REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HOLCIM PHILIPPINES, INC.,
Petitioner,

- versus -

THE CITY OF TAGUIG and ATTY. J. VOLTAIRE ENRIQUEZ, in his capacity as the CITY TREASURER OF THE CITY OF TAGUIG,
Respondents.

CTA AC NO. 268

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, JJ.

Promulgated:

NOV 15 2023

x- 2:20 p.m. - - - -x

DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review* [1] filed by petitioner Holcim Philippines, Inc., praying that the Court render judgment: (i) reversing and setting aside the Judgment dated May 6, 2022 (assailed Judgment),[2] and the subsequent Order dated June 13, 2022 (assailed Order),[3] both rendered by the Regional Trial Court of the City of Taguig (RTC) – Branch 271, in Civil Case Nos. 447-TG and 490-TG, entitled "*Holcim Philippines, Inc., v. The City of Taguig and Atty. Voltaire L. Enriquez, in his capacity as the City Treasurer of the City of Taguig;*" and (ii) granting petitioner's claim for refund of alleged illegally and/or erroneously collected local business tax (LBT) in the aggregate amount of ₱8,131,289.20.

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[1] Docket, pp. 5 to 32.
[2] Docket, pp. 38 to 51.
[3] Docket, pp. 52 to 55.

THE PARTIES

Petitioner Holcim Philippines, Inc. is a domestic corporation organized and existing under the laws of the Philippines, with principal office located at the 7th Floor, Venice Corporate Center, McKinley Town Center, Fort Bonifacio, Taguig City.[4] Its primary purpose, as stated in its Amended Articles of Incorporation,[5] is to engage in the business of manufacture, production, and merchandising, whether domestically or for export, of cement, cement products and by-products, including its derivatives, and any kinds of minerals and building materials.

Respondent City of Taguig is a local government unit (LGU) created by law. It may be served summons, notices, orders, and other processes of this Court through the Office of the City Mayor, City of Taguig.[6]

Co-respondent Atty. J. Voltaire L. Enriquez is the Acting City Treasurer of the City of Taguig, empowered to perform the duties of said office, including, *inter alia*, the collection of all local taxes, fees, and charges. He may be served summons, notices, orders, and other processes of this Court at the Office of the City Treasurer, City of Taguig.[7]

FACTUAL ANTECEDENTS (ADMINISTRATIVE LEVEL)

On January 10, 2018, as required for its application for the renewal of a business permit, petitioner executed a *Certification*[8] stating that its gross sales/receipts for January to December 2017 amounted to ₱3,539,770,902.34.

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[4] Exhibit "A", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 759 to 770.
[5] *Id.*
[6] Par. 4, *Petition for Refund*, vis-à-vis par. 2, Answer, RTC Docket (Civil Case No. 447-TG) – Vol. 1, pp. 6 and 77, respectively; and par. 4, *Petition for Refund*, vis-à-vis Par. 2, Answer RTC Docket (Civil Case No. 490-TG) pp. 5 and 47, respectively.
[7] Par. 5, *Petition for Refund*, vis-à-vis Par. 3, Answer, RTC Docket (Civil Case No. 447-TG) – Vol. 1, pp. 6 and 77, respectively; and par. 5, *Petition for Refund*, vis-à-vis par. 3, Answer, RTC Docket (Civil Case No. 490-TG) pp. 5 and 47, respectively.
[8] Exhibit "F", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 775.

On January 15, 2018,[9] April 4, 2018,[10] June 11, 2018,[11] and September 18, 2018,[12] respondent City of Taguig issued four (4) *Billing Statements* assessing petitioner of LBT for the 1st, 2nd, 3rd and 4th quarters of 2018, respectively, in the amount of ₱4,024,943.93 for each quarter.

On January 19, 2018, April 19, 2018, July 13, 2018, and October 11, 2018, petitioner paid the LBT as evidenced by Official Receipt Nos. A-3750183,[13] A-3919879,[14] A-4035852,[15] and A-4121919,[16] respectively, detailed as follows:

Quarter Covered (2018)	Billing Date	LBT	Date of Payment	Official Receipt No.
1st	January 15, 2018	₱4,024,943.93	January 19, 2018	A-3750183
2nd	April 4, 2018	₱4,024,943.93	April 19, 2018	A-3919879
3rd	June 11, 2018	₱4,024,943.93	July 13, 2018	A-4035852
4th	September18, 2018	₱4,024,943.93	October 11, 2018	A-4121919

On separate dates, specifically on March 16, 2018,[17] May 30, 2018,[18] August 2, 2018,[19] and November 9, 2018,[20] petitioner sent to respondent City Treasurer a letter requesting a refund of its alleged overpayment of LBT amounting to ₱2,032,820.80 for each quarter. Petitioner maintains that the bases of the assessment for LBT for the 1st, 2nd, 3rd, and 4th quarters of 2018 were erroneous and contrary to law.

Respondents failed to act on each petitioner's letter request, prompting it to elevate its claim before the court *a quo*.

[9] Exhibit "B", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 771.
[10] Exhibit "C", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 772.
[11] Exhibit "D", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 773.
[12] Exhibits "9" and "E", RTC Docket (Civil Case No. 447-TG) – Vols. 1 and 2, p. 412 and 774, respectively.
[13] Exhibit "H", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 777.
[14] Exhibit "I", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 778.
[15] Exhibit "J", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 779.
[16] Exhibit "K", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 780.
[17] Exhibit "L", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 781 to 783
[18] Exhibit "M", RTC Docket (Civil Case No. 447-TG) Vol. 2, pp. 788 to 790.
[19] Exhibit "N", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 795 to 797.
[20] Exhibit "O", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 802 to 804.

PROCEEDINGS BEFORE THE COURT *A QUO*

Civil Case No. 447-TG:

On November 6, 2018, petitioner filed a *Petition for Refund*[21] with the RTC, docketed as Civil Case No. 477-TG, praying that judgment be rendered granting its claim for refund of erroneously paid LBT for the 1st to 3rd quarters of 2018 in the aggregate amount of ₱6,098,468.40. The case was initially raffled to RTC – Branch 153 on November 18, 2018.[22]

On March 15, 2019, respondents filed their *Answer,*[23] while petitioner filed its *Reply (Re: Respondent's Answer dated March 1, 2019)* on April 5, 2019.[24]

Thereafter, or on May 9, 2019, petitioner filed a *Motion for Consolidation with Motion to Defer Mediation.*[25]

Civil Case No. 490-TG:

On February 8, 2019, petitioner filed a *Petition for Refund*[26] before the RTC, which was initially raffled to Branch 69, praying for the Court to render judgment granting petitioner's claim for refund of alleged erroneously paid LBT in the amount of ₱2,032,822.80 for the 4th quarter of 2018.

On April 16, 2019, respondents filed their *Answer,*[27] while petitioner filed its *Reply (Re: Respondent's Answer dated April 4, 2019)* on May 2, 2019.[28]

On June 7, 2019, petitioner filed a *Motion for Consolidation,*[29] praying that Civil Case No. 490-TG be consolidated with Civil Case No. 447-TG.

[21] RTC Docket (Civil Case No. 447-TG) – Vol. 1, pp. 5 to 16.
[22] RTC Docket (Civil Case No. 447-TG) – Vol. 1, p. 5.
[23] RTC Docket (Civil Case No. 447-TG) – Vol. 1, pp. 77 to 83.
[24] RTC Docket (Civil Case No. 447-TG) – Vol. 1, pp. 101 to 108.
[25] RTC Docket (Civil Case No. 447-TG) – Vol. 1, pp. 112 to 117.
[26] RTC Docket (Civil Case No. 490-TG), pp. 4 to 13.
[27] RTC Docket (Civil Case No. 490-TG), pp. 47 to 51.
[28] RTC Docket (Civil Case No. 490-TG), pp. 65 to 76.
[29] RTC Docket (Civil Case No. 490-TG), pp. 114 to 118.

Consolidated cases *a quo*:

On June 13, 2019, RTC – Branch 69 issued an Order, consolidating Civil Case No. 490-TG with Civil Case No. 447-TG pending before RTC – Branch 153.[30]

In view thereof, RTC – Branch 153 issued the Order dated July 3, 2019,[31] rendering moot the motion for consolidation filed by petitioner in Civil Case No. 447-TG. In the same Order, the case was set for mediation.

Subsequently, and after a failed mediation, the case was set for Judicial Dispute Resolution (JDR) on October 17, 2019.[32] However, there being no settlement reached by the parties, the JDR was terminated and ordered that the case be forwarded to the RTC's Office of the Clerk of Court for re-raffle to another branch,[33] RTC – Branch 271 (court *a quo*).

After filing the *Pre-Trial Brief for the Defendants*[34] on September 17, 2020, and petitioner's *Pre-Trial Brief*[35] on September 29, 2020, the case was set for *Pre-Trial* on November 11, 2021.[36]

On February 10, 2022, the *Pre-Trial* was terminated,[37] and the parties proceeded to trial, where they presented their respective documentary and testimonial evidence in support of their case.

Thereafter, or on May 6, 2022, the court *a quo* rendered the assailed Judgment,[38] the dispositive portion of which reads:

> "**ALL THE FOREGOING CONSIDERED**, the consolidated cases for ***Refund of Local Business Taxes in Civil Cases Nos. 447 and 490*** are hereby **DISMISSED.**
>
> **SO ORDERED.**"

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[30] RTC Docket (Civil Case No. 490-TG), pp. 120 to 121.
[31] RTC Docket (Civil Case No. 447-TG) – Vol. 1, pp. 122 to 123.
[32] Order dated September 4, 2019, RTC Docket (Civil Case No. 447-TG) – Vol. 1, p. 125.
[33] Order dated November 12, 2019, RTC Docket (Civil Case No. 447-TG) – Vol. 1, p. 128.
[34] RTC Docket (Civil Case No. 447-TG) – Vol. 1, pp. 152 to 161.
[35] RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 459 to 123.
[36] Order dated October 21, 2021, RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 632 to 637.
[37] Order dated February 10, 2022, RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 755 to 756.
[38] RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 941 to 954.

In dismissing the consolidated cases for refund of LBT, the court *a quo* ruled that while petitioner is entitled to the 50% preferential rate given to manufacturers of cement in accordance with Section 143(c)(8) of the Local Government Code (LGC), the filing of its judicial claims for refund on November 6, 2018 and February 8, 2019, respectively, were beyond the 30 days to appeal the claims in court. As found by the court *a quo*, the *Billing Statements* issued by respondents for the four (4) quarters of the taxable year 2018 were in the nature of Notices of Assessment. Considering that respondent City Treasurer did not act on the four (4) protest letters, petitioner should have filed its appeal before the court within thirty (30) days from the lapse of the sixty (60)-day period for the local treasurer to decide the protest, under Section 195 of the LGC.

Aggrieved, petitioner filed a *Motion for Reconsideration (Re: Judgment dated May 6, 2022)*[39] on May 26, 2022, but the same was denied in the equally assailed Order[40] dated June 13, 2022.

PROCEEDINGS BEFORE THIS COURT

On July 14, 2022, petitioner filed the present *Petition for Review.*

On July 26, 2022, the Court issued a Resolution[41] giving respondents ten (10) days from notice to file their comment on the *Petition for Review.*

On September 19, 2022, or within the extension period given, respondents filed *via* registered mail their *Comment/Opposition (To Petitioner's Petition for Review dated 13 July 2022).*[42]

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[39] RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 955 to 970.
[40] RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 989 to 992.
[41] Docket, p. 220.
[42] Docket, pp. 238 to 255.

On October 25, 2022, and in compliance with this Court's directive per Resolution[43] dated September 28, 2022, the court *a quo* forwarded the records of Civil Case Nos. 447-TG and 490-TG, which the Court noted in the Resolution[44] issued on November 2, 2022.

On December 9, 2022, the instant case was submitted for Decision, considering the submission of petitioner's *Memorandum* [45] on November 3, 2022, and respondents' *Memorandum*[46] on November 17, 2022. [47]

Hence, this Decision.

THE ISSUE

The sole issue[48] to be resolved by the Court is:

> **"WHETHER PETITIONER IS ENTITLED TO THE REFUND OF ₱8,131,289.20 (THE 'TOTAL CLAIM FOR REFUND') REPRESENTING ILLEGALLY AND ERRONEOUSLY BILLED AND COLLECTED LBT BY RESPONDENTS FROM PETITIONER.**"

Petitioner's Arguments:

In support of its *petition*, petitioner argues that the *Billing Statements* issued by the Business Permit and Licensing Office (BPLO) of respondent City of Taguig are not the "assessments" contemplated in Section 195 of the LGC, and are not formal "assessments" that should be formally protested; that there was no "finding" or examination made by respondent City Treasurer or his authorized representative that must precede an assessment under Section 195 of the LGC; that the *Billing Statements* were issued in connection with petitioner's application for renewal of business permit in respondent City of Taguig; that the *Billing Statements* are not the assessments under Section 195 of the LGC because they failed to state the amount of deficiency taxes that were due from petitioner; that

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[43] Docket, p. 261.
[44] Docket, p. 277
[45] Docket, pp. 278 to 307.
[46] Docket, pp. 312 to 330.
[47] Resolution dated December 9, 2022, Docket, p. 336.
[48] Issue, *Petition for Review*, Docket, p. 15.

the RTC erred in ruling that petitioner's claims for refund were filed out of time; that Section 196 of the LGC is the law applicable to this case; that petitioner complied with the requirements of Section 196 of the LGC to entitle it to a refund; and that the *Billing Statements* are invalid because they violated petitioner's right to due process of law.

Respondents' Counter-Arguments:

For his part, respondents counter-argue that the *Billing Statements* issued to petitioner are in the nature of *Notice of Assessment* as contemplated in Section 195 of the LGC and that the lower court is correct in ruling that petitioner's claims for refund were filed out of time; and that there was no denial of petitioner's constitutional right to due process in this case.

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

At the outset, it must be noted that in the assailed Judgment,[49] the court *a quo* ruled that the assessments issued against petitioner have become conclusive and unappealable on the ground that petitioner's judicial claims for refund in Civil Case Nos. 447-TG and 490-TG were filed beyond the thirty (30)-day period to appeal the claims in court.

As found by the court *a quo*, the subject *Billing Statements* are in the nature of *Notices of Assessment*, as they stated all the particulars, *i.e.*, the amount and nature of the tax assessed, the amount of deficiency, the surcharges, interests, and penalties due from petitioner. Further, petitioner protested the said *Notices of Assessment* before the City Treasurer of the City of Taguig on March 16, 2018 (for the January 15, 2018 payment); on May 30, 2018 (for the April 4, 2018 payment); on August 2, 2018 (for the June 11, 2018 payment); and on November 9, 2018 (for the September 18, 2018 payment).

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[49] Docket, pp. 38 to 51.

Based on the foregoing, and considering that the local treasurer did not act on the four (4) protest letters, the court *a quo* ruled that the period for the filing of the case in court should be as follows:

1. For the first quarter of 2018 Billing, petitioner paid the billing statement on January 19, 2018, and subsequently filed a letter of refund on March 16, 2018. Under Section 195, petitioner-appellant should have filed an appeal with the Court within thirty (30) days from May 15, 2018, which is the 60th day of the period for the local treasurer to decide the protest. Hence, the assessment became conclusive and unappealable effective June 15, 2018.

2. For the second quarter of 2018 Billing, petitioner paid the billing statement on April 19, 2018, and subsequently filed a letter of refund on May 30, 2018. Under Section 195, petitioner-appellant should have filed an appeal with the Court within thirty (30) days from July 30, 2018, which is the 60th day of the period for the local treasurer to decide the protest. Hence, the assessment became conclusive and unappealable effective August 30, 2018.

3. For the third quarter of 2018 Billing, petitioner paid the billing statement on July 13, 2018, and subsequently filed a letter of refund on August 2, 2018. Under Section 195, petitioner-appellant should have filed an appeal with the Court within thirty (30) days from October 1, 2018, which is the 60th day of the period for the local treasurer to decide the protest. Hence, the assessment became conclusive and unappealable effective November 1, 2018.

4. For the fourth quarter of 2018 Billing, petitioner paid the billing statement on October 11, 2018, and subsequently filed a letter of refund on November 9, 2018. Under Section 195, petitioner-appellant should have filed an appeal with the Court within thirty (30) days from January 8, 2019, which is the 60th day of the period for the local treasurer to decide the protest. Hence, the assessment became conclusive and unappealable effective February 8, 2019.

Petitioner, on the other hand, rejects the foregoing findings and asserts that the *Billing Statements* issued by the BPLO of respondent City of Taguig are not the assessments defined under Section 195 of the LGC of 1991 and that the court *a quo* seriously erred when it ruled that they were assessments.

The resolution of the above issue (*i.e.*, whether the Billing Statements are considered "assessments") is imperative, considering that the same will also deal with the *timeliness* of the filing of the petitions before the court *a quo* and the *jurisdiction* of this Court over the case.

The subject Billing Statements are not the "assessments" contemplated under Section 195 of the LGC of 1991.

Petitioner claims that in determining the prescriptive period for filing the case before the court *a quo*, Section 196 of the LGC is the provision applicable, and not Section 195 of the same law as found in the assailed Judgment, alleging that there was no notice of assessment issued to it by respondents for the taxable period 2018.

Sections 195 and 196 of the LGC state:

> "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**. 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 cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."
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> "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 until **a written claim for refund or credit has been filed with the local treasurer**. **No case or**

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> **proceeding shall be entertained in any court after the expiration of <u>two (2) years from the date of payment of such tax, fee, or charge</u>, or from the date the taxpayer is entitled to a refund or credit.**" *(Emphasis and underscoring supplied)*

In the *City of Manila and Office of the Treasurer of Manila v. Cosmos Bottling Corporation* ("*Cosmos Bottling* case"),[50] the Supreme Court made the following interpretation of Sections 195 and 196, specifically in cases when an assessment was issued by the LGU, to wit:

> "Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment[51] of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer, otherwise, the assessment becomes conclusive and unappealable.
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> xxx xxx xxx
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> **To stress, where an assessment is issued, <u>the taxpayer cannot choose to pay the assessment and thereafter seek a refund *at any time* within the full period of two years from the date of payment as Section 196 may suggest</u>.** If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' *within 60 days from receipt of the notice of assessment,* and thereafter bring suit in court *within 30 days from either decision or inaction* by the local treasurer.
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> Simply put, **there are two conditions that must be satisfied in order to successfully prosecute an action for refund <u>in case the taxpayer had received an assessment</u>. *One,* pay the tax and administratively assail <u>within 60 days</u> the assessment before the local treasurer, whether in a letter-protest or <u>in a claim for refund</u>. *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 <u>claim for refund</u> of erroneously or illegally collected tax.**" *(Emphasis and underscoring supplied)*

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[50] G.R. No. 196681, June 27, 2018.

[51] Whether payment was made before, on, or after the date of filing the formal protest.

Based on the foregoing jurisprudential pronouncements, where an assessment is issued, the taxpayer cannot choose to pay the assessment and seek a refund *at any time* within two years from the date of payment as Section 196 may suggest. Simply put, based on Sections 195 and 196 of the LGC of 1991, two (2) conditions must be satisfied in order **to successfully prosecute <u>an action for refund in case the taxpayer had received an assessment</u>**, to wit: (1) pay the tax and administratively assail the assessment, within sixty (60) days from receipt thereof, before the local treasurer, whether in a letter-protest or in a claim for refund; and (2) 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.

The foregoing interpretation was echoed in the subsequent case of *International Container Terminal Services, Inc. v. The City of Manila, et al.* ("*ICTSI* case"),[52] where the Supreme Court pronounced as follows:

> "**If the <u>taxpayer receives an assessment</u> and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code.** Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.
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> If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. 'Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.'

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[52] G.R. No. 185622, October 17, 2018.

> On the other hand, **if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies**." *(Emphasis and underscoring supplied)*

The ruling of the Supreme Court in *Cosmos Bottling* and *ICTSI* is clear and unequivocal. If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the LGC. Thus, it must file a written protest with the local treasurer within 60 days from receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest.

If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid.

On the other hand, if *no assessment notice* is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, Section 196 applies.

In the case at bar, respondents insist that the *Billing Statements* issued by the BPLO are in the nature of the *Notice of Assessment* as contemplated in Section 195 of the LGC. Thus, in ascertaining whether the said *Billing Statements* are in the nature of the *Notice of Assessment*, the Court finds enlightening the ruling in the case of *National Power Corporation v. The Province of Pampanga and Pia Magdalena D. Quibal*,[53] wherein the Supreme Court emphasized the details that must be contained in a notice of assessment, to wit:

[53] G.R. No. 230648, October 6, 2021.

> "Article 285 of the rules implementing the LGC reiterates the language used in Section 195. Thus, in *Yamane v. BA Lepanto Condominium Corp.*, **the Court stressed the details that must be contained in the notice of assessment**:
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>> 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 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 supplied*)

Verily, taxpayers must be informed of the nature of the deficiency tax, fee, or charge, as well as the amount of deficiency, surcharge, interest, and penalty. **Failure of the taxing authority to sufficiently inform the taxpayer of the facts and law used as bases for the assessment will render the assessment void**. In *Commissioner of Internal Revenue v. Fitness by Design, Inc.*, albeit involving national internal revenue taxes, the Court explained the importance of the notice requirement with due regard to the taxpayers' constitutional rights, to wit:

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> The rationale behind the requirement that taxpayers should be informed of the facts and the law on which the assessments are based conforms with the constitutional mandate that no person shall be deprived of his or her property without due process of law. Between the power of the State to tax and an individual's right to due process, the scale favors the right of the taxpayer to due process.
>
> The purpose of the written notice requirement is to aid the taxpayer in making a reasonable protest, if necessary. Merely notifying the taxpayer of his or her tax liabilities without details or particulars is not enough.
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> *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.* held that a final assessment notice that only contained a table of taxes with no other details was insufficient; xxx
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> Any deficiency to the mandated content of the assessment or its process will not be tolerated. xxx
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> xxx xxx xxx
>
> A final assessment notice provides for the amount of tax due with a demand for payment. This is to determine the amount of tax due to a taxpayer. However, **due process requires that taxpayers be informed in writing of the facts and law on which the assessment is based in order to aid the taxpayer in making a reasonable protest**. To immediately ensue with tax collection without initially substantiating a valid assessment contravenes the principle in administrative investigations 'that taxpayers should be able to present their case and adduce supporting evidence.'" (*Emphasis supplied; citations omitted*)

Without doubt, **the mandate of providing the taxpayer with notice of the facts and laws used as bases for the assessment is not to be mechanically applied. The purpose of this requirement is to adequately inform the taxpayer of the basis of the assessment to enable him to prepare for an intelligent or 'effective' protest or appeal of the assessment or decision**. Thus, **substantial compliance with the law is allowed if the taxpayer is later fully apprised of the basis of the deficiency taxes**

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> **assessment, which enabled him to file an effective protest.**" *(Emphasis supplied)*

In this case, a perusal of the *Billing Statements* shows that the same did not provide notice of the facts and laws on which the billed amounts were based.[54] From the details indicated in the said *Billing Statements*, it can be observed that the same were issued not as assessments of LBT but for the renewal of petitioner's business permit. Notably, in the previously cited *ICTSI* case,[55] the Supreme Court likewise concluded that the alleged "assessments" of LBT that must be paid as a prerequisite for the renewal of business permit could not be considered as the "notice of assessment" required under Section 195 of the LGC of 1991 as the same does not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner, to wit:

> "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.**" (*Emphases added*)

Similarly, in this case, no deficiency tax, surcharge, or interest were indicated in the subject *Billing Statements*.

Moreover, based on the allegations of both petitioner and respondents, the issue in this case also concerns the provisions of the LGC of 1991 and the Tax Ordinance of the City of Taguig that should be applied in the computation of petitioner's LBT liability. While petitioner invokes Section 143(c)(8) of the LGC of 1991, respondents invoke Tax

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[54] Refer to Exhibits "B", "C", and "D", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 771 to 773; and Exhibits "9" and "E", RTC Docket (Civil Case No. 447-TG) Vols. 1 and 2, p. 412 and 774, respectively.

[55] G.R. No. 185622, October 17, 2018.

Ordinance No. 34, Series of 2017, of the City of Taguig.[56] This and the Ordinance's pertinent provision were not stated in the subject *Billing Statements*. Clearly, the *Billing Statements* did not state the legal basis for coming up with the amount of LBT indicated therein. Thus, with more reason, the said *Billing Statements* cannot be considered as the notice of assessment contemplated under Section 195 of the LGC of 1991.

Petitioner complied with the prescriptive period for filing claims for refund of LBT as provided in Section 196 of the LGC of 1991.

Given the foregoing jurisprudential pronouncements, We find that the subject *Billing Statements* are not the notices of assessment contemplated under Section 195 of the LGC of 1991. Hence, the applicable provision in determining the *timeliness* of the filing of petitioner's judicial claim for refund before the court *a quo* is Section 196 of the LGC of 1991.

To recall, Section 196 of the LGC of 1991 states that 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 and no case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

In this case, records reveal that petitioner *timely* filed its respective administrative claims for refund before the City Treasurer of the City of Taguig for the LBT paid on January 19, 2018, April 19, 2018, July 13, 2018, and October 11, 2018, and *timely* filed its judicial claims for refund before the court *a quo* within two (2) years from the said LBT payment dates, detailed as follows:

[56] An Ordinance Amending Certain Provisions of Ordinance No. 24, Series of 1993 Otherwise Known as "The Revenue Code of Taguig" As Amended, and Adopting the New Rates of Business and other Taxes Prescribed Under this Ordinance, Taguig City Ordinance No. 034-17, dated December 22, 2017.

Quarters Covered (2018)	Official Receipt No.	Date of Payment	Last day of 2 -Year period to file Claim for Refund	Administrative Claim for Refund	Judicial Claim for Refund (RTC)
1st	A-3750183[57]	January 19, 2018	January 19, 2020	March 16, 2018[58]	November 6, 2018[59]
2nd	A-3919879[60]	April 19, 2018	April 19, 2020	May 30, 2018[61]	
3rd	A-4035852[62]	July 13, 2018	July 13, 2020	August 2, 2018[63]	
4th	A-4121919[64]	October 11, 2018	October 11, 2020	November 9, 2018[65]	February 8, 2019[66]

Thus, the court *a quo* committed a reversible error when it dismissed the subject *Petitions for Refund* upon the finding that the assessments had become conclusive and unappealable.

Petitioner is entitled to a refund of the amount claimed.

As narrated in the assailed Judgment, petitioner argues that it is entitled to the 50% preferential rate given to, *inter alia*, manufacturers of cement in accordance with Section 143(c)(8) of the LGC of 1991.

Respondents, on the other hand, maintained that the basis of their LBT assessment is Section 6 of the Tax Ordinance No. 34, Series of 2017 of the City of Taguig, where "cement" is not included as an essential commodity, *viz.*:

> "Section 6. EXPORTERS AND SELLERS OF ESSENTIAL COMMODITIES - Section 75 c) of the Revenue Code of Taguig of 1993, as amended, is hereby amended to read as follows:
>
> xxx xxx xxx
>
> c) the gross receipts of the following business shall be entitled to a preferential tax rate of one-half (1/2) of the rates prescribed under subsections a), b), and e) of Section 75 of the amended Revenue Code of Taguig of 1993:

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[57] Exhibit "H", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 777.
[58] Exhibit "L", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 781 to 783
[59] RTC Docket (Civil Case No. 447-TG) – Vol. 1, p. 1.
[60] Exhibit "I", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 778.
[61] Exhibit "M", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 788 to 790.
[62] Exhibit "K", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 780.
[63] Exhibit "N", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 795 to 797.
[64] Exhibit "J", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 779.
[65] Exhibit "O", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 802 to 804
[66] RTC Docket (Civil Case No. 490-TG), p. 1.

> 1. Exporters; and
> 2. Sellers of **essential commodities**, **essential commodities are limited to basic necessities or goods vital to the needs of consumers for their sustenance and existence, such as, but not limited to**, unprocessed rice, corn, and flour; fresh, dried or canned fish; other fresh marine food products; fresh pork, beef and poultry meat; fresh eggs; fresh milk; sugar; cooking oil; salt; laundry soap and detergent; household liquified petroleum gas (LPG); and medicine classified as essential by the Department of Health." (*Emphasis supplied*)

In finding for petitioner, the court *a quo*, following the dictum in *Batangas City et al. v. Pilipinas Shell Petroleum Corporation,*[67] where the Supreme Court explained that the power of the local government units to impose business taxes is derived from Section 143 of the LGC of 1991, ruled that the provisions of the LGC of 1991 limits or establishes the parameters on the taxing powers of LGUs. According to the court *a quo*, Tax Ordinance No. 34, Series of 2017, of the City of Taguig cannot expand nor limit the applicability of the 50% preferential tax rates by limiting the enumeration of what constitutes essential commodities. Doing so is a clear violation of the LGC of 1991.

We agree.

Unlike the national government, LGUs have no inherent power to tax. They merely derived the power from Article X, Section 5 of the 1987 Constitution. Consistent with this provision, the LGC was enacted to give each LGU the power to create its source of revenue and to levy taxes, fees, and charges **subject to statutory guidelines and limitations**.[68]

Moreover, Section 129, Book II, of the LGC of 1991 empowers each LGU to create its sources of revenue and to levy taxes, fees, and charges, but **subject to the provisions of the said Code**, consistent with the basic policy of local autonomy.

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[67] G.R. No. 187631, July 8, 2015.
[68] *City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc. (CEPALCO)*, G.R. No. 224825, October 17, 2018.

In other words, the power of an LGU to impose or levy taxes cannot go beyond the limitations set forth by the provisions of the LGC of 1991.

The power of a municipality and city to impose business taxes finds basis under Section 143 (a) and (e), *inter alia*, in relation to Section 151 of the LGC of 1991, to wit:

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

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind of nature, in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than 10,000.00		165.00
10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	302.00
20,000.00 or more but less than	30,000.00	440.00
30,000.00 or more but less than	40,000.00	660.00
40,000.00 or more but less than	50,000.00	825.00
50,000.00 or more but less than	75,000.00	1,320.00
75,000.00 or more but less than	100,000.00	1,650.00
100,000.00 or more but less than	150,000.00	2,200.00
150,000.00 or more but less than	200,000.00	2,750.00
200,000.00 or more but less than	300,000.00	3,850.00
300,000.00 or more but less than	500,000.00	5,500.00
500,000.00 or more but less than	750,000.00	8,000.00
750,000.00 or more but less than	1,000,000.00	10,000.00
1,000,000.00 or more but less than	2,000,000.00	13,750.00
2,000,000.00 or more but less than	3,000,000.00	16,500.00
3,000,000.00 or more but less than	4,000,000.00	19,800.00
4,000,000.00 or more but less than	5,000,000.00	23,100.00
5,000,000.00 or more but less than	6,500,000.00	24,375.00
6,500,000.00 or more	at a rate not exceeding thirty-seven and a half percent (37 1/2%) of one percent (1%)	

(b) On wholesalers, distributors, or dealers of any article of commerce of whatever kind of nature, in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than 1,000.00		18.00
1,000.00 or more but less than	2,000.00	33.00
2,000.00 or more but less than	3,000.00	50.00
3,000.00 or more but less than	4,000.00	72.00
4,000.00 or more but less than	5,000.00	100.00

5,000.00 or more but less than	6,000.00	121.00
6,000.00 or more but less than	7,000.00	143.00
7,000.00 or more but less than	8,000.00	165.00
8,000.00 or more but less than	10,000.00	187.00
10,000.00 or more but less than	15,000.00	220.00
15,000.00 or more but less than	20,000.00	275.00
20,000.00 or more but less than	30,000.00	330.00
30,000.00 or more but less than	40,000.00	440.00
40,000.00 or more but less than	50,000.00	660.00
50,000.00 or more but less than	75,000.00	990.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,870.00
150,000.00 or more but less than	200,000.00	2,420.00
200,000.00 or more but less than	250,000.00	3,300.00
300,000.00 or more but less than	500,000.00	4,400.00
500,000.00 or more but less than	750,000.00	6,600.00
750,000.00 or more but less than	1,000,000.00	8,800.00
1,000,000.00 or more but less than	2,000,000.00	10,000.00
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)	

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

(1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;

(3) Cooking oil and cooking gas;

(4) Laundry soap, detergents, and medicine;

(5) Agricultural implements, equipment and post-harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;

(6) Poultry feeds and other animal feeds;

(7) School supplies; and

(8) Cement.

(d) On retailers:

With gross sales or receipts for the preceding calendar year of:	Rate of Tax per annum
P400,000.00 or less..	2%
more than P400,000.00...	10%

xxx xxx xxx" *(Emphases added)*

"SEC. 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, **the city, may levy the taxes, fees, and charges which the province or municipality may impose**: 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." *(Emphases and underscoring added)*

Thus, a city, such as respondent City of Taguig, may tax manufacturers under subsection (a) of Section 143 of the LGC of 1991; however, manufacturers of essential commodities, such as cement, may only be taxed with a rate not exceeding 50% of the rates prescribed for under subsections (a), (b) and (d) of Section 143. Moreover, it can be deduced from subsection (c) of Section 143 of the LGC of 1991 that the articles considered as essential commodities are limited to those enumerated therein.

According to respondents, petitioner was billed with the subject LBT for 2018 based on Tax Ordinance No. 34 Series of 2017 of respondent City of Taguig, stating as follows:

"Section 3. TAX ON MANUFACTURERS – Section 75 a) of the Revenue Code of Taguig of 1993, as amended, is hereby amended to read as follows:

a) The business of Manufacturers shall be taxed at the rates of

Gross Receipts	**Rate**
Up to 1,000,000.00	1.25%
More than 1,000,000.00	P12,500.00 plus 45% of 1% of the amount in excess of P1,000,000.00

xxx xxx xxx"

The evidence presented before the court *a quo* shows that petitioner is a manufacturer and/or wholesaler of cement, as 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 its derivatives, and any kinds of minerals and building materials.[69]

However, respondents billed LBT at the rate for manufacturers in general without considering that petitioner, in this case, is a manufacturer of essential commodities, which is clearly beyond the limitations provided by the LGC of 1991 for manufacturers of cement.

Thus, the computation by respondents in billing petitioner of LBT for the taxable period 2018 is incorrect.

Furthermore, petitioner discovered that the gross receipts indicated in the *Billing Statements,* which is ₱3,575,950,157.49, is the amount stated in petitioner's *Certification* of total gross receipts/sales for the calendar year 2016[70] and not for the calendar year 2017,[71] which is the calendar year preceding 2018, the subject taxable period in this case.

Notably, the Tax Ordinance No. 34 Series of 2017 invoked by respondents confirms that the imposition of LBT shall be based on the gross receipts of the preceding calendar year and that operators or owners of businesses subject to LBT are required to submit a sworn statement of gross receipts. The pertinent provisions under the said Ordinance are as follows:

> "SECTION 2. Imposition of Tax. — Section 75 of the Revenue Code of Taguig of 1993, as amended, is hereby amended to read as follows:
>
>> SECTION 75. Imposition of Tax. — There is hereby imposed an annual tax on the following lines of business established, operated, conducted, or maintained within the City of Taguig, **based on the gross receipts of the preceding calendar year**;
>
> xxx xxx xxx

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[69] Exhibit "A", RTC Docket (Civil Case No. 447-TG) - Vol. 2, pp. 759 to 770.
[70] Exhibit "G", RTC Docket (Civil Case No. 447-TG) – Vol. 1, p. 776.
[71] Exhibit "F", RTC Docket (Civil Case No. 447-TG) – Vol. 1, p. 775.

SECTION 25. Sworn Statement of Gross Receipt. — Section 82 f) of the Revenue Code of Taguig of 1993, as amended, is hereby amended to read as follows:

f) Operators or owners of businesses subject to business taxes shall submit a sworn statement of their gross receipts for the preceding calendar year in such manner and form as may be prescribed by the Office of the City Treasurer. Should the taxpayer fail to submit a sworn statement of gross receipts, the City Treasurer or authorized representatives may verify or assess the gross receipts of the taxpayer under the best available evidence upon which the tax may be based.

xxx xxx xxx"

In view thereof, petitioner, in its administrative claims for refund,[72] computed the LBT due on the 2017 gross receipts and the alleged overpaid LBT for each quarter of 2018 in this wise:

a. Business Tax Due on the 2017 Gross Receipts

Declared Revenue	₱3,539,770,902.34[73]
Tax Computation	
Tax Due on the first ₱1,000,000.00	12,500.00
Tax Due in excess of ₱1,000,000.00 (45% of 1%)	15,924,469.06
Total	₱ 15,936,969.06
Rate for essential commodities	50%
Total Tax Due (Annual)	7,968,484.53
Total Tax Due (Quarterly)	**₱ 1,992,121.13**

b. Overpaid Business Tax

Business Tax Paid per Quarter of 2018	₱ 4,024,943.93
Should be Tax Due	1,992,121.13
Overpayment	**₱ 2,032,822.80**

[72] Exhibits "L", "M", "N" and "O", RTC Docket (Civil Case No. 447-TG) – Vol. 2, pp. 781 to 783, 788 to 790, 795 to 797 and 802 to 804, respectively.
[73] Exhibit "F", RTC Docket (Civil Case No. 447-TG) – Vol. 1, p. 775.

An examination of the records shows that respondents failed to controvert petitioner's evidence pertaining to the amount of 2017 gross receipts indicated in petitioner's *Certification*[74] from which the billed LBT for the taxable year 2018 should have been based.

Applying the provisions of Tax Ordinance No. 34 Series of 2017 and Section 143(a)(8) of the LGC of 1991, We find the above computation of petitioner proper.

Accordingly, petitioner is entitled to a refund of the amount of ₱8,131,289.20, representing overpayment of petitioner's LBT for the taxable year 2018, computed as follows:

Quarter Covered (2018)	Billing Date	Date of Payment	Official Receipt No.	LBT Paid (A)	LBT per the above computation (B)	Overpayment (A-B)
1st	January 15, 2018	January 19, 2018	A-3750183	₱4,024,943.93	₱1,992,121.13	₱ 2,032,822.80
2nd	April 4, 2018	April 19, 2018	A-3919879	₱4,024,943.93	₱1,992,121.13	2,032,822.80
3rd	June 11, 2018	July 13, 2018	A-4035852	₱4,024,943.93	₱1,992,121.13	2,032,822.80
4th	September 18, 2018	October 11, 2018	A-4121919	₱4,024,943.93	₱1,992,121.13	2,032,822.80
					TOTAL	**₱ 8,131,289.20**

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **GRANTED**. Accordingly, the assailed Judgment dated May 6, 2022, and Order dated June 13, 2022, rendered by the RTC–Branch 271, City of Taguig, in Civil Case Nos. 447-TG and 490-TG are **REVERSED** and **SET ASIDE**.

Respondents are **ORDERED TO REFUND** petitioner Holcim Philippines, Inc., the amount of **₱8,131,289.20**, representing its erroneously paid LBT for the year 2018.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[74] Exhibit "F", RTC Docket (Civil Case No. 447-TG) – Vol. 2, p. 775.

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's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice