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THIRD DIVISION

[G.R. No. 181845. August 4, 2009]

THE CITY OF MANILA, LIBERTY M. TOLEDO, in her capacity as THE TREASURER OF MANILA and JOSEPH SANTIAGO, in his capacity as the CHIEF OF THE LICENSE DIVISION OF CITY OF MANILA, *petitioners, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS (CTA); REVISED RULES OF THE COURT OF TAX APPEALS; 30-DAY ORIGINAL PERIOD FOR FILING A PETITION FOR REVIEW WITH THE (CTA) UNDER SECTION 11 OF R.A. 9282, AS IMPLEMENTED BY SECTION 3(a), RULE 8 OF THE REVISED RULES OF THE CTA MAY BE EXTENDED FOR A PERIOD OF 15 DAYS FOLLOWING BY ANALOGY SECTION 1, RULE 42 OF THE REVISED RULES OF CIVIL PROCEDURE; NO FURTHER EXTENSION SHALL BE ALLOWED THEREAFTER EXCEPT ONLY FOR COMPELLING REASONS, IN WHICH CASE THE EXTENDED PERIOD SHALL NOT EXCEED 15 DAYS.— The period to appeal the decision or ruling of the RTC to the CTA *via* a Petition for Review is specifically governed by Section 11 of Republic Act No. 9282, and Section 3(a), Rule 8 of the Revised Rules of the CTA. It is crystal clear from provisions that to appeal an adverse decision or ruling of the RTC to the CTA, the taxpayer must file a **Petition for Review** with the CTA **within 30 days** from receipt of said adverse decision or ruling of the RTC. It is also true that the same provisions are silent as to whether such 30-day period can be extended or not. However, Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA **following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure**. Section 1, Rule 42 of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15-day period from

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receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only **for the most compelling reasons,** another extended period not to exceed 15 days from the lapse of the first extended period. Following by analogy Section 1, Rule 42 of the Revised Rules of Civil Procedure, the **30-day** original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of **15 days**. No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed **15 days**.

2. ID.; ID.; ID.; PETITION FOR REVIEW FILED WITHIN THE REGLEMENTARY PERIOD; THE COURT OF TAX APPEALS FIRST DIVISION SHOULD HAVE GRANTED THE FIRST MOTION FOR EXTENSION OF PETITIONERS AS IT WAS SANCTIONED BY THE RULES OF PROCEDURE.— Even the CTA *en banc*, in its Decision dated 18 January 2008, recognizes that the 30-day period within which to file the Petition for Review with the CTA may, indeed, be extended, thus: Being suppletory to R.A. 9282, the 1997 Rules of Civil Procedure allow an additional period of fifteen (15) days for the movant to file a Petition for Review, upon Motion, and payment of the full amount of the docket fees. A further extension of fifteen (15) days may be granted on compelling reasons in accordance with the provision of Section 1, Rule 42 of the 1997 Rules of Civil Procedure x x x. In this case, the CTA First Division did indeed err in finding that petitioners failed to file their Petition for Review in C.T.A. AC No. 31 within the reglementary period. From **20 April 2007**, the date petitioners received a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order, petitioners had 30 days, or until **20 May 2007**, within which to file their Petition for Review with the CTA. Hence, the Motion for Extension filed by petitioners on 4 May 2007 – grounded on their belief that the reglementary period for filing their Petition for Review with the CTA was to expire on 5 May 2007, thus, compelling them to seek an extension of 15 days, or until **20 May 2007**, to file said Petition – was unnecessary and superfluous. Even without said Motion for Extension, petitioners could file their Petition for Review until 20 May 2007, as it was still within the 30-day reglementary

period provided for under Section 11 of Republic Act No. 9282; and implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA. The Motion for Extension filed by the petitioners on 18 May 2007, prior to the lapse of the 30-day reglementary period on 20 May 2007, in which they prayed for another extended period of 10 days, or until **30 May 2007**, to file their Petition for Review was, in reality, only the first Motion for Extension of petitioners. The CTA First Division should have granted the same, as it was sanctioned by the rules of procedure. In fact, petitioners were only praying for a 10-day extension, five days less than the 15-day extended period allowed by the rules. Thus, when petitioners filed *via* registered mail their Petition for Review in C.T.A. AC No. 31 on **30 May 2007,** they were able to comply with the reglementary period for filing such a petition.

3. ID.; ID.; ID.; PETITIONERS FAILED TO CONFORM TO SECTION 4 OF RULE 5, AND SECTION 2 OF RULE 6 OF THE REVISED RULES OF THE COURT OF TAX APPEALS; RELAXATION OF THE RULES CANNOT BE APPLIED SINCE PETITIONERS NEVER OFFERED ANY EXPLANATION OR JUSTIFICATION FOR THEIR NON-COMPLIANCE.— As found by the CTA First Division and affirmed by the CTA *en banc*, the Petition for Review filed by petitioners *via* registered mail on 30 May 2007 consisted only of one copy and all the attachments thereto, including the Decision dated 14 July 2006; and that the assailed Orders dated 16 November 2006 and 4 April 2007 of the RTC in Civil Case No. 03-107088 were mere machine copies. Evidently, petitioners did not comply at all with the requirements set forth under Section 4, Rule 5; or with Section 2, Rule 6 of the Revised Rules of the CTA. Although the Revised Rules of the CTA do not provide for the consequence of such non-compliance, Section 3, Rule 42 of the Rules of Court may be applied suppletorily, as allowed by Section 1, Rule 7 of the Revised Rules of the CTA. Section 3, Rule 42 of the Rules of Court reads: **SEC. 3.** *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the **dismissal** thereof. True, petitioners subsequently submitted certified copies of the Decision dated

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14 July 2006 and assailed Orders dated 16 November 2006 and 4 April 2007 of the RTC in Civil Case No. 03-107088, but a closer examination of the stamp on said documents reveals that they were prepared and certified only on 14 August 2007, about two months and a half after the filing of the Petition for Review by petitioners. Petitioners never offered an explanation for their non-compliance with Section 4 of Rule 5, and Section 2 of Rule 6 of the Revised Rules of the CTA. Hence, although the Court had, in previous instances, relaxed the application of rules of procedure, it cannot do so in this case for lack of any justification.

4. ID.; LOCAL TAXATION; RESPONDENT CANNOT BE TAXED AND ASSESSED UNDER TAX ORDINANCE NO. 7988 AND TAX ORDINANCE NO. 8011 WHICH WERE DECLARED NULL AND VOID AND WITHOUT ANY LEGAL EFFECT.— Even assuming *arguendo* that the Petition for Review of petitioners in C.T.A. AC No. 31 should have been given due course by the CTA First Division, it is still dismissible for lack of merit. Contrary to the assertions of petitioners, the *Coca-Cola* case is indeed applicable to the instant case. The pivotal issue raised therein was whether Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void, which this Court resolved in the affirmative. Tax Ordinance No. 7988 was declared by the Secretary of the Department of Justice (DOJ) as null and void and without legal effect due to the failure of herein petitioner City of Manila to satisfy the requirement under the law that said ordinance be published for three consecutive days. Petitioner City of Manila never appealed said declaration of the DOJ Secretary; thus, it attained finality after the lapse of the period for appeal of the same. The passage of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988, did not cure the defects of the latter, which, in any way, did not legally exist. By virtue of the *Coca-Cola* case, Tax Ordinance No. 7988 and Tax Ordinance No. 8011 are null and void and without any legal effect. Therefore, respondent cannot be taxed and assessed under the amendatory laws—Tax Ordinance No. 7988 and Tax Ordinance No. 8011.

5. ID.; ID.; CONSIDERING THE NULLITY OF TAX ORDINANCE NO. 7988 AND TAX ORDINANCE NO. 8011, RESPONDENT SHOULD NOT HAVE BEEN SUBJECTED TO THE LOCAL BUSINESS TAX UNDER SECTION 21 OF TAX ORDINANCE NO. 7794 FOR THE THIRD AND

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FOURTH QUARTERS OF 2000, GIVEN ITS EXEMPTION THEREFROM SINCE IT WAS ALREADY PAYING THE LOCAL BUSINESS TAX UNDER SECTION 14 OF THE SAME ORDINANCE.— Emphasis must be given to the fact that prior to the passage of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 by petitioner City of Manila, petitioners subjected and assessed respondent only for the local business tax under Section 14 of Tax Ordinance No. 7794, but never under Section 21 of the same. This was due to the clear and unambiguous *proviso* in Section 21 of Tax Ordinance No. 7794, which stated that "all registered business in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof." The "aforementioned tax" referred to in said *proviso* refers to local business tax. Stated differently, Section 21 of Tax Ordinance No. 7794 exempts from the payment of the local business tax imposed by said section, businesses that are already paying such tax under other sections of the same tax ordinance. The said *proviso*, however, was deleted from Section 21 of Tax Ordinance No. 7794 by Tax Ordinances No. 7988 and No. 8011. Following this deletion, petitioners began assessing respondent for the local business tax under Section 21 of Tax Ordinance No. 7794, as amended. The Court easily infers from the foregoing circumstances that petitioners themselves believed that prior to Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent was exempt from the local business tax under Section 21 of Tax Ordinance No. 7794. Hence, petitioners had to wait for the deletion of the exempting *proviso* in Section 21 of Tax Ordinance No. 7794 by Tax Ordinance No. 7988 and Tax Ordinance No. 8011 before they assessed respondent for the local business tax under said section. Yet, with the pronouncement by this Court in the *Coca-Cola* case that Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void and without legal effect, then Section 21 of Tax Ordinance No. 7794, as it has been previously worded, with its exempting *proviso*, is back in effect. Accordingly, respondent should not have been subjected to the local business tax under Section 21 of Tax Ordinance No. 7794 for the third and fourth quarters of 2000, given its exemption therefrom since it was already paying the local business tax under Section 14 of the same ordinance.

6. ID.; DOUBLE TAXATION; PRESENT IN CASE AT BAR; EXEMPTING *PROVISO* IN SECTION 21 OF TAX

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ORDINANCE NO. 7794 WAS PRECISELY INCLUDED SO AS TO AVOID DOUBLE TAXATION.— 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**. 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.

7. ID.; ID.; THE DISTINCTION PETITIONERS ATTEMPT TO MAKE BETWEEN THE TAXES UNDER SECTIONS 14 AND 21 OF TAX ORDINANCE NO. 7794 IS SPECIOUS.— 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

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> 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].

APPEARANCES OF COUNSEL

City Legal Counsel (Manila) for petitioners.
Salvador and Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This case is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Civil Procedure seeking to review and reverse the Decision[1] dated 18 January 2008 and Resolution[2] dated 18 February 2008 of the Court of Tax Appeals *en banc* (CTA *en banc*) in C.T.A. EB No. 307. In its assailed Decision, the CTA *en banc* dismissed the Petition for Review of herein petitioners City of Manila, Liberty M. Toledo (Toledo), and Joseph Santiago (Santiago); and affirmed the Resolutions dated 24 May 2007,[3] 8 June 2007,[4] and 26 July 2007,[5] of the CTA First Division in C.T.A. AC No. 31, which, in turn, dismissed the Petition for Review of petitioners in said case for being

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr. with Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring, *rollo*, pp. 32-44.

[2] *Id.* at 45-46.

[3] Signed by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Caesar A. Casanova, *rollo*, pp. 106-107.

[4] *Id.* at 127-129.

[5] *Id.* at 130-133.

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filed out of time. In its questioned Resolution, the CTA *en banc* denied the Motion for Reconsideration of petitioners.

Petitioner City of Manila is a public corporation empowered to collect and assess business taxes, revenue fees, and permit fees, through its officers, petitioners Toledo and Santiago, in their capacities as City Treasurer and Chief of the Licensing Division, respectively. On the other hand, respondent Coca-Cola Bottlers Philippines, Inc. is a corporation engaged in the business of manufacturing and selling beverages, and which maintains a sales office in the City of Manila.

The case stemmed from the following facts:

Prior to 25 February 2000, respondent had been paying the City of Manila local business tax only under Section 14 of Tax Ordinance No. 7794,[6] being expressly exempted from the business tax under Section 21 of the same tax ordinance. Pertinent provisions of Tax Ordinance No. 7794 provide:

Section 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 or manufacturers of any article of commerce of whatever kind or nature, in accordance with any of the following schedule:

x x x	x x x	x x x
over ₱6,500,000.00 up to ₱25,000,000.00	- - - - - - - - - - - - -	₱36,000.00 plus 50% of 1% in excess of ₱6,500,000.00
x x x	x x x	x x x

[6] Otherwise known as "Revenue Code of the City of Manila." Tax Ordinance No. 7794, as referred to in this case, is deemed to have already incorporated the amendments previously introduced to it by Tax Ordinance No. 7807. The Court no longer highlights the fact of the previous amendment of Tax Ordinance No. 7794 by Tax Ordinance No. 7807, since it is not an issue in this case, and to avoid confusion with the subsequent amendment of the former by Tax Ordinances No. 7988 and No. 8011.

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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 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.

x x x x x x x x x

(D) Excisable goods subject to VAT

(1) Distilled spirits

(2) Wines

x x x x x x x x x

(8) Coal and coke

(9) Fermented liquor, brewers' wholesale price, excluding the ad valorem tax

x x x x x x x x x

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

Petitioner City of Manila subsequently approved on 25 February 2000, Tax Ordinance No. 7988,[7] amending certain sections of Tax Ordinance No. 7794, particularly: (1) Section 14, by increasing the tax rates applicable to certain establishments operating within the territorial jurisdiction of the City of Manila; and (2) Section 21, by deleting the *proviso* found therein, which stated "that all registered businesses in the City of Manila that are already paying the aforementioned tax shall be exempted

[7] Otherwise known as "Revised Revenue Code of the City of Manila."

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from payment thereof." Petitioner City of Manila approved only after a year, on 22 February 2001, another tax ordinance, Tax Ordinance No. 8011, amending Tax Ordinance No. 7988.

Tax Ordinances No. 7988 and No. 8011 were later declared by the Court null and void in *Coca-Cola Bottlers Philippines, Inc. v. City of Manila*[8] (*Coca-Cola* case) for the following reasons: (1) Tax Ordinance No. 7988 was enacted in contravention of the provisions of the Local Government Code (LGC) of 1991 and its implementing rules and regulations; and (2) Tax Ordinance No. 8011 could not cure the defects of Tax Ordinance No. 7988, which did not legally exist.

However, before the Court could declare Tax Ordinance No. 7988 and Tax Ordinance No. 8011 null and void, petitioner City of Manila assessed respondent on the basis of Section 21 of Tax Ordinance No. 7794, as amended by the aforementioned tax ordinances, for deficiency local business taxes, penalties, and interest, in the total amount of ₱18,583,932.04, for the third and fourth quarters of the year 2000. Respondent filed a protest with petitioner Toledo on the ground that the said assessment amounted to double taxation, as respondent was taxed twice, *i.e.*, under Sections 14 and 21 of Tax Ordinance No. 7794, as amended by Tax Ordinances No. 7988 and No. 8011. Petitioner Toledo did not respond to the protest of respondent.

Consequently, respondent filed with the Regional Trial Court (RTC) of Manila, Branch 47, an action for the cancellation of the assessment against respondent for business taxes, which was docketed as Civil Case No. 03-107088.

On 14 July 2006, the RTC rendered a Decision[9] dismissing Civil Case No. 03-107088. The RTC ruled that the business taxes imposed upon the respondent under Sections 14 and 21 of Tax Ordinance No. 7988, as amended, were not of the same kind or character; therefore, there was no double taxation. The

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[8] G.R. No. 156252, 27 June 2006, 493 SCRA 279.

[9] Penned by Presiding Judge Augusto T. Gutierrez, *rollo*, pp. 47-53.

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RTC, though, in an Order[10] dated 16 November 2006, granted the Motion for Reconsideration of respondent, decreed the cancellation and withdrawal of the assessment against the latter, and barred petitioners from further imposing/assessing local business taxes against respondent under Section 21 of Tax Ordinance No. 7794, as amended by Tax Ordinance No. 7988 and Tax Ordinance No. 8011. The 16 November 2006 Decision of the RTC was in conformity with the ruling of this Court in the *Coca-Cola* case, in which Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were declared null and void. The Motion for Reconsideration of petitioners was denied by the RTC in an Order[11] dated 4 April 2007. Petitioners received a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order of the same court, on 20 April 2007.

On 4 May 2007, petitioners filed with the CTA a Motion for Extension of Time to File Petition for Review, praying for a 15-day extension or until 20 May 2007 within which to file their Petition. The Motion for Extension of petitioners was docketed as C.T.A. AC No. 31, raffled to the CTA First Division.

Again, on 18 May 2007, petitioners filed, through registered mail, a Second Motion for Extension of Time to File a Petition for Review, praying for another 10-day extension, or until 30 May 2007, within which to file their Petition.

On 24 May 2007, however, the CTA First Division already issued a Resolution dismissing C.T.A. AC No. 31 for failure of petitioners to timely file their Petition for Review on 20 May 2007.

Unaware of the 24 May 2007 Resolution of the CTA First Division, petitioners filed their Petition for Review therewith on 30 May 2007 *via* registered mail. On 8 June 2007, the CTA First Division issued another Resolution, reiterating the dismissal of the Petition for Review of petitioners.

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[10] *Id.* at 89-90.

[11] *Id.* at 96-97.

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Petitioners moved for the reconsideration of the foregoing Resolutions dated 24 May 2007 and 8 June 2007, but their motion was denied by the CTA First Division in a Resolution dated 26 July 2007. The CTA First Division reasoned that the Petition for Review of petitioners was not only filed out of time — it also failed to comply with the provisions of Section 4, Rule 5; and Sections 2 and 3, Rule 6, of the Revised Rules of the CTA.

Petitioners thereafter filed a Petition for Review before the CTA *en banc*, docketed as C.T.A. EB No. 307, arguing that the CTA First Division erred in dismissing their Petition for Review in C.T.A. AC No. 31 for being filed out of time, without considering the merits of their Petition.

The CTA *en banc* rendered its Decision on 18 January 2008, dismissing the Petition for Review of petitioners and affirming the Resolutions dated 24 May 2007, 8 June 2007, and 26 July 2007 of the CTA First Division. The CTA *en banc* similarly denied the Motion for Reconsideration of petitioners in a Resolution dated 18 February 2008.

Hence, the present Petition, where petitioners raise the following issues:

I. WHETHER OR NOT PETITIONERS SUBSTANTIALLY COMPLIED WITH THE REGLEMENTARY PERIOD TO TIMELY APPEAL THE CASE FOR REVIEW BEFORE THE [CTA DIVISION].

II. WHETHER OR NOT THE RULING OF THIS COURT IN THE EARLIER [*COCA-COLA CASE*] IS DOCTRINAL AND CONTROLLING IN THE INSTANT CASE.

III. WHETHER OR NOT PETITIONER CITY OF MANILA CAN STILL ASSESS TAXES UNDER [SECTIONS] 14 AND 21 OF [TAX ORDINANCE NO. 7794, AS AMENDED].

IV. WHETHER OR NOT THE ENFORCEMENT OF [SECTION] 21 OF THE [TAX ORDINANCE NO. 7794, AS AMENDED] CONSTITUTES DOUBLE TAXATION.

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Petitioners assert that Section 1, Rule 7[12] of the Revised Rules of the CTA refers to certain provisions of the Rules of Court, such as Rule 42 of the latter, and makes them applicable to the tax court. Petitioners then cannot be faulted in relying on the provisions of Section 1, Rule 42[13] of the Rules of Court as regards the period for filing a Petition for Review with the CTA in division. Section 1, Rule 42 of the Rules of Court provides for a 15-day period, reckoned from receipt of the adverse decision of the trial court, within which to file a Petition for Review with the Court of Appeals. The same rule allows an additional 15-day period within which to file such a Petition; and, only for the most compelling reasons, another extension period not to exceed 15 days. Petitioners received on 20 April 2007 a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order of the same court. On 4 May 2007, believing that they only had 15 days to file a Petition for Review with the CTA in division, petitioners moved for a 15-day extension, or until 20 May 2007, within which to file said Petition. Prior to the

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[12] **SEC. 1.** *Applicability of the Rules on procedure in the Court of Appeals, exception.* – The procedure in the Court *En Banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.

[13] **SEC. 1**. *How appeal taken; time for filing*. – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

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lapse of their first extension period, or on 18 May 2007, petitioners again moved for a 10-day extension, or until 30 May 2007, within which to file their Petition for Review. Thus, when petitioners filed their Petition for Review with the CTA First Division on 30 May 2007, the same was filed well within the reglementary period for doing so.

Petitioners argue in the alternative that even assuming that Section 3(a), Rule 8[14] of the Revised Rules of the CTA governs the period for filing a Petition for Review with the CTA in division, still, their Petition for Review was filed within the reglementary period. Petitioners call attention to the fact that prior to the lapse of the 30-day period for filing a Petition for Review under Section 3(a), Rule 8 of the Revised Rules of the CTA, they had already moved for a 10-day extension, or until 30 May 2007, within which to file their Petition. Petitioners claim that there was sufficient justification in equity for the grant of the 10-day extension they requested, as the primordial consideration should be the substantive, and not the procedural, aspect of the case. Moreover, Section 3(a), Rule 8 of the Revised Rules of the CTA, is silent as to whether the 30-day period for filing a Petition for Review with the CTA in division may be extended or not.

Petitioners also contend that the *Coca-Cola* case is not determinative of the issues in the present case because the issue of nullity of Tax Ordinance No. 7988 and Tax Ordinance No.

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[14] **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

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8011 is not the *lis mota* herein. The *Coca-Cola* case is not doctrinal and cannot be considered as the law of the case.

Petitioners further insist that notwithstanding the declaration of nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011, Tax Ordinance No. 7794 remains a valid piece of local legislation. The nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 does not effectively bar petitioners from imposing local business taxes upon respondent under Sections 14 and 21 of Tax Ordinance No. 7794, as they were read prior to their being amended by the foregoing null and void tax ordinances.

Petitioners finally maintain that imposing upon respondent local business taxes under both Sections 14 and 21 of Tax Ordinance No. 7794 does not constitute direct double taxation. Section 143 of the LGC gives municipal, as well as city governments, the power to impose business taxes, to wit:

SECTION 143. **Tax on Business**. – The municipality may impose taxes on the following businesses:

(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule:

x x x x x x x x x

(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule:

x x x x x x x x x

(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (1/2) of the rates prescribed under subsections (a), (b) and (d) of this Section:

x x x x x x x x x

Provided, however, That *barangays* shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos

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(₱50,000.00) or less, in the case of cities, and Thirty thousand pesos (₱30,000) or less, in the case of municipalities.

(e) On contractors and other independent contractors, in accordance with the following schedule:

x x x x x x x x x

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (₱50.00) per peddler annually.

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

Section 14 of Tax Ordinance No. 7794 imposes local business tax on manufacturers, *etc.* of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the LGC. On the other hand, the local business tax under Section 21 of Tax Ordinance No. 7794 is imposed upon persons selling goods and services in the course of trade or business, and those importing goods for business or otherwise, who, pursuant to Section 143(h) of the LGC, are subject to excise tax, value-added tax (VAT), or percentage tax under the National Internal Revenue Code (NIRC). Thus, there can be no double taxation when respondent is being taxed under both Sections 14 and 21 of Tax Ordinance No. 7794, for under the first, it is being taxed as a manufacturer; while under the second, it is being taxed as a person selling goods in the course of trade or business subject to excise, VAT, or percentage tax.

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The Court first addresses the issue raised by petitioners concerning the period within which to file with the CTA a Petition for Review from an adverse decision or ruling of the RTC.

The period to appeal the decision or ruling of the RTC to the CTA *via* a Petition for Review is specifically governed by Section 11 of Republic Act No. 9282,[15] and Section 3(a), Rule 8 of the Revised Rules of the CTA.

Section 11 of Republic Act No. 9282 provides:

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

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

Section 3(a), Rule 8 of the Revised Rules of the CTA states:

SEC 3. *Who may appeal; period to file petition*. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a **Regional Trial Court** in the exercise of its original jurisdiction may appeal to

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[15] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals and for Other Purposes.

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the Court by **petition for review** filed within **thirty days** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. x x x. (Emphasis supplied.)

It is crystal clear from the afore-quoted provisions that to appeal an adverse decision or ruling of the RTC to the CTA, the taxpayer must file a **Petition for Review** with the CTA **within 30 days** from receipt of said adverse decision or ruling of the RTC.

It is also true that the same provisions are silent as to whether such 30-day period can be extended or not. However, Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA **following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure**. Section 1, Rule 42[16] of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15-day period from receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only **for the most compelling reasons,** another extended period not to exceed 15 days from the lapse of the first extended period.

Following by analogy Section 1, Rule 42 of the Revised Rules of Civil Procedure, the **30-day** original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of **15 days**.

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[16] Section 1. *How appeal taken; time for filing.* – x x x The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

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No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed **15 days**.

Even the CTA *en banc*, in its Decision dated 18 January 2008, recognizes that the 30-day period within which to file the Petition for Review with the CTA may, indeed, be extended, thus:

> Being suppletory to R.A. 9282, the 1997 Rules of Civil Procedure allow an additional period of fifteen (15) days for the movant to file a Petition for Review, upon Motion, and payment of the full amount of the docket fees. A further extension of fifteen (15) days may be granted on compelling reasons in accordance with the provision of Section 1, Rule 42 of the 1997 Rules of Civil Procedure x x x.[17]

In this case, the CTA First Division did indeed err in finding that petitioners failed to file their Petition for Review in C.T.A. AC No. 31 within the reglementary period.

From **20 April 2007**, the date petitioners received a copy of the 4 April 2007 Order of the RTC, denying their Motion for Reconsideration of the 16 November 2006 Order, petitioners had 30 days, or until **20 May 2007**, within which to file their Petition for Review with the CTA. Hence, the Motion for Extension filed by petitioners on 4 May 2007 – grounded on their belief that the reglementary period for filing their Petition for Review with the CTA was to expire on 5 May 2007, thus, compelling them to seek an extension of 15 days, or until **20 May 2007**, to file said Petition – was unnecessary and superfluous. Even without said Motion for Extension, petitioners could file their Petition for Review until 20 May 2007, as it was still within the 30-day reglementary period provided for under Section 11 of Republic Act No. 9282; and implemented by Section 3(a), Rule 8 of the Revised Rules of the CTA.

The Motion for Extension filed by the petitioners on 18 May 2007, prior to the lapse of the 30-day reglementary period on

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[17] *Rollo*, p. 40.

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20 May 2007, in which they prayed for another extended period of 10 days, or until **30 May 2007**, to file their Petition for Review was, in reality, only the first Motion for Extension of petitioners. The CTA First Division should have granted the same, as it was sanctioned by the rules of procedure. In fact, petitioners were only praying for a 10-day extension, five days less than the 15-day extended period allowed by the rules. Thus, when petitioners filed *via* registered mail their Petition for Review in C.T.A. AC No. 31 on **30 May 2007,** they were able to comply with the reglementary period for filing such a petition.

Nevertheless, there were other reasons for which the CTA First Division dismissed the Petition for Review of petitioners in C.T.A. AC No. 31; *i.e.*, petitioners failed to conform to Section 4 of Rule 5, and Section 2 of Rule 6 of the Revised Rules of the CTA. The Court sustains the CTA First Division in this regard.

Section 4, Rule 5 of the Revised Rules of the CTA requires that:

> **SEC. 4.** *Number of copies.* – The parties shall file eleven signed copies of every paper for cases before the Court *en banc* and **six signed copies for cases before a Division of the Court in addition to the signed original copy**, except as otherwise directed by the Court. Papers to be filed in more than one case shall include one additional copy for each additional case. (Emphasis supplied.)

Section 2, Rule 6 of the Revised Rules of the CTA further necessitates that:

> **SEC. 2.** *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court. **A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition**. (Emphasis supplied.)

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The aforesaid provisions should be read in conjunction with Section 1, Rule 7 of the Revised Rules of the CTA, which provides:

SECTION 1. *Applicability of the Rules of Court on procedure in the Court of Appeals, exception.* – The procedure in the Court *en banc* or in Divisions in original or in appealed cases shall be the **same** as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of **Rules 42, 43, 44, and 46 of the Rules of Court, except as otherwise provided for in these Rules**. (Emphasis supplied.)

As found by the CTA First Division and affirmed by the CTA *en banc*, the Petition for Review filed by petitioners *via* registered mail on 30 May 2007 consisted only of one copy and all the attachments thereto, including the Decision dated 14 July 2006; and that the assailed Orders dated 16 November 2006 and 4 April 2007 of the RTC in Civil Case No. 03-107088 were mere machine copies. Evidently, petitioners did not comply at all with the requirements set forth under Section 4, Rule 5; or with Section 2, Rule 6 of the Revised Rules of the CTA. Although the Revised Rules of the CTA do not provide for the consequence of such non-compliance, Section 3, Rule 42 of the Rules of Court may be applied suppletorily, as allowed by Section 1, Rule 7 of the Revised Rules of the CTA. Section 3, Rule 42 of the Rules of Court reads:

SEC. 3. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the **dismissal** thereof. (Emphasis supplied.)

True, petitioners subsequently submitted certified copies of the Decision dated 14 July 2006 and assailed Orders dated 16 November 2006 and 4 April 2007 of the RTC in Civil Case No. 03-107088, but a closer examination of the stamp on said documents reveals that they were prepared and certified only

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on 14 August 2007, about two months and a half after the filing of the Petition for Review by petitioners.

Petitioners never offered an explanation for their non-compliance with Section 4 of Rule 5, and Section 2 of Rule 6 of the Revised Rules of the CTA. Hence, although the Court had, in previous instances, relaxed the application of rules of procedure, it cannot do so in this case for lack of any justification.

Even assuming *arguendo* that the Petition for Review of petitioners in C.T.A. AC No. 31 should have been given due course by the CTA First Division, it is still dismissible for lack of merit.

Contrary to the assertions of petitioners, the *Coca-Cola* case is indeed applicable to the instant case. The pivotal issue raised therein was whether Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void, which this Court resolved in the affirmative. Tax Ordinance No. 7988 was declared by the Secretary of the Department of Justice (DOJ) as null and void and without legal effect due to the failure of herein petitioner City of Manila to satisfy the requirement under the law that said ordinance be published for three consecutive days. Petitioner City of Manila never appealed said declaration of the DOJ Secretary; thus, it attained finality after the lapse of the period for appeal of the same. The passage of Tax Ordinance No. 8011, amending Tax Ordinance No. 7988, did not cure the defects of the latter, which, in any way, did not legally exist.

By virtue of the *Coca-Cola* case, Tax Ordinance No. 7988 and Tax Ordinance No. 8011 are null and void and without any legal effect. Therefore, respondent cannot be taxed and assessed under the amendatory laws—Tax Ordinance No. 7988 and Tax Ordinance No. 8011.

Petitioners insist that even with the declaration of nullity of Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent could still be made liable for local business taxes under both Sections 14 and 21 of Tax Ordinance No. 7944 as they were originally read, without the amendment by the null and void tax ordinances.

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Emphasis must be given to the fact that prior to the passage of Tax Ordinance No. 7988 and Tax Ordinance No. 8011 by petitioner City of Manila, petitioners subjected and assessed respondent only for the local business tax under Section 14 of Tax Ordinance No. 7794, but never under Section 21 of the same. This was due to the clear and unambiguous *proviso* in Section 21 of Tax Ordinance No. 7794, which stated that "all registered business in the City of Manila that are already paying the aforementioned tax shall be exempted from payment thereof." The "aforementioned tax" referred to in said *proviso* refers to local business tax. Stated differently, Section 21 of Tax Ordinance No. 7794 exempts from the payment of the local business tax imposed by said section, businesses that are already paying such tax under other sections of the same tax ordinance. The said *proviso*, however, was deleted from Section 21 of Tax Ordinance No. 7794 by Tax Ordinances No. 7988 and No. 8011. Following this deletion, petitioners began assessing respondent for the local business tax under Section 21 of Tax Ordinance No. 7794, as amended.

The Court easily infers from the foregoing circumstances that petitioners themselves believed that prior to Tax Ordinance No. 7988 and Tax Ordinance No. 8011, respondent was exempt from the local business tax under Section 21 of Tax Ordinance No. 7794. Hence, petitioners had to wait for the deletion of the exempting *proviso* in Section 21 of Tax Ordinance No. 7794 by Tax Ordinance No. 7988 and Tax Ordinance No. 8011 before they assessed respondent for the local business tax under said section. Yet, with the pronouncement by this Court in the *Coca-Cola* case that Tax Ordinance No. 7988 and Tax Ordinance No. 8011 were null and void and without legal effect, then Section 21 of Tax Ordinance No. 7794, as it has been previously worded, with its exempting *proviso*, is back in effect. Accordingly, respondent should not have been subjected to the local business tax under Section 21 of Tax Ordinance No. 7794 for the third and fourth quarters of 2000, given its exemption therefrom since it was already paying the local business tax under Section 14 of the same ordinance.

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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**.[18]

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.

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

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[18] *Commissioner of Internal Revenue v. Bank of Commerce*, G.R. No. 149636, 8 June 2005, 459 SCRA 638, 655.

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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].

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is hereby *DENIED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184005. August 4, 2009]

TOP ART SHIRT MANUFACTURING, INCORPORATED, MAXIMO AREJOLA and TAN SIU KHENG, *petitioners, vs.* **METROPOLITAN BANK AND TRUST COMPANY and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; WRIT OF POSSESSION; UPON THE