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FIRST DIVISION

[G.R. No. 181277. July 3, 2013]

SWEDISH MATCH PHILIPPINES, INC., *petitioner, vs.* **THE TREASURER OF THE CITY OF MANILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; A VERIFICATION SIGNED WITHOUT AUTHORITY FROM THE BOARD OF DIRECTORS IS DEFECTIVE; THE REQUIREMENT OF VERIFICATION IS, HOWEVER, SIMPLY A CONDITION AFFECTING THE FORM OF THE PLEADING AND NON-COMPLIANCE DOES NOT NECESSARILY RENDER THE PLEADING FATALLY DEFECTIVE.— The power of a corporation to sue and be sued is lodged in the board of directors, which exercises its corporate powers. It necessarily follows that "an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors." Thus, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors. Consequently, a verification signed without an authority from the board of directors is defective. However, the requirement of verification is simply a condition affecting the form of the pleading and non-compliance does not necessarily render the pleading *fatally* defective. The court may in fact order the correction of the pleading if verification is lacking or, it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed with so that the ends of justice may be served.

2. ID.; ID.; ID.; ID.; ID.; BY SUBMITTING THE PROOF OF AUTHORITY FROM THE BOARD OF DIRECTORS, PETITIONER-CORPORATION RATIFIED THE AUTHORITY OF IT'S FINANCE MANAGER TO

Supreme Court E-Library

REPRESENT IT IN THE PETITION FILED BEFORE THE TRIAL COURT AND CONSEQUENTLY TO SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING ON BEHALF OF THE CORPORATION.— In this case, it is undisputed that the Petition filed with the RTC was accompanied by a Verification and Certification of Non-Forum Shopping signed by Ms. Beleno, although without proof of authority from the board. However, this Court finds that the belated submission of the Secretary's Certificate constitutes substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure. A perusal of the Secretary's Certificate signed by petitioner's Corporate Secretary Rafael Khan and submitted to the RTC shows that not only did the corporation authorize Ms. Beleno to execute the required Verifications and/or Certifications of Non-Forum Shopping, but it likewise ratified her act of filing the Petition with the RTC. x x x. Additionally, it may be remembered that the Petition filed with the RTC was a claim for a refund of business taxes. x x x. Thus, for this particular case, Ms. Beleno, as finance director, may be said to have been in a position to verify the truthfulness and correctness of the allegations in the claim for a refund of the corporation's business taxes. In *Mediserv v. Court of Appeals*, we said that a liberal construction of the rules may be invoked in situations in which there may be some excusable formal deficiency or error in a pleading, provided that the invocation thereof does not subvert the essence of the proceeding, but at least connotes a reasonable attempt at compliance with the rules. After all, rules of procedure are not to be applied in a very rigid, technical manner, but are used only to help secure substantial justice.

3. TAXATION; LOCAL TAXATION; MANILA REVENUE CODE; DOUBLE TAXATION, DEFINED; THERE IS DOUBLE TAXATION IF RESPONDENT IS SUBJECTED TO TAXES UNDER SECTIONS 14 AND 21 OF TAX ORDINANCE NO. 7794.— At the outset, it must be pointed out that the issue of double taxation is not novel, as it has already been settled by this Court in *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*, in this wise: Petitioners obstinately ignore the exempting proviso in Section 21 of Tax Ordinance No. 7794, to their own detriment. Said exempting proviso was precisely included in said section so as to avoid

Supreme Court E-Library

double taxation. Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character. Using the aforementioned test, the Court finds that **there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.**

4. ID.; ID.; ID.; ID.; ID.; SECTION 143 OF THE LOCAL GOVERNMENT CODE, WHICH IS THE SOURCE OF THE POWER OF CITIES AND MUNICIPALITIES TO IMPOSE A LOCAL BUSINESS TAX, REVISITED.— The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that **when a municipality or city has already imposed a business tax on manufacturers, *etc*. of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, *etc*. to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "not otherwise specified in preceding paragraphs." In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance**

Supreme Court E-Library

No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC]. x x x Further, we agree with petitioner that Ordinance Nos. 7988 and 8011 cannot be the basis for the collection of business taxes. In *Coca-Cola,* this Court had the occasion to rule that Ordinance Nos. 7988 and 8011 were null and void for failure to comply with the required publication for three (3) consecutive days.

5. ID.; ID.; ID.; ID.; ID.; ID.; REFUND OF PAYMENT MADE FOR BUSINESS TAX OF A PERSON SUBJECTED TO DOUBLE TAXATION, PROPER; CASE AT BAR.— Accordingly, respondent's assessment under both Sections 14 and 21 had no basis. Petitioner is indeed liable to pay business taxes to the City of Manila; nevertheless, considering that the former has already paid these taxes under Section 14 of the Manila Revenue Code, it is exempt from the same payments under Section 21 of the same code. Hence, payments made under Section 21 must be refunded in favor of petitioner. It is undisputed that petitioner paid business taxes based on Sections 14 and 21 for the fourth quarter of 2001 in the total amount of ₱470,932.21. Therefore, it is entitled to a refund of ₱164,552.04 corresponding to the payment under Section 21 of the Manila Revenue Code.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Renato G. Dela Cruz and Editha C. Fernandez for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari*[1] filed by Swedish Match Philippines, Inc. (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Tax

[1] *Rollo,* pp. 26-75.

Supreme Court E-Library

Appeals *En Banc* (CTA *En Banc*) Decision[2] dated 1 October 2007 and Resolution[3] dated 14 January 2008 in C.T.A. EB No. 241.

THE FACTS

On 20 October 2001, petitioner paid business taxes in the total amount of ₱470,932.21.[4] The assessed amount was based on Sections 14[5] and 21[6] of Ordinance No. 7794, otherwise known

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[2] *Id*. at 76-87; penned by Associate Justice Juanito C. Castañeda Jr. and concurred in by then Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. The CTA *En Banc* affirmed the Decision dated 8 August 2006 and Resolution dated 27 November 2006 rendered by the CTA Second Division in C.T.A. AC No. 6, which affirmed the dismissal of petitioner's claim for a refund. The claim was dismissed by the Regional Trial Court (RTC) of Manila, Branch 21 on the ground of lack of legal capacity to sue and failure to establish a cause of action.

[3] *Id*. at 88-90.

[4] *Id*. at 269.

[5] SEC. 14. *Tax on Manufacturers, Assemblers and other Processors*. — There is hereby imposed a graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers and compounders of liquors, distilled spirits, and wines on manufacturers of any articles of commerce of whatever kind or nature in accordance with the following schedule.

With gross receipts or sales for the preceding calendar year in the amount of:

xxx.

[6] SEC. 21. *Tax on Business 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 person who sells goods and services in the course of trade or businesses; xxx

PROVIDED, that all registered businesses in the City of Manila already paying the aforementioned tax shall be exempted from payment thereof.

Supreme Court E-Library

as the Manila Revenue Code, as amended by Ordinance Nos. 7988 and 8011. Out of that amount, ₱164,552.04 corresponded to the payment under Section 21.[7]

Assenting that it was not liable to pay taxes under Section 21, petitioner wrote a letter[8] dated 17 September 2003 to herein respondent claiming a refund of business taxes the former had paid pursuant to the said provision. Petitioner argued that payment under Section 21 constituted double taxation in view of its payment under Section 14.

On 17 October 2003, for the alleged failure of respondent to act on its claim for a refund, petitioner filed a Petition for Refund of Taxes[9] with the RTC of Manila in accordance with Section 196 of the Local Government Code of 1991. The Petition was docketed as Civil Case No. 03-108163.

On 14 June 2004, the Regional Trial Court (RTC), Branch 21 of Manila rendered a Decision[10] in Civil Case No. 03-108163 dismissing the Petition for the failure of petitioner to plead the latter's capacity to sue and to state the authority of Tiarra T. Batilaran-Beleno (Ms. Beleno), who had executed the Verification and Certification of Non-Forum Shopping.

In denying petitioner's Motion for Reconsideration, the RTC went on to say that Sections 14 and 21 pertained to taxes of a different nature and, thus, the elements of double taxation were wanting in this case.

On appeal, the CTA Second Division affirmed the RTC's dismissal of the Petition for Refund of Taxes on the ground that petitioner had failed to state the authority of Ms. Beleno to institute the suit.

The CTA *En Banc* likewise denied the Petition for Review, ruling as follows:

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[7] *Supra* note 1, at 190-191.

[8] *Id*. at 263-268.

[9] *Id*. at 284-296.

[10] *Id*. at 254-257.

Supreme Court E-Library

In this case, the plaintiff is the Swedish Match Philippines, Inc. However, as found by the RTC as well as the Court in Division, the signatory of the verification and/or certification of non-forum shopping is Ms. Beleno, the company's Finance Manager, and that there was no board resolution or secretary's certificate showing proof of Ms. Beleno's authority in acting in behalf of the corporation at the time the initiatory pleading was filed in the RTC. It is therefore, correct that the case be dismissed.

WHEREFORE, premises considered, the petition for review is hereby **DENIED.** Accordingly, the assailed Decision and the Resolution dated August 8, 2006 and November 27, 2006, respectively, are hereby **AFFIRMED *in toto.***

SO ORDERED.[11]

ISSUES

In order to determine the entitlement of petitioner to a refund of taxes, the instant Petition requires the resolution of two main issues, to wit:

1) Whether Ms. Beleno was authorized to file the Petition for Refund of Taxes with the RTC; and

2) Whether the imposition of tax under Section 21 of the Manila Revenue Code constitutes double taxation in view of the tax collected and paid under Section 14 of the same code.[12]

THE COURT'S RULING

Authority from the board to sign the Verification and Certification of Non-Forum Shopping

Anent the procedural issue, petitioner argues that there can be no dispute that Ms. Beleno was acting within her authority when she instituted the Petition for Refund before the RTC, notwithstanding that the Petition was not accompanied by a

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[11] *Id*. at 86.

[12] *Id*. at 34-35.

Supreme Court E-Library

Secretary's Certificate. Her authority was ratified by the Board in its Resolution adopted on 19 May 2004. Thus, even if she was not authorized to execute the Verification and Certification at the time of the filing of the Petition, the ratification by the board of directors retroactively applied to the date of her signing.

On the other hand, respondent contends that petitioner failed to establish the authority of Ms. Beleno to institute the present action on behalf of the corporation. Citing *Philippine Airlines v. Flight Attendants and Stewards Association of the Philippines (PAL v. FASAP)*,[13] respondent avers that the required certification of non-forum shopping should have been valid at the time of the filing of the Petition. The Petition, therefore, was defective due to the flawed Verification and Certification of Non-Forum Shopping, which were insufficient in form and therefore a clear violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure.

We rule for petitioner.

Time and again, this Court has been faced with the issue of the validity of the verification and certification of non-forum shopping, absent any authority from the board of directors.

The power of a corporation to sue and be sued is lodged in the board of directors, which exercises its corporate powers.[14] It necessarily follows that "an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors."[15] Thus, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[16]

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[13] 515 Phil. 579, 584 (2006).

[14] *Cebu Metro Pharmacy, Inc. v. Euro-Med Laboratories, Philippines, Inc.*, G.R. No. 164757, 18 October 2010, 633 SCRA 320, 328.

[15] *Id*. at 329.

[16] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981, 994 (2001).

Supreme Court E-Library

Consequently, a verification signed without an authority from the board of directors is defective. However, the requirement of verification is simply a condition affecting the form of the pleading and non-compliance does not necessarily render the pleading *fatally* defective.[17] The court may in fact order the correction of the pleading if verification is lacking or, it may act on the pleading although it may not have been verified, where it is made evident that strict compliance with the rules may be dispensed with so that the ends of justice may be served.[18]

Respondent cites this Court's ruling in *PAL v. FASAP*,[19] where we held that only individuals vested with authority by a valid board resolution may sign a certificate of non-forum shopping on behalf of a corporation. The petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.[20] In a number of cases, however, we have recognized exceptions to this rule. *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*[21] provides:

> In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc., v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd. (Lepanto)*, we ruled that the

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[17] *Id.* at 994-995.

[18] *Id.* at 995.

[19] *Supra* note 13, at 582.

[20] *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*, G.R. No. 179488, 23 April 2012.

[21] G.R. No. 151413, 13 February 2008, 545 SCRA 10, 18-19.

Supreme Court E-Library

Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. **The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."** (Emphases supplied)

Given the present factual circumstances, we find that the liberal jurisprudential exception may be applied to this case.

A distinction between noncompliance and substantial compliance with the requirements of a certificate of non-forum shopping and verification as provided in the Rules of Court must be made.[22] In this case, it is undisputed that the Petition filed with the RTC was accompanied by a Verification and Certification of Non-Forum Shopping signed by Ms. Beleno, although without proof of authority from the board. However, this Court finds that the belated submission of the Secretary's Certificate constitutes substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure.

A perusal of the Secretary's Certificate signed by petitioner's Corporate Secretary Rafael Khan and submitted to the RTC shows that not only did the corporation authorize Ms. Beleno to execute the required Verifications and/or Certifications of

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[22] *Mediserv, Inc. v. Court of Appeals (Special Former 13th Division)*, G.R. No. 161368, 5 April 2010, 617 SCRA 284, 296.

Supreme Court E-Library

Non-Forum Shopping, but it likewise ratified her act of filing the Petition with the RTC. The Minutes of the Special Meeting of the Board of Directors of petitioner-corporation on 19 May 2004 reads:

> RESOLVED, that Tiarra T. Batilaran-Beleno, Finance Director of the Corporation, be authorized, as she is hereby authorized and empowered to represent, act, negotiate, sign, conclude and deliver, for and in the name of the Corporation, any and all documents for the application, prosecution, defense, arbitration, conciliation, execution, collection, compromise or settlement of all local tax refund cases pertaining to payments made to the City of Manila pursuant to Section 21 of the Manila Revenue Code, as amended;
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> RESOLVED, FURTHER, that Tiarra T. Batilaran-Beleno be authorized to execute Verifications and/or Certifications as to Non-Forum Shopping of Complaints/Petitions that may be filed by the Corporation in the above-mentioned tax-refund cases;
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> **RESOLVED, FURTHER, that the previous institution by Tiarra T. Batilaran-Beleno of tax refund cases on behalf of the Corporation, specifically Civil Cases Nos. 01-102074, 03-108163, and, 04-109044, all titled "Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila" and pending in the Regional Trial Court of Manila, as well as her execution of the Verifications and/or Certifications as to Non-Forum Shopping in these tax refund cases, are hereby, approved and ratified in all respects**. (Emphasis supplied)

Clearly, this is not an ordinary case of belated submission of proof of authority from the board of directors. Petitioner-corporation ratified the authority of Ms. Beleno to represent it in the Petition filed before the RTC, particularly in Civil Case No. 03-108163, and consequently to sign the verification and certification of non-forum shopping on behalf of the corporation. This fact confirms and affirms her authority and gives this Court all the more reason to uphold that authority.[23]

Additionally, it may be remembered that the Petition filed with the RTC was a claim for a refund of business taxes. It

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[23] *Supra* note 14, at 330-331.

Supreme Court E-Library

should be noted that the nature of the position of Ms. Beleno as the corporation's finance director/manager is relevant to the determination of her capability and sufficiency to verify the truthfulness and correctness of the allegations in the Petition. A finance director/manager looks after the overall management of the financial operations of the organization and is normally in charge of financial reports, which necessarily include taxes assessed and paid by the corporation. Thus, for this particular case, Ms. Beleno, as finance director, may be said to have been in a position to verify the truthfulness and correctness of the allegations in the claim for a refund of the corporation's business taxes.

In *Mediserv v. Court of Appeals*,[24] we said that a liberal construction of the rules may be invoked in situations in which there may be some excusable formal deficiency or error in a pleading, provided that the invocation thereof does not subvert the essence of the proceeding, but at least connotes a reasonable attempt at compliance with the rules. After all, rules of procedure are not to be applied in a very rigid, technical manner, but are used only to help secure substantial justice.[25]

More importantly, taking into consideration the substantial issue of this case, we find a special circumstance or compelling reason to justify the relaxation of the rule. Therefore, we deem it more in accord with substantive justice that the case be decided on the merits.

Double taxation

As to the substantive issues, petitioner maintains that the enforcement of Section 21 of the Manila Revenue Code constitutes double taxation in view of the taxes collected under Section 14 of the same code. Petitioner points out that Section 21 is not in itself invalid, but the enforcement of this provision would constitute double taxation if business taxes have already been paid under Section 14 of the same revenue code. Petitioner further

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[24] *Supra* note 22.

[25] *Id*. at 296-297.

Supreme Court E-Library

argues that since Ordinance Nos. 7988 and 8011 have already been declared null and void in *Coca-Cola Bottlers Philippines, Inc. v. City of Manila*,[26] all taxes collected and paid on the basis of these ordinances should be refunded.

In turn, respondent argues that Sections 14 and 21 pertain to two different objects of tax; thus, they are not of the same kind and character so as to constitute double taxation. Section 14 is a tax on manufacturers, assemblers, and other processors, while Section 21 applies to businesses subject to excise, value-added, or percentage tax. Respondent posits that under Section 21, petitioner is merely a withholding tax agent of the City of Manila.

At the outset, it must be pointed out that the issue of double taxation is not novel, as it has already been settled by this Court in *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*,[27] in this wise:

> Petitioners obstinately ignore the exempting proviso in Section 21 of Tax Ordinance No. 7794, to their own detriment. Said exempting proviso was precisely included in said section so as to avoid double taxation.
>
> Double taxation means taxing the same property twice when it should be taxed only once; that is, "taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character.
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> Using the aforementioned test, the Court finds that **there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila**

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[26] 526 Phil. 249 (2006).

[27] G.R. No. 181845, 4 August 2009, 595 SCRA 299.

Supreme Court E-Library

contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business.

The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that **when a municipality or city has already imposed a business tax on manufacturers, *etc*. of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, *etc*. to a business tax under Section 143(h) of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "not otherwise specified in preceding paragraphs." In the same way, businesses such as respondent's, already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC].**[28] (Emphases supplied)

Based on the foregoing reasons, petitioner should not have been subjected to taxes under Section 21 of the Manila Revenue Code for the fourth quarter of 2001, considering that it had already been paying local business tax under Section 14 of the same ordinance.

Further, we agree with petitioner that Ordinance Nos. 7988 and 8011 cannot be the basis for the collection of business taxes. In *Coca-Cola*,[29] this Court had the occasion to rule that Ordinance Nos. 7988 and 8011 were null and void for failure to comply

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[28] *Id*. at 320-322.

[29] *Supra* note 26.

Supreme Court E-Library

with the required publication for three (3) consecutive days. Pertinent portions of the ruling read:

It is undisputed from the facts of the case that Tax Ordinance No. 7988 has already been declared by the DOJ Secretary, in its Order, dated 17 August 2000, as null and void and without legal effect due to respondents' failure to satisfy the requirement that said ordinance be published for three consecutive days as required by law. Neither is there quibbling on the fact that the said Order of the DOJ was never appealed by the City of Manila, thus, it had attained finality after the lapse of the period to appeal.

Furthermore, the RTC of Manila, Branch 21, in its Decision dated 28 November 2001, reiterated the findings of the DOJ Secretary that respondents failed to follow the procedure in the enactment of tax measures as mandated by Section 188 of the Local Government Code of 1991, in that they failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of local circulation. From the foregoing, it is evident that Tax Ordinance No. 7988 is null and void as said ordinance was published only for one day in the 22 May 2000 issue of the Philippine Post in contravention of the unmistakable directive of the Local Government Code of 1991.

Despite the nullity of Tax Ordinance No. 7988, the court *a quo*, in the assailed Order, dated 8 May 2002, went on to dismiss petitioner's case on the force of the enactment of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988. Significantly, said amending ordinance was likewise declared null and void by the DOJ Secretary in a Resolution, dated 5 July 2001, elucidating that "*[I]nstead of amending Ordinance No. 7988, [herein] respondent should have enacted another tax measure which strictly complies with the requirements of law, both procedural and substantive.* ***The passage of the assailed ordinance did not have the effect of curing the defects of Ordinance No. 7988 which, anyway, does not legally exist.***" Said Resolution of the DOJ Secretary had, as well, attained finality by virtue of the dismissal with finality by this Court of respondents' Petition for Review on *Certiorari* in G.R. No. 157490 assailing the dismissal by the RTC of Manila, Branch 17, of its appeal due to lack of jurisdiction in its Order, dated 11 August 2003.[30] (Emphasis in the original)

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[30] *Id.* at 260-261.

Supreme Court E-Library

Accordingly, respondent's assessment under both Sections 14 and 21 had no basis. Petitioner is indeed liable to pay business taxes to the City of Manila; nevertheless, considering that the former has already paid these taxes under Section 14 of the Manila Revenue Code, it is exempt from the same payments under Section 21 of the same code. Hence, payments made under Section 21 must be refunded in favor of petitioner.

It is undisputed that petitioner paid business taxes based on Sections 14 and 21 for the fourth quarter of 2001 in the total amount of ₱470,932.21.[31] Therefore, it is entitled to a refund of ₱164,552.04[32] corresponding to the payment under Section 21 of the Manila Revenue Code.

WHEREFORE, premises considered, the instant Petition is **GRANTED.** Accordingly, the Court of Tax Appeals *En Banc* Decision dated 1 October 2007 and Resolution dated 14 January 2008 are **REVERSED** and **SET ASIDE.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.*, concur.

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[31] Respondent's Answer filed with the RTC of Manila in Civil Case No. 03108163, *supra* note 1, at 148.

[32] Annex "C" of the Petition, *id*. at 91.