REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

KUEHNE + NAGEL, INC., *Petitioner,*	CTA AC Case No. 189
-versus-	Members: **DEL ROSARIO,** P.J.,*Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
CITY OF PARAÑAQUE and JESUSA E. CUNETA, in her capacity as the City of Treasurer of Parañaque, *Respondents.*	Promulgated: NOV 15 2018 1:21 pm

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review[1] filed by Kuehne + Nagel, Inc., pursuant to Section 11[2], in relation to Section 7(a)(3)[3]

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[1]CTA Docket, pp. 8-

[2]SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: x x x

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[3]Sec 7. Jurisdiction . - The CTA shall exercise :

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

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of Republic Act No. 1125,[4] as amended, seeking to reverse and set aside the Decision[5] dated February 8, 2017 and Order[6] dated June 8, 2017 issued by the Regional Trial Court (RTC) Branch 257, Parañaque City, in Civil Case No. 07-0370.

Petitioner is a domestic corporation existing under and by virtue of Philippine laws, with principal office address at 5th Floor Unit 501-H, 507-508-H, Harbor Drive, Five E-Com Center, Pacific Drive Extension, Mall of Asia Complex, Pasay City. Petitioner is engaged in the business of international freight and/or cargo consolidation and forwarding by means of air and sea transport.

Respondent City of Parañaque (respondent City) is a local government unit (LGU) created by law.

Respondent Jesusa E. Cuneta (respondent Treasurer) was the duly appointed City Treasurer of Parañaque City when the Petition for Review was filed, empowered to perform the duties of said office, including, *inter alia*, the collection of all local taxes, fees, and charges. Respondent Cuneta no longer holds the position of Treasurer and has since been replaced by Mr. Gualberto B. Bernas IV, OIC-City Treasurer.

On July 25, 2007, Petitioner received respondent's Notice of Assessment[7] dated July 16, 2007 with attached Schedule of Business Tax Assessment assessing petitioner deficiency local business tax (LBT) for TY 2001 to 2005.

In the Notice of Assessment, respondent alleged that petitioner is liable for deficiency LBT, fees and charges, in the amount of Php 37,695,480.70, inclusive of surcharges and interests, broken down as follows:

Base Year/Taxable Year	Gross Per F/s	Gross as Declared by Petitioner	Tax Due	Tax Paid	Deficiency
2000/2001	400,000	57,144,484.00	2,001,500.00	287,222.42	1,714,277.58
2001/2002	400,000	62,852,932.00	2,001,500.00	315,764.66	1,685,735.34
2002/2003	475,960,816.97	66,001,879.00	2,381,304.08	331,509.40	2,049,794.69
2003/2004	1,223,860,625.00	62,358,270.00	6,120,803.13	313,291.35	5,807,511.78

[4] An Act Creating the Court of Tax Appeals.
[5] CTA Docket, pp. 40-43.
[6] Ibid., p. 44
[7] Petitioner's "Exhibit "D", Civil Case No. 07-0370.

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2004/2005	1,516,279,002.00	167,054,600.00	7,582,895.01	836,773.00	6,746,122.01
Total					18,003,441.39
Surcharge					4,500,860.35
Interest					15,191,178.95
TOTAL					**37,695,480.70**

The foregoing deficiency LBT allegedly relates to the difference between the gross receipts *vis-à-vis* the actual receipts declared by petitioner.

On September 4, 2007, petitioner filed a protest Letter dated September 3, 2007 with the Office of the respondent Treasurer contending that the payments it made for arrastre, wharfage fees, documentation, trucking, handling charges, storage fees, duties and taxes, among others, which were advanced on behalf of its customers should not be made as part of the gross receipts for purposes of computing the local business taxes, fees and charges.

Subsequently, in a letter dated September 10, 2007, respondent Treasurer required petitioner to submit all documents relevant to the assessment, to which petitioner complied.

In addition thereto, petitioner submitted a copy of the ruling issued by then Ministry of Finance in favor of NAKUFREIGHT (Philippines), petitioner's former name. The ruling held that petitioner's gross receipts do not include the clients' reimbursements of advances made by petitioner on behalf of its clients.

In a letter dated October 23, 2007, respondent Treasurer denied petitioner's protest.

Consequently, on November 13, 2007, petitioner filed a Petition for Review before the Regional Trial Court (RTC) of Parañaque City pursuant to Section 195[8] of the Local Government Code (LGC) of 1991.

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[8]Sec. 195. Protest of Assessment. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice 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.

In the Pre-Trial Order dated October 20, 2007, the parties agreed on the following issues:

For the Petitioner:

a. Whether or not the business tax of the petitioner from 2001 to 2005 should be computed based on the net receipt of the company that means excluding payment that the company received for arrastre, documentation, trucking handling charges, storage, fees, duties and taxes among others, which are only considered reimbursable expenses;

b. Whether or not the act of the petitioner in computing the LBT based on the net proceeds is not under declaration of its gross receipts for purposes of the local business tax based on charges;

c. Whether or not respondent city had lost its right to assess the LBT due to prescription for the 2001 assessment;

d. Whether or not the assessment issued by respondent City had lost its right to assess the LBT due to prescription for the 2001 assessment.

For the Respondent City of Parañaque:

a. Whether or not the petitioner is liable for business tax from 2001 to 2005 computed based on its gross receipts amounting to Php 37,695,480.70, including surcharges and interests;

b. Whether or not the alleged reimbursable expenses are part of petitioner's receipts in assessing LBT.

After trial on the merits, the case was submitted for decision. On February 8, 2017, the RTC promulgated the assailed Decision which dismissed petitioner's Petition for Review, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant petition is hereby dismissed for lack of merit

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SO ORDERED."

Aggrieved by said Decision, petitioner filed a Motion for Reconsideration, which was later denied in the assailed Order promulgated by the RTC of Parañaque City on June 8, 2017.

On August 7, 2017, the instant Petition for Review[9] was filed by petitioner and interposed that the Court a quo erred in finding it liable for deficiency local business tax.

On October 24, 2017, respondents filed a Motion to Admit Comment with Comment Attached dated October 19, 2017 explaining thereto the cause of the delay in filing such Comment.

In a Resolution dated October 30, 2017, this Court granted the Motion to Admit.

Thereafter, this Court granted both parties thirty (30) days within which to file their simultaneous memoranda.

The case was deemed submitted for decision per Resolution[10] promulgated on January 23, 2018, after petitioner and respondents filed their Memoranda on December 27, 2017[11] and January 10, 2018[12], respectively.

In the instant petition, petitioner argues that its reimbursable expenses, representing arrastre, documentation, trucking handling charges, storage fees, duties and taxes, among others, do not form part of its gross receipts, thus should not be subject to local business tax.

We rule to GRANT the Petition for Review.

The Court acknowledges the power of local government units to levy taxes, fees and charges emanates from Sec. 5, Article X of the 1987 Constitution. Sec. 5, Article X of the 1987 Constitution reads, thus:

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[9] CTA Docket, pp.8-39.
[10] *Ibid.*, p. 181.
[11] *Ibid.*, pp.134-163.
[12] *Ibid.*, pp. 167-176.

> "Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local governments."

Notably, Section 129 of the Local Government Code (LGC) of 1991 vests local government units, such as the respondents in this case, with the authority to create their own sources of revenue, to wit:

> "SECTION 129. Power to Create Sources of Revenue.- Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units."

Likewise, Section 143 of the Local Government Code of 1991 defines the general power of a municipality (or a city, if read in relation to Section 151[13] of the same Code) to tax businesses within its jurisdiction.

Paragraphs (a) to (g) thereof identify the particular businesses and fix the imposable tax rates for each, while paragraph (h)[14] is apparently the "catch-all provision" allowing the municipality or city to impose tax *"on any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax"*.

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[13] ***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 imposed: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
[14] ***SEC. 143. Tax on Business.***- The municipality may impose taxes on the following businesses:

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> (h) **On any business**, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: **Provided, That on any business subject to excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales** or receipts of the preceding calendar year.

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But like all powers granted by the State, it is not without limitations. While the LGC of 1991 empowered local government units to levy taxes, fees and charges, it expressly subjected such power to some common limitations, such as those enumerated under Section 133(j) of the LGC of 1991, which reads as follows:

> "SEC. 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:
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> xxx xxx xxx
>
> (j) **Taxes on the gross receipts** of transportation contractors and **persons engaged in the transportation** of passengers or **freight by hire** and common carriers by air, land or water, except as provided in this Code; x x x"

In view of the foregoing, Section 133(j) of the LGC clearly and unambiguously proscribes LGUs from imposing any tax on the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water.

The pronouncement of the Supreme Court in the consolidated cases of *City of Manila, et al. v. Hon. Angel Valera Colet, et al; Maersk-Filipinas, et al. v. City of Manila, et al.; Eastern Shipping Lines v. City Council of Manila, et al.; William Lines, Inc. v. Regional Trial Court of Manila, Branch 32, et al; PNOC Shipping and Transport Corporation v. Hon. Juan T. Nabong, Jr.; Maersk-Filipinas, Inc., et al. v. City of Manila, et al.; Cosco Container Lines, et al. v. City of Manila, et al.; Sulpicio Lines, Inc. v. Regional Trial Court of Manila, Branch 32, et al.; Association of International Shipping, Lines, Inc., in its own behalf and in representation of its Members v. City of Manila, et al.; Dongnama Shipping Co., Ltd., et al. v. Court of Appeals, et al*[15]., further elucidated on this matter and ruled in this wise:

[15] G.R. No. 120051/G.R. No. 121613/G.R. No. 121675/G.R. No. 121704/G.R. Nos. 121720-28/G.R. Nos. 121847-55/G.R. No. 122333/G.R. No. 122335/G.R. No. 122349/G.R. No. 124855, December 10, 2014.

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"xxx Section 133(j) of the LGC is a specific provision that explicitly withholds from any LGU, i.e., whether the province, city, municipality, or barangay, the power to tax the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water.

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The succeeding proviso of Section 143(h) of the LGC, viz., "Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year[,]" is not a specific grant of power to the municipality or city to impose business tax on the gross sales or receipts of such a business. Rather, the proviso only fixes a maximum rate of imposable business tax in case the business taxed under Section 143(h) of the LGC happens to be subject to excise, value added, or percentage tax under the NIRC.

The omnibus grant of power to municipalities and cities under Section 143(h) of the LGC cannot overcome the specific exception/exemption in Section 133(j) of the same Code. This is in accord with the rule on statutory construction that specific provisions must prevail over general ones.

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In the case at bar, the sanggunian of the municipality or city **cannot enact an ordinance imposing business tax on the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water, when said sanggunian was already specifically prohibited from doing so. Any exception to the express prohibition under**

Section 133(j) of the LGC should be just as specific and unambiguous. (Emphasis ours)

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And fourth, the construction adopted by the Court is in accordance with the consistent intention of the laws to withhold from the LGUs the power to tax transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water.

Even prior to Section 133(j) of the LGC, Section 5(e) of Presidential Decree No. 231, otherwise known as The Local Tax Code, as amended, already limited the taxing powers of LGUs as follows:

> SEC. 5. Common limitations on the taxing powers of local government. - The exercise of the taxing powers of provinces, cities, municipalities and barrios shall not extend to the imposition of the following:
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> xxx xxx xxx
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> (e) Taxes on the business of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carries by air, land or water except as otherwise provided in this Code, and taxes or fees for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof;

The Court, in *First Philippine Industrial Corp. v. Court of Appeals*, expounded on the lawmakers' reason for exempting the gross receipts of common carriers from the taxing powers of the LGUs:

From the foregoing disquisition, there is no doubt that petitioner is a "common carrier" and, therefore, exempt from the business tax as provided for in Section 133 (j), of the Local Government Code x x x

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The deliberations conducted in the House of Representatives on the Local Government Code of 1991 are illuminating:

"MR. AQUINO (A). Thank you,

Mr. Speaker. Mr. Speaker, we would like to proceed to page 95, line 1. It states: "SEC. 121 (now Sec. 131). Common Limitations on the Taxing Powers of Local Government Units." . . .

MR. AQUINO (A.). Thank you

Mr. Speaker. Still on page 95, subparagraph 5, on taxes on the business of transportation. This appears to be one of those being deemed to be exempted from the taxing powers of the local government units. May we know the reason why the transportation business is being excluded from the taxing powers of the local government units?

MR. JAVIER (E.). Mr. Speaker, there is an exception contained in Section 121 (now Sec. 131), line 16, paragraph 5. It states that local government units may not impose taxes on the business of transportation, except as otherwise provided in this code.

Now, Mr. Speaker, if the Gentleman would care to go to page 98 of Book II, one can see there that provinces have the power to impose a tax on business enjoying a franchise at the rate of not more than one-half of 1 percent of the gross annual receipts. So, transportation contractors who are enjoying a franchise would be subject to tax by the province. That is the exception, Mr. Speaker.

What we want to guard against here, Mr. Speaker is the imposition of taxes by local government units on the carrier business. Local government units may impose taxes on top of what is already being imposed by the National Internal Revenue Code which is the so-called "common carriers tax." We do not want a duplication of this tax, so we just provided for an exception under Section 125 (now Section 137) that a province may impose this tax at a specific rate.

MR. AQUINO (A.). Thank you for that clarification, Mr. Speaker..

It is clear that the legislative intent in excluding from the taxing power of the local government unit the imposition of business tax against common carriers is to prevent a duplication of the so-called "common carrier's tax."

Petitioner is already paying three (3%) percent common carrier's tax on its gross sales/earnings under the National Internal Revenue Code. To tax petitioner again on its gross receipts in its transportation of petroleum business would defeat the purpose of the Local Government Code.

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Consistent with the foregoing legislative intent, Republic Act No. 7716, more popularly known as the Expanded Value-Added Tax (E-VAT) Law, which took effect after the LGC on May 28, 1994, expressly amended the NIRC of 1977 and added to Section 115 of the latter on "Percentage tax on carriers and keepers of garages," the following proscription: "The gross receipts of common

> carriers derived from their incoming and outgoing freight shall not be subjected to the local taxes imposed under Republic Act No. 7160, otherwise known as the Local Government Code of 1991."

In view of the express limitation in Section 133(j), Section 143 (h) cannot be used as basis for the imposition of business taxes on freight forwarders, such as petitioner.

It is elementary in statutory construction that when the law speaks in clear and categorical language, there is no reason for interpretation or construction but only for application. Applying the law, this Court finds petitioner not liable for local business taxes on its freight forwarding services.

Being relevant, and only for the purpose of reinforcing the limitation of respondents' power to impose local business tax on petitioner, this Court deems it necessary to expound on the definition of "Gross sales" or "receipts" to determine its exact meaning.

The NIRC of 1997 does not provide a definition of the term gross receipts. The term is properly understood in its plain and ordinary meaning and must be taken to comprise of the entire receipts without any deduction.

Respondents cite the case of *Commissioner of Internal Revenue v. Bank of Commerce*[16] wherein the Supreme Court held as follows:

> "As commonly understood, the term ***gross receipts means the entire receipts without any deduction***. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. As explained by the Supreme Court of *Pennsylvania in Commonwealth of Pennsylvania v. Koppers Company, Inc.,*

[16] G.R. No. 149636, June 8, 2005.

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> Highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation. However, this in no way should affect or control the normal usage of words in the construction of our statutes; and we see nothing that would require us not to include the proceeds here in question in the gross receipts allocation unless statutorily such inclusion is prohibited. Under the ordinary basic methods of handling accounts, the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions xxx"

This Court agrees that absent a statutory definition, the term gross receipts is understood in its plain and ordinary meaning. Words in a statute are taken in their usual and familiar signification, with due regard to their general and popular use.

Under Section 131 (n) the Local Government Code of 1991, it provided a more concrete definition of gross receipts or sales, to wit:

> "Gross Sales or Receipts include the **total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials with the services and deposits or advance payments actually or constructively received during the taxable year for the services performed or to be performed for another person** excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT) paid by the taxpayer." (Emphasis supplied)

Applying the foregoing definition in the case at bar, the tax base for local business tax purposes on income payments to entities involved in the freight forwarding

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business is the **gross commission received by such entities**.

Even for the sake of argument that petitioner should be held liable for LBT, this Court notes that the tax base may still differ depending on the documentation employed, especially with regard to reimbursable expenses or advance payments made on behalf of the principals/customers. Determination must still be made if the amount actually or constructively received should be considered "income" for purposes of computing the tax base.

Petitioner asserts that the expenses it incurred were advances made on behalf of its clients, hence, reimbursable expenses that do not form part of the petitioner's taxable gross receipts.

The BIR had consistently ruled that reimbursements are not income but a return of capital. BIR Ruling Nos. DA-005-07 dated January 5, 2007, citing BIR Ruling No. DA-511-06, provides as follows:

> "**Reimbursement of expenses, by its very nature, is not income but merely a return of capital. As a return of capital, it is not income payment *per se*.** x x x"

In a reimbursement-at-cost transaction, it is inferred that the expenses are incurred by the advancing party for the benefit and account of the party accommodated.

In the case at bar, the sales/billing invoices[17], official receipts, and import entry declarations presented by the petitioner sufficiently prove that what was actually paid by petitioner's clients pertain to the same amount that was advanced by petitioner. Simply put, based on the documents presented, the expenses paid by petitioner's clients were without any mark-up or profit element.

Further, in Revenue Memorandum Circular 35-2006[18], the BIR already clarified that a cross-border cargo freight forwarder merely acts as **"integrator"** of the different

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[17] Petitioner's Exhibits "Z-1" to "Z-57", Civil Case No. 07-0370.
[18] REVENUE MEMORANDUM CIRCULAR NO. 35-06, June 21, 2006.

services, (i.e., sorting, trucking for pick-up/delivery, documentation, air/sea carriage etc.) while the actual shipment of the goods abroad or vice versa is provided by third-party service providers.

Thus, in the shipment of goods from one place to another, it is not actually the forwarder that renders all the said services but some of which are rendered by third-party service providers, hence, the payments received by the forwarder from its clients which are intended for third-party service providers ***cannot be considered as part of its gross receipts for tax purposes***. Accordingly, forwarders may only be subject to tax on their commissions and/or service fees they charge to their clients for the services they actually rendered.

A scrutiny of the records would reveal that petitioner's service fees were accounted and identified separately from the reimbursable expenses. Given the circumstances, there is no economic benefit that redounded to the petitioner that would warrant the payments received from its clients to form part of its taxable gross receipts.

Although taxes are the lifeblood of the government, their assessment and collection should be made in accordance with law, rules and regulations as any arbitrariness will defeat the very purpose of the government itself. This Court cannot condone errant or enterprising tax officials, as they are expected to be vigilant and law-abiding as well.

In fine, the foregoing discussion suffices for the reversal of the assailed decision.

WHEREFORE, the petition is **GRANTED**. The Decision of the Regional Trial Court of Parañaque City, Branch 257, in Civil Case No. 07-0370 dated February 8, 2017, and its Order dated June 8, 2017, are **REVERSED AND SET ASIDE**. The Assessments for local business tax for taxable years 2000 to 2004 are hereby **CANCELLED AND/OR WITHDRAWN**.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special 1st Division