 2021, denying petitioners' MR. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, Respondents' "Motion for Reconsideration" is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

In denying the MR, the Third Division pointed out that herein respondent was not required to follow the procedure set forth under Section 195 of the LGC of 1991 in the absence of a valid assessment and that the remedy under Section 196 of the LGC of 1991 should instead apply. It disagreed with petitioners' claims that BLPO's Billing Statements constituted valid assessments for purposes of availing the remedy under Section 195. It also did not share petitioners' view that the procedure and timeline under Section 195 should have been followed.

Finally, the Third Division also found that a prior claim for the first (1st) quarter of TY 2018 was not necessary to a claim for the 2nd and 3rd quarters of the same year (the subject of the present case). According to the Third Division, the LGC of 1991 does not impose this requirement and that dates of payment between the quarters are distinct from each other.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioners' receipt of a copy of the assailed Resolution on 11 March 2021[26], they filed a Motion for Extension of Time to File Petition for Review[27] with the Court *En Banc* on 25 March 2021 *via* registered mail, citing mainly an influx of heavy workload coupled with

[23] Division Docket, pp. 155-164.
[24] Id., pp. 170-177.
[25] Supra at note 2; Emphasis in the original text.
[26] See Notice of Resolution dated 19 February 2021, Annex "B" to petitioners' Motion for Extension of Time to File Petition for Review, *Rollo*, p. 23.
[27] Id., pp. 1-4.

the uncontrollable impacts of the pandemic regulations then in effect as grounds for the additional time sought.

In the *interim*, the Supreme Court issued a series of Administrative Circulars[28], extending the filing period for pleadings and other court submissions as the courts remained physically closed at the time. With this Court eventually reopening on 17 May 2021, pursuant to SC Administrative Circular No. 29-2021, the pertinent deadline for filing the present Petition for Review was set for 24 May 2021.[29]

On 24 May 2021, without waiting for the Court to act upon their motion, petitioners filed the instant Petition for Review[30] seeking the reversal of the Third Division's assailed Decision and Resolution.

The Court *En Banc* received both the above motion and Petition on 04 June 2021 and resolved[31] the former on 30 June 2021, declaring the same as deemed granted (upon the consideration that petitioners were able to file their motion within the permitted fifteen (15)-day appeal period[32]). Thereafter, it ordered respondent to file its comment on the Petition for Review, without necessarily giving due course to the same.

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28 Supreme Court (SC) Administrative Circular Nos. 15-2021 dated 03 April 2021, 21-2021 dated 10 April 2021, 22-2021 dated 14 April 2021, and 29-2021 dated 30 April 2021.

29 ALL first and second level courts, and appellate collegiate courts, and their judicial offices in the said areas shall continue to be physically closed until 14 May 2021.

...

The time for filing and service of pleadings and motions during this period in these areas is SUSPENDED and shall resume after seven (7) calendar days counted from the first day of the physical reopening of the relevant court.

...

30 Supra at note 5.

31 See Resolution dated 30 June 2021, *Rollo*, pp. 211-213.

32 Revised Rules of the Court of Tax Appeals (RRCTA), Rule 8, Section 3(b).

SEC. 3. *Who may appeal; period to file petition.* – ...

...

(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. (Emphasis and underscoring supplied)

On 25 October 2021, respondent timely filed its Comment.[33] In its "Comment/Opposition (Re: Petition for Review dated May 24, 2021)[34]", apart from laying down the merits of its refund claim in opposition to the points raised in the instant petition, respondent contested the validity of petitioners' Certification of Non-Forum Shopping[35], contending that petitioner City Treasurer lacked the authority to file the case on petitioner Taguig City's behalf.

On 08 November 2021, petitioners filed a "Motion for Leave to File a Reply and Admit Attached Reply (Re: Resolutions dated July 24, 2020 and 18 February 2021 of the Third Division, Court of Tax Appeals)".[36] On 02 March 2022, the Court ordered[37] respondent to comment on the said motion and held the decision on the instant petition in abeyance until after it resolves the aforesaid Motion.

On 30 May 2022, in its "Comment/Opposition (Re: Motion for Leave to File a Reply and Admit Attached Reply dated November 5, 2021)"[38], respondent opposed the admission of petitioners' Reply[39] citing the absence of an actionable document attached to the Reply (pursuant to Section 10, Rule 6, of the Revised Rules of Civil Procedure[40]) to justify its filing. It also reiterated its argument that petitioner's Certification of Non-Forum Shopping was defective and invalid. Later, in a Resolution dated 23 August 2022[41], the Court granted petitioner's Motion and deemed the petition submitted for decision:

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33 The Supreme Court issued several issuances wherein it declared successive physical closures of courts and suspensions of the time for filing and service of pleadings and motions namely: SC Administrative Circular No. 56-2021 dated 30 July 2021, SC Office of the Court Administrator (OCA) Circular No. 114-2021 dated 20 August 2021, OCA Circular No. 119-2021 dated 07 September 2021, and OCA Circular No. 123-2021 dated 01 October 2021.

34 *Rollo*, pp. 242-253.

35 Petitioner's Verification and Certification of Non-Forum Shopping attached to the Petition for Review, id., pp. 52-53.

36 Id., pp. 273-274.

37 See Resolution dated 02 March 2022, id., pp. 293-295.

38 Id., pp. 297-307.

39 Id., pp. 275-286.

40 **SEC. 10.** *Reply*. – All new matters alleged in the answer are deemed controverted. If the plaintiff wishes to interpose any claims arising out of the new matters so alleged, such claims shall be set forth in an amended or supplemental complaint. <u>However, the plaintiff may file a reply only if the defending party **attaches an actionable document** to his or her answer</u>. (Emphasis and underscoring supplied)

...

41 *Rollo*, pp. 309-314.

> ...
>
> ... [T]he Court *En Banc* is not precluded from and, in fact, expressly granted the discretion to allow the filing of other pleadings or documents such as a "reply" to a "comment or opposition" if it finds that it is necessary in arriving at a complete and just resolution of the case.
>
> A perusal of petitioners' Reply reveals that it was filed to controvert the allegations in respondent's Comment/Opposition, particularly that the present Petition for Review must be dismissed for failure to comply with the rules on certification against forum shopping. <u>It is only through the said Reply that petitioners will be afforded the opportunity to address the issue concerning the "Verification and Certification of Non-Forum Shopping" attached to the present Petition for Review.</u>
>
> Finding thus that <u>a "reply" to a "comment" may be allowed as it is not expressly prohibited in the rules and that there is a valid reason to allow the filing thereof in response to a newly-raised issue</u>, petitioners' Motion for Leave to File a Reply is hereby **GRANTED** and the Reply attached thereto is hereby **ADMITTED**.
>
> Accordingly, petitioner's Petition for Review, with respondent's Comment/Opposition and petitioners' Reply, is now deemed **SUBMITTED** for decision.
>
> **SO ORDERED.**[42]
>
> ...

Thereafter, on 02 September 2022, petitioners filed a "Manifestation with Motion to Grant Petition".[43] There, for the first time, they mentioned that LHPI (as *respondent*) has ceased its corporate existence and thus, it has lost its legal personality to participate in any court proceedings. In reply thereto, LHPI filed its "Comment/Opposition (Re: Manifestation with Motion to Grant Petition dated August 31, 2022) with Manifestation and Motion" on 13 September 2022.[44] It stated that it retained legal standing by virtue of a limited corporate existence enabled by law, for acts in connection with the corporation's dissolution.

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42 Citations omitted, emphasis in the original text and underscoring supplied.
43 *Rollo*, pp. 315-319.
44 Id., pp. 322-336.

Later, the parties mutually alleged[45] that LHPI's corporate existence has ceased in consequence of a merger between several corporations, including LHPI, that the Securities and Exchange Commission (SEC) approved on 07 May 2021.[46]

On 04 November 2022, the Court *En Banc* granted the motion for substitution (of LHPI with respondent)[47] and acknowledged LHPI's limited[48] corporate existence for three (3) years following the termination of its existence as a constituent corporation in the approved merger. Likewise, due to the transfer[49] of interest to the surviving corporation in place of the original respondent as its predecessor-in-interest pursuant to the Revised Corporation Code.

Still later, with the resolution of the pending incidents, the Court *En Banc* deemed the case submitted anew for decision.[50]

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45 Petitioner's Manifestation with Motion to Grant Petition dated 31 August 2022, par. 3, id., p. 315; and, Respondent's Comment/Opposition (Re: Manifestation with Motion to Grant Petition dated August 31, 2022) with Manifestation and Motion dated 13 September 2022, par. 2, id., p. 322.

46 Certificate of Filing of the Articles and Plan of Merger, Annex "A" attached to the Comment/Opposition (Re: Manifestation with Motion to Grant Petition dated August 31, 2022) with Manifestation and Motion, id., p. 339.

47 Supra at note 12.

48 **SEC. 139.** *Corporate Liquidation.* – Except for banks, which shall be covered by the applicable provisions of Republic Act No. 7653, otherwise known as "The New Central Bank Act", as amended, and Republic Act No. 3591, otherwise known as the Philippine Deposit Insurance Corporation Charter, as amended, every corporation whose charter expires pursuant to its article of incorporation is annulled by forfeiture, or whose corporate existence is terminated in any other manner, shall nevertheless **remain as a body corporate for three (3) years after the effective date of dissolution, for the purpose of prosecuting and defending suits by or against it** and enabling it to settle and close its affairs, dispose of and convey its property, and distribute its assets, but not for the purpose of continuing the business for which it was established. (Emphasis and underscoring supplied)

49 **SEC. 79.** *Effects of Merger or Consolidation.* – The merger or consolidation shall have the following effects:

...

(d) The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and franchises of each constituent corporation; and all real or personal property, all receivables due on whatever account, including subscriptions to shares and other choses in action, and every other interest of, belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and,

(e) The surviving or consolidated corporation shall be responsible for all the liabilities and obligations of each constituent corporation as though such surviving or consolidated corporation had itself incurred such liabilities or obligations; and **any pending claim, action or proceeding brought by or against any constituent corporation may be prosecuted by or against the surviving or consolidated corporation**. The rights of creditors or liens upon the property of such constituent corporations shall not be impaired by the merger or consolidation. (Emphasis and underscoring supplied)

50 See Resolution dated 04 November 2022, supra at note 12.

ISSUES

Based on the parties' arguments, the issues may be outlined as follows —

I.
WHETHER THE PETITION FOR REVIEW IS VALID AND THE COURT *EN BANC* HAS VALIDLY ACQUIRED JURISDICTION THEREON.

II.
WHETHER THE THIRD DIVISION ERRED IN REVERSING AND SETTING ASIDE THE ORDERS OF THE REGIONAL TRIAL COURT (RTC) OF TAGUIG - BRANCH 153 THAT DISMISSED RESPONDENT CEMCO HOLDINGS, INC.'S PETITION FOR REFUND FOR BEING FILED OUT OF TIME WHEN THE ASSESSMENTS HAD ALREADY BECOME FINAL AND EXECUTORY;

III.
WHETHER THE THIRD DIVISION ERRED IN RULING THAT THERE WAS NO VALID ASSESSMENT FOR PURPOSES OF SECTION 195 OF THE LOCAL GOVERNMENT CODE (LGC) OF 1991; AND,

IV.
WHETHER THE THIRD DIVISION ERRED IN RULING THAT A CLAIM FOR THE FIRST QUARTER OF TY 2018 WAS UNRELATED TO THE CLAIMS FOR THE SECOND AND THIRD QUARTERS.

ARGUMENTS AND DISCUSSIONS

In support of its petition, petitioners highlight respondent's suppose non-compliance with the requirements of Section 195[51] of the LGC of 1991 in challenging the Third Division's ruling (mainly citing different portions of the Supreme Court's pronouncements in the *Cosmos Bottling* case).

Petitioners maintain that the Third Division erred in reversing the RTC Taguig-Branch 153's Orders that dismissed respondent's prior Petition for Refund on the ground of belated filing as based on the procedures under Section 195 of the LGC of 1991. According to

[51] Supra at note 14.

petitioners, the subject of respondent's claim had long since become final and unappealable. They add that respondent should have filed its Petition for Refund for each quarter within the 30-day period from the lapse of the sixty (60)-day period within which the City Treasurer was to decide on respondent's administrative claim. Petitioners point out that respondent failed to file timely the petition for both the 2nd and 3rd quarters.

Petitioners also claim that, contrary to the Third Division's findings and consistent with the ruling in *Cosmos Bottling*, the Billing Statements that petitioner Taguig City's BPLO issued, constituted valid assessments for purposes of triggering the requirements under Section 195 of the LGC of 1991.

Arguing that the claim for the 1st quarter is relevant to the claims for the 2nd and 3rd quarters, petitioners also highlight that the 1st quarter assessment was the first of four and that respondent was already in estoppel after it paid the 1st quarter assessment (without any question or protest). They insist that with the 1st quarter assessment becoming final, the entire assessment, *i.e.* the portion pertaining to the remaining quarters of the year, then became final as well.

On the other hand, respondent counters that its refund claim was timely filed pursuant to Section 196[52] of the LGC of 1991 and refutes the existence of a valid assessment for purposes of Section 195 of the LGC of 1991. It posits that the Billing Statements are not the NOAs[53] contemplated under Section 195. Having paid the taxes and instituted the corresponding administrative and judicial claims within two (2) years from payment, respondent insists that its prior Petition for Refund was thus filed within the period prescribed.

Respondent also disagrees with petitioners' claim that the 1st quarter "*installment*" was relevant for the claims for the 2nd and 3rd quarters. According to it, there is no such requirement for availing the

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52 Supra at note 15.

53 **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. … (Emphasis and underscoring supplied)

remedy available under Section 196 of the LGC of 1991. In connection with the foregoing, however, respondent also previously manifested that it did file a claim for the 1st quarter of TY 2018 and the same was lodged before RTC Taguig-Branch 271, docketed as Civil Case No. 421.[54]

Similarly, in its Verification and Certification of Non-Forum Shopping attached to the Petition for Review, petitioners put forward a list of pending actions between the same parties (including the above-cited Civil Case No. 421[55]), to wit:

> ...
>
> 8. However, there are other pending actions between Petitioner and Respondents which involve common questions of law, which are:
>
> ...
>
> (c) Civil Case No. 421, filed before the Regional Trial Court of Taguig City, Branch 271, refund of local business tax pursuant to section 196 of Republic Act No. 7160[.]
>
> ...

As mentioned previously, respondent also raises an issue on the form of petitioners' Certification of Non-Forum Shopping, averring that the City Administrator and petitioner City Treasurer lacked the prerequisite authority to file the instant case on petitioner Taguig City's behalf, in the absence of a prior ordinance or resolution from the *Sangguniang Panglungsod* to this effect.

Expectedly, petitioners take an opposite position and insist that they have the authority to file the present petition and that the Certification of Non-Forum Shopping is valid. For them, a prior ordinance is unnecessary and impractical, and that petitioner City Treasurer has exercised the power of the city emanating from law, to sue and be sued, on the latter's behalf.

54 See Respondent's Comment/Opposition (Re: Petition for Review dated May 24, 2021), *Rollo*, p. 224.

55 Supra at note 35, pp. 52-53.

RULING OF THE COURT *EN BANC*

Before the Court *En Banc* proceeds to tackle the merits of respondent's refund claims, it finds it propitious to first discuss whether it has jurisdiction over the present petition.

Section 18 of Republic Act (**RA**) No. 1125[56], as amended by RA 9282[57], provides that a party adversely affected by a resolution of a Division of the [CTA] on an MR may file a Petition for Review with the CTA *En Banc*.

The RRCTA[58], under Section 3(b)[59], Rule 8, states that the party affected should file the Petition for Review within 15 days from receipt of a copy of the questioned decision or resolution. This is without prejudice to the authority of the Court to grant an additional 15-day period[60] from the expiration of the original period, within which to file the Petition for Review.

Applying the foregoing, petitioners received the assailed Resolution on 11 March 2021.[61] Counting 15 days therefrom, petitioners had until 26 March 2021 to file the present Petition for Review before the Court *En Banc*. On 25 March 2021, petitioner filed a "Motion for Extension of Time to File Petition for Review"[62] which the Court eventually granted[63], pushing the deadline to file the petition back to 10 April 2021.

However, the physical closures[64] of the courts resulted in the suspension of the periods for filing and service of pleadings[65] until the Court finally reopened on 17 May 2021, giving petitioners seven (7)

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56 AN ACT CREATING THE COURT OF TAX APPEALS.
57 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
58 Supra at note 9.
59 Supra at note 7.
60 Id.
61 Supra at note 26.
62 Supra at note 27.
63 Supra at note 31.
64 Supra at note 28.
65 Supra at note 29.

days[66], or until 24 May 2021, to file its Petition for Review. The instant petition filed on 24 May 2021[67] has thus been timely filed and the Court *En Banc* successfully acquired jurisdiction over it.

Incidentally, the Court *En Banc* notes that respondent in its Comment[68] on the instant petition, prays for its outright dismissal reiterating that the City Administrator and petitioner City Treasurer lacked the prerequisite authority to execute the Certification of Non-Forum Shopping and to file the petition on behalf of petitioner Taguig City, in the absence of a prior ordinance or resolution from the *Sangguniang Panglungsod.*

We disagree with respondent.

Section 170 of the LGC of 1991 lays down the responsibility of a city treasurer in the collection of local taxes, to wit:

> ...
>
> **SEC. 170.** *Collection of Local Revenues by Treasurer.* – **All local taxes, fees, and charges shall be collected by the** provincial, **city,** municipal, or Barangay **treasurer, or their duly authorized deputies.**[69]
>
> ...

In furtherance of the same, a city is empowered to institute civil remedies, including the filing of cases, through the city treasurer, as set forth in Sections 174 and 183 of the LGC of 1991, respectively:

> ...
>
> **SEC. 174.** *Civil Remedies.* – The civil remedies for the collection of local taxes, fees, or, and surcharges and interest resulting from delinquency shall be:
>
> ...
>
> (b) **By judicial action.** Either of these remedies or all may be pursued concurrently or at the discretion of the local government unit concerned.[70]

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66 Id.
67 Supra at note 6.
68 Supra at note 54.
69 Emphasis supplied.
70 Emphasis supplied.

> ...
>
> SEC. 183. *Collection of Delinquent Taxes, Fees, Charges or other Revenues through Judicial Action.* – <u>The local government unit concerned may enforce the collection of delinquent taxes, fees, charges or other revenues by civil action in any court of competent jurisdiction.</u> **<u>The civil action shall be filed by the local treasurer</u>** within the period prescribed in Section 194 of this Code.[71]
>
> ...

While the afore-cited provisions pertain specifically to collection cases for delinquent taxes, We stress that a city treasurer may exercise this power without prior authorization from the *Sangguniang Panglungsod*. The enumerated powers and duties of a *Sangguniang Panglungsod*[72] also do not point to a supposed need for authorization of its local treasurer for the latter to be able to file suits or defend the LGU against suits.

A deeper scrutiny of the relevant Titles of the LGC of 1991 demonstrates that the local treasurer is granted plenary powers relative to local and real property taxation. To construe the law in a way that the local treasurer is enabled only to file a civil action to collect tax and not to represent the LGU (when it is being sued or to appeal an adverse decision against it) runs counter to the objective of Section 170[73] of the LGC of 1991.

In *Venus Commercial Co., Inc. v. The Department of Health, et al.*[74], the Supreme Court explained the value of further powers implied from the responsibility of an office:

> ...
>
> True, there is no express provision in RA 3720, as amended, authorizing the FDA Director-General to padlock a production facility pending hearing before the FDA. This authority, however, is deemed subsumed in the statutory powers of the FDA Director-General "(to) issue orders of seizure, to seize and hold in custody any article or articles of food, device, cosmetics, household hazardous substances and health products that are adulterated, counterfeited, misbranded,

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71 Emphasis and underscoring supplied.

72 Sections 447, 458, and 468 for the Sangguniang Bayan, Panglungsod, and Panlalawigan, respectively; Local Government Code of 1991.

73 Supra at p. 17.

74 G.R. No. 240764, 18 November 2021; Citations omitted, underscoring supplied, emphasis and italics in the original text and supplied.

> or unregistered; or any drug, in-vitro diagnostic reagents, biologicals, and vaccine that is adulterated or misbranded." In other words, the grant of such authority to the FDA Director-General necessarily includes all such powers, even those not expressly stated, that are necessary to effectuate such authority. **This is the doctrine of necessary implication.**
>
> > No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an **all-embracing legislation** may be inadequate to provide for the unfolding events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. **The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.** *Ex necessitate legis.* **And every statutory grant of power, right[,] or privilege is deemed to include all incidental power, right[,] or privilege.** This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, simper inest et minus.*
>
> ...

To the mind of the Court, stripping the local treasurer of the powers necessary to effectively manage its responsibilities imposed by law would render it a toothless office. Corollarily, Section 16 of the LGC of 1991 reminds an LGU of the scope of its powers:

> ...
>
> SEC. 16. *General Welfare.* - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. ...[75]
>
> ...

Charged with the duty to collect taxes, the office of the local treasurer would find itself in an awkward position if it is unable to

[75] Underscoring supplied.

discharge the appropriate measures to meet its mandate and that it must always rely on another unit for it to carry out its functions exhaustively. It is also not a sound policy to resort to technicalities or formalities considering that the collection of taxes is vital to any local government's everyday operations.

Thus, in the absence of a categorical or definite requirement, under the LGC of 1991, that the local treasurer must be authorized by the *Sangguniang Panglungsod* concerned before he or she may file an appeal against an adverse decision against him or her (or defend a suit for that matter), the interpretation that local treasurers are *inherently* authorized as such is in more keeping with the Rules of Interpretation as provided in Section 5 of the LGC of 1991, which reads as follows:

> ...
>
> SEC. 5. *Rules of Interpretation.* – In the interpretation of the provisions of this Code, the following rules shall apply:
>
> (a) <u>Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt,</u> **<u>any question thereon shall be resolved in favor of devolution of powers</u>** <u>and of the lower local government unit</u>. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned[.][76]
>
> ...

Basic is the rule that provisions of a law should be read in relation to other provisions therein. A statute must be interpreted to give it efficient operation and effect as a whole.[77] Care should be given that every part thereof be given effect.[78] The LGC of 1991 is no different. Consistent with the legal maxim *ut res magis valeat quam pereat* ("that the thing may rather have effect than be destroyed"), the powers of an LGU must be susceptible of harmonious and comprehensive enforcement. Each of its section is expected to comprise a coherent, integrated unit that advances the policy declared therein.

Further, in the present action, petitioner City Treasurer appeals the Third Division's actions before this Court *En Banc* as a continuation

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76 Emphasis and underscoring supplied.
77 *Pilipinas Shell Petroleum Corporation v. Commissioner of Customs*, G.R. No. 195876, 05 December 2016.
78 *Office of the Ombudsman v. Celso Santiago*, G.R. No. 161098, 13 September 2007.

of the case stemming from respondent's priorly filed Petition for Refund with the RTC Taguig-Branch 153.

In the case of *The Bureau of Customs, et al. v. Jade Bros. Farm and Livestock, Inc.*[79], the Supreme Court recognized that "... appealed cases are a continuation of the original case and treated as only one case." When therein petitioners Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet, and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet, were sued as respondents in the LBAA (following the Consolidated and Revised Rules of Procedure Before the Local Boards of Assessment Appeals [**LBAA**] and the Central Board of Assessment Appeals [**CBAA**]), they were simply continuing the case filed against them as a result of LBAA's and CBAA's adverse decision.

Relative to this issue, the Court *En Banc* again quotes Our declarations in the Resolution dated 23 August 2022[80] of petitioners' "Motion for Leave to File a Reply and Admit Attached Reply (Re: Resolutions dated July 24, 2020 and 18 February 2021 of the Third Division, Court of Tax Appeals)"[81], to which respondent filed an opposition[82] attacking the supposed invalidity of petitioners' Certification of Non-Forum Shopping. In the said Resolution, We held:

> ...
>
> The Court *En Banc* notes that, while respondent's Comment/Opposition (to the present Petition for Review) is akin to an "answer" in the sense that both essentially fall under the category of responsive pleadings, the two (2) are nevertheless distinct from each other as they are governed by different provisions of the RRCTA and the Revised Rules of Court. Specifically, the filing of an "answer" to a petition for review filed before the Court in Division is governed by Section 5, Rule 6 of the RRCTA, in relation to Section 4, Rule 6 and Section 1, Rule 11 of the Revised Rules of Court. Whereas, the filing of a "comment" to a petition for review before the Court *En Banc* is, as earlier stated, governed by Section 8, Rule 43 of the Revised Rules of Court, in relation to Section 4(b), Rule 8 of the RRCTA.
>
> Bearing in mind that an "answer" (to a petition for review before the Court in Division) and a "comment" (to a petition for review

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[79] G.R. No. 246343, 18 November 2021.
[80] Supra at note 41.
[81] Supra at note 36.
[82] Supra at note 38.

> before the Court *En Banc*) are governed by different rules of procedure, it stands to reason that the new rule limiting the filing of a "reply" to when an actionable document is attached should apply only as regards an "answer" and, since there is no such limitation as regards a "comment" as the new rule was not carried to the rules of procedure applicable to appeals from the Court in Division to the Court *En Banc* (*i.e.*, Rule 43 of the Revised Rules of Court), petitioners' Reply may thus be allowed even if there is no actionable document attached to respondent's Comment/Opposition (to the present Petition for Review).
>
> ...
>
> Finding thus that a "reply" to a "comment" may be allowed as it is not expressly prohibited in the rules ... the Reply attached thereto is hereby **ADMITTED.**[83]
>
> ...

Considering all of the foregoing, We do not find any defect or want of authority in the form and execution of petitioners' Certification of Non-Forum Shopping.

Moving forward, and after a careful review of the records of the case and the parties' arguments, We find no error in the Third Division's actions; particularly, its assailed Decision and Resolution.

We essay the reasons below.

RESPONDENT WAS ABLE TO TIMELY FILE ITS PETITION FOR REFUND WITH THE REGIONAL TRIAL COURT (RTC) IN ACCORDANCE WITH SECTION 196 OF THE LOCAL GOVERNMENT CODE (LGC) OF 1991, AS AMENDED.

As earlier stated, RTC Taguig-Branch 153 dismissed respondent's prior Petition for Refund for being filed out of time (when the perceived assessments had supposedly already become final and executory). In support thereof, petitioners adhere to the timelines required in Section 195 of the LGC of 1991:

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[83] Citations omitted and emphasis in the original text.

> ...
>
> **Sec. 195.** *Protest of Assessment.* — ...
>
> ...
>
> 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[.]
>
> The local treasurer shall decide the protest within sixty (60) days from the time of its filing.
>
> 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.
>
> ...

From the foregoing, it is clear that Section 195 of the LGC of 1991 contemplates a scenario where an assessment is issued and where a taxpayer's receipt thereof triggers the running of the 60-day period for the filing of a written protest.

Section 196 of the LGC of 1991, on the other hand, is framed differently, admitting of a less complicated or less defined timeline -

> ...
>
> **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.**[84]
>
> ...

Notably, unlike the requirement of a NOA in Section 195, Section 196 is silent of such an assessment. It also does not impose a specific period for the filing of the administrative or written claim with the local treasurer. We quote in agreement the Third Division's disquisitions[85] on the matter, *viz*:

[84] Emphasis supplied.
[85] Supra at note 1, p. 66.

> ...
>
> Section 195 refers to the procedure of protesting an assessment of LBT, while Section 196 pertains to the rule in claiming LBT refund. Notably, the application of Section 195 is triggered by a notice of assessment made by the local treasurer or his duly authorized representative. Whereas, Section 196 does not depend upon the existence of an assessment notice.
>
> ...

In *City Treasurer of Manila v. Philippine Beverage Partners, Inc., substituted by Coca-Cola Bottlers Philippines*[86] (**City Treasurer of Manila**), citing the case of *Cosmos Bottling*, the Supreme Court discussed the distinctions between the two provisions, *viz*:

> ...
>
> **Section 195.** *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. ...
>
> ...
>
> **Section 196.** *Claim for Refund of Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected...
>
> The first provides the procedure for **contesting an assessment issued by the local treasurer**; whereas, the second provides the procedure for the **recovery of an erroneously paid or illegally collected tax, fee or charge.** <u>Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office</u>. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

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86 G.R. No. 233556, 11 September 2019; Emphasis and underscoring supplied, emphasis and italics in the original text.

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

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

Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended **inaction** by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.

Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that **the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC.**

Clearly, when a taxpayer is assessed a deficiency local tax, fee or charge, he may protest it under Section 195 even without making payment of such assessed tax, fee or charge. This is because the law on

> local government taxation, save in the case of real property tax, does not expressly require "*payment under protest*" as a procedure prior to instituting the appropriate proceeding in court. This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest.
>
> Needless to say, <u>there is nothing to prevent the taxpayer from paying the tax under protest or simultaneous to a protest.</u> There are compelling reasons why a taxpayer would prefer to pay while maintaining a protest against the assessment. For instance, a taxpayer who is engaged in business would be hard-pressed to secure a business permit unless he pays an assessment for business tax and/or regulatory fees. Also, a taxpayer may pay the assessment in order to avoid further penalties, or save his properties from levy and distraint proceedings.
>
> ...

Henceforth, We summarize the relevant rules distinguishing the remedies available under Sections 195 and 196 of the LGC of 1991, respectively, as follows:

1. A taxpayer must comply with Section 195 in protesting an assessment supported by a notice of assessment;

2. A taxpayer may also seek recourse under Section 196 when it paid an assessment that it believes is erroneous and invalid; and,

3. A taxpayer may file a refund claim under Section 196 for erroneous and invalid taxes paid in the absence of an assessment.

We note as well that in the *Cosmos Bottling* ruling, the Supreme Court laid down twin conditions for instituting an action for refund before the courts. However, the refund contemplated therein is predicated on a preceding assessment:

> ...
>
> Simply put, <u>there are two conditions that must be satisfied in order to successfully prosecute an action for refund **in case the taxpayer had received an assessment**</u>. *One*, pay the tax and administratively assail within 60 days the assessment before the local

> treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.
>
> ...
>
> To reiterate, Cosmos, after it had protested and paid the **assessed tax**, is permitted by law to seek a refund having fully satisfied the twin conditions for prosecuting an action for refund before the court.[87]
>
> ...

Section 196, however, does not make any reference to such an assessment. Further, the remedy provided in Section 195 does not include a requirement to pay the contested assessment, though neither provision precludes recovery by a taxpayer who, for some reason, proceeds with payment of the assessment beforehand, with the intent to protest the same later on.

As in the case of *City Treasurer of Manila*[88], the variance in the requisites and effects of the remedies offered by the two provisions should not be interchanged.

Additionally, the fact that they can intertwine when applied for successively, and the consequences[89] that would attend such applications, as was explored at length in *Cosmos Bottling*, should not be overlooked. Nonetheless, as will be explained later on, the present

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87 Supra at note 18; Emphasis and underscoring supplied, and italics in the original text.

88 Supra at note 86.

89 Supra at note 18.

...

"Equally important is the institution of the judicial action for refund **within thirty (30) days from the denial of or inaction on the letter-protest or claim**, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196).Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even though the suit is seemingly grounded on Section 196, **the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court.**

The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable. Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. ... (Emphasis in the original text)

...

case does not admit of an assessment that Section 195 of the LGC of 1991 contemplates.

In light of the foregoing, it is thus apparent that respondent timely filed its refund claim. In the case at bar, respondent grounds its claim on Section 196 of the LGC of 1991, filing both its administrative and judicial claims well within the prescribed two-year deadline, contrary to petitioners' contention that the procedure under Section 195 of the LGC of 1991 should govern.

PETITIONER TAGUIG CITY'S BILLING STATEMENTS (AS ISSUED BY ITS BUSINESS PERMIT AND LICENSING OFFICE) DO NOT CONSTITUTE VALID NOTICES OF ASSESSMENT UNDER SECTION 195 OF THE LOCAL GOVERNMENT CODE (LGC) OF 1991, AS AMENDED.

Under Section 195[90] of the LGC of 1991, a valid assessment is a prerequisite for its application. The Third Division has aptly ruled[91]:

> ...
> The language of Section 195 clearly shows that before a notice of assessment may be issued, there must be a finding first by the local treasurer that the correct taxes, fees, or charges have not been paid, to wit:
>
> > "SEC. 195. *Protest of Assessment.* - **When the local treasurer or his duly authorized representative <u>finds that correct taxes, fees, or charges have not been paid</u>, 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. ...**
>
> ...

Verily, there must be a finding by the local treasurer or a duly authorized representative, embodied in a NOA issued against the concerned taxpayer. The NOA shall essay vital details such as the nature of the tax, fee or charge, the amount of deficiency, the surcharges,

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[90] Supra at note 14.
[91] Supra at note 2, p. 74; Emphasis, italics, and underscoring in the original text.

interests, and penalties. This conforms with the constitutional requirement that no person shall be deprived of his or her property without due process of law.[92]

In herein case, a perusal of the Billing Statements that petitioner Taguig City's BPLO[93] issued reveals that they are not the NOAs contemplated in Section 195 of the LGC of 1991. We echo the observations of the Third Division[94]:

> ...
>
> ... A careful examination of the documents attached to the "Petition for Refund" show that the Billing Statements were issued and prepared by the Taguig City Business Permit and Licensing Office. Consequently, the same cannot be considered as the notice of assessment required under Section 195, for they were not issued by the Office of the City Treasurer nor were they signed by Respondent City Treasurer.
>
> More importantly, as explicitly stated in Section 195, a notice of assessment is issued only after "finding that the correct taxes, fees, or charges have not been paid" and it must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties." Simply put, the assessment contemplated under the law is premised on the local treasurer making a finding that the correct taxes, fees or charges were not paid after examination, and that the local treasurer issue a statement containing the amount of deficiency, surcharges, interests, and penalties due from the taxpayer. This is not what happened in the case at hand.
>
> ...

In terms of giving a taxpayer notice of an assessment resulting from the taxing authority's findings, Section 195 of the LGC of 1991 resembles Section 228[95] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which mandates that the taxpayer be properly informed of the basis of the assessment against it.

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

93 Annexes "D" and "F", attached to the Petition for Review, *Rollo*, pp. 78 and 80.

94 Supra at note 1, p. 67.

95 **SEC. 228**. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings[.] ...

...

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

...

An examination of the templates for the subject Billing Statements appears to present a breakdown of the amount of taxes due (along with the interest and surcharges). *However*, unlike what Section 195 of the LGC of 1991 requires, the Billing Statements do not purport to inform the taxpayer that there has been a finding by the local treasurer, or his or her duly authorized representative, that the correct taxes, fees, or charges, for a specific period or instance, have not been paid.

Following a strict evaluation of the Billing Statements, We could readily see that, as opposed to what is generally expected of a valid NOA, there is no sufficient indication of the factual and legal bases therefor. Similarly, there was also no comprehensible computation in support of the amount in the NOA.

A closer scrutiny of the Billing Statements would also reveal that a clear statement that such was carried out in petitioner City Treasurer's behalf (by his duly authorized representative) is wanting. From the face of the document, the more immediate conclusion that a reasonable observer would reach is that they have been issued pursuant to an application for a renewal of a business permit.

In administrative proceedings, due process simply means the opportunity given to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Due process is complied with if the party, who is properly notified of allegations against him or her, is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions.[96]

With the disquisitions above, the Court *En Banc* could not but agree with the Third Division that the Billing Statements issued to respondent do not meet the requirements of a valid NOA in Section 195 of the LGC of 1991.

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96 *Alan La Madrid Purisima v. Glenn Gerard C. Ricafranca, et al.*, G.R. No. 237530, 29 November 2021.

AN ASSESSMENT AND CORRESPONDING CLAIM FOR THE 1ST QUARTER IS NOT RELEVANT TO THE REFUND CLAIMS FOR THE 2ND AND 3RD QUARTERS.

As a final point, contrary to petitioners' stance, We are of view that claim for the 1st quarter of TY 2018 is not a prerequisite to the other separate claims for the 2nd and 3rd quarters for the same TY. We adopt the Third Division's disquisition as set forth clearly in the assailed Resolution[97]:

> ...
>
> ... Respondent is thoroughly mistaken in stating that there should be a prior claim for refund for the first quarter of 2018; otherwise, Petitioner cannot claim a refund for its second and third quarters of 2018. For one, **there is no such prerequisite indicated under the LGC of 1991**. More importantly, the claim for refund for the first quarter of 2018 is unrelated and immaterial for the refund for the second and third quarters of 2018, for **the dates of their payment are distinct and separate from another.**[98]
>
> ...

A plain reading of Section 196[99] of the LGC of 1991 would show that no such requirement (as raised by petitioners) exists.

In the same vein, We are unswayed by petitioners' argument that the amounts billed by the BPLO partake of installments that were to be billed throughout TY 2018, insinuating thus that respondent is in estoppel as it had not protested the billing for the 1st quarter. Similarly, that in failure to do so, the entirety of the assessment has become final and unappealable.

This Court has already established that the subject matter of the Billing Statements, in the form they were presented to respondent, did not amount to valid assessments. In conclusion, there being no valid assessments within the contemplation of Section 195[100] of the LGC of 1991, these assessments cannot attain finality. It is a well-settled rule that

97 Supra at note 2, p. 76.
98 Emphasis supplied.
99 Supra at note 15.
100 Supra at note 14.

a void assessment bears no valid fruit.[101] Put differently, if an invalid assessment bears no valid fruit, with more reason will no such fruit arise if there was no assessment in the first place.[102]

Incidentally, We deem it more appropriate to evaluate each tax payment that respondent has made independently, reckoning from each payment its eligibility to seek a refund under Section 196 of the LGC of 1991.

Nonetheless, for the sake of argument, both parties to the instant case have already acknowledged the existence of a refund claim pertaining to the 1st quarter of TY 2018, lodged as Civil Case No. 421 before the RTC Taguig City-Branch 271.[103]

WHEREFORE, in view of the foregoing, the instant Petition for Review filed by petitioners City of Taguig and J. Voltaire Enriquez, in his capacity as Treasurer of The City of Taguig, on 24 May 2021 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 24 July 2020 and 18 February 2021, respectively, of the Third Division in CTA AC No. 227, entitled *Lafarge Holdings (Philippines), Inc. v. The City of Taguig and Atty. J. Voltaire L. Enriquez, in his capacity as the City Treasurer of the City of Taguig,* are **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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101 *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 249153, 12 September 2022.

102 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 197945, 09 July 2018.

103 Supra at notes 54 and 55.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

ON LEAVE
CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
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.

ROMAN G. DEL ROSARIO
Presiding Justice