

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HOLCIM PHILIPPINES, INC.,

CTA EB NO. 2758
(CTA AC No. 251)

Petitioner,

Present:

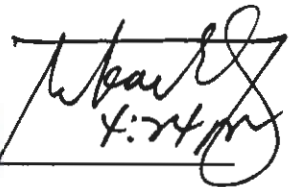
- versus -

DEL ROSARIO, *PJ*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES *JJ*.

THE CITY OF MANILA AND
JOSEPHINE D. DAZA, IN HER
CAPACITY AS THE CITY
TREASURER OF THE CITY OF
MANILA,

Respondents.

Promulgated:
NOV 26 2024



X-----X

DECISION

FERRER-FLORES, J.:

At bar is a *Petition for Review*¹ filed by petitioner **Holcim Philippines, Inc.** against respondents **The City of Manila and Josephine D. Daza, in her capacity as the City Treasurer of the City of Manila** assailing the Decision dated November 18, 2022² (assailed Decision), and the Resolution dated May 11, 2023,³ (assailed Resolution) of the Court of Tax Appeals (CTA) Special Second Division⁴ in CTA AC No. 251, the dispositive portions of which read:

¹ Filed on June 16, 2023, *Rollo*, pp. 6-37.

² *Id.*, at pp. 39-61.

³ *Id.*, at pp. 63-68.

⁴ Penned by Associate Justice Jean Marie A. Bacorro-Villena and concurred in by Associate Justice Lane S. Cui-David.

Assailed Decision:

WHEREFORE, the foregoing premises considered, the Petition for Review of petitioner Holcim Philippines, Inc. filed on 17 May 2021 is hereby **DENIED** for lack of merit. Accordingly, the Decision and Order of the Regional Trial Court of the City of Manila, Branch 21, in Civil Case No. R-MNL-18-12812-CV on 11 December 2020 and 01 March 2021, respectively, are hereby **AFFIRMED**.

SO ORDERED.

Assailed Resolution:

WHEREFORE, the foregoing considered, petitioner's "Motion for Reconsideration (Re: Decision dated November 18, 2023)" filed on 07 December 2022, is hereby **DENIED** for lack of merit.

SO ORDERED.

THE PARTIES

Petitioner Holcim Philippines, Inc. is a domestic corporation organized and existing under the laws of the Philippines, with principal office located at 7th Floor, Venice Corporate Center, McKinley Town Center, Fort Bonifacio, Taguig City.⁵

Respondent City of Manila is a local government unit vested with authority to impose taxes and fees within its jurisdiction in accordance with the Local Government Code (LGC) of 1991.⁶

Respondent Daza is the Treasurer of the City of Manila empowered to perform the duties of said office, including, *inter alia* the collection of all local taxes, fees and charges.⁷

FACTUAL ANTECEDENTS

The factual antecedents as narrated in the Division Decision are as follows:⁸

⁵ Paragraph (Par.) 14, IV. Parties, Petition for Review, *Rollo*, p. 4; Decision dated November 18, 2022, *Rollo*, p. 40.

⁶ Decision dated November 18, 2022, *Rollo*, p. 40.

⁷ *Id.*

⁸ *Rollo*, pp. 33-38.

DECISION

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On 10 January 2018, petitioner executed a Certification stating its gross sales for calendar year (CY) 2017 amounting to P1,186,126,910.78 in connection with the renewal of its business permit.

On 15 January 2018, respondent city, through respondent treasurer, issued petitioner a Statement of Account for the 1st Quarter of CY 2018 (Q1 SOA), holding the latter liable for local business tax (LBT) amounting to P660,483.32. Petitioner paid the same to guarantee its continuous operations. However, in a letter dated 15 March 2018, petitioner sought a partial refund of the amount of P331,204.67 deeming the same to have been collected illegally.

Thereafter, on 27 March 2018, respondent city issued against petitioner a SOA for the 2nd Quarter of CY 2018 (Q2 SOA) amounting to P660,483.32. Petitioner again paid but, in a letter dated 22 May 2018, requested a refund of the amount of P331,204.67.

Lastly, on 27 June 2018, respondent city issued a SOA for the 3rd Quarter of CY 2018 (Q3 SOA) for a similar amount of P660,483.32. After payment, petitioner, through a letter dated 02 August 2018, again requested a partial refund of the amount of P331,204.67.

In the *interim*, through its Licensing Division's Officer-in-Charge (OIC), Atty. Rogel C. Gatchalian (Atty. Gatchalian), respondent city wrote petitioner a letter (letter request) dated 03 April 2018 which the latter received on 17 May 2018. It requested the latter to provide certain financial documents to the Office of the City Treasurer for the latter to determine the correct amount of its tax liability.

On 05 November 2018, petitioner filed a Petition for Refund with the RTC.

During the trial of the case, petitioner offered the testimony of Marion D. Castañeda (Castañeda) who, since December 2018, has been HPI's Tax and Business Permits Manager. *Via* his Judicial Affidavit, he testified to the fact of petitioner's receipt of the SOAs, payment of assessed LBT, and its subsequent partial claim for refund of LBT paid for the 1st, 2nd, and 3rd quarters of CY 2018. He further testified that HPI's sales as a manufacturer and wholesaler of cement, an essential commodity under Section 143 (c) (8) of the LGC of 1991, should be subject to 1/2 of the rates specified under subsections (a), (b) and (d) of the aforementioned Section. In connection with his testimony, Castañeda also identified the following pieces of documentary evidence:

Document	Exhibit
Holcim Philippines Amended Articles of Incorporation (AOI)	"A"
Business Permit dated 20 January 2018	"B"
Business Permit dated 20 January 2017	"C"
Q1 SOA	"D"
Q2 SOA	"E"
Q3 SOA	"F"

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Official Receipt (OR) No. U033034344B	"G"
OR U032044167B	"H"
OR U040031499B	"I"
Protest Letter dated 15 March 2018	"J"
Protest Letter dated 22 May 2018	"K"
Protest Letter dated 02 August 2018	"L"

After petitioner rested its case, respondents' witness Magdalena Q. Afuang (**Afuang**), its Local Treasury Operations Officer III, took the witness stand and testified through her Judicial Affidavit. According to Afuang, *per* petitioner's business permit, it has been registered as a mere wholesaler and not a wholesaler of essential commodities. As such, it was not to be entitled to the preferential rate of LBT under Section 103 of the 2013 Omnibus Revenue Code of the City of Manila (**ORCCM**).

Later in her testimony, Afuang also attested to petitioner's receipt of the letter request on 17 May 2018, requesting the latter to produce certain financial documents to verify its claim of refund. Since petitioner immediately raised its claim for refund to the Court without complying with such request, respondents were denied the opportunity to act on petitioner's claim.

The said letter request dated 03 April 2019 (which petitioner received on 17 May 2018) was admitted into evidence as respondent's Exhibit "1" to "1-b".

After the trial, the RTC promulgated the assailed Decision and essentially found petitioner to have failed in proving that it has registered as a wholesaler of an essential commodity which, in this case, is cement *per* its business permit for CY 2018 and the preceding years. Following the Supreme Court's ruling in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue (Total Gas)*, the RTC also found petitioner's judicial action for refund dismissible for its failure to substantiate its claim at the administrative level (when it ignored respondents' request for the production of financial documents relevant to its claim for refund).

Aggrieved, petitioner filed a Motion for Reconsideration (**MR**) of the assailed Decision. However, the RTC was unperturbed and denied the same as contained in its similarly assailed Order dated 01 March 2021.

Having been consistently denied of relief by the RTC, petitioner then filed this present petition.

In a Resolution dated 27 May 2021, the Court ordered respondents to file a comment/opposition to the instant petition. On 25 June 2021, respondents filed their Comment. Subsequently, on 12 July 2021, petitioner filed its "Reply (Re: Respondents' Comment dated June 21, 2021 filed through registered mail on June 23, 2021)" (**Reply**).

In yet another Resolution dated 14 July 2021, the Court noted petitioner's Reply. On 04 October 2021, respondents filed a Manifestation wherein it adopted the contents of their Comment as their Memorandum. On 27 October 2021, petitioner filed its Memorandum and reiterated the

contents of the instant petition. Finally, in a Resolution dated 23 November 2021, the Court submitted herein case for decision.

As earlier mentioned, the CTA Special Second Division denied the *Petition for Review* for lack of merit. Petitioner's *Motion for Reconsideration* was likewise denied.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Undeterred by the adverse decision, petitioner filed the present *Petition for Review* on June 16, 2023.

Upon the directive of the Court,⁹ respondents filed their *Comment-Opposition* on October 16, 2023.¹⁰ Petitioner thereafter filed a *Reply/Opposition (Re: Respondents' Comment-Opposition dated October 16, 2023)* on November 3, 2023.¹¹

In the Minute Resolution dated November 13, 2023,¹² the Court noted respondents' *Comment-Opposition* as well as petitioner's *Reply/Opposition (Re: Respondents' Comment-Opposition dated October 16, 2023)*. The case was also submitted for decision.

ISSUES

In assailing the Decision and Resolution of the CTA Special Second Division, petitioner assigns the following errors:

- A. The CTA Special Second Division erred in ruling that petitioner failed to prove it was a wholesaler/manufacturer of an essential commodity, the cement, and entitled to a preferential rate of local business tax (LBT) on sales thereof under Sections 102 and 103 of the 2013 Omnibus Revenue Code of City of Manila (ORCCM); and,
- B. The CTA Special Second Division erred in ruling that there is no ground to grant the claim for refund of LBT.

⁹ Minute Resolution dated September 27, 2023, *Rollo*, p. 142.

¹⁰ *Rollo*, pp. 143-147.

¹¹ *Rollo*, pp. 148-160.

¹² *Rollo*, p. 161.

Petitioner's arguments

Petitioner insists that it was able to prove that it is a wholesaler of cement, an essential commodity under Section 143 (c) of the LGC of 1991. It points out that the parties stipulated before the RTC proceedings that petitioner is a manufacturer and/or wholesaler of cement. Accordingly, such stipulation of fact, coupled with petitioner's Amended Articles of Incorporation (AOI) stating that it is a manufacturer and/or wholesaler of cement, should be conclusive as to petitioner's business activity and classification and entitlement to the preferential LBT rate in the LGC of 1991 and ORCCM. The Manila Cement Terminal is maintained by petitioner for purposes of manufacturing/wholesaling of cement.

Further, petitioner reiterates that there is no requirement in law and/or jurisprudence that a taxpayer claiming for refund of erroneously and illegally collected LBT first present its business permit or registration before it may avail of the relief granted under Section 196 of the LGC of 1991.

Respondents' arguments

Respondents, on the other hand, aver that petitioner's arguments are mere rehash of the issues already discussed by the RTC and the CTA Special Second Division. There is, thus, no need to deviate from the ruling considering that there is no new evidence, argument, overturning of rulings on jurisprudence or even amendment to existing laws.

Respondents submit that the only evidence presented that could prove that petitioner is a seller and/or manufacturer of an essential commodity (cement) is the Amended AOI. Aside from such claim, however, it is also authorized to deal in other building materials which may or may not fall within the scope of the essential commodities enumerated under Section 143 (c) of the LGC of 1991.

RULING OF THE COURT *EN BANC*

The *Petition for Review* lacks merit.

After an assiduous review of the records and the parties' arguments, the Court finds no cogent reason to reverse or modify the assailed Decision and Resolution. Petitioner essentially reiterated its arguments, which the CTA Special Second Division painstakingly discussed and passed upon.

Timeliness of the Petition for Review

Before delving into the merits of the instant case, the Court shall first determine its jurisdiction.

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA) provides:

Sec. 3. Who may appeal; period to file petition. –

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

Petitioner received the Resolution denying its *Motion for Reconsideration* on May 17, 2023. Counting fifteen (15) days therefrom, petitioner had until June 1, 2023 within which to elevate the appeal before this Court.

On May 31, 2023, petitioner filed a *Motion for Extension of Time To File Petition for Review*. In the Minute Resolution dated June 2, 2023, petitioner was granted fifteen (15) days or until June 16, 2023 within which to file its Petition for Review.

Petitioner, thus, timely filed the instant *Petition for Review* on June 16, 2023.

Petitioner is not entitled to the preferential rate for essential commodities under Section 143 (c)(8) of the LGC of 1991.

Petitioner posits that the stipulation of fact before the RTC that it is a manufacturer of cement, as well as the Amended AOI, is conclusive, and therefore, it must be allowed to avail of the preferential rate for essential commodities under Section 143 (c) (8) of the LGC of 1991.

We do not agree. ↴

As found by the CTA Special Second Division, petitioner is not *exclusively* engaged in the sale and/or manufacture of cement. We echo the Decision of the CTA Special Second Division, to wit:

PETITIONER FAILED TO PROVE
WITH PREPONDERANT EVIDENCE
THAT IT IS ENTITLED TO THE
PREFERENTIAL RATE.

An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal.

Section 143 (c) (8) of the LGC of 1991, as amended, provides:

...

SEC. 143. Tax on Business. — The municipality may impose taxes on the following businesses:

...

(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 subsection (a), (b) and (d) of this Section:

...

(8) Cement.

...

Meanwhile, Sections 102 and 103 of the ORCCM, state:

...

SEC. 102. Tax on Wholesalers, Distributors, or Dealers. — There is hereby imposed a graduated tax on wholesalers, distributors, or dealers in **any article of commerce of whatever kind or nature.** . .

...

SEC. 103. Tax on Essential Commodities. — A percentage tax at the rate of one half (1/2) of the rates prescribed under Sections 101, 102, and 104 is hereby imposed on exporters, and on **manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder:**

...

(8) Cement.

...

At this juncture, it is important to remember that LGUs impose LBT on the *privilege of doing business within their territorial jurisdictions*. The phrase "doing business" refers to engaging in some sort of "trade or commercial activity frequently as a means of subsistence or with an eye toward profit. Thus, in order for petitioner to be entitled to the discounted

tax rate under Section 103 of the ORCCM, it is incumbent upon petitioner to prove that it is engaged in business as a manufacturer, miller, producer, wholesaler, distributor, dealer or retailer of cement or other essential commodities.

To prove that it is a manufacturer and/or wholesaler of cement, petitioner proffered as evidence its Amended AOI and the testimony of its witness, Castañeda. As shown in its Amended (AOI), petitioner's primary business purposes are as follows:

...

To engage in the **business of manufacture, production and merchandising, whether domestically or for export, of cement, cement products and by-products, including its derivatives, and any and all kinds of minerals and building materials.** (As amended on March 31, 2011 by the Board of Directors and on May 12, 2011 by the Shareholders)

...

Indubitably, from the nature of its business, petitioner is *not exclusively* engaged in the sale and/or manufacture of cement. According to its Amended AOI, it may engage in the sale and/or manufacture of all kinds of minerals and building materials. In connection with this, petitioner's Certification of its total gross receipts/sales for the CY 2017 does not indicate that its sales were derived *solely* from the sale of cement.

Moreover, as regards this matter, the testimony of Castañeda bears glaring inconsistencies. In Castañeda's Amended Judicial Affidavit, he testified thusly:

...

11. Question: **Is HPI engaged in cement manufacturing in the City of Manila?**

Answer: **Yes.** Apart from the actual manufacturing and production of cement, the storage, warehousing, transportation, merchandising, and wholesaling, form part of the cement manufacturing business of HPI. In the City of Manila, HPI has a terminal, known as the "Holcim Philippines, Inc.-Manila Cement Terminal" located in L10 B2 Manila Harbor Center, Tondo, Manila, which serves and acts as an **entry point of cement manufactured by Holcim from outside of Luzon.**

12. Question: Can you state the registered line of business of HPI in the City of Manila for 2018 and prior year?

Answer: For years 2017 and 2018, HPI was registered as a "WHOLESALE" and "WAREHOUSING."

...

Moreover, as found by the CTA Special Second Division, petitioner's lone witness had no personal knowledge of the factual allegations in its original petition before the RTC. We quote:

As it is, petitioner's sole witness has no personal knowledge of the factual allegations in its original petition before the RTC. The only piece of evidence that may somehow substantiate petitioner's status as a seller and/or manufacturer of an essential commodity would be its Amended AOI. **However, as previously discussed, petitioner's Amended AOI also authorizes it to deal in other building materials which may or may not fall within the scope of the essential commodities enumerated under Section 143 of the LGC of 1991 and Section 103 of the ORCCM. Since petitioner's Certification does not also itemize which among its gross sales pertains to the sale of cement; the Court has no way to determine whether the preferential rate of LBT may be applied to even a portion of its petitioner's revenue.** Taking into consideration these circumstances (and the declaration of petitioner's own witness that HPI's business, at least in Manila, is registered as "WHOLESALE" in general and "WAREHOUSING"), the Court thus is left to conclude that petitioner is indeed *not* to be entitled to a preferential rate of LBT.

Even assuming *arguendo* that petitioner is not required to register as a wholesaler and/or manufacturer of cement to avail of the preferential rate, petitioner's evidence remains severely lacking to even prove that it deserves a partial refund of the collected LBT. (*Emphasis supplied*)

xxx xxx xxx

In cases where only preponderance of evidence is needed to grant relief to the claimant, the parties' opposing evidence are necessarily pitted against each other. The standard is met if the evidence is able to prove that **the proposition is more likely to be true than not true or more probable than improbable.** Stated differently, it is more likely to be true or more probable than what the opposing pieces of evidence prove, *i.e.*, the proof generated by the evidence is **any value greater than fifty percent chance that the proposition is true as against what the opposing evidence sought to establish.** (*Emphasis in the original*)

Bearing in mind that tax refunds or credits – just like tax exemptions – are strictly construed against taxpayers, the latter have the burden to prove strict compliance with the conditions for the grant of the tax refund.¹³ On this score, petitioner failed to prove that it is entitled to the preferential rate of LBT under Section 143 (c)(8) of the LGC of 1991.

All told, there is no compelling reason for the Court *En Banc* to disturb the findings and ruling of the CTA Special Second Division. ↗

¹³ *Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 184266, November 11, 2013.

DECISION


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in her capacity as the City Treasurer of the City of Manila


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WHEREFORE, the instant **Petition for Review** is **DENIED** for lack of merit. The Decision dated November 18, 2022 and the Resolution dated May 11, 2023 in CTA AC No. 251 are hereby **AFFIRMED**.

SO ORDERED.

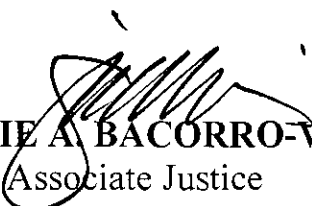

CORAZON G. FERRER-FLORES
Associate Justice

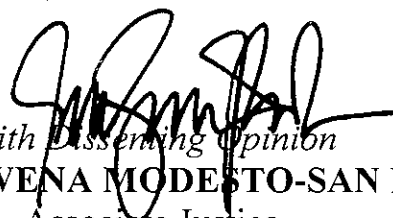
WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


With Dissenting Opinion
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

ON LEAVE
HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DELROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

HOLCIM PHILIPPINES, INC., **CTA EB NO. 2758**
Petitioner, (CTA AC No. 251)

-versus-

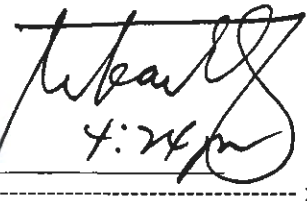
**THE CITY OF MANILA AND
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Respondents.

Present:
DEL ROSARIO, P.J.
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

Promulgated:

NOV 26 2024

A handwritten signature in black ink is written over a blue date stamp that reads "NOV 26 2024". Below the date stamp, the time "4:24 pm" is handwritten in black ink.

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DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With all due respect to my esteemed colleague, Associate Justice Corazon G. Ferrer-Flores, I disagree with her finding that petitioner is not entitled to the preferential rate for essential commodities under *Section 143 (c) (8) of the Local Government Code of 1991* (“LGC”).

Petitioner, as a manufacturer and wholesaler of an essential commodity, *i.e.*, cement, is entitled to the preferential rate for local business tax (“LBT”) under *Section 143(c)(8) of the LGC*. Accordingly, it is entitled to a refund of erroneously paid LBT for the 1st, 2nd, and 3rd quarters of calendar year (“CY”) 2018.

Unlike the national government, local government units (“LGUs”) have no inherent power to tax. They merely derive such power from *Article X, Section 5 of the 1987 Constitution*. Consistent with this provision, the *LGC* was enacted to give each LGU the power to create its own source of revenue and to levy taxes, fees, and charges, *subject to statutory guidelines and* ✓

limitations.¹ Additionally, it is clear that *Section 129, Book II, of the LGC*, empowers each LGU to create its own sources of revenue, and to levy taxes, fees, and charges, consistent with the basic policy of local autonomy, but *subject to the provisions of the said Code*. In other words, the power of an LGU to impose or levy taxes cannot go beyond the limitations set forth by the provisions of the *LGC*.

The power of a municipality and city to impose business taxes finds basis under *Section 143 in relation to Section 151, both of the LGC*, to wit:

SEC. 143. Tax on Business. — *The municipality may impose taxes on the following businesses:*

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

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than 10,000.00		165.00
10,000.00 or more but less than 15,000.00	15,000.00	220.00
15,000.00 or more but less than 20,000.00	20,000.00	302.00
20,000.00 or more but less than 30,000.00	30,000.00	440.00
30,000.00 or more but less than 40,000.00	40,000.00	660.00
40,000.00 or more but less than 50,000.00	50,000.00	825.00
50,000.00 or more but less than 75,000.00	75,000.00	1,320.00
75,000.00 or more but less than 100,000.00	100,000.00	1,650.00
100,000.00 or more but less than 150,000.00	150,000.00	2,200.00
150,000.00 or more but less than 200,000.00	200,000.00	2,750.00
200,000.00 or more but less than 300,000.00	300,000.00	3,850.00
300,000.00 or more but less than 500,000.00	500,000.00	5,500.00
500,000.00 or more but less than 750,000.00	750,000.00	8,000.00
750,000.00 or more but less than 1,000,000.00	1,000,000.00	10,000.00
1,000,000.00 or more but less than 2,000,000.00	2,000,000.00	13,750.00
2,000,000.00 or more but less than 3,000,000.00	3,000,000.00	16,500.00
3,000,000.00 or more but less than 4,000,000.00	4,000,000.00	19,800.00
4,000,000.00 or more but less than 5,000,000.00	5,000,000.00	23,100.00
5,000,000.00 or more but less than 6,500,000.00	6,500,000.00	24,375.00
6,500,000.00 or more	at a rate not exceeding thirty-seven and a half percent (37 1/2%) of one percent (1%)	

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

¹ *City of Cagayan De Oro vs. Cagayan Electric Power & Light Co., Inc. (CEPALCO)*, G.R. No. 224825, October 17, 2018.

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than 1,000.00		18.00
1,000.00 or more but less than 2,000.00	2,000.00	33.00
2,000.00 or more but less than 3,000.00	3,000.00	50.00
3,000.00 or more but less than 4,000.00	4,000.00	72.00
4,000.00 or more but less than 5,000.00	5,000.00	100.00
5,000.00 or more but less than 6,000.00	6,000.00	121.00
6,000.00 or more but less than 7,000.00	7,000.00	143.00
7,000.00 or more but less than 8,000.00	8,000.00	165.00
8,000.00 or more but less than 10,000.00	10,000.00	187.00
10,000.00 or more but less than 15,000.00	15,000.00	220.00
15,000.00 or more but less than 20,000.00	20,000.00	275.00
20,000.00 or more but less than 30,000.00	30,000.00	330.00
30,000.00 or more but less than 40,000.00	40,000.00	440.00
40,000.00 or more but less than 50,000.00	50,000.00	660.00
50,000.00 or more but less than 75,000.00	75,000.00	990.00
75,000.00 or more but less than 100,000.00	100,000.00	1,320.00
100,000.00 or more but less than 150,000.00	150,000.00	1,870.00
150,000.00 or more but less than 200,000.00	200,000.00	2,420.00
200,000.00 or more but less than 250,000.00	250,000.00	3,300.00
300,000.00 or more but less than 500,000.00	500,000.00	4,400.00
500,000.00 or more but less than 750,000.00	750,000.00	6,600.00
750,000.00 or more but less than 1,000,000.00	1,000,000.00	8,800.00
1,000,000.00 or more but less than 2,000,000.00	2,000,000.00	10,000.00
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)	

(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.

(d) On retailers:

With gross sales or receipts for the preceding calendar year of:	Per Annum Rate of Tax
P400,000.00 or less.....	2%
more than P400,000.00.....	10%

(Italics supplied.)

SEC. 151. Scope of Taxing Powers. — Except as otherwise provided in this Code, *the city, may levy the taxes, fees, and charges which the province or municipality may impose:*

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.
 (Emphases and italics supplied.)

Thus, based on *Section 151, in relation to Section 143, both of the LGC*, a city, such as respondent City of Manila, may tax manufacturers under *Section 143 (a) of the LGC*. However, manufacturers of essential commodities, such as cement, may only be taxed with a rate not exceeding 50% of the rates prescribed for under *Sections 143 (a), (b), and (d) of the LGC*. Relative thereto, under *Section 131(o) of the LGC*, a manufacturer is any person that changes or modifies any product to take the form of another, either to prepare it for special uses or to transform it to some marketable shape, for the purpose of selling or distributing them to others for a fee.

In this case, the parties stipulated, and as duly indicated in petitioner’s Amended Articles of Incorporation (“AOI”), that petitioner’s primary purpose is “(t)o engage in the business of manufacture, production and merchandising, whether domestically or for export, of cement, cement products and by-products, including its derivatives, and any and all kinds of minerals and building materials.” Thus, petitioner is a manufacturer and/or wholesaler of cement, which is classified by *Section 143(c) of the LGC* as an essential commodity.

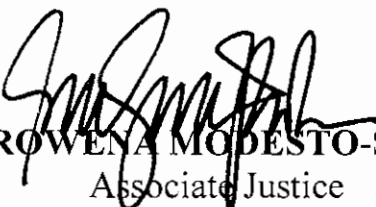
The fact that petitioner’s Amended AOI provides that it may also engage in the manufacture of “any and all kinds of minerals and building materials” does not cancel out petitioner’s status as a manufacturer and/or wholesaler of cement entitled to the reduced LBT rates under *Section 143 (c) of the LGC*. Nowhere in the stated provision is it provided that a manufacturer and/or wholesaler of essential commodities must exclusively manufacture or wholesale the subject essential commodity to the exclusion of other goods to be entitled to the preferential LBT rates.

Accordingly, I am of the opinion that respondents erred in billing petitioner LBT using the rate for manufacturers in general.

Disregarding petitioner's clear status as a manufacturer of essential commodities is clearly beyond the limitations provided by the *LGC* as to how LGUs can impose LBT on manufacturers of cement like petitioner in this case.

Consequently, petitioner is entitled to the preferential rates under *Section 143 (c) of the LGC* as a manufacturer and/or wholesaler of cement. The computation by respondents in billing petitioner LBT for the 1st, 2nd and 3rd quarters of CY 2018 using the rates for manufacturers in general is thus incorrect.

ALL TOLD, I vote that petitioner's claim for refund be granted.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice