

THIRD DIVISION

[G.R. No. 185622, October 17, 2018]

**INTERNATIONAL CONTAINER TERMINAL SERVICES, INC.,
PETITIONER, V. 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**

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.

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 P6,224,250.00, 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 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 P27,800,674.36 "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.

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 P39,268,772.41. 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] 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 P6,224,250.00, 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.

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 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]

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 P15,539,727.90, 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 P44,134,449.68 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