

## SECOND DIVISION

[ G.R. No. 167732, July 11, 2012 ]

**TEAM PACIFIC CORPORATION, PETITIONER, VS. JOSEPHINE DAZA IN HER CAPACITY AS MUNICIPAL TREASURER OF TAGUIG, RESPONDENT.**

### DECISION

**PEREZ, J.:**

The proper remedy from the denial of an assessment protest by a local treasurer is at issue in this Rule 45 petition for review on *certiorari* filed by petitioner Team Pacific Corporation (TPC), assailing the Order dated 5 April 2005 issued by the Regional Trial Court (RTC), Branch 152, Pasig City in SCA No. 2662, dismissing its Rule 65 petition for *certiorari*.<sup>[1]</sup>

The facts are not in dispute.

A domestic corporation engaged in the business of assembling and exporting semiconductor devices, TPC conducts its business at the FTI Complex in the then Municipality of Taguig. It appears that since the start of its operations in 1999, TPC had been paying local business taxes assessed at one-half (1/2) rate pursuant to Section 75 (c) of Ordinance No. 24-93, otherwise known as the *Taguig Revenue Code*. Consistent with Section 143 (c)<sup>[2]</sup> of Republic Act (RA) No. 7160, otherwise known as the *Local Government Code of 1991*, said provision of the Taguig Revenue Code provides as follows:

Section 75. *Imposition of Tax.* – There is hereby imposed on the following persons, natural or juridical, who establish, operate conduct or maintain their respective businesses within the Municipality of Taguig, a graduated business tax in the amounts hereafter prescribed:

x x x x

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

(1) Rice and corn;

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;

(3) Cooking oil and cooking gas;

- (4) Laundry soap, detergents, and medicine;
- (5) Agricultural implements, equipment and post- harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;
- (6) Poultry feeds and other animal feeds;
- (7) School supplies; and
- (8) Cement.

x x x x

When it renewed its business license in 2004, however, TPC's business tax for the first quarter of the same year was assessed in the sum of P208,109.77 by respondent Josephine Daza, in her capacity as then Municipal Treasurer of Taguig. The assessment was computed by Daza by applying the full value of the rates provided under Section 75 of the *Taguig Revenue Code*, instead of the one-half (1/2) rate provided under paragraph (c) of the same provision. Constrained to pay the assessed business tax on 19 January 2004 in view of its being a precondition for the renewal of its business permit, TPC filed on the same day a written protest with Daza, insisting on the one-half (1/2) rate on which its business tax was previously assessed. In support of its position, TPC invoked Section 143 (c) of the *Local Government Code of 1991* and Section 2 of Local Finance Circular No. 4-93 of the Department of Finance which provided guidelines for the imposition of business taxes on exporters by municipalities.<sup>[3]</sup>

Subsequent to its 13 April 2004 demand for the refund and/or issuance of a tax credit for the sum of P104,054.88 which it considered as an overpayment of its business taxes for the same year,<sup>[4]</sup> TPC filed its 15 April 2004 Rule 65 petition for *certiorari* which was docketed as SCA No. 2662 before the RTC. Alleging that no formal action was taken regarding its protest on or before 19 March 2004 or within the period of sixty (60) days from the filing thereof as prescribed under Article 195 of the *Local Government Code*, TPC maintained that it was simply informed by Atty.

Marianito D. Miranda, Chief of the Taguig Business Permit and Licensing Office, that the assessment of its business tax at the full rate was justified by the fact that it was not an exporter of the essential commodities enumerated under Section 143 of the *Local Government Code* and Section 75 of the *Taguig Revenue Code*. Arguing that Daza acted with grave abuse of discretion in not applying the one-half (1/2) rate provided under paragraph (c) of the same provisions, TPC prayed for the issuance of a temporary restraining order and/or permanent injunction to restrain the former from assessing business taxes at the full rate, the refund of its overpayment as well as the grant of its claims for exemplary damages and attorney's fees.<sup>[5]</sup>

On 25 June 2004, Daza filed her comment to the foregoing petition, contending that the change in the administration in the then Municipality of Taguig brought about the assessment and imposition of the correct business tax on TPC. Not being an exporter of the essential commodities enumerated under the provisions in question, it was argued that TPC is not entitled to the fifty (50%) percent business tax exemption it had been granted in the previous years. Having supposedly denied the letter-protest thru Atty. Miranda, Daza likewise faulted TPC for not filing its appeal in court within thirty (30) days from receipt of the denial in accordance with Article

195 of the *Local Government Code*. Denigrating TPC's 13 April 2004 demand for the refund and/or issuance of a tax credit as a vain attempt to rectify its procedural error, Daza prayed for the dismissal of the petition for *certiorari* on the ground that the same cannot be resorted to as a substitute for a lost right of appeal and was, by itself, bereft of merit.<sup>[6]</sup>

In its 14 July 2004 reply, TPC insisted that Daza failed to act formally on its letter-protest and took the latter to task for not attaching to her comment a copy of the supposed denial issued by Atty. Miranda.<sup>[7]</sup> Acting on the memorandum<sup>[8]</sup> and motions to resolve filed by TPC,<sup>[9]</sup> the RTC went on to render the herein assailed Order dated 5 April 2005, dismissing the petition for lack of merit. While finding that the absence of proof of Atty. Miranda's denial of TPC's letter-protest meant that the latter had thirty (30) days from the lapse of the sixty (60) days prescribed under Article 195 of the *Local Government Code* within which to perfect its appeal, the RTC ruled that, rather than the special civil action of *certiorari* provided under Rule 65 of the *1997 Rules of Civil Procedure*, an ordinary appeal would have been the proper remedy from the assessment complained against.<sup>[10]</sup> Without moving for the reconsideration of the foregoing order, TPC filed the petition at bench on 28 April 2005, on pure questions of law.<sup>[11]</sup>

In its 6 June 2006 Memorandum, TPC proffers the following issues for resolution, to wit: (a) whether or not it availed of the correct remedy against Daza's illegal assessment when it filed its petition for *certiorari* before the RTC; and, (b) whether or not, as an exporter of semiconductor devices, it should be assessed business taxes at the full rate instead of the one-half (1/2) rates provided under Section 75 (c) of the *Taguig Revenue Code* and 143 (c) of the *Local Government Code*. In urging the reversal of the RTC's assailed 5 April 2005 Order, TPC argues that, without the remedy of appeal being specified with particularity under Article 195 of the *Local Government Code*, a Rule 65 petition for *certiorari* is the proper and logical remedy since Daza acted with grave abuse of discretion in assessing its business taxes at the full rate. Although it is an exporter of semiconductors, TPC insists that its business tax should have been computed at one-half (1/2) rate in accordance with the clear intendment of the law. It likewise claimed that its position is congruent with administrative determinations as well as Daza's own act of reverting back to the half rate assessment of its business tax for the second quarter of 2006.<sup>[12]</sup>

In her memorandum, Daza, in turn, asserted that the RTC correctly dismissed TPC's petition for *certiorari* in view of its failure to avail of the proper remedy of ordinary appeal provided under Article 195 of the *Local Government Code*. As then Municipal Treasurer of Taguig, Daza argued that she did not exceed her jurisdiction or abuse her discretion in assessing TPC's business tax pursuant to Section 143 (c) of the same Code and Section 75 (c) of the *Taguig Revenue Code*. Not being an exporter of the basic commodities enumerated under the subject provisions, TPC cannot insist on the computation of its business taxes on the basis of the one-half (1/2) rate prescribed for a category of taxpayers to which it clearly did not belong. In view of TPC's choice of the wrong mode of appeal, Daza maintained that the assailed assessment had already attained finality and can no longer be modified.<sup>[13]</sup>

We find the dismissal of the petition in order.

Considering that the RTC's assailed 5 April 2005 order did not delve on the proper rate of business tax imposable on TPC as an exporter, we shall limit our discussion to the procedural aspects of the petition.

A taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or the lapse of the sixty (60) day period within which the local treasurer is required to decide the protest, from the moment of its filing. This much is clear from Section 195 of the *Local Government Code* which provides as follows:

SEC. 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 canceling 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.

Absent any showing of the formal denial of the protest by Atty. Miranda, then Chief of the Taguig Business Permit and Licensing Office, we find that TPC's filing of its petition before the RTC on 19 April 2004 still timely. Reckoned from the filing of the letter protest on 19 January 2004, Daza had sixty (60) days or until 19 March 2004 within which to resolve the same in view of the fact that 2004 was a leap year. From the lapse of said period, TPC, in turn, had thirty (30) days or until 18 March 2004 within which to file its appeal to the RTC. Since the latter date fell on a Sunday, the RTC correctly ruled that TPC's filing of its petition on 19 April 2004 was still within the period prescribed under the above quoted provision. Whether or not a Rule 65 petition for *certiorari* was the appropriate remedy from Daza's inaction on TPC's letter-protest is, however, an entirely different issue which we are now called upon to resolve, considering the RTC's ruling that it should have filed an ordinary appeal instead. As correctly observed by TPC, after all, Section 195 of the *Local Government Code* does not elaborate on how an appeal is to be made from the denial by a local treasurer of a protest on assessment made by a taxpayer.<sup>[14]</sup>

In the case of *Yamane vs. BA Lepanto Condominium Corporation*<sup>[15]</sup> (BLCC), this Court saw fit to rule that the remedy to be pursued by the taxpayer is one cognizable by the RTC in the exercise of its original – not its appellate – jurisdiction. In said case, BLCC's *appeal* from the denial of its protest by the Makati City