REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

ALABANG SUPERMARKET CORPORATION,
Petitioner,

- versus -

THE CITY GOVERNMENT OF MUNTINLUPA, REPRESENTED BY MAYOR JAIME R. FRESNEDI, THE CITY TREASURER OF MUNTINLUPA, AND THE SANGGUNIANG PANLUNGSOD OF MUNTINLUPA CITY,
Respondents.

C.T.A. AC NO. 22

Members:

ACOSTA, *Presiding Justice*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

DEC 12 2007, 4:10 PM

x - x

DECISION

ACOSTA, ***P.J.*****:**

This is a Petition for Review filed before this Court on April 11, 2006, pursuant to Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282, in relation to Rule 42 of the 1997 Rules of Court, seeking the reversal of the Decision rendered by Judge Alberto L. Lerma of Branch 256 of the Regional Trial Court (RTC) of Muntinlupa City, in the case entitled "*Alabang Supermarket Corporation vs. The City Government of Muntinlupa City, et al, Civil Case No. 01-096*", dated March 6, 2006, which dismissed herein petitioner's complaint and supplemental complaint for declaratory relief, refund and/or issuance of a tax credit certificate of the 3% percentage tax on its sale of alcohol and tobacco products allegedly illegally imposed and collected by herein respondent, pursuant to Section 2 of the Muntinlupa CIty Ordinance No. 98-015. This petition further prays that:

1. Section 2 of the Muntinlupa City Ordinance No. 98-015 passed by the Sangguninag Panlungsod ng Muntinlupa City as approved by Mayor Jaime R. Fresnedi on December 14, 1998 be declared NULL and VOID;

2. The Muntinlupa City Treasurer refunds by way of tax credit or otherwise, to petitioner all of the taxes unlawfully collected on account of the alleged illegal imposition of the questioned Ordinance (in the aggregate amount of P3,637,552.06 as of December 15, 2002, plus legal interest accruing thereon); and

3. Respondents pay to petitioner the amount of not less than P250,000.00 as litigation expenses, attorney's fees and costs of suit.

The facts as culled from the records of the case are as follows:

Petitioner, Alabang Supermarket Corporation, is a domestic corporation duly organized and existing under Philippine Laws. It operates the Alabang branch of the Makati Supermarket, a distributor and dealer of, among others, liquor, beer, wine, distilled spirits, cigarettes and tobacco products.

On the other hand, respondents City Treasurer of Muntinlupa, herein represented by Ms. Nelia A. Barlis, The City Government of Muntinlupa, herein represented by Mayor Jaime R. Fresnedi, and the Sangguniang Panglungsod of Muntinlupa, are the government offices which enacted and are tasked to implement the assailed Ordinance No. 98-015.

Pursuant to Section 5(b), Article I, Chapter I of Title II of Ordinance No. 93-35, otherwise known as the Revenue Code of the City of Muntinlupa, petitioner pays the graduated business tax on its gross sales of liquor, beer, wine, distilled spirits, cigarettes and tobacco products. Such provision of the Revenue Code implements Section 143(b) of the Local Government Code (LGC) of 1991.

Ek

On December 1, 1998, the City Government of Muntinlupa, through the approval of its City Mayor, enacted City Ordinance No. 98-015, or the *"Kautusan na Inaamyendahan ang Ordinansa Bilang 93-35 o Muntinlupa Revenue Code sa Pamamagitan ng Pagpapataw ng Buwis sa Pangangalakal (Business Tax) sa mga Produktong Alak (liquor, beer, wines, distilled spirits, etc.) at Sigarilyo/Tabako o anumang Kauri Nito"*, which imposes a three percent (3%) business tax on the sale and distribution of alcoholic beverages and tobacco products. Section 2 of the assailed Ordinance specifically provides that:

> "**Seksyon 2. PAGPAPATAW NG BUWIS**. Ang mga mamamakyaw at magtitingi ng produktong alak (pinadalisay at pinalakas at pinangasim) at sigarilyo/tabako ay pinapatawan ng tatlong (3%) porsyentong buwis batay sa kabuuang benta (Gross Sales or Gross Receipts) sa loob ng isang taon."

In this regard, for the periods covering January 2, 1999 to September 15, 2002, petitioner allegedly paid the total amount of Three Million Six Hundred Ninety Six Thousand Five Hundred Fifty Seven and 06/100 Pesos (P3,696,557.06)[1] representing the 3% business tax based on its gross receipts from its sales of liquor, beer, wine, distilled spirits, cigarette and tobacco products, to wit:

Period Covered	Date Paid	OR Number	Amount Paid
Jan. 2, 1999 to Mar. 15, 1999	22-Mar-99	3792527	157,809.68
Mar. 16, 1999 to June 15, 1999	21-Jun-99	3851028	181,243.76
June 16, 1999 to Sept. 15, 1999	20-Sep-99	3413947	166,993.34
Sept. 16, 1999 to Dec. 15, 1999	20-Dec-99	3467517	233,837.75
Dec. 16, 1999 to Mar. 15, 2000	20-Mar-00	7058588	280,493.32
Mar.16, 2000 to June 15, 2000	20-Jun-00	4658813	190,012.01
June 16, 2000 to Sept. 15, 2000	20-Sep-00	1346344	182,788.09
Sept. 16, 2000 to Dec. 15, 2000	20-Dec-00	2734519	236,869.62
Dec. 16, 2000 to Mar. 15, 2001	21-Mar-01	3485387	300,200.14
Mar. 16, 2001 to June 15, 2001	20-Jun-01	7060116	217,979.78
June 16, 2001 to Sept.15, 2001	20-Sep-01	7135164	219,313.79
Sept. 16, 2001 to Dec. 15, 2001	20-Dec-01	0422861	260,913.23
Dec. 16, 2001 to Mar. 15, 2002	20-Mar-02	8149591	313,873.10

[1] Should be Three Million Three Hundred Seventy Three Thousand Eight Hundred Eighty Four and 27/100 Pesos (P3,373,884.27)

Elu

Mar. 16, 2002 to June 15, 2002	20-Jun-02	4501125	221,684.93
June 16, 2002 to Sept. 15, 2002	20-Sep-02	4591684	209,871.73
TOTAL			3,373,884.27

Aggrieved by the alleged erroneous collections made by respondents, petitioner, through its external auditor, wrote a letter to the Bureau of Local Government Finance (BLGF) of the Department of Finance seeking clarification on whether or not the City of Muntinlupa can legally impose the 3% business tax on gross receipts of wholesalers and retailers from their sale of liquor, beer, wine, distilled spirits, cigarette and tobacco products under CIty Ordinance No. 98-015.

In response to petitioner's query, the BLGF issued its ruling in favor of petitioner stating that "*The local legislative body may amend the same, however, the rates of increase should have been based on the schedules of graduated business taxes under Section 143 (b) of the LGC and not on the basis of the 2% local percentage tax on gross sales or receipts. xxx Thus, in amending Section 5(b) of the Revenue Code of the City of Muntinlupa, the increase should have been 10% on the schedules of graduated business taxes, not 3% on the gross sales or receipts.*"

In light of the ruling of the BLGF, petitioner wrote a letter[2] dated March 20, 2001 addressed to the City Treasurer of Muntinlupa seeking the refund/tax credit of the amount of P1,630,047.57 representing the 3% business taxes paid on its gross sales of liquor, beer, wine distilled spirits, cigarettes and tobacco products for the period covering January 1999 to December 2000. On March 21, 2001, petitioner filed its Complaint[3] with the Regional Trial Court of Muntinlupa seeking the refund or issuance of a tax credit certificate of the same amount and covering the same period.

On January 6, 2003, petitioner filed with the same lower court a

[2] Annex "E", Petition for Review
[3] Annex "F", Petition for Review

Ela

Supplemental Complaint[4] with the application for the issuance of a temporary restraining order and/or a writ of preliminary injunction. Petitioner likewise sought the declaration of nullity of Section 2 of the Muntinlupa City Ordinance No. 98-015, as well as, in addition to the amount in the original Complaint, the amount of P2,066,509.19 representing the payments made for the period from December 16, 2000 to December 15, 2002, making a total of P3,637,552.06 allegedly erroneously paid business taxes for the period covering January 1999 to December 15, 2002. Petitioner also prayed for the payment of not less than P250,000.00 as litigation expenses, attorney's fees and cost of suit.

In an Order dated August 25, 2003, the Regional Trial Court of Muntinlupa denied for lack of merit petitioner's application for the issuance of the temporary restraining order. After the pre-trial conference, both parties were directed to submit their respective Memorandum considering that the issues raised were purely legal in nature, the payments made by petitioner not having been disputed or denied by respondents.

In the assailed Decision of Judge Alberto L. Lerma of Branch 256 of the RTC of the City of Muntinlupa, petitioner's claim for refund was disallowed on the findings that Ordinance No. 98-015 was enacted and approved with basis, thus:

> "The City Government of Muntinlupa City has amended the Internal Revenue Code of Muntinlupa with the end purpose of applying its proceeds to support the existence of the local government as an aid to pursue its governmental objectives. Hence, the public purpose character of the imposition was then justified. From the foregoing, nothing was shown or there was failure of showing that the questioned imposition was oppressive, excessive nor prohibitive. A mere branding of the imposition as ultra vires or it is a void issuance will not satisfy the criteria in considering that the tax ordinance is arbitrary and unreasonable. In fact, the ordinance was enacted and approved with basis. When Ordinance No. 98-35 was amended so as to effect the increase of the business tax or percentage tax from 2% to 3%, the same was justified upon pursuing the provisions of the

[4] Annex "G", Petition for Review

Em

> Local Government Code of the Philippines specifically Section 151 thereof, which provides that 'the rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more that fifty percent (50%) except the rates of professionals and amusement tax.' Therefrom, the imposition did not fall under the excepted provision, hence, not prohibited. The only question that has surfaced is whether or not the imposition is oppressive or excessive. This Court should answer the same in the negative. When the aforecited provision allows the increase of the tax rate up to the maximum 50%, the City Government has merely effected the authority thus delegated by increasing the former 2% business tax up to 50% the resultant of which was the 3% imposition. Hence, it is assumed that the appertaining increase is neither unreasonable nor arbitrary taking into consideration that is within the bounds of Section 151 of the LGC. xxx"

No motion for reconsideration taken by petitioner, this Petition for Review was filed on April 11, 2006 based on the following issues:

> "A. Whether or not Section 2 of Muntinlupa City Ordinance No. 98-015 is null and void?
>
> B. Whether or not the respondents should refund/return to the petitioner by way of tax credit or otherwise the 3% business tax they illegally and unlawfully collected from the latter plus legal interests accruing thereto?
>
> C. Whether or not the petitioner is entitled to litigation expenses and attorneys fees."

As regards the first issue raised, petitioner submits that Section 2 of Muntinlupa City Ordinance No. 98-015 (Ordinance), which amended the graduated rates under Section 5(b), Article I, Chapter I of Title II of the Revenue Code of Muntinlupa (RCM) to impose a 3% rate of business tax, is contrary to Section 5, Article X of the 1987 Constitution, as well as the express provisions of Section 130, 133 (i), 143(b) and 191 of the Local Government Code (LGC). Petitioner argues that local governments do not have the inherent power to tax except such power as may

Ela

be delegated to them by law. The power granted by the Constitution apparently is not absolute, rather, subject to such limitations and guidelines as may be provided for by law.

Moreover, Sections 130, 133 (i), 143(b) and 191 of the LGC, expressly imposed limitations and guidelines that govern the exercise of the local government units' taxing and revenue-raising powers. Petitioner contends that respondents' Ordinance No. 98-015 contravenes Section 130 of the LGC for the same is excessive and confiscatory. Likewise, Section 133(i) of the same Code prohibits local government units from imposing percentage taxes on sales, barters or exchanges or similar transactions on goods or services. And considering that Ordinance No. 98-015 imposes a 3% business tax on the gross sales, it is necessarily an exaction based on sales, thus, null and void.

Further, petitioner argues that Section 191 of the LGC specifically provides that local government units have the authority to adjust the tax rates as prescribed in the LGC of 1991 not oftener than once every five (5) years but in no case shall the adjustments exceed ten percent (10%) of the rates fixed under the said Code. Thus, by amending Section 5(b) of the RCM, respondents should have increased the graduated rates by ten percent (10%) and not imposed a fixed rate of 3%.

Furthermore, as the BLGF has ruled, the term "*any article of commerce of whatever kind and nature*" under Section 143(b) of the LGC of 1991 is so broad as to already include liquor, beer, wine, distilled spirits, cigarettes and tobacco products. Verily, Section 2 of Ordinance No. 98-015, by imposing a 3% business tax on the gross sales of these products, contravened Section 143(b). Inasmuch as the BLGF is the government agency tasked to assist local governments units in the formulation and implementation of policies on local government revenue administration and management, its opinion in the absence of any palpable error must be upheld.

Petitioner similarly avers that from the time of the effectivity of the RCM on November 22, 1993, the City of Muntinlupa had been collecting from petitioner the graduated business tax rates pursuant to Section 143(b) of the LGC of 1991 on its sale and distribution of liquor, wine, beer and other distilled spirits, as well as, on its sale of cigarette and tobacco. However, with the implementation of the assailed Ordinance up to the present, instead of the graduated business tax rates pursuant to Section 5(b) of the RCM, petitioner have been paying and respondents have been collecting the fixed rate of 3% based on petitioner's gross sales.

Respondent City Government of Muntinlupa submitted its Comment on August 2, 2006. As regards the issue of the validity of Ordinance No. 98-015 is concerned, respondents argue that the imposition of the said Ordinance of a 3% business tax on wholesalers and retailers of liquor, beer, wines, distilled spirits, cigarette and tobacco products is valid. It is submitted that "distributors/dealers" who are at the same time "retailers" of liquor, beer, wines, distilled spirits, cigarette and tobacco products, such as petitioner, do not fall under the enumerations of taxable subject found under subparagraphs (a) to (g) of Section 143 of the LGC of 1991. This is evident from the fact that in the enumeration in the said Section 143, "wholesalers, distributors and dealers" are lumped together in one group and taxed separately from "retailers". With respect to the former, the applicable provision is Section 143(b), while Section 143(d) applies to "retailers", which provides for a fixed percentage tax of two percent (2%) per annum based on gross sales or gross receipts not exceeding P400,000.00 and one percent (1%) where it is in excess of the first P400,000.00.

Respondents aver that it is erroneous for petitioner to claim that as it is covered under Section 143(b) of the LGC, it may no longer be taxed under Section 2 of the assailed Ordinance. Petitioner is clearly both a "distributor/dealer" and "retailer", such that neither Section 143(b) nor any other subparagraphs of Sections 143 find application. Not being covered under subparagraphs (a) to (g), then Article 237 of the Implementing Rules and Regulations (IRR) of the LGC, which allows cities to levy and collect a percentage tax not exceeding 3% based on gross sales or receipts on any business not otherwise specified in Section 143 (a) to (g) of the LGC[5], in relation Section 151[6] of the LGC come into play.

However, even assuming that Article 237 of the IRR in relation to Section 151 do not apply, the imposition of the subject percentage tax finds statutory basis in Section 143(h) of the LGC in relation to Section 151 of the same Code. The imposition of the 3% business tax is still within the fifty percent (50%) maximum increase from the 2% percentage tax allowed by law. The City Government, therefore, did not exceed its limits when it enacted Ordinance No. 98-015 imposing the questioned 3% business tax on the gross sales or receipts of liquor, beer, wines, distilled spirits, cigarettes and tobacco products.

Respondents further argue that what is contemplated in Section 2 of the contested Ordinance is a new imposition on a particular tax which the City Government of Muntinlupa, through the Sanggunian, has deemed proper to tax, pursuant to Section 143(h) of the LGC, as implemented under Article 237 of the IRR. Therefore, contrary to petitioner's claim, the subject ordinance does not adjust, increase, or amend an existing imposition, rather, it creates a new one, this legislative intent is manifest in the Ordinance's "Whereas" clauses, to wit:

---

[5] Article 237 (b), Rules and Regulations Implementing the Local Government Code
[6] Sec. 151. Scope of Taxing Powers. – xxx
The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

> "SAPAGKAT, sa kasalukuyan ay walang sinisingil ang Pamahalaang Lungsod na buwis sa pangangalakal (business tax) sa mga produktong alak at sigarilyo/tabako o anumang kauri nito; xxx"

As regards the payment of attorneys' fees and costs of suit, respondents submit that costs of suit are not recoverable against government entities and officers when they are sued purely in their official capacity. It must be stressed that what is involved in the present case is the collection of revenues by a local government unit. Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its constituents are largely derived from its revenue and collections.

This case basically involves the legal issue of whether or not Section 2 of Ordinance No. 98-015, imposing a 3% business tax on petitioner's gross sales of liquor, beer, wine, distilled spirits, cigarette and tobacco products, is valid. However, before discussing the above-stated legal issue, this Court deems it necessary to resolve first the factual issue of petitioner's claim.

The facts reveal that petitioner filed an administrative claim for refund or issuance of a tax credit certificate[7] for the 3% business tax it paid for the period covering January 2, 1999 to December 15, 2000 in the amount of P1,630,047.57 on March 20, 2001. A Complaint with the Regional Trial Court of Muntinlupa was then filed by petitioner March 21, 2001, seeking the refund or issuance of a tax credit certificate for the same amount. In this regard, there is no question that petitioner's administrative and judicial claims for refund or issuance of a tax credit certificate fall within the reglementary two (2)-year period from its payment of the assailed 3% business tax. Since petitioner's first payment of the tax was indisputably made on

[7] Annex "E", Petition for Review

March 22, 1999, it had until March 21, 2001[8] within which to file both its administrative and judicial claims for refund. Subsequently though, a Supplemental Complaint increasing the amount of refund to cover the periods December 16, 2000 to December 15, 2002, or in the total amount of P3,637,552.06 was filed by petitioner on January 6, 2003. However, records are wanting of any written administrative claim for refund filed with the local treasurer for the additional amount covering the period December 16, 2000 to December 15, 2002. It must be stressed that the law specifically provides that a written administrative claim for refund is required before any proceeding in court may be entertained.

Section 196 of the Local Government Code of 1991 (LGC) in relation to Article 286 of the Rules and Regulations Implementing the same Code specifically provides 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." (*Emphasis supplied*)

Verily, taxpayers entitled to refund or tax credit must file first with the local treasurer a written claim duly supported by evidence of payments within two (2) years from the payment of the tax, fee or charge. No case shall be entertained in any court absent this written claim being first shown or proven.

In this regard, this Court can only take into consideration the original amount of P1,630,047.57 representing the 3% business tax on petitioner's gross sales of liquor, beer, wine, distilled spirits, cigarette and tobacco products for the period covering January 2, 1999 to December 15, 2000, which amount was properly the

[8] The year 2000 being a leap year

subject of a written administrative claim and judicial claim for refund.

The Court will now proceed to the main issue raised. After a painstaking consideration of the arguments raised by both parties, this Court partially agrees with petitioner.

Under the provisions of the Local Government Code, more particularly Sections 132 and 143, the power to impose a tax, fee or charge to generate revenue under the said Code shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance. Pursuant to these provisions of law, the City Government of Muntinlupa then enacted its Revenue Code of Muntinlupa, as well as, the assailed Ordinance No. 98-015, which basically imposes a fixed business tax rate of 3% on the gross sales/receipts of wholesalers and retailers of liquor, beer, wine, distilled spirits, cigarettes and tobacco products.

Provided under Section 5(b), Title II, Chapter I of the Revenue Code of Muntinlupa, is the graduated business tax rates for "wholesalers, distributors, or dealers of any article of commerce of whatever kind or nature". This provision evidently took its root from Section 143 (b) of the LGC, which provides that:

> "**Sec. 143. Tax on Business**. - The municipality may impose taxes on the following business: xxx
>
> (b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:
>
> x x x x x x x x x"

In this instant case, petitioner, as a distributor and dealer of liquor, beer, wine, distilled spirits, cigarettes and tobacco products, was previously taxed based on the graduated business tax rates pursuant to Section 5(b), Chapter I, Title II of the Revenue Code of Muntinlupa. Respondents' imposition of the graduated tax

Glr

rates apparently was pursuant to Section 143 (b) of the LGC, which allows local government units to impose a business tax on wholesalers, distributors or dealers of the mentioned articles of commerce, taking into consideration the last paragraph of the said section, which provides:

> "The sanggunian concerned may prescribe a **schedule of graduated tax rates** but in no case to exceed the rates prescribed herein."

However, with the enactment of Ordinance No. 98-015, respondents now collect from petitioner the 3% fixed business tax rate based on petitioner's gross sales or receipts of liquor and other distilled products and cigarette products as a wholesaler and retailer, on the premise that no other provision of law imposes a business tax on wholesalers and retailers of liquor, beer, wine, distilled products, cigarette and tobacco products.

It is emphasized that the very phrase under Section 143 (b) of the LGC, "any article of commerce of whatever kind and nature", is broad enough as to include liquor, beer, wine, distilled products, cigarettes and tobacco products. When the law evidently does not distinguish the articles of commerce subject to the business tax, thus, respondents' should not have done so. Further, it is not disputed that petitioner have already been taxed as distributor and dealer of liquor, beer, wine, distilled spirits, cigarettes and tobacco products by the respondent, based on the graduated rates provided for under Section 5(b), Chapter I, Title II of the Revenue Code of Muntinlupa City. The aforesaid section clearly taxes "wholesalers, distributors and dealers". Hence, it was erroneous for respondents to argue that "no other provision of law imposes a business tax on wholesalers and retailers of liquor, beer, wine, distilled spirits, cigarette and tobacco products". Respondents may also argue that there was no amendment to speak of taking into consideration the

Ela

"whereas" clauses of the said Ordinance, however, by the very nature of the imposition of the fixed tax rate of 3%, from the graduated rates being collected from petitioner, there is definitely the nature of an increase in the rates imposed.

When Ordinance No. 98-015 was enacted amending/increasing the rates of business taxes to a fixed rate of 3%, which is more than 10% of the allowable increase, such imposition was excessive and contrary to law. Pursuant to Section 191[9] of the LGC, it is provided that the LGUs may adjust the rates of taxes prescribed in the same Code, not oftener than once every five (5) years, but in no case shall it exceed ten percent (10%) of the rates already prescribed. In this regard, the adjustments on the rate of tax imposed upon petitioner should have been based on the existing graduated business tax rates under Section 5(b), Artilce I, Chapter I of Title II of the Revenue Code of Muntinlupa.

It is most important to reiterate that respondents cannot base the adjustments on the business tax rates on the 2% tax rate provided for under Section 143(h) of the LGC. It may be argued that petitioner's business falls under the said section, which provides that "any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended xxx", however, it is stressed that the Revenue Code of Muntinlupa adopted a graduated rate of tax, pursuant to Section 143(b), taking into consideration the last paragraph of Section 143 of the LGC.

Moreover, Section 151 of the LGC cannot be made to apply considering that it is a general provision which provides for the scope and extent of the city's taxing power, that is, the section merely empowers the city to levy taxes which may exceed the maximum rates allowed the province or municipality by fifty percent (50%).

[9] Sec. 191. Authority of Local Government Units to Adjust Rates of Tax Ordinances. – Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five years, but in no case shall adjustment exceed ten percent (10%) of the rates fixed under this Code.

Ea

Evidently, issue for consideration being the rate of increase which should be allowed to Section 5(b), Chapter I, Title II of the Revenue Code of Muntinlupa, Section 191 of the LGC should be applied.

Nonetheless, although this Court agrees with petitioner that the Ordinance increasing the rates of business taxes to 3% is excessive and contrary to law, its claim for refund of the full amount may not be allowed.

It must be emphasized that this Court's findings does not extend to petitioner's non-liability for the payment of business taxes. It is not disputed that petitioner is liable to pay the business taxes pursuant to Section 5(b) of Chapter I, Title II of the Revenue Code of Muntinlupa. It may be that the imposition of the 3% fixed business tax is excessive, however, petitioner is not exempt from the payment of business tax as may be imposed by the local government unit concerned in accordance with law. This Court finds that the increase in the business tax rates imposed by Section 2 of Ordinance No. 98-015 is excessive and beyond the taxing power of the City Government of Muntinlupa, pursuant to Section 191 of the LGC, but as regards petitioner's liability for the business tax, the same is in the affirmative. Absent any evidence or document to show or compute for the exact amount of business taxes petitioner is liable to, the claim for refund may not be allowed.

Lastly, as regards petitioner's claim for attorney's fees and costs of suit, it is an established rule that costs of suit are not recoverable against government entities and officers when they are sued purely in their official capacity.[10]

WHEREFORE, in view of the foregoing, this instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, this case is **REMANDED** back to the lower court for the proper recomputation of petitioner's business tax liability covering the period from January 2, 1999 to December 15, 2000 only, taking into consideration

[10] Philippine Veterans Office vs. Anover, 125 SCRA 364

Section 191 of the LGC. Any excess on the amount already paid by petitioner shall then be refunded by way of a tax credit. Furthermore, respondents are likewise **ORDERED to DESIST** from further collecting the 3% fixed business taxes pursuant to Section 2 of Ordinance No. 98-015.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division