REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HOLCIM PHILIPPINES, INC., *Petitioner,*	**CTA AC NO. 315** Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
- versus -	
THE CITY OF MANILA and MA. JAZMIN M. TALEGON, in her capacity as Officer-in-Charge of the City Treasurer's Office of the City of Manila, *Respondents.*	Promulgated: OCT 30 20__ 4:30 p.m.

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DECISION

RINGPIS-LIBAN, *J*.:

Before this Court is a Petition for Review filed by Holcim Philippines, Inc., seeking: (1) the reversal of the Decision dated November 17, 2023 and the Order dated January 2, 2024, both issued by Branch 6 of the Regional Trial Court (RTC) of the City of Manila in Civil Case No. R-MNL-22-00525-CV; and (2) the refund of local business tax (LBT) in the amount of ₱2,205,303.62, allegedly collected illegally and erroneously.

THE PARTIES

Petitioner Holcim Philippines, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at the 7th Floor, Two World Square, McKinley Hill, Fort Bonifacio, Taguig City. It is engaged in the manufacture and wholesale of cement. As stated in its Amended Articles of Incorporation, its primary purpose is "to engage in the business of manufacture, production, and merchandising, whether domestically or for export, of cement, cement products and by-products, including their derivatives, and any and all kinds of minerals and building materials."

Respondent City of Manila is a local government unit created by law. Service of summons, notices, orders, and other court processes may be made through its Office of the City Legal Officer and/or the Office of the City Mayor.

Respondent Jazmine M. Talegon is the Officer-in-Charge, City Treasurer of the City of Manila.

THE FACTS

On January 2, 2020, as part of its application for the renewal of its business permit, petitioner executed a Certification stating that its gross sales/receipts for calendar year 2019 amounted to ₱595,189,976.00.

On January 10, 2020, respondents issued to petitioner a Statement of Account of even date, assessing LBT in the amount of ₱2,872,387.59 for taxable year 2020. Petitioner paid said amount on January 16, 2020, as evidenced by Official Receipt No. U033056014B issued by the City Treasurer.

On December 16, 2021, petitioner sent a letter to the City Treasurer seeking a refund of a portion of the payment, in the amount of ₱2,205,303.62.

On February 2, 2022, petitioner filed with the RTC a Petition for Refund, praying for the return of erroneously paid LBT in the same amount.

After trial, the RTC promulgated the assailed Decision on November 17, 2023, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Refund filed by petitioner Holcim Philippines, Inc. is hereby **DISMISSED** for being filed out of time and for lack of merit.
>
> **SO ORDERED**."

On December 11, 2023, petitioner filed a Motion for Reconsideration of the Decision dated November 17, 2023, which the RTC denied in the assailed Order.

Aggrieved, petitioner filed the present Petition for Review on February 2, 2024. Respondents filed their Comment on April 23, 2024.

In a Minute Resolution dated April 25, 2024, the Court directed the parties to file their respective memoranda. Respondents complied on June 3, 2024, while petitioner filed its Memorandum on June 7, 2024.

The case was submitted for decision on June 25, 2024.

THE ISSUES

Petitioner raises as the sole issue its entitlement to the refund claim. In this regard, it attributes to the RTC the following errors of fact and law:

> "VIII.
> ASSIGNMENT OF ERRORS
>
> A.
> The Trial Court erred in applying the periods in Section 195 of the LGC because the Statement of Account is not and cannot be considered as an 'assessment.'
>
> B.
> The Trial Court erred in holding that Petitioner must first prove its registration with Respondent City of Manila as a manufacturer and/or wholesaler of cement, an essential commodity under the LGC, before it may be entitled to refund of the Total Claim for Refund.
>
> C.
> The Trial Court erred in determining that Respondents' use of PILAA in calculating Petitioner's LBT for 2020 was appropriate.
>
> D.
> The Trial Court erred in determining that there was no violation of Petitioner's right to due process."

ARGUMENTS OF THE PARTIES

Petitioner asserts that:

1. The Statement of Account issued by the City's License Division is not the "assessment" contemplated under Section 195 of the Local Government Code (LGC). Petitioner further asserts that:

   a. An assessment under Section 195 of the LGC should contain the amount of deficiency taxes, surcharges, interests, and penalties due from the taxpayer. The subject Statement of Account was issued in connection with petitioner's application for renewal of business permit and failed to state the amount of deficiency taxes due.

b. An assessment under Section 195 of the LGC must be preceded by an examination of the taxpayer's books of account and other accounting records by the local treasurer or a duly authorized representative, and its issuance must be based on a finding that correct taxes, fees, or charges have not been paid.

2. Petitioner complied with Section 196 and is therefore entitled to a refund. Its registration as an "ordinary wholesaler" is irrelevant to the refund claim, and denial on this ground is inconsistent with Section 143(c)(8) of the LGC.

3. Petitioner is engaged in the manufacture and/or wholesale of cement and is entitled to the preferential rate under Section 143(c)(8). Respondents admitted that petitioner operates the Holcim Philippines, Inc.–Manila Cement Terminal located at L10 B2, Manila Harbor Center, Tondo, Manila for its wholesaling operations.

4. The use of the Presumptive Income Level of Assessment Approach (PILAA) in computing the LBT was baseless and arbitrary.

5. The issuance of the Statement of Account violated petitioner's right to due process.

Respondents maintain that the RTC correctly dismissed the petition for refund. They argue that:

1. The LBT collected from petitioner is correct.

2. Petitioner was registered as a wholesaler of non-essential goods.

3. Respondent's admission that petitioner's wholesaling of cement does not automatically warrant the preferential rate.

4. The computation of LBT was based on the PILAA.

THE COURT'S RULING

After a judicious evaluation, the Court finds that the Petition for Review is impressed with merit.

Timeliness of the Petition

Under Section 7(a)(3) of Republic Act (RA) No. 1125, as amended, the Court of Tax Appeals (CTA) shall exercise exclusive appellate jurisdiction to review by appeal, decisions, orders, or resolutions of the RTC in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction. Any party adversely affected by a decision or ruling of the RTC may file an appeal with the CTA within thirty (30) days after receipt of such decision or ruling.[1]

On January 4, 2024, petitioner received a copy of the assailed Order. Counting thirty (30) days from said date, petitioner had until February 3, 2024 within which to file its appeal. Considering that February 3, 2024 fell on a Saturday, the filing of the present Petition for Review on February 5, 2024 was timely made.

The Statement of Account is not the "assessment" contemplated under Section 195 of the LGC.

The Court finds that Statement of Account is not the "assessment" contemplated under Section 195 of the LGC.

In *Luz R. Yamane v. BA Lepanto Condominium Corporation,*[2] the Supreme Court first addressed the statutory requirements for a valid "notice of assessment" in the context of local government taxation, thus:

> **Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved <u>but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties</u>.** In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as

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[1] Section 11, RA 1125, as amended; Section 3(a), Rule 8, Revised Rules of the Court of Tax Appeals.
[2] G.R. No. 154993, October 25, 2005 [Per J. Tinga, *Second Division*].

> well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body. *(Emphasis and underscoring supplied)*

The Statement of Account was issued not to assess a deficiency in local business tax but merely to facilitate the renewal of petitioner's business permit. Notably, in *International Container Terminal Services, Inc. v. The City of Manila*[3] the Supreme Court held that alleged "assessments" issued in connection with the issuance or renewal of business permits cannot be deemed the notice of assessment contemplated under Section 195 of the LGC, as such documents lack any determination of deficiency, surcharges, interest, or penalties. The Court ruled:

> "What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state 'the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties.' In *Yamane v. BA Lepanto Condominium Corp.*:
>
> > Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local

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[3] G.R. No. 185622, October 17, 2018 [Per J. Leonen, *Third Division*].

> Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body. (Citations omitted)

No such precondition is necessary for a claim for refund pursuant to Section 196.

Here, no notice of assessment for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first three (3) quarters of 1999. As observed by Court of Tax Appeals Justice Casanova in his Concurring and Dissenting Opinion to the September 5, 2008 Decision:

> In order to apply Section 195 of the LGC, there is a need for the issuance of a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. It is only upon receipt of this notice of assessment that a taxpayer is required to file a protest within sixty (60) days from receipt thereof.
>
> Given the nature of a notice of assessment, it is my opinion that no notice pertaining to deficiency taxes for the periods subsequent to the 3rd Quarter of 1999 up to the present were ever issued or sent by respondents to ICTSI.
>
> In ICTSI's case, as correctly found by the *Second Division*, *viz.*:
>
> 'Records disclose in the instant case that petitioner filed a protest pursuant to Section 195 of the LGC only with respect to the assessment of the amount of P6,224,250.00, which covers the [first three quarters] of 1999. Petitioner protested the said assessment on July 15, 1999 and paid the same amount under protest. This is not controverted by the respondents.'
>
> Hence, Section 195 of the LGC cannot apply to the period subsequent to the 3rd Quarter of 1999 because ICTSI did not receive any notice of assessment thereafter that states the nature of the tax[,] amount of deficiency[,] and charges.

The 'assessments' from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila. While these receipts state the amount and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the 'notice of assessment' required under Section 195 of the Local Government Code." *(Emphasis supplied and citations omitted)*

The same principle applies in this case. The subject Statement of Account neither indicates any deficiency tax, surcharge, or interest nor sets forth the factual and legal bases of the supposed assessment. Accordingly, petitioner correctly maintains that the Statement of Account does not constitute an assessment within the contemplation of Section 195 of the LGC.

It bears emphasis that Section 195 applies only when a notice of assessment has been issued to the taxpayer, necessarily presupposing the existence of a valid tax assessment. In *National Power Corporation v. Province of Pampanga*,[4] the Supreme Court underscored the taxing authority's duty to clearly inform the taxpayer of the factual and legal bases of the assessment:

> "Taxpayers' obligation for deficiency taxes cannot depend on a guessing game. To stress, the taxpayer must not only be informed of what taxes it is liable to pay and under what authority the obligation to pay is based. Equally important is that it must be advised how much is the pending tax liability and the period covered. **Without these particulars, taxpayers would be deprived of adequate opportunity to prepare for an intelligent appeal as they would have no way of determining what is considered by the taxing authority in making the assessment."** *(Emphasis supplied.)*

There is likewise no showing that respondents or their duly authorized representative made any finding that petitioner failed to pay the correct taxes, fees, or charges. Accordingly, the two-year prescriptive period under Section 196, which governs claims for refund or tax credit of taxes erroneously or illegally collected, properly applies to petitioner's claim.

Petitioner Complied with the Prescriptive Period under Section 196

Because the Statement of Account is not a notice of assessment under Section 195 of the LGC, the timeliness of petitioner's claim is governed solely by Section 196. This provision bars any court action to recover taxes erroneously or illegally collected unless: (1) a written claim for refund or credit is first filed with the local treasurer, and (2) both the administrative and judicial claims are made within two (2) years from payment or from the date the taxpayer becomes entitled to a refund.

Petitioner paid the LBT on January 16, 2020, giving it until January 16, 2022 to file both claims. It filed its administrative claim with the City Treasurer on December 16, 2021, well within the two-year period.

[4] G.R. No. 230648, October 6, 2021 [Per J. Lopez, M., *First Division*].

Under Administrative Circular No. 01-2022 dated January 10, 2022, the filing periods of all pleadings due in January 2022 were extended until February 1, 2022. In addition, Proclamation No. 1236, series of 2021 declared February 1, 2022 as a non-working holiday in observance of the Chinese New Year.

Accordingly, petitioner's judicial claim filed on February 2, 2022 was timely.

Entitlement to the Preferential Rate for Manufacturers or Wholesalers of Essential Commodities

Petitioner claims entitlement to the preferential LBT rate under Section 143(c)(8) of the LGC. Respondents counter that petitioner failed to register as a manufacturer or wholesaler of essential commodities and is therefore not entitled to a reduced rate or any refund. The RTC agreed with the respondent, ruling that because petitioner was registered as an ordinary wholesaler, the preferential rate would apply only after it amended its business registration in March 2022.

The Court finds for the petitioner.

Local government units (LGUs) have no inherent power to tax; they derive such authority from Article X, Section 5 of the 1987 Constitution and the LGC.

Under the LGC, Section 151, in relation to Section 143, authorizes cities to impose business taxes, but Section 143(c) limits the tax on manufacturers, millers, producers, wholesalers, distributors, dealers, or retailers of essential commodities—including cement—to one-half of the rates imposed on ordinary manufacturers or wholesalers. Section 131(o) defines a "manufacturer" as any person who changes or modifies a product to prepare it for special use or to transform it into marketable form.

Nothing in Section 143(c), Section 151, or any other provision of the LGC requires prior registration with the local government as a manufacturer of essential commodities before a taxpayer may claim the preferential rate. Unless expressly authorized by the statute, respondents may not impose additional requirements beyond those provided by law.[5]

[5] *Villacorta v. Bernardo*, G.R. No. L-31249, August 19, 1986 [Per J. Cruz, *First Division*]; *The Solicitor General et al. v. The Metropolitan Manila Authority*, G.R. No. 102782, December 11, 1991 [Per J. Cruz, *En Banc*].

The documentary and testimonial evidence establish that petitioner is a manufacturer and/or wholesaler of cement—an essential commodity under Section 143(c)— and is therefore entitled to the preferential rate.

Respondents Properly Applied the PILAA

Petitioner contends that the use of PILAA was improper, insisting that it is permissible only when a taxpayer fails to present proof of gross sales or receipts. It claims that its Certification dated January 2, 2020, showing gross sales or receipts, was attached to its December 16, 2021 letter constituting its administrative claim for refund, thereby precluding the application of PILAA.

This contention is unavailing. PILAA may be applied only when: (1) the taxpayer does not provide proof of gross sales or receipts; and (2) its use is expressly authorized by a local tax ordinance.[6]

While petitioner did submit its Certification with its administrative claim for refund in 2021, this only underscores that no such proof was presented at the time respondents issued the Statement of Account in 2020. Thus, the first requisite for the use of PILAA was satisfied.

The second requirement is likewise met. Section 182 of the 2013 Manila Revenue Code expressly authorizes the use of a "Presumptive Income Assessment" when a taxpayer neglects or refuses to declare gross sales or receipts, or where the declaration appears inadequate and no audited financial statements are submitted.

With both requisites present, respondents were justified in applying PILAA in assessing petitioner's LBT.

Petitioner is Entitled to a Refund of Erroneously Paid LBT in the Amount of ₱1,436,193.80

In sum, while respondents were justified in applying PILAA, they should have computed petitioner's liability using the preferential rates applicable to manufacturers and/or wholesalers of essential commodities.

Section 103 of the Manila Revenue Code provides that manufacturers and/or wholesalers of essential commodities are subject to only one-half of the rates imposed on those dealing in non-essential commodities.

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[6] BLGF Memorandum Circular No. 01-001-17 dated January 5, 2017; *First Planters Pawnshop, Inc. v. City Treasurer of Pasay City*, CTA EB No. 501, December 10, 2010.

Accordingly, petitioner's LBT liability for calendar year 2019 should have been ₱1,436,193.80 or one-half of the ₱2,872,387.59 actually assessed. Since petitioner paid the full amount of ₱2,872,387.59, it is entitled to a refund of erroneously paid LBT in the amount of ₱1,436,193.80.

ACCORDINGLY, the present Petition for Review is **PARTIALLY GRANTED**. Respondents are hereby **ORDERED** to refund petitioner Holcim Philippines, Inc. in the total amount of **₱1,436,193.80**, representing erroneously or illegally paid local business taxes for calendar year 2019.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

With due respect, please see my Concurring and Dissenting Opinion
CORAZON G. FERRER-FLORES
Associate Justice

ATTESTATION

I attest 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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

HOLCIM PHILIPPINES, INC., Petitioner,	**CTA AC NO. 315** [RTC Civil Case No. R-MNL-22-00525-CV]
vs.	*Present:*
THE CITY OF MANILA AND MA. JAZMIN M. TALEGON, IN HER CAPACITY AS THE OFFICER-IN-CHARGE OF THE CITY TREASURER'S OF THE CITY OF MANILA, Respondent.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.* Promulgated:

x - 4:30p.m. - - - - - - - - x

CONCURRING AND DISSENTING OPINION

FERRER-FLORES, J.:

Prefatorily, I concur with the *ponencia* of my esteemed colleague that the subject Statement of Account is not the "assessment" referred to in Section 195 of the Local Government Code of 1991 (LGC), and that petitioner **Holcim Philippines Inc.'s** cause of action appropriately falls under Section 196 of the LGC. Correspondingly, I agree with the *ponencia* in finding that petitioner timely filed its claim for refund under Section 196 of the LGC.

I do, however, express my dissent on the conclusion reached that petitioner is entitled to the preferential rate allowed for manufacturer/wholesaler of cement. According to the *ponencia,* the documentary and testimonial evidence establish that petitioner is a manufacturer and/or wholesaler of cement – an essential commodity under Section 143 (c) of the LGC of 1991 – and is therefore entitled to the preferential rate. Moreover, nothing in Section 143(c), Section 151, or any other provision of the LGC of 1991 requires prior registration with the local government as a manufacturer of essential commodities before the taxpayer may claim the preferential rate.

It is undoubted that petitioner was registered as an ordinary wholesaler at the time of the subject claim. Yet, petitioner is seeking the refund of its "excess" payment as it should have been assessed at a preferential rate as a manufacturer/wholesaler of cement under Section 143(c)(8).

Petitioner was well aware that at the time of the subject claim, it was registered as an ordinary wholesaler, and such was the reason why respondents did not apply the preferential rate. Despite this, petitioner did not proffer any explanation as to why it registered as an ordinary wholesaler, instead of a wholesaler of an essential commodity that it so claims. Petitioner's witness, Dennis G. Segovia, Jr, testified on cross-examination, as follows:[1]

> Q: Now, Mr. Witness you stated that the City did not apply the preferential rate granted to manufacturer/wholesaler of cements specifically to HPI?
>
> A: Yes, Attorney.
>
> Q: And do you agree with me that HPI is registered as a Wholesaler in the Bureau of Permit?
>
> A: Yes, Attorney.
>
> Q: And you just assumed that because HPI is engaged in the sapient sale the same is automatically entitled to preferential rate. Is that what you are saying?
>
> A: Yes, Attorney.
>
> Q: Is it not the fact that the business owners who apply for business before the Local Government Unit are the ones who declare what business they want to pursue? Is that correct?
>
> A: Yes, Attorney.
>
> Q: And they are the ones who declare what business they wish to engage in?
>
> A: Yes, Attorney.
>
> Q: And do you agree with me that there are many classification of businesses being registered in the City?

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[1] Transcript of Stenographic Notes (TSN) of the hearing dated September 7, 2023, pp. 13-14, RTC Civil Case No. R-MNL-22-00525-CV.

A: Yes, Attorney.

xxx xxx xxx

Q: Okay. Are you aware of the reason why City of Manila did not apply the 50% discount on the Local Business Tax?

A: Due to the wrong registration. The "Wholesaler" rather than the "Wholesaler for basic commodities."

Relevantly, respondents' witness, Atty. Paul S. Vega, stated in his cross-examination that the assessment is based on what is reflected on the taxpayer's application with the Bureau of Permits, to wit:

Q: Do you confirm that under the Local Government Code that the registration with the Bureau of Permits is not a requirement.

A: I cannot confirm because as far as our office is concerned, we only assessed taxes based on their application as reflected in their application with the Bureau of Permits.[2]

xxx xxx xxx

Q: What is your legal basis for using the registration as the basis for the computation of the local business tax?

A: If I may, Your Honor. The process for applying for a business permit lies with the taxpayer, they are the ones who filled out all the necessary documents and details in their business permit that they are applying with the City of Manila. And after which, after the process has been done and all the regulatory offices have approved their application, then the proper business permit has been issued. In the case of Holcim Philippines, Inc., we are referring to the fact that their business permit since the time prior to 2022 it appears that their application reflects that they are wholesaler for non-essential commodities that is why from the time that a business tax against them that they have been assessed as wholesaler of non-essential products. And we have no control, our office had no control over the application process since it is before the taxpayer who applied their business permit to the City of Manila.

Q: Mr. Witness, the question was, what was your legal basis for using that business registration… (interrupted)

Atty. Tan: Already Answered, Your Honor. It was the registration itself.

Court: That is your answer?

Witness: Yes, Your Honor. My answer is that, our basis was their application, Your Honor. So, when they applied in the City of Manila and in all other businesses applied to the City of Manila, that is the process.

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2 TSN of the hearing dated October 26, 2023, p. 13 RTC Civil Case No. R-MNL-22-00525-CV.

> The taxpayer applies and whatever they have applied necessary taxes are assessed, Your Honor, after said application.[3]

Even lending credence to petitioner's averment that the business registration is irrelevant, it is my humble opinion that petitioner fell short in proving by preponderant evidence that it is entitled to the preferential rate accorded to manufacturers/wholesalers of cement. To prove its claim, petitioner banks on its Amended Articles of Incorporation (AOI), which states as its primary purpose:

> To engage in the business of manufacture, production and merchandising, whether domestically or for export, of cement, <u>cement products and by-products, including its derivatives, and any kinds of minerals and building materials.</u>

While petitioner is undoubtedly a manufacturer of cement, it is *not*, as expressed in its AOI, *exclusively* engaged in such. Significantly, petitioner is authorized also to engage in the business of manufacturing, production, and merchandising, whether domestically or for export, of <u>cement products and by-products, including its derivatives, and any and all kinds of minerals and building materials.</u>

Section 143(c)(8) of the LGC specifically enumerates "cement" as an essential commodity.

Expressio unius est exclusio aterius. It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[4]

Congruent with the statutory construction principle above, I believe that the entitlement to the preferential rate must be strictly construed, and limited only to "cement" as specified in the LGC. Stated differently, the entitlement to preferential rate must not be extended to products other than cement.

As established in the records, petitioner failed to provide its gross sales or receipts to respondents. Even assuming there is Certification of its

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[3] TSN of the hearing dated October 26, 2023, p. 17, RTC Civil Case No. R-MNL-22-00525-CV.

[4] *Development Bank of the Philippines vs. Commissioner on Audit*, G.R. No. 221706, March 13, 2018.

gross sales or receipts, there is no way for the Court to determine whether the gross sales, wholly or partially, is attributable to the manufacture/wholesale of cement. Accordingly, for failure of petitioner to prove that its sales arose wholly from the manufacture/wholesale of cement, its claim for refund must be denied.

All told, I vote to deny the instant *Petition for Review*.

CORAZON G. FERRER-FLORES
Associate Justice