Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., Petitioner,	**G.R. No. 185622** Present:
-versus-	PERALTA, *J.*, *Chairperson,* LEONEN, GESMUNDO*, REYES, J., JR., and HERNANDO, *JJ.*
THE CITY OF MANILA; LIBERTY M. TOLEDO, IN HER CAPACITY AS TREASURER OF MANILA; GABRIEL ESPINO, IN HIS CAPACITY AS RESIDENT AUDITOR OF MANILA; AND THE CITY COUNCIL OF MANILA, Respondents.	**Promulgated:** October 17, 2018

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DECISION

LEONEN, *J.*:

If a party can prove that the resort to an administrative remedy would be an idle ceremony such that it will be absurd and unjust for it to continue seeking relief that evidently will not be granted to it, then the doctrine of exhaustion of administrative remedies will not apply.

* Gesmundo, J., on leave.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the September 5, 2008 Decision[2] and December 12, 2008 Resolution[3] of the Court of Tax Appeals En Banc in C.T.A. EB No. 277. The Court of Tax Appeals En Banc dismissed the Petition for Review[4] filed by International Container Terminal Services, Inc. (International Container), and affirmed the May 17, 2006 Decision[5] and February 22, 2007 Resolution[6] of the Court of Tax Appeals Second Division.

The Court of Tax Appeals Second Division found that the City of Manila committed direct double taxation when it imposed a local business tax under Section 21(A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Ordinance No. 7807, in addition to the business tax already imposed under Section 18 of Manila Ordinance No. 7794, as amended.[7] It ordered a partial refund of ₱6,224,250.00, representing the erroneously paid business taxes for the third quarter of taxable year 1999. However, it did not order the City of Manila to refund the business taxes paid by International Container subsequent to the first three (3) quarters of 1999.[8]

International Container, a corporation with its principal place of business in Manila, renewed its business license for 1999. It was assessed for two (2) business taxes: one for which it was already paying, and another for which it was newly assessed. It was already paying a local annual business tax for contractors equivalent to 75% of 1% of its gross receipts for the preceding calendar year pursuant to Section 18 of Manila Ordinance No. 7794. The newly assessed business tax was computed at 50% of 1% of its gross receipts for the previous calendar year, pursuant to Section 21(A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807. It paid the additional assessment, but filed a protest letter[9] dated July 15, 1999 before the City Treasurer of Manila.[10]

When the City Treasurer failed to decide International Container's protest within 60 days from the protest, International Container filed before

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1 *Rollo*, pp. 11–57.

2 Id. at 59–77. The Decision was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez. Associate Justices Casanova and Palanca-Enriquez filed separate concurring and dissenting opinions.

3 Id. at 101–106. The Resolution was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

4 Id. at 494–528.

5 Id. at 401–423. The Decision, docketed as C.T.A. AC No. 11, was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

6 Id. at 483–493. The Resolution was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Juanito C. Castañeda, Jr. Associate Justice Olga Palanca-Enriquez was on leave.

7 Id. at 417–420.

8 Id. at 422.

9 Id. at 108–113.

10 Id. at 60–61.

the Regional Trial Court of Manila its Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order against the City Treasurer and Resident Auditor of Manila.[11] The City Treasurer and the Resident Auditor of Manila moved for the dismissal[12] of the Petition for Certiorari and Prohibition on the ground that International Container had no cause of action, since it had failed to comply with the requirements of Section 187 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.[13]

The Regional Trial Court granted the City Treasurer and the Resident Auditor's motion and dismissed International Container's Petition for Certiorari and Prohibition.[14] International Container appealed the dismissal to the Court of Appeals, which set aside the Regional Trial Court's dismissal and ordered the case remanded to the Regional Trial Court for further proceedings.[15]

While the Petition for Certiorari and Prohibition was pending, the City of Manila continued to impose the business tax under Section 21(A), in addition to the business tax under Section 18, on International Container so that it would be issued business permits. On June 17, 2003, International Container sent a letter[16] addressed to the City Treasurer of Manila, reiterating its protest to the business tax under Section 21(A) and requesting for a refund of its payments in the amount of ₱27,800,674.36 "in accordance with Section 196 of the Local Government Code,"[17] which states:

> Section 196. Claim for Refund of Tax Credit. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

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11 Id. at 114–124.

12 Id. at 308–311.

13 LOCAL GOVT. CODE, sec. 187 states:
Section 187. Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings. — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

14 *Rollo*, pp. 312–314.

15 Id. at 315–329.

16 Id. at 137–139.

17 Id. at 139.

On July 11, 2003, International Container filed an Amended and Supplemental Petition,[18] alleging, among others, that since the payment of both business taxes was a pre-condition to the renewal of International Container's business permit, it was compelled to pay, and had been paying under protest. It amended its prayer to include not only the refund of business taxes paid for the first three (3) quarters of 1999, but also the taxes continuously paid afterwards.[19] The Regional Trial Court admitted its Amended and Supplemental Petition.[20]

In its February 28, 2005 Decision,[21] the Regional Trial Court dismissed the Amended and Supplemental Petition, again finding that International Container failed to comply with the requirements of Section 195 of the Local Government Code. It found that when the City Treasurer failed to act on International Container's protest and continued to collect the business tax under Section 21(A), it could be determined that the protest was denied. Under Section 195 of the Local Government Code, International Container had 60 days to appeal the denial to a competent court. However, instead of appealing the denial, it resorted to a Petition for Certiorari and Prohibition, which was not a remedy prescribed under Section 195 of the Local Government Code. By failing to avail of the proper remedy, the assessments made against it became conclusive and unappealable.[22]

International Container filed a Petition for Review[23] against the City of Manila, its City Treasurer, its Resident Auditor, and its City Council (the City of Manila and its Officials) before the Court of Tax Appeals, docketed as C.T.A. AC No. 11. It prayed that the Court of Tax Appeals set aside the Regional Trial Court February 28, 2005 Decision, and order the City of Manila and its Officials to refund the business taxes assessed, demanded, and collected under Section 21(A) in the amount of ₱39,268,772.41. This amount corresponded to the periods from 1999 to the first quarter of 2004 plus any and all subsequent payments until the case would have been finally decided. Finally, it prayed that the Court of Tax Appeals order the City of Manila and its Officials to desist from imposing and collecting the business tax under Section 21(A), and to pay attorney's fees.[24]

On August 18, 2005, International Container sent another letter[25]

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18 Id. at 143–162.
19 Id. at 159.
20 Id. at 636.
21 Id. at 213–218. The Decision, docketed as Civil Case No. 99-95092, was penned by Judge Concepcion S. Alarcon-Vergara of Branch 49, Regional Trial Court, Manila.
22 Id. at 217.
23 Id. at 219–250.
24 Id. at 247–248.
25 Id. at 618–619.

addressed to the City Treasurer of Manila, reiterating its protest against the business tax under Section 21(A), and claiming a refund for the third quarter of 2003 up to the second quarter of 2005.

The Court of Tax Appeals Second Division issued its May 17, 2006 Decision[26] setting aside the Regional Trial Court February 28, 2005 Decision and partially granting International Container's prayer for a refund. It found that imposing the business tax under Section 21(A) in addition to the contractors' tax under Section 18 constituted direct double taxation.[27] It ordered the City of Manila and its Officials to refund the amount of ₱6,224,250.00, representing the additional taxes paid for the first three (3) quarters of 1999. The claims corresponding to the subsequent periods were denied, since the Court of Tax Appeals Second Division found that International Container failed to substantiate its claims and to comply with Section 195 of the Local Government Code. It found that International Container failed to submit to the court its protest dated June 17, 2003, and thus, the court could not verify the total amount of taxes paid and the taxing period covered in this protest.[28]

International Container moved to partially reconsider[29] the May 17, 2006 Decision, praying, among others, that the Court of Tax Appeals Second Division elevate the records of the case so that it may verify the June 17, 2003 protest. It further argued that Section 196 of the Local Government Code should be applied to its claim, and not Section 195. The City of Manila and its Officials filed their own Motion for Reconsideration.[30] The Court of Tax Appeals Second Division directed the elevation of the records.[31]

International Container sent a letter[32] dated January 10, 2007 addressed to the City Treasurer of Manila, reiterating its protest, this time, covering the period from the third quarter of 2005 to the fourth quarter of 2006.

On February 22, 2007, the Court of Tax Appeals Second Division denied the parties' respective Motions for Reconsideration.[33] It found that International Container raised the applicability of Section 196 of the Local Government Code for the first time on appeal. Further, it held that International Container's failure to file a written protest for each assessment in the mayor's permit after the first three (3) quarters of 1999 rendered these assessments final and executory.

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26 Id. at 401–423.
27 Id. at 417–419.
28 Id. at 421–422.
29 Id. at 424–440.
30 Id. at 455–465.
31 Id. at 478–481.
32 Id. at 482.
33 Id. at 484–493.

International Container filed a Petition for Review with Prayer for Temporary Restraining Order and/or Preliminary Injunction before the Court of Tax Appeals En Banc.[34] It argued that the Court of Tax Appeals Second Division should have applied Section 196 of the Local Government Code for the payments that it had made subsequent to the third quarter of 1999, pointing out that it had prayed for a refund as early as the proceedings in the Regional Trial Court.[35] Moreover, Sections 195 and 196 pertain to separate and independent remedies; to resort to Section 195 as a condition precedent to availing of the remedy under Section 196 was illogical.[36]

On June 22, 2007, International Container filed an Urgent Motion to Suspend Collection,[37] claiming that the City of Manila and its Officials still collected the business tax under Section 21(A) despite the Court of Tax Appeals Second Division May 17, 2006 Decision. The Urgent Motion was granted by the Court of Tax Appeals En Banc to preserve the status quo and upon the filing by International Container of a surety bond.[38]

On September 5, 2008, the Court of Tax Appeals En Banc issued its Decision,[39] dismissing the Petition for Review for lack of merit. Contrary to the claim of International Container, the Court of Tax Appeals En Banc found that International Container's causes of action in the Regional Trial Court and Court of Tax Appeals Second Division were different from each other. In the Regional Trial Court, International Container's action was for the annulment of the assessment and collection of additional local business tax. In its Amended and Supplemental Petition, International Container discussed the propriety of the imposition of the business tax under Section 21(A) to support the annulment of the assessment.[40] According to the Court of Tax Appeals En Banc, this meant that International Container chose to protest the assessment pursuant to Section 195 of the Local Government Code, and not to request for a refund as provided by Section 196.[41] Notably, International Container prayed for, and was granted, the opportunity to amend its Petition for Certiorari and Prohibition, but still failed to include an argument in support of its alleged claim under Section 196 of the Local Government Code.

The Court of Tax Appeals En Banc further found that Sections 195 and 196 of the Local Government Code are two (2) separate and distinct remedies granted to taxpayers, with different requirements and conditions. International Container cannot merely claim that by complying with the

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34 Id. at 494–532.
35 Id. at 505–506.
36 Id. at 515–518.
37 Id. at 533–539.
38 Id. at 546-551.
39 Id. at 59–77.
40 Id. at 69.
41 Id. at 71.

reglementary period of protesting an assessment under Section 195, it had already complied with the two (2)-year period stated in Section 196. The Court of Tax Appeals found that since International Container paid the taxes under the assessment, its claim for refund assumed that the assessment was wrong. The claim for refund should be understood as a logical and necessary consequence of the allegedly improper assessment such that if the assessment were cancelled, the taxes paid under it should be refunded. This should not be understood as the claim for refund under Section 196 of the Local Government Code.[42]

Moreover, even if the applicability of Section 195 did not preclude the availability of Section 196 as a remedy, International Container only made its protest to the City Treasurer's assessment without expressly stating that it intended to claim a refund under Section 196 for taxes paid after the first three (3) quarters of 1999. As pointed out by the Court of Tax Appeals Second Division, its attempt to invoke Section 196 on appeal was due to its failure to recover under Section 195, not having made timely written protests of the assessments made against it.[43]

Having found that only Section 195 applied, the Court of Tax Appeals En Banc found that it was no longer necessary to determine whether International Container complied with the requirements of Section 196 for the periods after the first three (3) quarters of 1999. It reiterated the Court of Tax Appeals Second Division's ruling that International Container should have filed a written protest within 60 days from receipt of each and every assessment made by the City of Manila and its Officials, as embodied in the Mayor's Permit, regardless of its belief that the written protest would have been futile. Writing "paid under protest" on the face of municipal license receipts upon payment of the taxes is not the administrative protests contemplated by law.[44]

Court of Tax Appeals Associate Justice Caesar A. Casanova (Associate Justice Casanova) wrote a Concurring and Dissenting Opinion.[45] He noted that the notice of assessment in Section 195 of the Local Government Code was the same as a notice of assessment under Section 228 of the 1997 National Internal Revenue Code. He opined that no notice for deficiency taxes subsequent to the third quarter of 1999 up to the present was ever issued by the City of Manila and its Officials; thus, Section 195 of the Local Government Code did not apply.[46]

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42 Id. at 71–74.
43 Id. at 74–76.
44 Id. at 75–76.
45 Id. at 78–88. Likewise, Associate Justice Ola Palanca-Enriquez filed a Concurring and Dissenting Opinion, stating that there was no direct double taxation in this case, and thus, International Container was not entitled to the partial refund (*Rollo*, pp. 89–100).
46 Id. at 80–82.

Moreover, according to Associate Justice Casanova, International Container partially complied with the requirements of Section 196 of the Local Government Code, from the third quarter of 2001 up to the fourth quarter of 2006. Following its July 15, 1999 protest for the first three (3) quarters of 1999, it filed claims for refund before the City Treasurer on June 17, 2003, August 19, 2005, and January 11, 2007. The payments from October 19, 1999 to April 19, 2001, in the total amount of ₱15,539,727.90, could no longer be refunded as the period to claim the refund had prescribed since its earliest claim was on June 17, 2003. Similarly, the claim for refund for the first and second quarters of 2007 could not be allowed since it did not file a claim with the City Treasurer. Associate Justice Casanova voted to partially grant the petition and to order the City of Manila and its Officials to refund ₱44,134,449.68 in its favor.[47]

On December 12, 2008, the Court of Tax Appeals En Banc denied International Container's Motion for Reconsideration[48] for lack of merit.[49] In its Resolution, it addressed the City of Manila and its Officials' claim in their Comment to the Motion for Reconsideration[50] that the Court of Tax Appeals had no jurisdiction over International Container's claim for refund from the fourth quarter of 1999 onwards due to non-payment of docket fees before the Regional Trial Court.[51] It noted that in *Sun Insurance Office, Ltd. v. Asuncion*,[52] the error of non-payment or insufficiency of docket fees may be rectified by the payment by the filing party of the correct amount within a reasonable time but in no case beyond the applicable prescriptive or reglementary period. However, it held that *Sun Insurance* was inapplicable to this case, as there was no showing that International Container had paid the additional docket fees. The applicable ruling should be *Manchester Development Corp. v. Court of Appeals*,[53] which held that the non-payment or insufficiency of docket fees would result in the court not acquiring jurisdiction over the case, rendering void the ruling of the Regional Trial Court on the additional claims of International Container.[54]

On December 24, 2008, International Container filed a Motion for Extension of Time to file Petition for Review[55] with this Court, praying for an additional 30 days, or until February 2, 2009 within which to file its Petition for Review. This Court granted the Motion for Extension in its January 14, 2009 Resolution.

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47 Id. at 85–88.
48 Id. at 579–599.
49 Id. at 101–106.
50 Id. at 605–607.
51 Id. at 103.
52 252 Phil. 280 (1989) [Per J. Gancayco, En Banc].
53 233 Phil. 579 (1987) [Per J. Gancayco, En Banc].
54 *Rollo*, pp. 104–105.
55 Id. at 3–6.

On February 2, 2009, International Container filed its Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the September 5, 2008 Decision and December 12, 2008 Resolution of the Court of Tax Appeals En Banc.[56]

In its Petition for Review, International Container claims that it is entitled to a refund of ₱6,224,250.000 plus ₱57,865,901.68 in payments of taxes under Section 21(A) of Manila Ordinance No. 7764, as amended by Section 1(G) of Manila Ordinance No. 7807.[57]

First, it argues that it raised the issue of the refund at the earliest possible instance at the administrative level, and later, before the Regional Trial Court, and not only on appeal. It points out that in its July 15, 1999 Letter to the City of Manila and its Officials, it requested that if the questioned assessment had already been paid, then the amount paid should be refunded. For the amounts paid for the fourth quarter of 1999 up to the second quarter of 2003, it demanded a refund and expressly cited Section 196 of the Local Government Code in its June 17, 2003 Letter. The City Treasurer, in its September 1, 2005 Letter, even acknowledged that International Container had made a claim for refund or tax credit.[58]

Petitioner included prayers for refund of the taxes paid under protest both in its original Petition for Certiorari and Prohibition, and in its Amended and Supplemental Petition before the Regional Trial Court.[59]

Second, petitioner argues that when it filed its Petition before the Regional Trial Court, it availed of two (2) remedies: a protest under Section 195 of the Local Government Code for the assessments made by the City of Manila and its Officials for the first three (3) quarters of 1999, and a refund under Section 196 of the Local Government Code for its subsequent payments.[60]

The ₱6,224,250.00 ordered refunded by the Court of Tax Appeals Second Division represented the taxes that petitioner paid under the assessment issued not only for the taxes for the third quarter of 1999, but also back taxes for the first and second quarters of 1999. Since the assessment was issued on July 5, 1999, after the taxes for these quarters were already due, then the assessment was for deficiency tax assessments. According to petitioner, this was within the scope of Section 195 of the Local Government Code, which it claims covers only deficiency tax assessments.[61]

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56 Id. at 11–58.
57 Id. at 51.
58 Id. at 27–30.
59 Id. at 31.
60 Id. at 34.
61 Id. at 37.

As for the additional business taxes paid by petitioner, these were not deficiency taxes, but taxes due for the current taxable periods. Since these taxes were required for the issuance of its business permit, it was forced to pay the assessments under protest. This was the situation contemplated by Section 196 of the Local Government Code, which involves the recovery of any tax, fee, or charge erroneously or illegally collected.[62]

Petitioner argues that it complied with the requirements of Section 196, namely, that it filed the requisite written claims for refund, and the judicial claim was filed within two (2) years from payment or from the date of entitlement to the refund or credit.[63]

For the amounts paid after the third quarter of 1999 up to the second quarter of 2003, petitioner filed a claim for refund before the City Treasurer in its June 17, 2003 Letter. Then, it filed its Amended and Supplemental Petition before the Regional Trial Court, among the prayers of which was the recovery of all payments made under Section 21(A) of Manila Ordinance No. 7794 subsequent to the first three (3) quarters of 1999. It also filed claims for refund for the third quarter of 2003 up to the second quarter of 2005 on August 19, 2005, and from the third quarter of 2005 up to the fourth quarter of 2006 on January 11, 2007.[64]

Petitioner claims that there was no longer a need to make separate written claims for the taxes paid but not covered by these claims for refund. Citing *Central Azucarera Don Pedro v. Central Bank*,[65] it points out that this Court has previously dispensed with the filing of the subsequent claims because it would have been an exercise in futility since the claims were based on common grounds that the taxing authority had already rejected. Moreover, as petitioner's basis for its claims for refund is a pure question of law, there is no need for it to exhaust its administrative remedies.[66]

As for the prescriptive period, petitioner avers that it became entitled to a refund or credit only on July 2, 2007, when the dismissal of its appeal of the May 17, 2006 Decision and February 22, 2007 Resolution of the Court of Tax Appeals Second Division became final and executory. It points out that these judgments declared that Section 21(A) of Manila Ordinance No. 7764 was illegal double taxation. Thus, it had until July 2, 2009 to file its judicial claim for refund for its payments. While it agrees with some portions of Justice Casanova's Concurring and Dissenting Opinion in the Court of Tax Appeals

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62 Id. at 38.
63 Id. at 39.
64 Id. at 40.
65 104 Phil. 598 (1958) [Per J. Padilla, En Banc].
66 *Rollo*, pp. 40–42.

En Banc September 5, 2008 Decision, it argues that all of its payments were covered by its claims for refund since the two (2)-year period for a judicial refund ended on July 2, 2009 and the administrative claim may be dispensed with.[67]

Third, petitioner asserts that the joinder of its protest to the deficiency tax assessment and the refund of its tax payments are in accordance with the Rules of Court. Since both are premised on the same cause of action, namely, the illegal collection of business taxes under Section 21(A) of Manila Ordinance No. 7794, to file separate cases would be to split this cause of action and would produce a multiplicity of suits.[68]

Finally, petitioner claims that when it filed its Amended and Supplemental Petition, it was not ordered by the Regional Trial Court to pay additional docket and filing fees. Citing *Lu v. Lu Ym*,[69] it argues that cases should not be automatically dismissed when there is no showing of bad faith on the part of the filing party when insufficient docket fees were paid. In any event, it undertakes to pay any additional docket fees that may be found due by this Court.[70]

On February 18, 2009,[71] this Court ordered respondents to comment on the Petition for Review, with which they complied on April 16, 2009.[72]

In their Comment, respondents argue that the Regional Trial Court did not acquire jurisdiction over this case because petitioner failed to pay the docket fees for the additional claims within the reglementary period. They claim that petitioner purposefully avoided paying these docket fees.[73]

On August 26, 2009, petitioner filed its Reply to the Comment,[74] in compliance with this Court's July 1, 2009 Resolution.[75]

In its Reply, petitioner reiterates its argument that the insufficiency of the docket fees paid for the Amended and Supplemental Petition does not warrant its dismissal. Citing *United Overseas Bank (formerly Westmont Bank) v. Ros*,[76] it argues that a case should not be dismissed simply because a

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67 Id. at 42–44.
68 Id. at 45–46.
69 585 Phil. 251 (2008) [Per J. Nachura, Third Division].
70 *Rollo*, pp. 47–51.
71 Id. at 637.
72 Id. at 653–661.
73 Id. at 655–656.
74 Id. at 669–687.
75 Id. at 662.
76 556 Phil. 178 (2007) [Per J. Chico-Nazario, Third Division].

party failed to file the docket fees, if no bad faith is shown.[77] It claims that it did not act with malice or deliberately intend to evade payment of docket fees.[78] Moreover, it points out that respondents raised the issue of insufficient docket fees for the first time in its October 25, 2008 Comment before the Court of Tax Appeals En Banc. Respondents should be deemed estopped from questioning the jurisdiction of the Regional Trial Court and of the Court of Tax Appeals.[79]

On December 9, 2009, the parties were ordered to submit their respective memoranda.[80] Petitioner filed its Memorandum on April 5, 2010,[81] while respondents filed their Memorandum on June 10, 2010.[82]

In their Memorandum, respondents argue that petitioner invoked Section 195 of the Local Government Code when it filed its original action, and only belatedly introduced its cause of action under Section 196 before the Court of Tax Appeals. Moreover, even if it may validly invoke Section 196, it failed to comply with the requirement of filing a written claim prior to the institution of its action with the Regional Trial Court since it already filed the case for refund even before it paid the taxes owed to respondents beginning the fourth quarter of 1999. Finally, it claims that not only is there non-payment of docket fees, petitioner is already barred from paying the deficiency docket fees, since the period within which to pay is only within the applicable prescriptive or reglementary period, which has already lapsed.[83]

The issues for this Court's resolution are:

First, whether or not the Regional Trial Court has jurisdiction over petitioner International Container Terminal Services, Inc.'s claims for refund from the fourth quarter of 1999 onwards, despite its non-payment of additional docket fees to the Regional Trial Court;

Second, whether or not Section 195 or Section 196 of the Local Government Code govern petitioner International Container Terminal Services, Inc.'s claims for refund from the fourth quarter of 1999 onwards; and

Finally, whether or not petitioner International Container Terminal Services, Inc. complied with the requirements that would entitle it to the

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77 *Rollo*, p. 671.
78 Id. at 672–673.
79 Id. at 676.
80 Id. at 689–690.
81 Id. at 704–759.
82 Id. at 766–780.
83 Id. at 774–778.

refund it claims.

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It is an established rule that the payment of the prescribed docket fees is essential for a court to acquire jurisdiction over a case.[84] Nonetheless, in *Sun Insurance Office*,[85] this Court laid down the principles concerning the payment of docket fees for initiatory pleadings:

> Nevertheless, petitioners contend that the docket fee that was paid is still insufficient considering the total amount of the claim. This is a matter which the clerk of court of the lower court and/or his duly authorized docket clerk or clerk in-charge should determine and, thereafter, i[f] any amount is found due, he must require the private respondent to pay the same.
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> Thus, the Court rules as follows:
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> 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
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> 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.
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> 3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.[86]

Should the docket fees paid be found insufficient considering the value of the claim, the filing party shall be required to pay the deficiency, but jurisdiction is not automatically lost. The clerk of court involved, or his or her duly authorized deputy, is responsible for making the deficiency assessment.[87]

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[84] *Manchester Development Corp. v. Court of Appeals*, 233 Phil. 579 (1987) [Per J. Gancayco, En Banc].
[85] 252 Phil. 280 (1989) [Per J. Gancayco, En Banc].
[86] Id. at 291–292.
[87] *Rivera v. Del Rosario*, 464 Phil. 783 (2004) [Per J. Quisumbing, Second Division].

If a party pays the correct amount of docket fees for its original initiatory pleading, but later amends the pleading and increases the amount prayed for, the failure to pay the corresponding docket fees for the increased amount should not be deemed to have curtailed the court's jurisdiction. In *PNOC Shipping and Transport Corp. v. Court of Appeals*:[88]

> With respect to petitioner's contention that the lower court did not acquire jurisdiction over the amended complaint increasing the amount of damages claimed to P600,000.00, we agree with the Court of Appeals that the lower court acquired jurisdiction over the case when private respondent paid the docket fee corresponding to its claim in its original complaint. Its failure to pay the docket fee corresponding to its increased claim for damages under the amended complaint should not be considered as having curtailed the lower court's jurisdiction. Pursuant to the ruling in *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, the unpaid docket fee should be considered as a lien on the judgment even though private respondent specified the amount of P600,000.00 as its claim for damages in its amended complaint.[89] (Citation omitted)

When it is not shown that the party deliberately intended to defraud the court of the full payment of docket fees, the principles enumerated in *Sun Insurance* should apply. In *United Overseas Bank*:[90]

> This Court is not inclined to adopt the petitioner's piecemeal construction of our rulings in *Manchester* and *Sun Insurance*. Its attempt to strip the said landmark cases of one or two lines and use them to bolster its arguments and clothe its position with jurisprudential blessing must be struck down by this Court.
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> All told, the rule is clear and simple. In case where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in Sun Insurance and not the strict regulations set in *Manchester* will apply.[91]

Here, contrary to the findings of the Court of Tax Appeals En Banc, the circumstances dictate the application of *Sun Insurance*.

First, it is undisputed that petitioner paid the correct amount of docket fees when it filed its original Petition for Certiorari and Prohibition before the Regional Trial Court. It was when it filed its Amended and Supplemental Petition, where it prayed for refund of all the tax payments it had made and would make after the first three (3) quarters of 1999,[92] that the issue of deficient payment of docket fees arose.

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88 358 Phil. 38 (1998) [Per J. Romero, Third Division].
89 Id. at 62.
90 556 Phil. 178 (2007) [Per J. Chico-Nazario, Third Division].
91 Id. at 197.
92 *Rollo*, p. 159.

As pointed out by petitioner, in its July 18, 2003 Order admitting the Amended and Supplemental Petition, the Regional Trial Court did not order petitioner to pay any additional docket fees corresponding to its amended prayer:

> The Court admits the Amended and Supplemental Petition. The respondents are ordered to file their responsive pleading to said Amended Petition. In view of this development, respondents are given a new period of ten (10) days from receipt of this Order, to submit said responsive pleading.
>
> SO ORDERED.[93]

Notably, as argued by petitioner, the amount it claims under its amended prayer for refund in the Amended and Supplemental Petition cannot be determined with absolute certainty, as it continued to pay the taxes due to respondents during the course of the proceedings.[94]

Second, it is clear that respondents never assailed petitioner's insufficient payment of docket fees before the Regional Trial Court and the Court of Tax Appeals Second Division. They only raised this issue in their October 25, 2008 Comment to petitioner's Motion for Reconsideration[95] of the September 5, 2008 Decision of the Court of Tax Appeals En Banc. Respondents have not denied this.

If a party fails to seasonably raise the other party's failure to pay sufficient docket fees, then estoppel will set in. In *Lu v. Lu Ym, Sr.*:[96]

> Assuming arguendo that the docket fees were insufficiently paid, the doctrine of estoppel already applies.
>
> The assailed August 4, 2009 Resolution cited *Vargas v. Caminas* on the non-applicability of the *Tijam* doctrine where the issue of jurisdiction was, in fact, raised before the trial court rendered its decision. Thus the Resolution explained:
>
> > Next, the Lu Ym father and sons filed a motion for the lifting of the receivership order, which the trial court had issued in the interim. David, et al., brought the matter up to the CA even before the trial court could resolve the motion. Thereafter, David, at al., filed their Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies. It was at this point that the Lu Ym

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93 Id. at 636.
94 Id. at 59.
95 Id. at 605–607.
96 658 Phil. 156 (2011) [Per J. Carpio-Morales, En Banc].

> father and sons raised the question of the amount of filing fees paid. They also raised this point again in the CA when they appealed the trial court's decision in the case below.
>
> We find that, in the circumstances, the Lu Ym father and sons are not estopped from challenging the jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered judgment and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous—they should have addressed this issue directly to the trial court instead of the OCA—they should not be deemed to have waived their right to assail the jurisdiction of the trial court.

Lu Ym father and sons did not raise the issue before the trial court. The narration of facts in the Court's original decision shows that Lu Ym father and sons merely inquired from the Clerk of Court on the amount of paid docket fees on January 23, 2004. They thereafter still "speculat[ed] on the fortune of litigation." Thirty-seven days later or on March 1, 2004 the trial court rendered its decision adverse to them.

Meanwhile, Lu Ym father and sons attempted to verify the matter of docket fees from the Office of the Court Administrator (OCA). In their Application for the issuance [of] a writ of preliminary injunction filed with the Court of Appeals, they still failed to question the amount of docket fees paid by David Lu, et al. It was only in their Motion for Reconsideration of the denial by the appellate court of their application for injunctive writ that they raised such issue.

Lu Ym father and sons' further inquiry from the OCA cannot redeem them. A mere inquiry from an improper office at that, could not, by any stretch, be considered as an act of having raised the jurisdictional question prior to the rendition of the trial court's decision. In one case, it was held:

> Here it is beyond dispute that respondents paid the full amount of docket fees as assessed by the Clerk of Court of the Regional Trial Court of Malolos, Bulacan, Branch 17, where they filed the complaint. If petitioners believed that the assessment was incorrect, they should have questioned it before the trial court. Instead, petitioners belatedly question the alleged underpayment of docket fees through this petition, attempting to support their position with the opinion and certification of the Clerk of Court of another judicial region. Needless to state, such certification has no bearing on the instant case.

The inequity resulting from the abrogation of the whole proceedings at this late stage when the decision subsequently rendered was adverse to the father and sons is precisely the evil being avoided by the equitable principle of estoppel.[97] (Emphasis supplied, citations omitted)

In this case, respondents failed to explain why they belatedly raised the

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[97] Id. at 184–185.

issue of insufficient payment of docket fees before the Court of Tax Appeals En Banc in 2008, even though the issue arose as early as 2003, when petitioner filed its Amended and Supplemental Petition. As such, they are now estopped from assailing the jurisdiction of the Regional Trial Court due to petitioner's insufficient payment of docket fees.

Finally, there is no showing that petitioner intended to deliberately defraud the court when it did not pay the correct docket fees for its Amended and Supplemental Petition. Respondents have not provided any proof to substantiate their allegation that petitioner purposely avoided the payment of the docket fees for its additional claims. On the contrary, petitioner has been consistent in its assertion that it will undertake to pay any additional docket fees that may be found due by this Court. Further, it is well settled that any additional docket fees shall constitute a lien on the judgment that may be awarded.[98]

II

Sections 195 and 196 of the Local Government Code govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes:

> Section 195. Protest of Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
>
> Section 196. Claim for Refund of Tax Credit. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer

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[98] *Sun Insurance Office, Ltd. v. Asuncion*, 252 Phil. 280 (1989) [Per J. Gancayco, En Banc]; *PNOC Transport and Shipping Corp. v. Court of Appeals*, 358 Phil. 38 (1998) [Per J. Romero, Third Division]; *Lu v. Lu Ym, Sr.*, 658 Phil. 156 (2011) [Per J. Carpio-Morales, En Banc].

is entitled to a refund or credit.

In *City of Manila v. Cosmos Bottling Corp.*,[99] this Court distinguished between these two (2) remedies:

> The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.
>
> Obviously, the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.
>
> On the other hand, Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.
>
> Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended **inaction** by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.
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> Additionally, Section 196 does not expressly mention an assessment

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[99] G.R. No. 196681, June 27, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/196681.pdf> [Per J. Martires, Third Division].

> made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that **the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal**. Thus, under such circumstance, **the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC**.[100] (Emphasis in the original, citation omitted)

If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code.[101] Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest.[102] In this case, as no tax was paid, there is no claim for refund in the appeal.[103]

If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid.[104] "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer."[105]

On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.[106]

Here, there is no dispute on the refund of ₱6,224,250.00, representing the additional taxes paid for the first three (3) quarters of 1999, as ordered by the Court of Tax Appeals Second Division in its May 17, 2006 Decision on the basis that there was direct double taxation. The controversy here pertains

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100 Id. at 12–13.
101 Id.
102 LOCAL GOVT. CODE, sec. 195.
103 *City of Manila v. Cosmos Bottling Corp.*, G.R. No. 196681, June 27, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/196681.pdf> [Per J. Martires, Third Division].
104 Id.
105 Id.
106 Id.

to petitioner's entitlement to a refund of the taxes paid subsequent to the third quarter of 1999, which was denied by the Court of Tax Appeals Second Division on the ground that petitioner failed to comply with the requirements of Section 195.

When petitioner raised the applicability of Section 196 to the claim for refund of these subsequent payments, the Court of Tax Appeals Second Division, as affirmed by the Court of Tax Appeals En Banc, held that Section 196 cannot apply as petitioner previously anchored its claims under Section 195. As ruled by the Court of Tax Appeals En Banc:

> Unmistakably, Section 195 and Section 196 of the LGC are two separate and diverse remedies granted to taxpayers, calling for different requirements and conditions for their application. Considering so, petitioner should have been clear on the basis of its action. It cannot be allowed to resort to an *all-encompassing remedy* so that in case it is disqualified under once, it can immediately shift to the other.
>
> When petitioner appealed to the Second Division, the following issues were raised:
>
> 1. Whether or not the Petition of petitioner were prematurely filed, or, whether or not the said petition is the "appeal" contemplated in Section 195 of the Local Government Code.
>
> 2. Whether or not petitioner is taxable under Section 21(A) of Manila Ordinance No. 7794, as amended by Manila Ordinance No. 7807, given the fact that it is already taxed as a contractor under Section 18 of the same ordinance.
>
> Again, a cursory reading of the above as well as the arguments, discussions and theories in the *Petition for Review* and *Memorandum* filed before the Second Division shows that petitioner's argument/theory on the applicability of Section 196 to its claim after the first three quarters of 1999 was not ascertainable. In contrast, the petition is enclosed with supporting arguments on petitioner's protest to the imposition of the additional local business tax. There was no mention or discussion of Section 196.
>
> From the RTC until the filing of a petition before the Second Division, **emphasis** had been given on petitioner's arguments questioning the assessment.[107] (Emphasis in the original)

The nature of an action is determined by the allegations in the complaint and the character of the relief sought.[108] Here, petitioner seeks a refund of

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[107] *Rollo*, pp. 71–72.

[108] *Sunny Motors Sales, Inc. v. Court of Appeals*, 415 Phil. 515 (2001) [Per J. Pardo, First Division].

taxes that respondents had collected. Following *City of Manila,*[109] refund is available under both Sections 195 and 196 of the Local Government Code: for Section 196, because it is the express remedy sought, and for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid. Whether the remedy availed of was under Section 195 or Section 196 is not determined by the taxpayer paying the tax and then claiming a refund.

What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties."[110] In *Yamane v. BA Lepanto Condominium Corp.*:[111]

> Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.[112] (Citations omitted)

No such precondition is necessary for a claim for refund pursuant to Section 196.[113]

Here, no notice of assessment for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first three (3) quarters of 1999. As observed by Court of Tax Appeals Justice

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[109] G.R. No. 196681, June 27, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/196681.pdf> [Per J. Martires, Third Division].

[110] LOCAL GOVT. CODE, sec. 195.

[111] 510 Phil. 750 (2005) [Per J. Tinga, Second Division].

[112] Id. at 770.

[113] *City of Manila v. Cosmos Bottling, Corp.*, G.R. No. 196681, June 27, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/196681.pdf> [Per J. Martires, Third Division].

Casanova in his Concurring and Dissenting Opinion to the September 5, 2008 Decision:

> In order to apply Section 195 of the LGC, there is a need for the issuance of a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. It is only upon receipt of this notice of assessment that a taxpayer is required to file a protest within sixty (60) days from receipt thereof.
>
> Given the nature of a notice of assessment, it is my opinion that no notice pertaining to deficiency taxes for the periods subsequent to the 3rd Quarter of 1999 up to the present were ever issued or sent by respondents to ICTSI.
>
> In ICTSI's case, as correctly found by the *Second Division*, viz:
>
> > "Records disclose in the instant case that petitioner filed a protest pursuant to Section 195 of the LGC only with respect to the assessment of the amount of P6,224,250.00, which covers the [first three quarters] of 1999. Petitioner protested the said assessment on July 15, 1999 and paid the same amount under protest. This is not controverted by the respondents."
>
> Hence, Section 195 of the LGC cannot apply to the period subsequent to the 3rd Quarter of 1999 because ICTSI did not receive any notice of assessment thereafter that states the nature of the tax[,] amount of deficiency[,] and charges.[114]

The "assessments" from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila.[115] While these receipts state the amount and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the "notice of assessment" required under Section 195 of the Local Government Code.

When petitioner paid these taxes and filed written claims for refund before respondent City Treasurer, the subsequent denial of these claims should have prompted resort to the remedy laid down in Section 196, specifically the filing of a judicial case for the recovery of the allegedly erroneous or illegally collected tax within the two (2)-year period.

Petitioner appealed the denial of the protest against respondent City

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[114] *Rollo*, pp. 81–82.
[115] Id. at 444–454.

Treasurer's assessment and the action against the denial of its claims for refund. For both issues, petitioner's arguments are based on the common theory that the additional tax under Section 21(A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is illegal double taxation. Hence, their joinder in one (1) suit was legally appropriate and avoided a multiplicity of suits.[116]

III

A tax refund or credit is in the nature of a tax exemption,[117] construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[118] Claimants of a tax refund must prove the factual basis of their claims with sufficient evidence.[119]

To be entitled to a refund under Section 196 of the Local Government Code, the taxpayer must comply with the following procedural requirements: *first*, file a written claim for refund or credit with the local treasurer; and *second*, file a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.[120]

As to the first requirement, the records show that the following written claims for refund were made by petitioner:

In its June 17, 2003 Letter to the City Treasurer, it claimed a refund of ₱27,800,674.36 for taxes paid from the fourth quarter of 1999 up to the second quarter of 2003.[121]

In its August 18, 2005 Letter to the City Treasurer, it claimed a refund of ₱14,190,092.90 for taxes paid for the third quarter of 2003 up to the second quarter of 2005.[122]

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116 *See Commissioner of Internal Revenue v. Court of Appeals*, 304 Phil. 518 (1994) [Per J. Regalado, Second Division].

117 *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317 (2005) [Per J. Panganiban, Third Division].

118 *Commissioner of Internal Revenue v. Manila Mining Corp.*, 505 Phil. 650 (2005) [Per J. Carpio-Morales, Third Division]; *Metro Manila Shopping Mecca Corp. v. Toledo*, 710 Phil. 375 (2013) [Per J. Perlas-Bernabe, Second Division].

119 *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317 (2005) [Per J. Panganiban, Third Division]; Paseo Realty & Development Corp. v. Court of Appeals, 483 Phil. 254 (2004) [Per J. Tinga, Second Division]; *KEPCO Philippines Corp. v. Commissioner of Internal Revenue*, 656 Phil. 68 (2011) [Per J. Mendoza, Second Division].

120 *Metro Manila Shopping Mecca Corp. v. Toledo*, 710 Phil. 375 (2013) [Per J. Perlas-Bernabe, Second Division].

121 *Rollo*, pp. 137–139.

122 Id. at 618–619.

In her September 1, 2005 Response[123] to the August 18, 2005 Letter, City Treasurer Liberty M. Toledo denied the claim, stating in part:

> With respect to the alleged final and executory decision of the Regional Trial Court, Branch 21, Manila in Civil Case No. 00-97081, please be informed that as of this writing, there is no decision yet rendered by the Supreme [Court] on the appeal made by the City. Hence, the decision has not attained finality.
>
> In view thereof and considering that the issue on whether or not Golden Arches is liable under Section 21 or not and that the same constitute double taxation is sub-judice due to the case filed in court by your company, this Office, cannot, much to our regret, act favorably on your claim for refund or credit of the tax collected as mentioned above. Rest assured that upon receipt of any decision from the Supreme Court declaring Section 21 illegal and unconstitutional, this Office shall act accordingly.[124]

Thereafter, petitioner sent its January 10, 2007 Letter to the City Treasurer claiming a refund of taxes paid for the third quarter of 2005 until the fourth quarter of 2006, pursuant to the Court of Tax Appeals Second Division May 17, 2006 Decision.[125]

As for the taxes paid thereafter and were not covered by these letters, petitioner readily admits that it did not make separate written claims for refund, citing that "there was no further necessity"[126] to make these claims. It argues that to file further claims before respondent City Treasurer would have been "another exercise in futility"[127] as it would have merely raised the same grounds that it already raised in its June 17, 2003 Letter:

> In the present controversy, it can be gleaned from the foregoing discussion that to file a written claim before the Respondent City Treasurer would have been another exercise in futility because the grounds for claiming a refund for the subsequent years would have been the very same grounds cited by petitioner in support of its 17 June 2003 letter that was not acted upon by Respondent City Treasurer. Thus, it would have been reasonable to expect that any subsequent written claim would have likewise been denied or would similarly not be acted upon. This is bolstered by the fact that during the pendency of the instant case, from its initial stages before the Regional Trial Court up to the present, Respondents have continued and unceasingly assessed and collected the questioned local business tax. . . .[128]

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123 Id. at 620–621.
124 Id. at 621.
125 Id. at 482.
126 Id. at 40.
127 Id. at 41.
128 Id.

The doctrine of exhaustion of administrative remedies requires recourse to the pertinent administrative agency before resorting to court action.[129] This is under the theory that the administrative agency, by reason of its particular expertise, is in a better position to resolve particular issues:

> One of the reasons for the doctrine of exhaustion is the separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so. A no less important consideration is that administrative decisions are usually questioned in the special civil actions of certiorari, prohibition and mandamus, which are allowed only when there is no other plain, speedy and adequate remedy available to the petitioner. It may be added that strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets.[130] (Citation omitted)

When there is an adequate remedy available with the administrative remedy, then courts will decline to interfere when the party refuses, or fails, to avail of it.[131]

Nonetheless, the failure to exhaust administrative remedies is not always fatal to a party's cause. This Court has admitted of several exceptions to the doctrine:

> As correctly suggested by the respondent court, however, there are a number of instances when the doctrine may be dispensed with and judicial action validly resorted to immediately. Among these exceptional cases are: 1) when the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; 6) when irreparable damage will be suffered; 7) when there is [no] other plain, speedy and adequate remedy; 8) when strong public interest is involved; 9) when the subject of the controversy is private land; and 10) in quo warranto proceedings.[132] (Citations omitted)

If the party can prove that the resort to the administrative remedy would be an idle ceremony such that it will be absurd and unjust for it to continue seeking relief that evidently will not be granted to it, then the doctrine would not apply. In *Central Azucarera*:[133]

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129 *Sunville Timber Products, Inc. v. Abad*, 283 Phil. 400 (1992) [Per J. Cruz, First Division].
130 Id. at 406.
131 *Abe-Abe v. Manta*, 179 Phil. 417 (1979) [Per J. Aquino, Second Division].
132 *Sunville Timber Products, Inc. v. Abad*, 283 Phil. 400, 407 (1992) [Per J. Cruz, First Division].
133 104 Phil. 598 (1958) [Per J. Padilla, En Banc].

> On the failure of the appellee to exhaust administrative remedies to secure the refund of the special excise tax on the second importation sought to be recovered, we are of the same opinion as the trial court that it would have been an idle ceremony to make a demand on the administrative officer and after denial thereof to appeal to the Monetary Board of the Central Bank after the refund of the first excise tax had been denied.[134]

As correctly pointed out by petitioner, the filing of written claims with respondent City Treasurer for every collection of tax under Section 21(A) of Manila Ordinance No. 7764, as amended by Section 1(G) of Ordinance No. 7807, would have yielded the same result every time. This is bolstered by respondent City Treasurer's September 1, 2005 Letter, in which it stated that it could not act favorably on petitioner's claim for refund until there would have been a final judicial determination of the invalidity of Section 21(A).

Further, the issue at the core of petitioner's claims for refund, the validity of Section 21(A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is a question of law.[135] When the issue raised by the taxpayer is purely legal and there is no question concerning the reasonableness of the amount assessed, then there is no need to exhaust administrative remedies.[136]

Thus, petitioner's failure to file written claims of refund for all of the taxes under Section 21(A) with respondent City Treasurer is warranted under the circumstances.

Similarly, petitioner complied with the second requirement under Section 196 of the Local Government Code that it must file its judicial action for refund within two (2) years from the date of payment, or the date that the taxpayer is entitled to the refund or credit. Among the reliefs it sought in its Amended and Supplemental Petition before the Regional Trial Court is the refund of any and all subsequent payments of taxes under Section 21(A) from the time of the filing of its Petition until the finality of the case:

> WHEREFORE, premises considered, it is respectfully prayed –
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> . . . .
>
> c) after trial, a decision be rendered ordering the respondents to refund the local business taxes assessed, demanded and

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[134] Id. at 602–603.

[135] *Pepsi-Cola Bottling Company of the Philippines, Inc. v. Municipality of Tanauan, Leyte*, 161 Phil. 591 (1976) [Per J. Martin, En Banc].

[136] *Ty v. Trampe*, 321 Phil. 81 (1995) [Per J. Panganiban, Second Division]; *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473 (2014) [Per J. Leonen, Second Division].

> collected by them and paid under protest by petitioner, in the amount of P6,224,250.00, corresponding to the first three (3) quarters of 1999 plus any and all subsequent payments of taxes under Section 21(A) of Manila Ordinance No. 7794, as amended, made by petitioner from the time of the filing of this Petition until this case is finally decided, together with legal interest thereon, as well as the attorney's fees and costs of suit.[137]

As acknowledged by respondent City Treasurer in her September 1, 2005 Letter, petitioner's entitlement to the refund would only arise upon a judicial declaration of the invalidity of Section 21(A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807. This only took place when the Court of Tax Appeals En Banc dismissed respondents' Petition for Review of the May 17, 2006 Decision of the Court of Tax Appeals Second Division, rendering the judgment on the invalidity of Section 21(A) final and executory on July 2, 2007.[138] Therefore, the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The September 5, 2008 Decision and December 12, 2008 Resolution of the Court of Tax Appeals En Banc in C.T.A. EB No. 277 are hereby **REVERSED** and **SET ASIDE**. The Court of Tax Appeals En Banc is **DIRECTED** to proceed with the resolution on the merits of C.T.A. EB No. 277 with due and deliberate dispatch.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

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[137] *Rollo*, pp. 158–159.
[138] Id. at 529.

On leave
ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

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

DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY
WILFREDO V. LAPUAN
Division Clerk of Court
Third Division
DEC 17 2018