REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

THE CITY GOVERNMENT OF MAKATI AND THE CITY TREASURER OF MAKATI,
Petitioners,

- versus -

SOUTH LUZON TOLLWAY CORPORATION,
Respondent.

CTA AC No. 187

Members:

DEL ROSARIO, *P.J.*, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
MAY 09 2018 : 8:23 a.m.

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DECISION

***DEL ROSARIO, P.J.*:**

This is a Petition for Review filed by petitioners, the City Government of Makati and the City Treasurer of Makati, seeking the reversal and setting aside of the Decision dated January 6, 2017 and Order dated May 11, 2017 of the Regional Trial Court, Branch 36, Calamba City, Laguna, in Civil Case No. 4749-2014-C entitled *"South Luzon Tollway Corporation vs. The City Government of Makati and Nelia A. Barlis in her capacity as City Treasurer."*

The assailed Decision ordered the City Government of Makati and the City Treasurer of Makati to refund respondent South Luzon Tollway Corporation the total amount of Twenty Million Five Hundred Eighty Five Thousand Six Hundred Three Pesos and Nineteen Centavos (₱20,585,603.19), representing local business tax assessed by the City Treasurer of Makati upon the respondent's filing of an application for business retirement, and to pay Attorney's Fees of Ten

Thousand Pesos (₱10,000.00) and Cost of Suit represented by the docket fees.

THE PARTIES

Petitioner City of Makati is a duly created and existing local government unit empowered under the Local Government Code to assess and collect local business taxes through Petitioner City Treasurer (hereinafter collectively known as "Petitioners"). The City Treasurer instituted this case in her official capacity. Petitioners may be served with notices and judicial processes at Makati City Hall, J.P. Rizal Street, Makati City. [1]

On the other hand, respondent South Luzon Tollway Corporation is a corporation duly organized and existing under the laws of the Philippines, with principal business address at Km 44 South Luzon Expressway, Sitio Latian, Brgy. Mapagong, Calamba City, Laguna. It is represented by its legal counsel on record, Baniqued & Baniqued, with office address at Suite 803, 8th Floor, Jollibee Centre, San Miguel Avenue, Ortigas Center, Pasig City.[2]

THE FACTS

Respondent was organized for the purpose of engaging in the rehabilitation, construction, and expansion, of the South Luzon Expressway ("SLEX").[3] Respondent's principal office was located at 6/F 104 Rada Street, Legaspi Village, Makati City.[4]

On August 3, 2011, respondent transferred its principal office to Sitio Latian, Barangay Mapagong, Calamba City, Laguna,[5] and accordingly, applied for a Certificate of Business Retirement with petitioners. In the process of its application, respondent was assessed local business tax for the period January 1 to September 30, 2011.[6]

On January 31, 2012, respondent paid the assessed local business tax (described in the Official Receipt as Municipal License

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[1] Petition for Review, CTA Docket, p. 8.
[2] Petition for Review, CTA Docket, p. 9.
[3] Exhibit "C", RTC Records, p. 90.
[4] Exhibit "E", RTC Records, pp. 111-117.
[5] Exhibit "C", RTC Records, pp. 87-102.
[6] Memorandum, CTA Docket, p. 83.

Ret. Service) in the amount of Twenty Million Five Hundred Eighty Five Thousand Six Hundred Three Pesos and Nineteen Centavos (₱20,585,603.19).[7] On same date, respondent was issued a Certificate of Business Retirement.[8]

On December 13, 2013, respondent sent a letter addressed to the City of Makati, through then City Treasurer Nelia A. Barlis, requesting for a refund of the local business tax it paid, claiming that it was registered as a pioneer enterprise with the Board of Investments ("BOI") on March 3, 2010 and is therefore exempt from local business tax for six (6) years or from March 3, 2010 to March 3, 2016.[9]

Receiving no reply from petitioners on its claim for refund, on February 3, 2014, respondent filed a Petition with the Regional Trial Court of Calamba City, Laguna, Branch 36 ("Laguna-RTC"), docketed as Civil Case No. 4749-2014-C, praying that it be declared exempt from local business taxes for the period beginning March 3, 2010 until March 3, 2016 and seeking a refund of the local business tax previously collected by petitioners.[10]

On January 6, 2017, Laguna-RTC promulgated the assailed Decision[11] granting respondent's Petition, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing, judgment is hereby rendered in favor of the petitioner and against respondents who are directed to refund the petitioner of the total amount of Twenty Million Five Hundred Eighty-Five Thousand Six Hundred Three Pesos and Nineteen Centavos (P20,585,603.19), Attorney's Fees of P10,000.00; and Cost of suit represented by the docket fees.
>
> SO ORDERED."

In the assailed Decision, Laguna-RTC stated that the written claim for refund with the local treasurer and the case for refund filed in court were seasonably made within the two (2)-year prescriptive period provided under Section 196 of the Local Government Code. Since the date of the payment of tax was on January 31, 2012, respondent had two (2) years therefrom or until January 31, 2014 (Friday) to file its claim for refund with the Court. However, pursuant to Proclamation No.

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[7] Exhibit "A", RTC Records, p. 214.
[8] Exhibit "B", RTC Records, p. 215.
[9] Exhibit "G", RTC Records, pp. 254-256.
[10] Petition, RTC Records, pp. 1-7.
[11] RTC Decision, RTC Records, pp. 355-363.

655[12], January 31, 2014 was declared as Special (Non-Working) Day while February 1 and 2 of 2018 fell on Saturday and Sunday, respectively. Thus, respondent timely filed the Petition with the Laguna-RTC on February 3, 2014 (Monday).

In sum, Laguna-RTC made the following findings: (i) respondent paid the local government of Makati City the amount of ₱20,585,603.19, representing local business taxes as evidenced by Official Receipt No. MKTCF 1501336; (ii) respondent's payment was made for the local government of Makati City to issue a Certificate of Business Retirement; (iii) respondent's payment was erroneously made since respondent was exempt from paying local business tax pursuant to a BOI Certificate; and, (iv) respondent made a written claim for refund and filed the judicial action within the 2-year prescriptive period allowed by the law.

On February 27, 2017, petitioners filed a "Motion for Reconsideration (Re: Decision dated 06 January 2017)", which was denied in an Order dated May 11, 2017.[13]

On June 16, 2017, petitioners filed the present Petition for Review.[14]

On July 17, 2017, the Court promulgated a Resolution directing petitioners to submit the requisite proof of authority allowing the filing officer (Jesusa E. Cuneta, the incumbent Treasurer of the City of Makati) to file the Petition for Review and authorizing her to sign the Verification and Certification of Non-Forum Shopping.[15]

On July 28, 2017, petitioners filed their "Compliance/Manifestation (Re: Resolution dated 17 July 2017)"[16] which the Court noted in a Resolution dated August 24, 2017.[17]

On September 11, 2017, respondent filed its "Comment/Opposition (Re: Petition for Review)".[18]

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[12] Declaring the Regular Holidays, Special (Non-Working) Days, and Special Holiday (For All Schools) for the Year 2014.
[13] RTC Order, RTC Records, p. 382.
[14] CTA Docket, pp. 8-33.
[15] CTA Docket, pp. 36-37.
[16] CTA Docket, pp. 38-43.
[17] CTA Docket, pp. 47-48.
[18] CTA Docket, pp. 49-69.

In a Resolution issued on October 3, 2017, the Court ordered both parties to submit their respective memoranda within thirty (30) days from receipt thereof.[19]

On November 3, 2017, petitioners and respondent filed their respective Memoranda.[20]

The case was submitted for decision on November 16, 2017, hence this decision.[21]

THE ISSUE

The sole issue for resolution of this Court is whether respondent is entitled to a refund in the amount of Twenty Million Five Hundred Eighty Five Thousand Six Hundred Three Pesos and Nineteen Centavos (₱20,585,603.19) representing local business tax (Municipal License Ret. Service) paid upon filing of its application for business retirement and to an award of Attorney's Fees of Ten Thousand Pesos (₱10,000.00) and the Cost of Suit represented by the docket fees.

PARTIES' ARGUMENTS

Petitioners submit the following propositions:

(1) Respondent failed to file its judicial claim for refund within two (2) years from the date of payment of the local business tax in Makati City;

(2) At the time of payment of the local business tax on January 31, 2014, respondent never presented the alleged Certificate of Registration with the BOI;

(3) Assuming that respondent is entitled to its claim for refund of the local business tax, respondent may only be granted refund in the form of tax credit, by express provision of law;

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19 CTA Docket, pp. 80-81.
20 CTA Docket, pp. 82-103; and 104-118.
21 CTA Docket, p. 121.

(4) Respondent was not able to discharge the burden of proving that it is entitled to the refund being prayed for; and

(5) Laguna-RTC gravely erred in awarding Attorney's Fees of ₱10,000.00 and costs of suit in favor of the respondent.

On the other hand, respondent argues that:

(1) Petitioners failed to submit proof of authority of Ms. Jesusa Cuneta to file the Petition for Review on behalf of the City Government of Makati;

(2) It is settled that the rule in computing legal periods shall be governed by Section 31, Chapter VIII, Book I of the Administrative Code of 1987; consequently, respondent timely filed its claim for refund of the local business tax with Laguna-RTC on February 3, 2014;

(3) The non-presentation of the Certificate of Registration issued by the BOI upon payment of the local business tax does not negate respondent's entitlement to the refund thereof, which were clearly collected erroneously or illegally by the City Government of Makati;

(4) The law does not limit a taxpayer's claim for refund of erroneously or illegally collected local business tax in the form of tax credit; and,

(5) Respondent, being a BOI-registered entity with pioneer status at the time of the payment of the subject tax, is clearly exempt from the payment of local business tax pursuant to Section 133 (g) of the Local Government Code.

THE COURT'S RULING

The City Treasurer has the authority to file the Petition for Review and to sign the Verification and Certification of Non-Forum Shopping attached thereto.

At the outset, the Court shall discuss the issue of whether the City Treasurer is authorized to file the present Petition for Review and to sign the Verification and Certification of Non-Forum Shopping.

In a Resolution dated July 17, 2017, the Court directed petitioners to submit the requisite proof of authority allowing the filing officer to file the Petition for Review and authorizing her to sign the Verification and Certification against Non-Forum Shopping.[22] In compliance therewith, petitioners manifested before the Court that the City Treasurer of Makati City herself, in her official capacity, is an indispensable party in the present case and that the subject Petition for Review was filed before this Court pursuant to her mandated duties under the Local Government Code ("LGC").[23]

It is settled that every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[24] While the City Treasurer was an aggrieved party in the assailed Decision and Order of the Laguna-RTC, she is the official mandated under the LGC to collect taxes with the corresponding duty to ensure that all taxes and other revenues of the city are collected.

Interestingly, records disclose that respondent filed the Petition with the Laguna-RTC against the City of Makati and the City Treasurer of Makati in her official capacity. After petitioners filed their Answer to the Petition, respondent did not raise in its Reply to the Answer as well as during the Pre-Trial Conference any issue as to the authority of the City Treasurer to sign the Verification and Certification of Non-Forum Shopping which was attached to the Answer.

Under Article 1431 of the Civil Code, the doctrine of estoppel is anchored on the rule that "an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." The principle of estoppel elucidates that a party, as respondent herein, is precluded from denying its own acts, admissions or representations to the prejudice of the other party in order to prevent fraud and falsehood.[25]

[22] CTA Docket, pp. 36-37.
[23] Petitioners "Compliance/Manifestation (Re: Resolution dated 17 July 2017) filed on July 28, 2017, CTA Docket, pp. 38-43.
[24] *Jose J. Ferrer, Jr. vs. City Mayor Herbert Bautista*, G.R. No. 210551, June 30, 2105.
[25] *Rizal Commercial Banking Corp. vs. Commissioner of Internal Revenue*, G.R. No. 170257, September 7, 2011.

By its own acts, respondent is estopped from questioning the City Treasurer's authority. To hold otherwise and allow respondent to gainsay its own act or deny rights which it had previously recognized would run counter to the principle of equity.[26]

In fine, the Court *En Banc* finds that the City Treasurer has the authority to institute the present case.

Timeliness of Action for Claim of Refund

Section 196 of the LGC provides the rules on claims for refund or tax credit of local taxes erroneously or illegally collected:

> "SEC. 196. *Claim for Refund or Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit."

Pursuant to the above-stated provision, the following requirements are indispensable in a claim for refund or tax credit of any local taxes, fees or charges:

1. The taxpayer must file a written claim for refund or credit with the local treasurer; and

2. The case or proceeding for refund [or tax credit] must be filed within two (2) years from the date of payment of the tax, fee or charge or from the date the taxpayer is entitled to a refund or credit.[27]

With regard to the **first requisite**, records disclose that respondent was in the process of applying for a Certificate of Business Retirement with petitioners when it was assessed local business tax for the period January 1 to September 30, 2011.[28] On January 31,

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[26] *Id.*
[27] *Metro Manila Shopping Mecca Corp., et. al. vs. Ms. Liberty M. Toledo, in her official capacity as the City Treasurer of Manila, and the City of Manila*, G.R. No. 190818, June 5, 2013.
[28] Memorandum, CTA Docket, p. 83.

2012, respondent paid the assessed local business tax in the amount of Twenty Million Five Hundred Eighty Five Thousand Six Hundred Three Pesos and Nineteen Centavos (₱20,585,603.19).[29]

In a Letter dated December 13, 2013 addressed to Ms. Nelia A. Barlis, then City Treasurer of Makati City, respondent requested for the refund of the local business tax it paid in the amount of Twenty Million Five Hundred Eighty Five Thousand Six Hundred Three Pesos and Nineteen Centavos (₱20,585,603.19).[30] Said Letter was received by the City of Makati on December 13, 2014. Undeniably, such written claim constituted compliance with the first requisite.

With regard to the **second requisite**, review of the records shows the following relevant dates:

- **January 31, 2012** – Respondent paid the local business tax assessed by petitioners in connection with respondent's application for retirement of business;

- **December 13, 2013** – Respondent filed the written claim for refund.

- **February 3, 2014** – Respondent filed a Petition with the Laguna-RTC.

In arguing that respondent failed to timely file the written claim for refund, petitioners claim that two (2) years would mean 730 days, pursuant to Article 13 of the New Civil Code which states that "years are of three hundred sixty-five days each." Counting 730 days from January 31, 2012, the last day would fall on January 30, 2014. The Petition, which was filed on February 3, 2014, was therefore filed out of time.

On the other hand, respondent maintains that Section 31, Chapter VIII, Book I of the Administrative Code of 1987 should govern in the computation of legal periods, which provides that a year is composed of twelve (12) calendar months, making their Petition timely filed within the two (2)-year prescriptive period.

Petitioners' contention must fail.

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[29] Exhibit "A", RTC Records, p. 214.
[30] Exhibit "G", RTC Records, pp. 254-256.

It is settled that in the computation of legal periods, a **year is composed of twelve (12) calendar months.** In *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*,[31] the Supreme Court explained:

> "In *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*, we said that **as between the Civil Code, which provides that a year is equivalent to 365 days, and the Administrative Code of 1987, which states that a year is composed of 12 calendar months, it is the latter that must prevail following the legal maxim, *Lex posteriori derogat priori.*** Thus:
>
>> Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter – the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. **Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.**
>>
>> There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. **For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*"** *(Boldfacing supplied)*

Consistent with the foregoing doctrine, the two-year period from January 31, 2012 (the date of payment of the local business tax) would be **January 31, 2014** which, however, was a **special (non-working) day in celebration of Chinese New Year.**[32] Section 28, Chapter VII, Book I of the Administrative Code of 1987 provides:

> "Section 28. Pretermission of Holiday. - Where the day, or the last day, for doing any act required or permitted by law falls on a regular holiday or special day, **the act may be done on the next succeeding business day**." *(Boldfacing supplied)*

The next succeeding business day from January 31, 2014 was **February 3, 2014 (Monday)**. Given that the Petition was filed with the

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[31] G.R. No. 184823, October 6, 2010.
[32] Pursuant to Presidential Proclamation No. 655 dated September 25, 2013.

Laguna-RTC on February 3, 2014, the Petition was indeed timely filed within the two (2)-year prescriptive period provided by law.

Respondent is exempt from payment of local business tax

Under the Omnibus Investment Code of 1987, an enterprise can be registered with the BOI as either pioneer or non-pioneer.[33] Article 39 thereof provides that all registered enterprises shall be granted with, among others, income tax holiday incentive, *viz.*:

> "ARTICLE 39. Incentives to Registered Enterprises. — All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment;
>
> (a) **Income Tax Holiday.** —
>
> (1) **For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government**. xxx xxx xxx." *(Boldfacing supplied)*

Section 133 (g) of the LGC, in turn, prohibits provinces, cities, municipalities, and barangays from imposing tax on business enterprises certified by the BOI as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from date of registration, to wit:

> "Section 133. *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall **not** extend to the levy of the following:
>
> xxx xxx xxx
>
> (g) **Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration**;" *(Boldfacing supplied)*

BLGF Memorandum Circular No. 01-001-2017 dated January 5, 2017, which was issued by the Bureau of Local Government Finance to avoid erroneous assessment of taxes and fees by the local government units, reiterates the exemption from local business tax of

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[33] Article 28, Omnibus Investment Code of 1987.

business enterprises certified by the BOI as pioneer and non-pioneer for a period of six (6) and four (4) years, respectively, from the date of registration.

In recognizing that Section 133 of the LGC is a limitation on the power to tax of local government units to tax, the Supreme Court, in *Petron Corporation vs. Mayor Tobias M. Tiangco*,[34] declared:

> "Congress has the constitutional authority to impose limitations on the power to tax of local government units, and Section 133 of the Code is one such limitation. Indeed, the provision is the explicit statutory impediment to the enjoyment of absolute taxing power by local government units, not to mention the reality that such power is a delegated power. To cite one example, **under Section 133(g), local government units are disallowed from levying business taxes on "business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and (4) four years, respectively from the date of registration**." *(Boldfacing supplied)*

Batangas Power Corporation vs. Batangas City[35] *and National Power Corporation vs. Hon. Ricardo R. Rosario*[36] further clarified that the six (6)-year period of exemption from local business taxes granted to pioneer enterprises registered with the BOI shall commence from date of registration with the BOI, *viz.*:

> "On the first issue, petitioners BPC and NPC contend that contrary to the impugned decision, BPC's 6-year tax holiday should commence on the date of its actual commercial operations as certified to by the BOI, not on the date of its BOI registration.
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> We disagree. Sec. 133(g) of the LGC, which proscribes local government units (LGUs) from levying taxes on BOI-certified pioneer enterprises for a period of six years from the date of registration, applies specifically to taxes imposed by the local government, like the business tax imposed by Batangas City on BPC in the case at bar. Reliance of BPC on the provision of Executive Order No. 226, specifically Section 1, Article 39, Title III, is clearly misplaced as the six-year tax holiday provided therein which commences from the date of commercial operation refers to income taxes imposed by the national government on BOI-registered pioneer firms. Clearly, it is the provision of the Local Government Code that should apply to the tax claim of Batangas City against the BPC. **The 6-year tax exemption of BPC should thus commence from the date of BPC's registration with the BOI on July 16, 1993 and end on July 15, 1999**." *(Boldfacing supplied)*

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[34] G.R. No. 158881, April 16, 2008.
[35] G.R. No. 152771, April 28, 2004.
[36] G.R. No. 152771, April 28, 2004.

Undeniably, a BOI-registered enterprise, whether as pioneer or non-pioneer, is exempt from the payment of local business tax for a period of six (6) years and four (4) years, respectively, from the date of registration.

In this case, records reveal that respondent was registered with the BOI as evidenced by its BOI Certificate of Registration dated **March 3, 2010.**[37] Truth to tell, **petitioners never categorically denied that respondent is registered with the BOI or that respondent falls under the exemption provided in Section 133 (g) of the LGC**. Petitioners merely claim that **at the time of payment** of the disputed taxes on January 31, 2012, respondent failed to present its BOI Certificate of Registration, hence, petitioners argue that they should not be faulted for assessing the subject local business tax and denying respondent's claim for refund.

Pertinent parts of petitioners' Answer to the Petition filed by respondent with the Laguna-RTC state:

> "AT THE TIME OF PAYMENT OF THE DISPUTED TAXES ON 31 JANUARY 2014, PETITIONER NEVER PRESENTED THE ALLEGED CERTIFICATE OF REGISTRATION WITH THE BOI
>
> 13. As alleged by petitioner itself:
>
> > '15. In the process of applying for a Certificate of Business Retirement from Respondent City, the Petitioner was assessed by the Respondent Treasurer local business tax in the amount of P20,585,603.19 based on its revenues for the period January 1 to September 30, 2011.
> >
> > '16. In order to secure the Certificate of Business Retirement, the Petitioner paid on January 31, 2012, the assessed local business tax in the amount of P20, 585, 605.19 to Respondents. Attached as Annex 'B' is a copy of the receipt evidencing payment.'
>
> 14. **The alleged Certificate of Registration with the BOI in favor of petitioner was never presented before the Office of the City Treasurer of Makati at the time of said payment.**
>
> 15. **Since there was no allegation from petitioner that said alleged Certificate of Registration with the BOI was never presented on the time of the payment of the disputed taxes, then**

[37] Exhibit "H", RTC Records, p. 261.

respondents should not be faulted for assessing the subject taxes and denying the refund thereof." *(Boldfacing supplied)*

In their present Petition for Review, particularly in paragraphs 13, 14 and 15 thereof, petitioners merely reiterated the foregoing arguments to justify their position that respondent is not entitled to the refund sought.

The Court notes that, at the time of the filing of the claim for refund on December 13, 2013, respondent submitted, among others, a copy of its BOI Certificate of Registration which was issued by the BOI on March 3, 2010, in support of its claim that it is exempt from local business tax for the period of six (6) years from **March 3, 2010 to March 3, 2016**. Petitioners failed, however, to act on respondent's claim for refund, notwithstanding that based on the documents submitted by respondent in support of its claim, it should not have been made to pay the local business tax for the period **January 1 to September 30, 2011**.

Contrary to petitioners' stance, the non-presentation of the BOI Certificate of Registration upon assessment and at the time of payment of the subject local business tax does not negate respondent's entitlement to the refund.

Section 195 of the LGC gives respondent the right to claim a refund of erroneously or illegally collected local business tax. The right to file a claim for refund necessarily includes the right to submit documents in support thereof. Petitioners may be justified in assessing and collecting the local business tax from respondent at the time of the filing of its application for retirement of business, for failure to present documents to prove its exemption from local business tax. But it is patently erroneous for petitioners to insist on respondent's non-entitlement to the claim for refund of respondent, notwithstanding the submission of its BOI Certificate of Registration which proves its entitlement thereto, merely on the ground that the BOI Certificate of Registration was not submitted at the time of the application for retirement of business or payment of the assessed local business tax.

Since there is no denying that respondent has sufficiently established by preponderant evidence its right to the refund, and considering that petitioners failed to present contrary evidence other than their blanket statement that petitioner failed to present the BOI Certificate of Registration at the time of the payment of the local business tax, the Court finds that the Laguna-RTC did not err in holding that respondent is entitled to the refund sought.

Indeed, "tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[38] Thus, a claimant must positively show compliance with pertinent provisions of the law in order to be entitled thereto. But once the taxpayer is able to sufficiently prove its entitlement to the refund, as in the case at bar, it thus behooves the government to refund what the taxpayer is entitled to.

Respondent is entitled to a cash refund

With regard to petitioners' argument that on the assumption that respondent is entitled to the claim, it may only be issued a tax credit, by express provision of law, the same must fail.

Section 196 of the LGC explicitly gives the taxpayer the right to file a claim for **refund <u>or</u>** tax credit of erroneously or illegally collected taxes. Section 196 of the LGC explicitly states:

> "Section 196. *Claim for Refund or 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 <u>or</u> credit.**" (*Boldfacing supplied*)

Consistent with Section 196 of the LGC, paragraph (d) Section 7B.14 of the Revised Makati Revenue Code (RMRC) provides:

> "SECTION 7B.14. *Taxpayer's Remedies.* –
>
> xxx xxx xxx
>
> (d) *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 of <u>refund</u> or credit** has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of

[38] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now Team Energy Corporation)*, G.R. No. 180434, January 20, 2016.

> 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.
>
> **The tax credit granted a taxpayer shall not be refundable in cash** but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall no other tax obligations payable to the Local Government of City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year. (*Boldfacing and underscoring supplied*)

The use of the disjunctive "or" connotes that there is an alternative or an option between at least two (2) choices. "In its elementary sense, 'or' as used in a statute is a disjunctive article **indicating an alternative. It often connects a series of words or propositions indicating a choice of either**."[39] The aforecited law is clear. It is a cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."[40] Needless to say, to remove the choice to be refunded in cash reads into Section 196 of the LGC and paragraph (d) Section 7B.14 of RMRC a provision that is not there.

Attorney's fees and cost of suit

In ordering the refund of the amount of Twenty Million Five Hundred Eighty Five Thousand Six Hundred Three Pesos and Nineteen Centavos (₱20,585,603.19), representing local business tax assessed by the City Treasurer of Makati upon the respondent's filing of an application for business retirement, Laguna-RTC likewise ordered petitioners to pay respondent Attorney's Fees of Ten Thousand Pesos (₱10,000.00) and Cost of Suit represented by the docket fees.

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[39] *Centeno vs. Hon. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994.
[40] *Cynthia S. Bolos vs. Danilo T. Bolos*, G.R. No. 186400, October 20, 2010.

In *Municipality of Cainta vs. City of Pasig and Uniwide Sales Warehouse Club, Inc.*[41] and *Uniwide Sales Warehouse Club, Inc. vs. City of Pasig and Municipality of Cainta,*[42] the Supreme Court declared:

> "The award of attorney's fees is improper because the RTC-Pasig automatically awarded the same in the dispositive portion of its decision without stating the factual or legal basis therefor in the body of the decision.
>
> The award of attorney's fees is the exception rather than the general rule. As such, **it is necessary for the trial court to make findings of fact and law that would bring the case within the exception and justify the grant of such award**. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. **On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its decision the reasons for awarding the same. Consequently, the award of attorney's fees should be deleted**." *(Boldfacing supplied)*

Prescinding from the foregoing, the Court finds the award of Attorney's Fees improper as the same was merely stated in the dispositive portion of the assailed Decision. There is nothing in the body of the assailed Decision which states its factual and legal basis. As Laguna-RTC failed to discuss the basis in awarding the same, this Court, on appeal, is precluded from making a finding as to the basis for its award.

Relative to the costs of suit, Section 1, Rule 142 of the Rules of Court states:

> "Section 1. *Costs ordinarily follow results of suit.* – Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines, unless otherwise provided by law."

Antonio Favis vs. Municipality of Sabangan[43] reiterates the ruling in *Carlos Palanca vs. The City of Manila*[44] that while no costs shall be allowed against the Government of the Philippines where it is the unsuccessful party, the general rule that costs are imposed upon the

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[41] G.R. No. 176703, June 28, 2017.
[42] G.R. No. 176721, June 28, 2017.
[43] G.R. No. L-26522, February 27, 1969.
[44] G.R. No. L-15819, October 27, 1920.

unsuccessful party applies to public corporations which sue and can be sued and municipal corporations.

Costs are certain allowances authorized by statute or court rule to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceedings. They are in the nature of incidental damages allowed to indemnify a party against the expense of successfully asserting his rights in court. The theory on which they are allowed to a plaintiff is that the default of defendant made it necessary to sue him, and to a defendant, that plaintiff sued him without cause.[45]

In view of petitioners' inaction on respondent's claim for refund, the latter was constrained to file a Petition with the Laguna-RTC for recovery of the local business tax paid to petitioners. Being the successful party in the case, the Laguna-RTC acted judiciously in awarding cost of suit in favor of respondent.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated January 6, 2017 and the Order dated May 11, 2017 of the Regional Trial Court, Branch 36, Calamba City, Laguna in Civil Case No. 4749-2014-C entitled *"South Luzon Tollway Corporation vs. The City Government of Makati and Nelia A. Barlis in her capacity as City Treasurer"* are **AFFIRMED** with **MODIFICATION**. The award of Attorney's Fees in the amount of Ten Thousand Pesos (₱10,000.00) is **DELETED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

Cielito N. Mindaro-Grulla

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[45] *Maglana Rice and Corn Mill, Inc. vs. Annie L. Tan*, G.R. No. 159051, September 21, 2011.

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice