Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC.,
Petitioner,

C.T.A. AC NO. 11

- versus -

THE CITY OF MANILA, LIBERTY M. TOLEDO, in her capacity as the TREASURER OF MANILA and GABRIEL ESPINO, in his capacity as RESIDENT AUDITOR OF MANILA, and the CITY COUNCIL OF MANILA,
Respondents.

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAY 1 7 2006

x - x

DECISION

UY, *J*.:

This is a Petition for Review filed on May 11, 2005, pursuant to Section 11 of Republic Act (R.A.) No. 1125 as amended by R.A. No. 9282, in relation to Rule 42 of the 1997 Rules of Court, seeking to set aside the Decision rendered by Judge Concepcion Alarcon-Vergara of Branch 49 of the Regional Trial Court of Manila in (Special) Civil Case No. 99-95092, dated February 28, 2005. It is further prayed that the respondents be ordered: to refund the local business taxes which they assessed, demanded and collected from petitioner in the total amount of P39,268,772.41, which corresponds to the taxable period 1999 to the 1st Quarter of 2004, plus any, and all subsequent payments of taxes by petitioner under Section 21 (A) of Manila Ordinance No. 7794 (The Revenue Code of the City of Manila), as amended by Section 1 (G) of Manila Ordinance 7807, until this case is finally decided, together with legal interest thereon; to stop/desist from further implementing the provisions of Section 21 (A) of Ordinance No. 7794, as amended by Section 1 (G) of Ordinance No. 7807; and to pay petitioner attorney's fees and the costs of suit.

THE FACTS

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

Petitioner International Container Terminal Services, Inc. (ICTSI) is a corporation duly organized and existing under the laws of the Philippines, with principal place of business at ICTSI Administration Building, Manila International Carrier Terminal (MICT), MICT South Access Road, North Harbor, Manila.

Respondent City of Manila is a public corporation created and existing pursuant to law; co-respondent City Council of Manila is the law-making body of the City of Manila, vested by law with the power and authority to appropriate funds, among others; co-respondent Liberty M. Toledo is the incumbent Treasurer of the City of Manila, while co-respondent Gabriel Espino is the incumbent Resident Auditor of the City of Manila. All of the above-named respondents may be served with the processes of this Court through its counsel of record, the City Legal Officer of Manila, whose office is located at the Second Floor, City Hall of Manila.

Petitioner is engaged in the business of servicing the stevedoring, arrastre and warehousing needs of local and international shipping vessels in the Philippines. In the sale of these services, petitioner is paying annually the City of Manila local business tax on contractors equivalent to 75% of 1% of the gross receipts for the preceding calendar years, pursuant to Section 18 of Manila Ordinance No. 7794, as amended.

Upon renewal of its business license for the year 1999, petitioner was additionally assessed by the Office of the City Treasurer, another business tax in the amount of P6,244,250.00 for the year 1999 computed at 50% of 1% of the gross receipts in 1998 pursuant to Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807. Petitioner protested the assessment of P6,224,250.00 in a letter dated July 15, 1999 which was received on the same day, but paid the amount assessed under protest.

The City Treasurer of Manila allegedly failed to decide on petitioner's protest within sixty (60) days from the filing thereof. Thus, within thirty (30) days from the lapse of the sixty (60)-day period, particularly on September 15, 1999, petitioner filed a Petition for Certiorari and Prohibition (With Prayer for Issuance of a Temporary Restraining Order) under Rule 65 of the Rules of Court before the Regional Trial Court (RTC), docketed as (Special) Civil Case No. 99-95092. The Regional Trial Court immediately issued an order setting the case for hearing on the application for a temporary restraining order on September 17, 1999.

During the hearing on said date, petitioner's counsel failed to appear and only the City Legal Officer of Manila, representing the City Treasurer and the Resident Auditor of Manila appeared and filed a Motion to Dismiss anchored on the following grounds:

> "(1) that under Section 187 of the Local Government Code of 1991, the time to question the legality of Section 21 (A) of Ordinance No. 7794, as amended by Section 21 (G) of Ordinance No. 7807, should be within 30 days from the effectivity of the tax, and this period had long lapsed; and
>
> (2) that assuming the reglementary period has not yet lapsed, the petition should be dismissed for failure to exhaust administrative remedies since the question of constitutionality should be lodged before the Secretary of Justice."[1]

On the very same day, the Regional Trial Court granted the motion and dismissed the petition with finality. The Order reads:

> **"O R D E R**
>
> Atty. Floreza failed to appear and such failure is fatal to his cause.
>
> The Court gave the floor to both Atty. Monsod, the City Legal Chief and the City Treasurer as well as the resident Auditor Mr. Montalbo and their manifestations are all in the records. They convinced the Court that indeed the petitioner has no cause of action.
>
> Wherefore, as prayed for them, this case is ordered dismissed, and that dismissal is final.
>
> Let a copy hereof be furnished the Secretary of Finance, the one who is dead set in stopping the collection by the City of

[1] Motion to Dismiss, Annex H of the Petition for Review, Rollo, pp. 92-95.

Manila as gathered from the manifestation of the City Treasurer of Manila.

The City of Manila is well represented by Atty. Monsod, the City Treasurer and the resident Auditor are al notified hereof.

SO ORDERED.

Given in open Court, September 17, 1999.

(Signed)
CONCEPCION S. ALARCON - VERGARA
J u d g e"[2]

On September 23, 1999, petitioner's counsel filed a Motion for Reconsideration and Clarification of the Order dated September 17, 1999. On October 1, 1999, the Regional Trial Court dismissed the Petition for Certiorari for the second time and held that the dismissal is final because the petition was prematurely filed. The Order reads as follows:

"**O R D E R**

Submitted for the resolution is a Motion for Clarification of the Order of Dismissal.

A cursory reading of the order readily spells out what it means, which is a dismissal of the case.

The petition is clear that it is to review the actuations of the City Treasurer of Manila in pursuing to collect a tax in obedience to City Ordinance No. 7794 as amended by Ordinance No. 7807 which has not been declared invalid, as well as the actuations of the Resident Auditor in ordering the City Treasurer and his agents and representatives to collect the tax in question.

Atty. Floreza's argument is revolving around one point, that he is not suing under Section 187 but is doing so under Section 195 of the Local Government Code, as amended. Section 195 of the Local Government Code, in part, provides that if the Local Treasurer finds the assessment correct, he shall

[2] Order dated September 17, 1999, Annex I of the Petition for Review, Rollo, p. 96.

> deny the protest and the taxpayer have thirty (30) days from the receipt of denial or from the lapse of sixty (60) day period, to appeal therefrom with a competent court, otherwise the assessment becomes conclusive and unappealable.
>
> As it looks, the petition for certiorari filed by the petitioner is premature. There should be an appeal to a competent court which shall first be resolved. Should the appeal be resolved favorably to the City, then no petition for certiorari should ever be filed. Should it be resolved against the City, then the petition is most proper. That is the only time when the competent court can review the actuations of the City Treasurer in pursuing the collection of a tax which had already been resolved to be not due to the City.
>
> It appears on record and from the manifestation of the petitioner's lawyer himself, that the petitioner received a copy of the assessment on July 5, 1999. The records, further, show that the protest against the assessment was filed by the petitioner, as appearing on Annex F attached to the petition, on July 15, 1999; 60 days therefrom would be September 13, 1999, such that the petitioner had a 30-day period from September 13 or up to October 13, 1999 within which to lodge their appeal before the Court and, until and unless said appeal is decided favorably to the petitioner, the present petition would have no leg to stand on.
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> The petitioner for certiorari is, accordingly, dismissed for the second time and this dismissal is final.
>
> SO ORDERED.
>
> Given in open Court, October 1, 1999.
>
> *(Signed)*
> CONCEPCION S. ALARCON – VERGARA
> J u d g e"[3]

Petitioner appealed the Orders of dismissal to the Court of Appeals and was docketed as C.A.-G.R. SP No. 56078. On July 26, 2002, the 14th Division of the Court of Appeals rendered its Decision setting aside the Orders of the Regional Trial Court dated September 17, 1999 and October 1, 1999 as it

[3] Order dated October 1, 1999, Annex J of the Petition for Review, Rollo, pp. 97-98.

agreed with petitioner's argument that the word "appeal" in Section 195 of the Local Government Code is used in its "generic and ordinary sense and pertains to no other than appeal via a special civil action for certiorari, prohibition and/or mandamus under Rule 65 to review respondents' act of improperly imposing, assessing and collecting the assailed tax".[4]

However, with respect to the issue of whether petitioner is taxable under Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807, the Court of Appeals deemed it proper that the RTC resolve the same as this issue was not appropriately ventilated because of the hasty dismissal. Hence, the case was remanded to the RTC for further proceedings.

On July 11, 2003, petitioner filed an Amended and Supplemental Petition alleging among others, that in its letter dated June 17, 2003 which respondent City Treasurer received on June 18, 2003, petitioner reiterated its protest and/or claim for refund for the additional business taxes paid under Section 21(A) of Manila Ordinance No. 7794, as amended by Manila Ordinance No. 7807 (Annex "H") with prayer for the issuance of a writ of permanent injunction enjoining the respondents from imposing and collecting the additional tax under Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807 pending resolution of said petition.[5]

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[4] Decision promulgated on July 26, 2002, CA-G.R. SP No. 56078, Rollo, pp.99-113.
[5] Amended and Supplemental Petition, Rollo, pp. 43–62.

The Regional Trial Court conducted the hearing as directed by the Court of Appeals. In its Decision rendered on February 28, 2005, the case was again dismissed for the same reason that the case was earlier dismissed. In the assailed Decision, the court a quo did not resolve the issue of petitioner's taxability under Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1 (G) of Manila Ordinance No. 7807. It ruled that:

> "The main thrust of petitioner's argument is, that respondent City Treasurer and the Resident Auditor of Manila should be prohibited from continuing the further implementation of the provisions of Section 21 (A) of Ordinance No. 7794 as amended on Ordinance No. 7807.
>
> Certiorari, under Section 1 of Rule 65, is available only when the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and their being no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. Prohibition, on the other hand, when the tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or had exceeded its or his jurisdiction, or had acted with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.
>
> Considering the above definition of Certiorari and Prohibition, in the light of the explanation of the City Treasurer, in her testimony before this Court, no excess of jurisdiction nor grave abuse of discretion could be attributed the respondents for the precise reason that the taxes alluded to by the two sections of the same Ordinance, refer to different businesses. The petitioner knew that under the Rules, certiorari could not substitute an appeal.
>
> The Local Government Code, under Section 195 provides:
>
> "x x x x x x within 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 60 days from the time of its filing x x x x x. 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 30 days from receipt of the denial of the protest or from the lapse of the 60 day period prescribed herein within which to appeal with the court or competent jurisdiction, otherwise the assessment becomes conclusive and unappealable.

In this case, the Local Treasurer did not act on the protest but continued to collect. From the actuation of the Local Treasurer, it could be clearly deduced that the protest had been denied and therefore ICTSI had 60 day period from the filing of its protest according to the Local Government Code, to interpose an appeal to the competent court. The petitioner did not avail of such remedy and in its stead, it submitted only a Petition for Certiorari to this Court, which is not the proper remedy, and the direct result of the non–appeal is – the assessments of the respondents became conclusive and unappealable. Therefore, whether or not the petitioner is entitled to refund, could no longer be looked into by this Court.

WHEREFORE, in the light of the foregoing premise, the Court is constrained to order anew, but with finality, the dismissal of this petition.

SO ORDERED.

Manila, Philippines, February 28, 2005.

(Signed)
CONCEPCION S. ALARCON – VERGARA
J u d g e"[6]

Petitioner received this Decision on April 12, 2005. Thereafter, petitioner filed this Petition for Review on May 11, 2005 before this Court. Respondents were required to file their comment thereto in the Resolution promulgated on May 18, 2005. On July 11, 2005, respondents filed their Comment while petitioner filed its Reply thereto on August 1, 2005.

[6] Decision promulgated on February 28, 2005, Annex A of the Petition for Review, Rollo, pp. 37-39.

Thereafter, this Court resolved to give due course to the Petition for Review and required the parties to file their respective memorandum in the Resolution dated August 5, 2005. Petitioner filed its Memorandum on September 28, 2005 while respondents filed their Memorandum on September 29, 2005. Thereafter, this case was submitted for Decision on October 28, 2005. Hence, this decision.

THE ISSUES

The following are the issues for the determination of this Court:

(1) Whether or not the petition for certiorari and prohibition filed with the trial court is the "appeal" contemplated in Section 195 of the Local Government Code;

(2) Whether or not the assessment of taxes by the City of Manila under Sections 18 and 21 of the Revenue Code of the City of Manila (Ordinance No. 7794 as amended by Ordinance No. 7808) constitutes double taxation; and

(3) Whether or not petitioner can be taxed under Section 21 (A) of Manila Ordinance No. 7794, as amended by Manila Ordinance No. 7807, given the fact that it is already taxed as a contractor under Section 18 of the same ordinance.

In its Memorandum[7] filed on September 28, 2005, petitioner submits that the Court of Appeals rendered a Decision on 26 July 2002 in CA-G.R. SP No. 56078 affirming petitioner's contention that the Petition for Certiorari and

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[7] Petitioner's Memorandum, Rollo, pp. 188-216.

Prohibition filed with the Regional Trial Court in (Special) Civil Case No. 99-95092 was in full compliance with the appeal requirement provided for under Section 195 of the Local Government Code. Respondents did not move for reconsideration, or appeal the Decision of the Court of Appeals. Thus, said Decision allegedly became final and executory and is now the "law of the case" in these proceedings. The doctrine of "law of the case" means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case so long as the facts on which such decision was predicated continue to be the facts of the case before the Court citing the case of Mangoma vs. Court of Appeals (241 SCRA 21).

It is also petitioner's submission that in making it liable under Section 21(A) of the Manila Revenue Ordinance, when it is already paying business tax under Section 18, would confer upon respondents a taxing power beyond what has been allowed by Congress under the Local Government Code. Section 21(A) should therefore be construed to apply only to businesses which have not been taxed under any other provision of the Manila Revenue Ordinance.

According to petitioner, being a contractor taxed under Section 18, it cannot again be held liable under Section 21(A) of the same Ordinance, as amended by Ordinance No. 7807. To do so would constitute double taxation which is in contravention of the clear language of Section 143 (h) of the Local government Code of 1991 in relation to Section 153 of the same Code.

On the other hand, respondents maintain that petitioner cannot assail the validity of such Ordinance by way of a petition for certiorari and prohibition with prayer for issuance of a temporary restraining order without observing the principle of exhaustion of administrative remedies mentioned under Section 187 of the Local Government Code pertaining to the procedure for approval and effectivity of tax ordinances and revenue measures. Under said section, any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice. And since the period within which to question the constitutionality of the said ordinance provided under Section 187 had long expired, the petition should be dismissed outright for being time-barred.

Respondents further claim that the tax imposed under Section 18 is a tax on contractors wherein a corresponding percentage tax at a rate of 75% of 1% on gross receipts was assessed on petitioner, while that imposed under Section 21 is a tax on business subject to the excise or value-added or percentage taxes under the National Internal Revenue Code at the rate of 50% of 1% per annum on the gross sales or receipts of the preceding year. Petitioner being a contractor, renders service to the public, hence it is subject to the value-added tax under the NIRC. However, respondents stress that the tax is not a tax against the business of petitioner as a contractor, but it is against the consumers who are the end-users of petitioner's services.

THIS COURT'S RULING

The petition is meritorious.

Anent the first issue, the Court agrees with the petitioner that since respondents did not move for a reconsideration of the Decision of the Court of Appeals in CA-G.R. SP No. 56078[8] promulgated on July 26, 2002, the ruling therein became final, and is now the "law of the case" in these proceedings considering that it was then the proper forum to seek redress from decisions or actions of the regional trial courts in local tax cases.[9]

In its Decision, the Court of Appeals, citing the Supreme Court's decision in Rodriquez vs. Court of Appeals[10] held:

> "As a rule, jurisprudence shows that 'when the remedy of appeal is available, the extraordinary remedy of certiorari cannot be resorted to because the availability of appeal or other equitable remedies proscribes recourse to the special civil action of certiorari. Further the Supreme Court has consistently ruled that:
>
> > 'As a rule, errors of judgment or of procedure, not relating to the court's jurisdiction nor involving grave abuse of discretion, are not reviewable by certiorari under Rule 65 of the Revised Rules of Court. However, there are exceptions to said ruled *[sic]*. For instance, certiorari is justified in order to prevent irreparable damage and injury to a party where the trial judge capriciously and whimsically exercised his judgment, or where there may be danger of failure of justice. Certiorari may also be availed of where an appeal would be slow, inadequate and insufficient.[11]'

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[8] Ponencia of Justice Romeo A. Brawner, Chairman, as concurred by Justices Jose L. Sabio, Jr. and Mario L. Guariña III, Members of the 14th Division of the Court of Appeals.
[9] Sec. 9 (3) of B. P. 129.
[10] 245 SCRA 150 (1995).
[11] Citing Villalon vs. IAC, 144 SCRA 445 (1986).

> In the case at bench, certiorari is justified in order to prevent irreparable damages and injury to ICTSI. If the assessed tax is indeed unwarranted, the petitioner-appellant taxpayer is then prejudiced by the dismissal of its petition in the RTC. In this light, we rule that the petition for certiorari and prohibition filed by the petitioner-appellant is the correct mode to appeal from the inaction of the City Treasurer of Manila. xxx"[12]

The Court takes note that the above decision of the Court of Appeals has become final and executory and is now the law of the case before Us. Law of the case has been defined as the opinion delivered on a former appeal. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[13]

Considering however that under Section 7(a)(3) of Republic Act No. 9282, which took effect on April 23, 2004, decisions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction are now appealable to the Court of Tax Appeals, We deem it necessary to discuss this issue as We see it.

The Local Government Code (LGC) of 1991 gives an aggrieved taxpayer arising from disputed assessments of local taxes, several remedies

[12] Decision in CA-G.R. SP No. 56078, Rollo, p. 111.
[13] Suarez De Leon vs. Estrella (A.M. No. RTJ-05-1935, July 29, 2005).

under the following sections: (1) Section 187, entitled "Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures, Mandatory Public Hearings"; (2) Section 195 entitled "Protest of Assessment"; and (3) Section 196 entitled "Claim for Refund or Tax Credit".

Section 187 of the LGC requires that any question on the constitutionality or legality of tax ordinances or revenue measures be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who has sixty (60) days from date of receipt of appeal to render a decision. That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee or charge levied therein; provided that within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Under Section 195, a taxpayer is given sixty (60) days from receipt of the assessment within which to file a protest with the local treasurer who shall then render his decision on the protest within sixty (60) days from the time of its filing. If the local treasurer finds the assessment correct, he shall deny the protest. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest **to appeal such decision**. If the local treasurer fails to render a decision, the taxpayer shall also have thirty (30) days from the lapse of the sixty (60)-day period prescribed, within which **to appeal**

with the court of competent jurisdiction, otherwise, the assessment shall become conclusive and unappealable.

Lastly, under Sec. 196 of the LGC, a taxpayer must file a written claim for refund or credit with the local treasurer before he can file a case or proceeding in court for the recovery of any tax, fee, or charge erroneously or illegally collected, within two years from the date of payment of such tax, fee, or charge.

Contrary to respondent's stand, petitioner's resort to the remedy provided under Section 195 was the proper recourse available to it under the prevailing circumstances in this petition considering that when it received the notice of assessments for the period beginning from the first three (3) quarters of 1999, the assailed Ordinances Nos. 7794, as amended by 7807, have long been effective as early as July 1, 1993 and September 30, 1993, respectively. It would thus be unjust to require petitioner to resort to the remedy provided under Section 187 of the LGC because that remedy was no longer legally and procedurally viable under the situation that petitioner was in.

The next question that confronts Us now is: what mode of appeal is contemplated under Section 195 of the LGC?

Clearly under Section 195, the aggrieved taxpayer must interpose an ordinary appeal to the courts of competent jurisdiction because even the Court of Appeals said that a Petition for Certiorari and Prohibition cannot be used as a substitute for a remedy of a regular appeal which is available.

The second and third issues, being interrelated, shall be discussed jointly.

It is petitioner's contention that the assessment of taxes by the City of Manila under Section 18 and 21 of the Revenue Code of the City of Manila constitute double taxation and therefore it should no longer be required to pay taxes under Section 21 (A) of said ordinance as it had already been paying taxes as contractor under Section 18.

The Court agrees with the petitioner.

We look into the provisions of Section 18 and Section 21 (A) of Ordinance No. 7794.[14] Section 18 provides:

> " **Section 18. Tax on Contractors.** – A percentage tax is hereby imposed on contractors and other independent contractors, in accordance with the following schedule:
>
> xxx xxx xxx"

On the other hand, Section 21 (A) reads:

> **"SECTION 21. Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC**. — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of three percent (3%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said code."

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[14] The Revenue Code of the City of Manila, effective July 1, 1993.

Because of strong protests from taxpayers, the City Council of Manila enacted an amendatory ordinance, Ordinance No. 7807,[15] which reduced the tax rates from three percent (3%) to Fifty Percent of One Percent (50% of 1%).[16] Thus, Section 21 (A), as amended, provides as follows:

> **"Sec. 21. Tax on Businesses Subject to the Excise, Value-Added or Percentage Taxes Under the NIRC** — On any of the following businesses and articles of commerce subject to the excise, value-added or percentage taxes under the National Internal Revenue Code hereinafter referred to as NIRC, as amended, a tax of FIFTY PERCENT (50%) OF ONE PERCENT (1%) per annum on the gross sales or receipts of the preceding calendar year is hereby imposed:
>
> A) On persons who sell goods and services in the course of trade or business; and those who import goods whether for business or otherwise, as provided for in Sections 100 to 103 of the NIRC as administered and determined by the Bureau of Internal Revenue pursuant to the pertinent provisions of the said Code."

From the foregoing, it is apparent that Section 18 is a tax on contractors while Section 21 (A) is a business tax on persons who sell goods and services in the course of trade or business, and those who import goods whether for business or otherwise. A "contractor" as defined under Section 4 (h) of Ordinance No. 7794 is as follows:

> **"SECTION 4. Words and Phrases.** – When used in this Ordinance:
>
> **h) "Contractor"** - <u>includes persons, natural or juridical, not subject to professional tax under Section 11 of said ordinance, whose activity consists essentially of the sale of all kinds of services for a fee</u>, regardless of whether or not the performance of the service calls for the exercise or use of the physical mental faculties of such contractor or his employees.

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[15] Ordinance No. 7807 became effective on September 30, 1993.
[16] Flores, Local Government Taxation, Book II, 1st Ed., pp. 333-334.

> As used in this Section, the term 'contractor' shall include arrastre proprietors or operators; x x x x" *(Emphasis supplied)*

Based on the aforequoted definition, a contractor is a natural or juridical person that essentially sells all kinds of services for a fee and it includes one engaged in arrastre services such as petitioner. And as a contractor, petitioner was taxed under Section 18 of the subject Manila Ordinance. Additionally, it was also held liable to pay business tax under Section 21 (A) for selling services in the course of its business. Evidently, the taxes under Section 18 and Section 21 (A) similarly tax persons, natural or juridical, engaged in the sale of services in the course of its business, which is a clear case of double taxation.

In its strict sense (referred to as direct duplicate taxation or direct double taxation), double taxation means – (a) taxing twice, (b) by the same taxing authority, (c) within the same jurisdiction or taxing district, (d) for the same purpose, (e) in the same year [taxing period], (f) some of the property in the territory.[17] Clearly, all these requisites are present in the case at bench.

Although to a limited extent, there is merit in respondents' claim that double taxation is not prohibited, even the Supreme Court declared that although double taxation in general is not forbidden by our Constitution (since we have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union), the Highest Tribunal also settled that double taxation becomes "obnoxious"

[17] De Leon and De Leon, Jr., The Fundamentals of Taxation, 2004 Edition, p.49.

where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose.[18]

As a general rule, the tax powers of local government units are to be liberally construed pursuant to Section 5 (a) of the Local Government Code, but a doubt on the application of a tax ordinance shall be construed strictly against the local government unit except tax exemptions, incentive or relief which shall be construed strictly against the grantee as provided under Section 5 (b) of the same Code.

Notwithstanding however this Court's finding that there is double taxation in the case at bench, the Court cannot order a total refund of petitioner's claim in the total amount of Php 39,268,772.41 corresponding to the period from 1999 to the 1st Quarter of 2004, plus any and all subsequent payments of taxes under Section 21 (A) of the Manila Ordinance due to petitioner's failure to substantiate its entire claim.

As mandated under Section 195 of the Local Government Code of 1991, petitioner must comply with the procedural requirement of **filing a written protest within sixty (60) days from receipt of each notice of assessment issued by the local treasurer, and the denial or inaction by the local treasurer must be timely appealed to the courts of competent jurisdiction**.

Records disclose in the instant case that petitioner filed a protest pursuant to Section 195 of the LGC only with respect to the assessment of

[18] Pepsi-Cola Bottling Company of the Philippines, Inc. vs. Municipality of Tanauan, Leyte, et al., 69 SCRA 460 (1976).

the amount of P6,224,250.00, which covers the third quarter of 1999.[19] Petitioner protested the said assessment on July 15, 1999 and paid the same amount under protest. This is not controverted by the respondents.[20]

Within thirty (30) days from the lapse of the sixty (60)-day period, petitioner appealed to the RTC by way of the Petition for Certiorari and Prohibition which, as discussed earlier, was considered by the Court of Appeals as the proper appeal since "appeal" under Section 195, is used in its generic sense. This ruling became the law of the case for failure of the respondents to move for a reconsideration thereof. Insofar as the remaining balance of petitioner's claim, there is no clear proof of compliance with the procedural requirements laid down under Section 195 of the LGC.

Granting that petitioner filed a protest on June 18, 2003, pertaining to the additional business taxes assessed by respondents, as it was shown that respondents' counsel admitted the authenticity and existence of the Letter dated June 17, 2003,[21] purporting to be the letter protest assailing the subsequent assessments for additional business taxes under Section 21 (A) of Ordinance No. 7794 as amended by Ordinance No. 7807, and which was marked as Exhibit "U" to "U-2" in Special Civil Action No. 99-95092 and formally offered as part of the evidence for the plaintiff, petitioner in this case,[22] this document was never submitted in the instant petition. The Court therefore has no way of verifying how much is the total amount of taxes

[19] Rollo, pp. 15 and 82.
[20] Respondents' Memorandum, Rollo, pp. 171 and 172.
[21] TSN, Special Civil Action No. 99-95092, ICTSI v. Acebedo, March 15, 2004, p. 7-8, Rollo, pp. 80-81.
[22] Formal Offer of Plaintiff's Documentary Exhibits, Special Civil Case No. 99-95092, Rollo, p. 88.

and the taxing period covered in said letter protest. Consequently, petitioner's claim for the period covering the 4th quarter of 1999 up to the 1st quarter of 2004 is denied.

Petitioner's claim for attorney's fees is likewise denied pursuant to the general rule provided under Article 2208 of the Civil Code, which states that in the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs cannot be recovered. The same holds true with respect to the claim for interest in the instant petition.

IN VIEW OF THE FOREGOING, the assailed Decision of the Regional Trial Court, Branch 49 dated February 28, 2005 is hereby **SET ASIDE** and the claim for refund is **PARTIALLY GRANTED.**

Accordingly, respondents are hereby: (a) **ORDERED TO REFUND** to petitioner the reduced amount of P6,224,250.00 representing the local business taxes erroneously paid in the third quarter of 1999; and (b) **ORDERED TO DESIST** from further imposing the additional taxes under Section 21 (A) of the Manila Ordinance No. 7794, as amended by Section 1 (G) of Ordinance No. 7807, on petitioner.

Petitioner's prayer for the award of attorney's fees and interest is **DENIED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman'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.

ERNESTO D. ACOSTA
Presiding Justice