REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

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CITY OF MANILA AND THE CITY TREASURER OF MANILA,
Petitioners,

- versus -

ASIAN TERMINALS, INC.,
Respondent.

CTA AC No. 199
(Civil Case No. 15-134939)

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 25 2019
11:14 a.m.

x - x

DECISION

UY, J.:

Before this Court is the *Petition for Review*[1] filed on March 13, 2018 by the City of Manila and the City Treasurer of Manila, praying to annul and set aside the Decision dated November 2, 2017[2] and Order dated February 7, 2018[3], both rendered by the Manila Regional Trial Court (RTC) – Branch 7, in Civil Case No. 15-134939, entitled *"Asian Terminals, Inc., Petitioner, versus City of Manila and Hon. Rizal Y. Del Rosario, in his capacity as City Treasurer of Manila, Respondents",* the dispositive portions of which respectively read as follows:

Decision dated November 2, 2017:

> "**WHEREFORE**, consistent with the above findings, petitioner's revenues earmarked for remittance to the PPA amounting to ₱1,443,688,705.63 for 2013 and ₱2,006,367,198.61 for 2014 are hereby declared not part

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[1] Docket, pp. 8 to 18.
[2] Docket, pp. 20 to 31.
[3] Docket, pp, 32 to 33.

of petitioner's income and therefore, not subject for Local Business Tax.

SO ORDERED."

Order dated February 7, 2018:

"WHEREFORE, the *Motion for Reconsideration* filed by the respondents is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner City of Manila is a highly urbanized city created under and by virtue of Republic Act (RA) No. 409, as amended, with the power to levy taxes, to sue and be sued, and to exercise such other powers as are granted to corporations under the law. Its office is located at Manila City Hall, Padre Burgos Street, Ermita, Manila, where it may be served with summons and other court processes.[4]

Co-petitioner City Treasurer of Manila is vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including *inter alia,* the power to assess and collect local business taxes due to petitioner City of Manila, and the power to decide disputed assessments, pursuant to the provisions of the Local Government Code (LGC) of 1991, and RA No. 409, as amended, with address at the Office of the City Treasurer, Manila City Hall, Padre Burgos Street, Ermita, Manila.[5]

On the other hand, respondent Asian Terminal Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at ATI Head Office, A. Bonifacio Drive, Port Area, Manila, and duly registered with the Bureau of internal Revenue under Tax Identification Number 000-132-413.[6]

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[4] Par. 2, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 478.

[5] Par. 3, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 478.

[6] Par. 1, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 477.

In the Letter of Assessment (LOA) dated July 8, 2015,[7] which was received by respondents on even date, petitioners demanded payment of alleged deficiency local business taxes (LBT), amounting to an aggregate of ₱43,635,223.47, inclusive of surcharges and interest, for the years 2013 and 2014, within seven (7) days from the said receipt of the LOA.[8] The said amount is broken down as follows:[9]

Taxable Years	**2013**	**2014**
Gross Revenues as per Audited Financial Statements	₱6,048,343,000.00	₱7,536,913,000.00
Calendar Years	**2014**	**2015**
Tax Due	₱49,901,304.75	₱62,182,007.25
Tax Paid		
(Head Office)	38,592,732.93	43,050,853.82
(Valenzuela Ext. Sta. Mesa Branch)	129,942.66	129,942.66
Tax Deficiency	₱11,178,629.16	₱19,001,210.77
Add: Surcharge	2,794,657.29	4,750,302.69
Total	₱13,973,286.45	₱23,751,513.46
Add: Interest	3,772,787.34	2,137,636.21
Total Deficiency	**₱17,746,073.79**	**₱25,889,149.67**
Grand Total Due		
GRAND TOTAL		**₱43,635,223.47**

On July 13, 2015, respondent filed the letter dated July 10, 2015[10] with petitioner City Treasurer, contesting the latter's directive for it to pay the alleged deficiency LBT within seven (7) days from receipt of the LOA for lack of legal basis, and expressly reserving its right to file an administrative protest to the LOA within the sixty (60)-day period provided under Section 195 of the Local Government Code.[11]

Subsequently, on July 31, 2015, respondent filed a *Preliminary Reply to the LOA dated 8 July 2015*,[12] wherein respondent underscored its initial observations on the deficiency LBT assessment and requested a re-evaluation thereof, without prejudice to its right to

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[7] Exhibits "A" and "1", RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 527 to 529, and 799, respectively.

[8] Par. 4, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 478.

[9] Exhibit "2", RTC Docket (Civil Case No. 15-134939) – Vol. II, p. 800; Par. 5, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 479.

[10] Exhibit "B", RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 529 to 530.

[11] Par. 6, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 479.

[12] Exhibit "C", RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 531 to 540.

file a formal protest to the LOA, within the said 60-day reglementary period.[13]

On August 25, 2015, respondent received petitioners' letter dated August 24, 2015,[14] stating that respondent's arguments in its *Preliminary Reply to the LOA* were found to be without merit. Thus, a formal demand was made upon respondent to pay its alleged deficiency LBT, within five (5) days from receipt of such letter.[15]

Thereafter, on August 27, 2015, respondent filed a *Reply to Formal Demand Letter dated 24 August 2015* with the Office of the City Treasurer of Manila,[16] underscoring its previous contention that under Section 195 of the LGC of 1991, respondent had sixty (60) days from receipt of the LOA, or from July 8, 2015 until September 6, 2015, within which to file its administrative protest to the assessment. Moreover, respondent once again put petitioners on notice that it would file a protest to the LOA on or before September 6, 2015, in compliance with the 60-day period provided by law.[17]

Hence, on September 4, 2015, respondent filed its *Formal Protest of Deficiency Local Business Taxes Assessment for the Years 2013 and 2014* with the Office of the City Treasurer of Manila,[18] requesting that the assessments for 2013 and 2014 be set aside for lack of factual and legal basis.[19]

On October 7, 2015, respondent received a copy of petitioners' Decision dated September 30, 2015 on the *Protest*,[20] wherein petitioners (i) excluded the revenues generated by the Batangas Container Terminal in Batangas, and the Inland Clearance Depot in Laguna, from respondent's revenues; and (ii) deducted respondent's prior payments of LBT on the gross revenues from its operations in

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[13] Par. 7, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, pp. 479 to 480.
[14] Exhibit "D", RTC Docket (Civil Case No. 15-134939) – Vol. II, p. 557.
[15] Par. 8, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 480.
[16] Exhibit "E", RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 558 to 559.
[17] Par. 9, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 480.
[18] Exhibit "F", RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 560 to 577.
[19] Par. 10, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 480.
[20] Exhibits "G" and "3", RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 578 to 580, and 801 to 803, respectively; Par. 13, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 482.

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Sta. Mesa, Manila, from petitioners' computation of respondent's alleged tax liabilities.[21] Thus, respondent's alleged deficiency LBT For 2013 and 2014 was reduced from ₱43,635,223.47 to ₱33,363,565.80,[22] broken down as follows:[23]

	2013	2014
Gross Revenues as per Audited Financial Statements	₱6,048,342,889.83	₱7,536,912,616.50
Less:		
Batangas Container Terminal	91,194,196.38	665,832,249.94
Inland Clearance Depot	51,304,597.20	89,986,290.64
Taxable Revenues	₱5,905,844,206.42	₱6,781,094,459.42
Tax Due: [**Service Contractor**]	48,725,689.70	55,946,504.29
Less Tax Paid: [**Head Office**]	38,592,732.93	43,050,853.82
For 2014 & 2015 (Sta. Mesa Branch)	129,942.66	129,942.66
Tax Deficiency:	₱10,003,014.11	₱12,765,707.81
Add: Surcharge (25%)	2,500,753.53	3,191,426.95
Sub-total	₱12,503,767.64	₱15,957,134.76
Add: Interests	3,626,092.62	1,276,570.78
Total Tax Deficiency	**₱16,129,860.26**	**₱17,233,705.54**
Grand Total Due		**₱33,363,565.80**

Respondent then filed its *Petition for Review*[24] on October 30, 2015, before the Manila RTC entitled "*Asian Terminals, Inc., Petitioner, v. City of Manila and Hon. Rizal Y. Del Rosario, in his capacity as City Treasurer of Manila, Respondents*", praying for the cancellation and withdrawal of petitioners' assessment for alleged deficiency LBT in the total amount of ₱33,363,565.80. The case was docketed as Civil Case No. 15-134939 and was originally raffled to Manila RTC – Branch 19. However, due to parties' failure to reach an amicable settlement through the Judicial Dispute Resolution proceedings, the said case was re-raffled to Manila RTC – Branch 7, Manila, on November 16, 2016.[25]

In said *Petition for Review* (Civil Case No. 15-134939) filed with the RTC of Manila, Asian Terminals Inc. claimed that the PPA Fees cannot be subjected for LBT assessment as the income it earned from its Contract with the PPA was merely earmarked for remittance to the latter pursuant to their Contract for Cargo Handling Services

[21] Par. 14, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 482.
[22] Par. 15, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 483.
[23] Par. 16, Stipulation of Facts, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 483.
[24] RTC Docket (Civil Case No. 15-134939) – Vol. I, pp. 1 to 32.
[25] Order dated November 16, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 472.

and Third Supplement to the Contract for Handling and Related Services. For their part, the City of Manila and The City Treasurer, contended otherwise. They argued that to allow a deduction of the PPA Fees from the declared Gross Receipts of Asian Terminals, Inc. would in effect operate as a tax exemption which first requires that the same be expressly granted by law in favor of the taxpayer. Pursuant to Sec 131 of the Local Government Code (LGC), Gross Sales or Receipts are allegedly "discounts if determinable at the time of sales, sales return, excise tax and value added tax." Gross receipts by its very nature, applies to all receipts (inflows) without deduction, exemption or exclusion from gross receipts is inconsistent with the pronounced policy of the law to maintain simplicity in (t)ax assessment and collection and to assure a steady source of revenues even during economic slowdown. In plain logic, any deduction will convert the legal meaning of gross receipts to net receipts. Since there is no law or regulation allowing the earmarking of the PPA Fees, the same form part of the gross receipts of Asian Terminals, Inc.[26]

Referral to mediation and JDR proceedings of Civil Case No. 15-134939 both proved futile. In the Order of the Court *a quo* dated December 9, 2016, pre-trial was declared terminated. The trial of the case then ensued.

On November 2, 2017, the Court *a quo* promulgated the assailed Decision,[27] declaring that the revenues earmarked by respondent for remittance to the Philippine Ports Authority (PPA), amounting to ₱1,443,688,705.63 for 2013, and ₱2,006,367,198.61 for 2014, are not part of respondent's income and, therefore, not subject to LBT.

Thereafter, petitioners filed their *Motion for Reconsideration* on December 12, 2017,[28] which was denied in the assailed Order dated February 7, 2018.[29]

Aggrieved, petitioners filed the instant *Petition for Review* with this Court on March 13, 2018,[30] and the same was raffled to its First Division.

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[26] RTC Decision, Docket, p. 29; RTC Docket (Civil Case No. 15-134939) – Vol. II, p. 930.
[27] Docket, pp. 20 to 31; RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 921 to 932.
[28] RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 933 to 940.
[29] Docket, pp, 32 to 33; RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 989 to 990.
[30] Docket, pp. 8 to 19.

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In the Resolution dated May 9, 2018,[31] the First Division of this Court directed: (i) respondent to file its *Comment*, within ten (10) days from notice; and (ii) the Branch Clerk of Court of Manila RTC – Branch 7, to elevate the entire records of Civil Case No. 15-134939, within ten (10) days from notice.

In compliance therewith, the Branch Clerk of Court transmitted the records of Civil Case No. 15-134939 on May 31, 2018,[32] while respondent filed its *Comment/Opposition (Re: Petition for Review dated 16 March 2018)* on June 7, 2018.[33]

Subsequently, the parties were directed to submit their respective memoranda, within thirty (30) days from receipt thereof in the Resolution dated June 29, 2018.[34] *Respondent's Memorandum* was filed on August 9, 2018;[35] while no memorandum was filed by petitioners.[36]

Meanwhile, in the Order dated September 26, 2018,[37] the instant case was transferred to this Division, pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018 entitled "*Reorganizing the Three (3) Divisions of the Court*".

In the Resolution dated October 12, 2018,[38] the instant case was submitted for decision. Hence, this Decision.

THE ISSUE

Culled from petitioners' arguments vis-à-vis respondent's contentions, the issue for this Court's resolution is as follows:

> Whether or not respondent's revenues allegedly earmarked for remittance to the Philippine Ports Authority amounting to ₱1,443,688,705.63 for 2013 and ₱2,006,367,198.61 for 2014 are subject to local business tax or LBT;

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[31] Docket, pp. 44 to 45.
[32] Docket, pp. 50 to 56.
[33] Docket, pp. 63 to 83.
[34] Docket, p. 100.
[35] Docket, pp. 102 to 135.
[36] Records Verification dated September 5, 2018 issued by the Judicial Records Division of this Court, Docket, p. 151.
[37] Docket, p. 154.
[38] Docket, p. 209.

Whether or not respondent was able to adduce sufficient evidence to prove that the PPA Fees have in fact been earmarked for remittance to the PPA.

Petitioner's arguments:

Petitioners mainly argue that the successful judicial appeal of respondent's in the Court *a quo* had been based on an unsubstantiated conclusion that respondent's revenues were earmarked for remittance to the PPA amounting to ₱1,443,688,705.63 for 2013, and ₱2,006,367,198.61 for 2014. Allegedly, the questioned judgment of the Court *a quo* has absolutely no evidentiary support; and that the records are bereft of any admissible evidence which would substantiate the said Court's postulation.

In addition, petitioners argue that the Court *a quo's* unyielding reliance on the cases of *Philippine National Bank vs. Commissioner of Internal Revenue*[39] (*PNB* case), and *The Collector (now Commissioner) of Internal Revenue vs. Manila Jockey Club, Inc.*[40] (*Manila Jockey Club* case), is a classic and monumental misreading, and misquotation of jurisprudence.

Allegedly, it cannot escape a discerning eye that the questioned judgment of the court *a quo* had absolutely no evidentiary support; that there is no competent, valid and authenticated documentation definitively showing the specific amounts of ₱1,443,688,705.63 for 2013, and ₱2,006,367,198.61 for 2014 were earmarked and remitted by respondent ATI to the Philippine Ports Authority.

Moreover, petitioners contend that the relevant Audited Financial Statements (AFS) of respondent are missing and never presented; and that respondent did not even introduce any *Official* or *Acknowledgment Receipt*, which a government agency, like PPA, would by force of law issue to evidence and officially recognize such remittance, if the same were truly paid by respondent.

According to petitioners, not only did respondent fail to present the pertinent AFS to show: (a) the specific amounts purported due to PPA, and (b) actual proof of remittance (in the form of debit entries) of the PPA fees, by jurisprudence and the prevailing nature of local

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[39] G.R. No. 158175, October 18, 2007.
[40] G.R. Nos. L-13887 and L-13890, June 30, 1960.

taxation, must form part of the Gross Sales or Receipts of respondent subject to LBT by petitioners.

Furthermore, petitioners aver that aside from the absence of any factual basis for its erroneous conclusion, the assailed Decision unmistakably lacked any legal support.

Respondent's counter-arguments:

On the other hand, respondent counter-argues that contrary to petitioners' claims, respondent was able to adduce sufficient evidence to prove that PPA fees have in fact been earmarked for remittance to the PPA; and that respondent need not present its AFS for 2013 and 2014, as well as the *Official Receipts* and *Acknowledgement Receipts* issued by the PPA, for the purpose of proving that its PPA fees represent amounts which have been reserved or earmarked for remittance to the PPA.

Respondent likewise contends that, even assuming *arguendo,* that the contracts between respondent and the PPA do not partake the nature of regulations, it is apparent that the provisions of such contracts are for purposes of implementing the PPA's mandate under the Revised PPA Charter, as well as the following regulations issued by the Philippine Government, which further serve as basis for the earmarking of a percentage of respondent's revenues for remittance to the PPA. And that based on the existing Contracts for Cargo Handling Services between the PPA and respondent, as well as Letter of Instruction (LOI) No. 1005-A and PPA Memorandum Circular Nos. 37-90, 50-90, and 11-95, it is clear that with respect to the portion of respondent's revenues designated or earmarked as PPA fees, respondent does not recognize any income or gain which is taxable for LBT purposes because it simply functions as a collection agent or "pass-through entity" for and on behalf of PPA.

Moreover, petitioners cannot feign ignorance of the existence and contents of respondent's AFS for 2013 and 2014, considering that a copy of such AFS has long been submitted to petitioners in connection with their audit and examination of respondent's business records for taxable years 2013 to 2014. A perusal of petitioners' final decision on respondent's administrative protest, which was precisely the subject of respondent's judicial protest filed with the lower court, would show that petitioners relied on the AFS in their issuance of the disputed LBT assessment against respondent amounting to ₱33,363,565.80.

According to respondent, the instant case is purely legal in nature, *i.e.*, whether or not respondent's revenues earmarked for remittance to the PPA are subject to LBT, and does not concern any factual determination of the mathematical accuracy or computation of such PPA fees.

Finally, respondent points out that it is actually petitioners who have grossly misappreciated the relevance and application of the *PNB* case and *Manila Jockey Club* case to the case at bar.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

To *"earmark"* means *"to designate for a specific purpose."*[41] Property is said to be earmarked when it can be identified and distinguished from other property of the same nature.[42]

Indeed, it has already been jurisprudentially settled in the case of "*Philippine National Bank vs. Commissioner of Internal Revenue*" that amounts earmarked, whether delivered or received, do not form part of gross receipts, because these are **by law or regulation** reserved for some person other than the taxpayer.[43]

In other words, for an amount to be considered as *"earmarked"* and not forming part of gross receipts of a taxpayer, the following must be established, to wit:

1. the said amount must have been designated for a specific purpose;
2. it must be identifiable and distinguishable from other property of the same nature; and
3. there must be a law or regulation reserving the same for some other person.

As for the third requisite, *i.e.*, the existence of a law or regulation for the required earmarking, the Supreme Court, in *Visayan Cebu Terminal Co., Inc. vs. Commissioner of Internal*

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[41] The Merriam-Webster Dictionary, © 2005, p. 154.
[42] The Attorney's Pocket Dictionary, © 1981, p. 159.
[43] G.R. No. 158175, October 18, 2007.

Revenue (*Visayan Cebu Terminal* case),[44] has considered an arrastre management contract having the following provisions as a "regulation" *(infra)*, to wit:

> "2. During the period while this agreement remains in force and effective, the CONTRACTOR shall be, and the BUREAU does hereby appoint the CONTRACTOR, sole manager of the Arrastre Service at the Port of Cebu, ..., subject always, however, to the terms, conditions, restrictions, subjections, supervisions and provisions in this agreement contained...
>
> 23. It is further understood and agreed that in consideration of the rights and privileges granted the CONTRACTOR for the management of the Arrastre Service, **the Bureau shall receive twenty-eight per centum (28%) of the total monthly gross income derived from whatever source in connection with the operation of the Arrastre Service, payable monthly within ten (10) days of the succeeding month.**" *(Emphasis supplied)*

Thus, so long as a contract has a similar provision as the foregoing, the same may be deemed as a "regulation", for purposes of earmarking, so as not to be included in the taxpayer's gross receipts.

In the case *a quo*, respondent has shown the existence of certain contracts it entered into, as the "CONTRACTOR", with the PPA, containing provisions similar to that cited in the *Visayan Cebu Terminal* case, to wit:

> **Contract for Cargo Handling Services dated March 13, 1992:**[45]
>
> "Section 3.02 Payment of Government Share – In consideration of the rights and privileges granted to the CONTRACTOR and for the CONTRACTOR to share the burden of accelerated development, construction and maintenance of port facilities, the CONTRACTOR shall remit to the AUTHORITY (without prejudice to its right to impose direct/daily collection system) not later than the

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[44] G.R. Nos. L-19530 & 19444, February 27, 1965.

[45] Exhibit "K", RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 599 to 602.

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tenth (10) day of the succeeding month an amount equivalent to the monthly fixed fees on arrastre, stevedoring and terminal handling fees together with the Variable Fees as provided in Sections 3.03 and 3.04 hereof.

Section 3.03 Fixed Fee – The CONTRACTOR shall remit to the AUTHORITY in Philippine Pesos an annual fixed government fee equivalent to FOUR MILLION NINE HUNDRED NINETY SIX THOUSAND EIGHT HUNDRED AND FORTY SIX U.S. DOLLARS (U.S.$4,996,846.00) in twelve (12) monthly equal installments, payable not later than the 10th day of the succeeding month without need of demand. The Philippine Peso equivalent of U.S. Dollars shall be based on the reference rates of the Bankers Association of the Philippines or the equivalent reference rate at the time of payment is made. It is further understood that the fixed fee mentioned above is exclusive of the ten percent (10%) Value Added Tax.

Section 3.04 Variable Fee – In addition to the annual fixed fee, **the CONTRACTOR shall pay to the AUTHORITY a variable fee equivalent to five percentum (5%) on total gross income, whether collected or not**. Said variable fee is, likewise exclusive of the ten percent (10%) VAT. Total gross income shall mean all revenues derived from arrastre, stevedoring and all other related port services rendered by the CONTRACTOR pursuant to the provisions of this Contract. The fees to be paid to the AUTHORITY by Ocean Terminal Services, Inc. and 7-R Port Services, Inc. shall be those provided in their respective contracts modified under the terms of the Deeds of Assignment as approved by the Board of Directors of the AUTHORITY." *(Emphasis supplied)*

Third Supplement to the Contract for Cargo Handling and Related Services dated October 19, 2007:[46]

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[46] Exhibit "L", RTC Docket (Civil Case No. 15-134939) – Vol. II, pp. 603 to 607.

"Section 5. <u>Fees and Consideration for the Extended Term</u>

5.1 In addition to the initial investment of Four Hundred Million Philippine Pesos (Php400,000,000.00) already made by the Contractor, the Contractor shall invest One Hundred and Twenty Million Philippine Pesos (Ph₱120,000,000.00) for additional works and other costs related to the construction of the head office building of the Authority.

5.2 From May 19, 2013 (except otherwise indicated), up to the end of the Extended Term, the Contractor shall pay the Authority the following amounts:

a) Lump Sum Fee

The Contractor shall pay the Authority a lump sum fee in the amount of Two Hundred and Eighty-two Million Philippine Pesos (Ph₱282,000,000.00) on May 19, 2013.

b) Fees for International Containerized Cargo Operations

(i) Fixed annual fee in the amount of Nine Million United States Dollars (US$9,000,000.00); and
(ii) **Variable fee in the amount equivalent to twenty percent (20%) of gross revenues from international containerized cargo operations**;

c) Fees for International and Domestic Cargo Storage Operations

(i) Fixed annual fee in the amount of Fifty-five Million Philippine Pesos (Php 55,000,000.00);
(ii) In addition to the above fixed annual fee-

(1) **Variable fee in the amount equivalent to thirty percent (30%) of annual gross storage revenues from international cargo storage**

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operations in excess of Two Hundred and Seventy-three Million Pesos (Php 273,000,000.00), whether collected or uncollected.

(2) **Variable fee in the amount equivalent to ten percent (10%) of annual gross storage revenues from domestic cargo storage operations**, payable from the commencement of domestic operations, whether collected or uncollected.

d) Fees for Domestic Cargo Handling Operations

Government share of ten percent (10%) of gross revenues from all domestic cargo handling operations.

e) Adjunct Fee

If the actual international container volume throughput at the South Harbor exceeds 1,900,000 Twenty Equivalent Units ('TEUs') for any calendar year during the Extended Term, the Contractor shall pay an adjunct fee of Four and 63/100 United States Dollars (US$4.63) per TEU in excess of 1,900,000 TEUs. The obligation of the Contractor to pay adjunct fees shall cease in the calendar year the Contractor commences any civil works extending the capacity beyond 1,900,000 TEUs in accordance with port construction and development plans approved by the Authority.

5.3 Fees for International Non-containerized Cargo Operations

The Contractor shall pay to the Authority the following amounts-

a) **Government share in the amount equivalent to fourteen percent (14%) of gross stevedoring revenues from international non-containerized cargo operations**, payable from the date of

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effectivity of this Third Supplement up to the end of the Extended Term.

b) **Government share in the amount equivalent to twenty percent (20%) of gross arrastre revenues from international non-containerized cargo operations**, payable retroactive from June 1, 2007 up to the end of the Extended Term.

5.4 The Contractor shall pay the United States Dollar denominated fees in Philippine Pesos using the Philippine Dealing System US$-Ph₱ closing rate of the last trading day prior to the payment date. However, each party may request the other party the payment of the fixed fees in Section 5.2(b)(i) and/or the adjunct fees in Section 5.2(e) in United States Dollars (US$).

5.5 The fixed fees shall payable quarterly in advance not later than the fifth day of the first month of every quarter. The variable fees shall be payable quarterly in arrears not later than the fifth day of the first month of every quarter. For avoidance of doubt, the fees are payable on or before January 5, April 5, July 5, October 5 of every year of the Extended Term.

5.6 The adjunct fees shall be payable annually on or before January 31 of the year following the calendar year in which the 1,900,000 TEUs annual throughput of international containerized cargo has been exceeded."

Thus, based on the foregoing contractual provisions, respondent must comply with a government "regulation" requiring the reservation of certain amounts from respondent's gross income, or gross revenues from certain operations or activities, as the case may be, to be remitted to the PPA.

However, pointing to a legal provision or principle in a case to support an argument is one thing; proving whether one is covered by the same is quite another. The former involves a question of law; while the latter pertains to a question of fact.

There is a question of law when the doubt or difference is on what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference is on the truth or falsity of the facts alleged. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[47]

Hence, if at all, the question of law in this case is on whether the earmarked amounts, such as respondent's PPA fees, form part of the gross receipts of the taxpayer. This is so because such issue can be determined without reviewing or evaluating the evidence presented.

In the determination of the same, this Court or the Court *a quo* only need to refer to the legal provision, or legal principle embodied in prevailing jurisprudence. As already shown, said earmarked amounts may not form part of the taxpayer's gross receipts, so long as there is a law or regulation requiring the reservation of such amounts, pursuant to the *PNB* case.

In any event, the said question of law has already been addressed in this case, and We found that the PPA fees of respondent may be considered as earmarked amounts, not forming of its gross receipts so as to be subject to LBT, as it falls under the parameters laid down by the said jurisprudential pronouncements.

Nevertheless, the determination of the truthfulness or falsity of the amounts of ₱1,443,688,705.63 for 2013, and ₱2,006,367,198.61 for 2014, alleged to be representing PPA fees earmarked by respondent for the said years, involves a question of fact. This must be so because the resolution thereof entails the review or evaluation of the evidence submitted.

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[47] *Ericsson Telecommunications, Inc. vs. City of Pasig, et.al.,* G.R. No. 176667, November 22, 2007.

A careful examination of the evidence presented by respondent in the proceedings below would disclose that it has not presented any evidence to prove or establish the alleged amounts of ₱1,443,688,705.63 for 2013, and ₱2,006,367,198.61 for 2014, represent PPA fees earmarked by respondent for the said years.

Contrary to the assertions of respondent, it should have established that the said amounts were actually "earmarked" by clear and convincing evidence, one of which is respondent's AFS covering the years 2013 and 2014. This holds true because two of the sub-issues raised by respondent itself in the proceedings below are as follows:

> "1.a) Whether or not [respondent]'s PPA Fees **amounting to P1,443,688,705.65 for 2013 and P2,006,367,198.61 for 2014** should be treated as part of Petitioner's income which is taxable for LBT purposes;
>
> xxx xxx xxx
>
> 1.e.) Whether or not **the presentation of the PPA Fees in [respondent]'s Audited Financial Statements ('AFS') conclusively determines the nature and proper treatment of such fees.**"[48]

In view of this latter sub-issue, respondent's AFS covering the years 2013 and 2014 must have been offered and admitted in evidence, for without which it cannot be determined if indeed in the said AFS, the presentation of the PPA fees conclusively determined the nature and proper treatment thereof.

Furthermore, respondent made the following allegations in its *Petition for Review* in Civil Case No. 15-134939, viz:

> "...we concede that [respondent] did not present the PPA Fees as a separate item from its Revenues from Operations in its AFS for 2013 and 2014. While we note that for the taxable years prior to 2013, the revenues reported by [respondent] in its AFS were net of the PPA Fees, **we respectfully submit that the change in the presentation of [respondent]'s revenues <u>in its AFS</u> for**

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[48] Issues to be Resolved, Pre-Trial Order dated December 9, 2016, RTC Docket (Civil Case No. 15-134939) – Vol. I, pp. 487 and 488.

> **2013 and 2014 was merely a matter of form and does not in any way affect the nature of such PPA Fees as earmarked amounts which belong to and are held in trust for the PPA.**"[49] *(Emphasis and underscoring supplied)*

The foregoing allegations require proof, and apparently requires the presentation of respondent's AFS for 2013 and 2014. Without the said proof, it cannot be determined whether indeed the change in the presentation of respondent's revenues was merely a matter of form and does not in any way affect the nature of the PPA fees as earmarked.

The basic rule is that he who alleges must prove his case.[50] A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence.[51]

Interestingly, while respondent attached some pages of its AFS for 2013 and 2014 in its *Petition for Review* in Civil Case No. 15-134939, it chose not to present and offer in evidence the whole version thereof during the trial of the said case. Reasonably, this give rise to the presumption that evidence willfully suppressed would be adverse if produced.[52]

More importantly, as regards the above-quoted first sub-issue, the amounts of PPA fees for the years 2013 and 2014 must be determined so as to know how much exactly should be excluded from the gross revenues of respondent, in the computation of the LBT accruing for the said years.

Nonetheless, in not submitting evidence to prove the amount of PPA fees, respondent cannot validly invoke the cases of *Commissioner of Internal Revenue vs. Tours Specialists, Inc., et al.*[53] (*Tours Specialists* case) and *Visayan Cebu Terminal Co., Inc. vs. Commissioner of Internal Revenue*[54] (*Visayan Cebu Terminal* case).

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[49] Par. 51, Petition for Review, RTC Docket (Civil Case No. 15-134939) – Vol. I, p. 25.
[50] *Lim vs. Equitable PCI Bank*, G.R. No. 183918, January 15, 2014.
[51] *Spouses Nilo Ramos and Eliadora Ramos vs. Obispo, et al.*, G.R. No. 193804, February 27, 2013.
[52] Section 3(e), Rule 131 of the Rules of Court.
[53] G.R. No. 66416, March 21, 1990.
[54] G.R. Nos. L-19530 & 19444, February 27, 1965.

In the *Tours Specialists* case, the Supreme Court said:

> "In essence, the petitioner's assertion that the hotel room charges entrusted to the private respondent were part of the package fee paid by foreign tourists to the respondent is not correct. **<u>The evidence is clear</u> to the effect that the amounts entrusted to the private respondent were exclusively for payment of hotel room charges of foreign tourists entrusted to it by foreign travel agencies.**
>
> xxx xxx xxx
>
> In the case of *Commissioner of Internal Revenue v. Manila Jockey Club, Inc. (supra)*, the Commissioner appealed two decisions of the Court of Tax Appeals disapproving his levy of amusement taxes upon the Manila Jockey Club, a duly constituted corporation authorized to hold horse races in Manila. **<u>The facts of the case</u> show that the monies sought to be taxed never really belonged to the club.** xxx." *(Emphases and underscoring supplied)*

Hence, in the foregoing case, the amounts earmarked for which they were reserved or earmarked is undisputed. Specifically, unlike in the *Tours Specialists* and *Manila Jockey Club* cases, the evidence in the instant case is not clear that the amounts of ₱1,443,688,705.63 for 2013, and ₱2,006,367,198.61 for 2014, were exclusively for the remittance of, or earmarked as, PPA fees.

Likewise, in the *Visayan Cebu Terminal* case, the High Court found:

> "The Commissioner of Internal Revenue, on his part, contends that the 28% received by the Bureau of Customs constitutes 'a business expense of the respondent, which is not deductible from the latter's gross receipts for purposes of the 3% tax imposed by Section 191 of the Tax Code.' In exempting the petitioner from the payment of 3% tax on the 28% given to the Bureau of Customs, the CTA cited the case of *Manila Jockey Club v. Collector*, *supra*, wherein this Court, among others, has said:

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> 'Needless to say, gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor.'
>
> The Commissioner, however, postulates that the above ruling is not applicable to the instant case, for there is no law or regulation which specifically earmarks 8% of the total monthly gross receipts derived from the arrastre service in question, for the Bureau of Customs. Republic Act No. 140, amending Act No. 3002 and Comm. Act No. 285, under which the management agreement was entered into does not so provide. Withal, **<u>it is not disputed</u> that said amount had been given to the Bureau of Customs under the authority of par. 23 of the Management Contract, heretofore reproduced, which can be lawfully construed as 'regulation'.** As the learned trial Court has aptly observed: 'x x x the government could not have intended to consider as gross receipts the 28% that went to one of its institutions, the Bureau of Customs, and thereby collect percentage tax on it from petitioner. To hold petitioner liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code.'" *(Emphases and underscoring supplied)*

Based on the foregoing, it can be easily surmised that there is no factual dispute that the subject earmarked amount had been given to the concerned government agency. Hence, there is no necessity to present evidence to prove the said amount.

In the instant case, there is still a question of whether the amounts of ₱1,443,688,705.63 for 2013, and ₱2,006,367,198.61 for 2014, are the true amounts of the subject PPA fees.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. The assailed Decision dated November 2, 2017 and Order dated February 7, 2018, both rendered by the Manila RTC – Branch 7, in Civil Case No. 15-134939, are **REVERSED** and **SET ASIDE**.

Accordingly, respondent is **ORDERED TO PAY** petitioners the amount of **₱33,363,565.80**, representing respondent's deficiency LBT for the years 2013 and 2014.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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