Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CITY TREASURER OF MANILA, Petitioner,	**G.R. No. 233556**
	Present:
- versus -	CARPIO, *J., Chairperson,* CAGUIOA, REYES, J. JR., LAZARO-JAVIER, and ZALAMEDA, *JJ.*
PHILIPPINE BEVERAGE PARTNERS, INC., substituted by COCA-COLA BOTTLERS PHILIPPINES, Respondent.	**Promulgated:** 11 SEP 2019

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DECISION

REYES, J. JR., *J.*:

Assailed in this Petition for Review on *Certiorari* are the December 22, 2016 Decision[1] and June 13, 2017 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1342 which affirmed the May 8, 2015 Decision[3] and the July 20, 2015 Resolution[4] of the CTA Second Division in C.T.A. AC No. 122.

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1 Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring; *rollo*, pp. 24-39.

2 Id. at 41-46.

3 Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr., and Amelia R. Cotangco-Manalastas, concurring; id. at 139-153.

4 Id. at 155-158.

The Antecedents

On January 17, 2007, the petitioner City Treasurer of Manila (petitioner) issued a Statement of Account (SOA) under Bill No. 012007-33025 to Philippine Beverage Partners, Inc. (respondent). The SOA showed that respondent is liable to pay petitioner local business taxes and regulatory fees for the first quarter of 2007 in the total amount of ₱2,930,239.82.

Respondent protested the assessment through a letter dated January 19, 2007, arguing that Tax Ordinance Nos. 7988 and 8011, amending the Revenue Code of Manila (RCM), have been declared null and void. Respondent also argued that the collection of local business tax under Section 21 of the RCM in addition to Section 14 of the same code constitutes double taxation. Thereafter, respondent made a formal tender of payment to the City of Manila on January 22, 2007, for local business tax and regulatory fees for the first quarter of 2007 in the amount of ₱506,080.89. On February 2, 2007, petitioner issued a letter to respondent denying the latter's protest which respondent received on February 6, 2007.

On February 13, 2007, respondent paid the total amount of ₱2,930,239.82 stated in the SOA. Then, on March 2, 2007, respondent filed a written claim for refund of erroneously/illegally collected tax with petitioner in the amount of ₱2,424,158.93. Further, respondent filed a Complaint for the Revision of SOA (Preliminary Assessment) and for Refund or Credit of LBT Erroneously/Illegally Collected with the Regional Trial Court, Manila, Branch 47 (RTC) on March 8, 2007.

The RTC Ruling

In a Decision[5] dated November 18, 2013, the RTC ordered the refund of the overpayment made by respondent. It held that respondent is already taxed under Section 14 of the RCM, thus, it should no longer be subjected to tax under Section 21 of the same Code. The trial court added that respondent properly filed a claim for refund. It noted that the taxes and fees subject of the claim for refund/tax credit were paid on February 13, 2007 and on March 2, 2007, respondent filed with petitioner a written claim for refund. The RTC opined that respondent had not only exhausted the requisite administrative remedy, *i.e.*, filing of a claim for refund with the City Treasurer, but it also filed the present case on time, on March 8, 2007, which is within two years from the payment of the taxes and fees erroneously/illegally collected which payment was made on February 13, 2007. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering defendants City of Manila and Liberty M. Toledo to refund to the

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5 Penned by Presiding Judge Paulino Q. Gallegos; id. at 76-86.

> plaintiff the taxes paid hereunder in the amount of [₱]2,424,158.93 and to pay the cost of suit.
>
> SO ORDERED.[6]

Petitioner moved for reconsideration but the same was denied by the RTC in an Order[7] dated July 4, 2014.

Aggrieved, petitioner filed a Petition for Review with the CTA Second Division.

The CTA Second Division Ruling

In a Decision dated May 8, 2015, the CTA Second Division affirmed the RTC ruling. It ruled that respondent complied with the requirements for filing a refund of any local taxes, fees or charges erroneously or illegally collected. The CTA Second Division denied petitioner's contentions that it was erroneous for the trial court to grant respondent's claim for refund based solely on the latter's computation and that respondent's claim should be negated by its tax deficiency for the years 2006 and 2007 amounting to ₱9,071,298.78. It held that these arguments were not raised by petitioner in its Answer before the trial court. Further, petitioner passed upon the opportunity of raising other factual and legal issues when they agreed to dispense with the pre-trial and to just submit the case for decision upon filing of the parties' respective memoranda. The CTA Second Division disposed the case in this wise:

> **WHEREFORE**, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated November 18, 2013 and Order dated July 4, 2014 of the Regional Trial Court of Manila, Branch 47, are both ***AFFIRMED***.
>
> **SO ORDERED.**[8]

Petitioner moved for reconsideration, but the same was denied by the CTA Second Division in a Resolution dated July 20, 2015. Undaunted, petitioner filed a Petition for Review before the CTA *En Banc*.

The CTA En Banc Ruling

In a Decision dated December 22, 2016, the CTA *En Banc* ruled that respondent was able to comply with the requisites for entitlement to a refund/credit of local taxes considering that it filed a written claim for refund

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6 Id. at 86.
7 Id. at 107A-109.
8 Id. at 152.

on March 2, 2007, and filed the judicial claim on March 8, 2007, which is within two years from payment of the tax on February 13, 2007. As regards the deficiency tax of respondent for the years 2006 and 2007 which petitioner seeks to offset against the amount respondent is entitled to as tax refund, the CTA *En Banc* ruled that petitioner waived any additional defenses by its failure to raise the same in its Answer before the trial court. The *fallo* reads:

> **WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit. The Decision promulgated on May 8, 2015 and the Resolution promulgated on July 20, 2015 by the Second Division are hereby **AFFIRMED**.
>
> **SO ORDERED**.[9]

Petitioner moved for reconsideration, but the same was denied by the CTA *En Banc* on June 13, 2017. Hence, this Petition for Review on *Certiorari*.

The Issues

I. WHETHER A TAXPAYER WHO PROTESTED AN ASSESSMENT MAY LATER ON INSTITUTE A JUDICIAL ACTION FOR REFUND; AND

II. WHETHER THE ALLEGED DEFICIENCY TAXES OF RESPONDENT MAY BE USED TO OFFSET ITS CLAIM FOR REFUND.

Petitioner argues that respondent should have appealed the denial of its protest instead of instituting an action for refund; and that based on the 2006 Audited Financial Statement of respondent, the latter has underpayments in its business tax payments for 2006 and 2007, thus, the same should be offset against respondent's claim for refund.[10]

The Court's Ruling

The petition is denied.

I.

Petitioner contends that the assessment against respondent became final and executory when the latter effectively abandoned its protest and instead sued in court for the refund of the assessed taxes and charges. The

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9 Id. at 38.
10 Id. at 10-18.

foregoing argument is not novel. In fact, the case of *City of Manila v. Cosmos Bottling Corporation*[11] (Cosmos) finds application. It must be noted that Cosmos and the present case involve the same taxing authority (City of Manila), the same taxing period (first quarter of 2007) and Cosmos, like respondent in the case at bar, was assessed with the tax on manufacturers under Section 14 and the tax on other businesses under Section 21 of the RCM. The Court has settled in Cosmos that a taxpayer facing an assessment issued by the local treasurer may protest it and alternatively: (1) appeal the assessment in court, or (2) pay the tax, and thereafter, seek a refund. Thus, in Cosmos, the Court declared:

> *Second*, **a taxpayer who had protested *and* paid an assessment is not precluded from later on instituting an action for refund or credit.**
>
> The taxpayers' remedies of protesting an assessment and refund of taxes are stated in Sections 195 and 196 of the LGC, to wit:
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> > 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

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11 G.R. No. 196681, June 27, 2018.

charge, or from the date the taxpayer is entitled to a refund or credit.

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. (Italics in the original)

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. (Emphasis in the original)

Additionally, Section 196 does not expressly mention an assessment 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.**

Clearly, when a taxpayer is assessed a deficiency local tax, fee or charge, he may protest it under Section 195 even without making payment of such assessed tax, fee or charge. This is because the law on local government taxation, save in the case of real property tax, does not expressly require "*payment under protest*" as a procedure prior to instituting the appropriate proceeding in court. This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest.

Needless to say, there is nothing to prevent the taxpayer from paying the tax under protest or simultaneous to a protest. There are compelling reasons why a taxpayer would prefer to pay while maintaining a protest against the assessment. For instance, a taxpayer who is engaged in business would be hard-pressed to secure a business permit unless he pays an assessment for business tax and/or regulatory fees. Also, a taxpayer may pay the assessment in order to avoid further penalties, or save his properties from levy and distraint proceedings.

The foregoing clearly shows that a taxpayer facing an assessment may protest it and alternatively: *(1)* appeal the assessment in court, or *(2)* pay the tax and thereafter seek a refund. Such procedure may find jurisprudential mooring in *San Juan v. Castro* wherein the Court described for the first and only time the alternative remedies for a taxpayer protesting an assessment — either appeal the assessment before the court of competent jurisdiction, or pay the tax and then seek a refund. The Court, however, did not elucidate on the relation of the second mentioned alternative option, *i.e.*, pay the tax and then seek a refund, to the remedy stated in Section 196.

As this has a direct bearing on the arguments raised in the petition, we thus clarify.

Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable.** (Emphasis in the original)

(a) Where no payment is made, the taxpayer's procedural remedy is governed strictly by Section 195. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment. (Italics in the original)

(b) **Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes.** In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. 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.

The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under Section 196 of the LGC. In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily **assailing the validity or correctness of the assessment he had administratively protested.** (Emphasis in the original)

It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him. As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.

Equally important is the institution of the judicial action for refund **within thirty (30) days from the denial of or inaction on the letter-protest or claim,** not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even though the suit is seemingly grounded on Section

196, **the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court.** (Emphases in the original)

The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable. Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. It cannot be anytime thereafter because the lapse of 30 days from decision or inaction results in the assessment becoming conclusive and unappealable. In short, the scenario wherein the administrative claim for refund falls on the early stage of the two-year period but the judicial claim on the last day or late stage of such two-year period does not apply in this specific instance where an assessment is issued.

To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' within 60 days from receipt of the notice of assessment, and thereafter bring suit in court within 30 days from either decision or inaction by the local treasurer.

Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.[12] (Emphases supplied and citations omitted)

In this case, after respondent received the assessment on January 17, 2007, it protested such assessment on January 19, 2007. After payment of the assessed taxes and charges, respondent wrote petitioner another letter asking for the refund and reiterating the grounds raised in the protest letter. Then, on February 6, 2007, respondent received the letter denying its protest.

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[12] Id.

Thus, on March 8, 2007, or exactly thirty (30) days from its receipt of the denial, respondent brought the action before the RTC of Manila. Hence, respondent was justified in filing a claim for refund after timely protesting and paying the assessment.

II.

As regards the second issue, Section 195 of the LGC provides that "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." Thus, suffice it to say that the issuance of a notice of assessment is mandatory before the local treasurer may collect deficiency taxes from the taxpayer. The notice of assessment is not only a requirement of due process but it also stands as the first instance the taxpayer is officially made aware of the pending tax liability.[13] The local treasurer cannot simply collect deficiency taxes for a different taxing period by raising it as a defense in an action for refund of erroneously or illegally collected taxes.

To reiterate, respondent, after it had protested and paid the assessed tax, is permitted by law to seek a refund having fully satisfied the twin conditions for prosecuting an action for refund before the court.

Consequently, the CTA did not commit a reversible error when it allowed the refund in favor of respondent.

WHEREFORE, the petition is **DENIED** for lack of merit. The December 22, 2016 Decision and the June 13, 2017 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1342 are hereby **AFFIRMED**.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

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[13] *Yamane v. BA Lepanto Condominium Corp.*, 510 Phil. 750, 770 (2005).

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

RODIL V. ZALAMEDA
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.

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second 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.

LUCAS P. BERSAMIN
Chief Justice