

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

**SPECIAL SECOND DIVISION**

**CITY TREASURER OF  
MAKATI rep. by ACTING  
CITY TREASURER  
JESUSA E. CUNETA,**

*Petitioner,*

**CTA AC NO. 257**

*Members:*

**BACORRO-VILLENA, Acting Chairperson, and  
CUI-DAVID, JJ.**

-versus-

**KURIMOTO  
(PHILIPPINES)  
CORPORATION,**

*Respondent.*

Promulgated:

AUG 31 2023

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*J* *8:40 a.m.*

**DECISION**

**CUI-DAVID, J.:**

Before the Court is a Petition for Review<sup>1</sup> under Rule 4, Section 3 (a)(3)<sup>2</sup> of the Revised Rules of Court of Tax Appeals (RRCCTA), praying that the Orders dated June 7, 2021 (first assailed Order)<sup>3</sup> and November 17, 2021 (second assailed Order)<sup>4</sup> of the Regional Trial Court (RTC), Branch 132, Makati City be set aside and that the Court dismiss respondent's claim for refund.

**THE PARTIES**

Petitioner City Treasurer of Makati City, represented by Acting City Treasurer Jesusa E. Cuneta, is the officer of the City Government of Makati tasked to verify, assess, and collect taxes, fees, and charges.<sup>5</sup> She may be served with notices,

<sup>1</sup> Docket, pp. 5-20.

<sup>2</sup> SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following: ...

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction; ...

<sup>3</sup> Docket, pp. 38-42; RTC *rollo* – Vol. 3, pp. 274-278.

<sup>4</sup> Docket, pp. 53-55; RTC *rollo* – Vol. 3, pp. 315-317.

<sup>5</sup> Parties, Petition for Review (Petition), Docket, p. 6.

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resolutions, and other papers at the Office of the Treasurer, Makati City Hall, JP Rizal Street, Brgy. Poblacion, Makati City.<sup>6</sup>

Respondent Kurimoto (Philippines) Corporation is a domestic corporation registered with the Securities and Exchange Commission on September 30, 2010, with principal office at 10F Pacific Star Bldg., Makati Ave. cor. Sen. Gil Puyat Ave., Makati City. It is registered with the local governments of, and authorized to do business in, Makati City and the Municipality of Claver, Surigao del Norte.<sup>7</sup> Respondent obtained the necessary permits from the local governments of Claver and Makati City.<sup>8</sup>

**THE FACTS<sup>9</sup>**

On January 13, 2016, petitioner issued a Billing Assessment<sup>10</sup> for business tax due from respondent for the taxable year (TY) 2016, amounting to ₱543,775.99 (2016 Assessment).

On January 20, 2016, respondent paid the assessed amount of ₱543,775.99 in full.<sup>11</sup> Thus, respondent was issued Makati City Business Permit No. 33999 dated January 20, 2016, valid until December 31, 2016.<sup>12</sup>

On January 17, 2017, petitioner issued a Billing Assessment<sup>13</sup> against respondent for deficiency business tax for TY 2016 amounting to ₱107,550.24 plus surcharge and interest of ₱54,850.62, in the total amount of ₱162,400.86 (2017 Assessment). On January 23, 2017, respondent paid the additional assessment of ₱162,400.86.<sup>14</sup>

On June 5, 2018, petitioner issued a Notice of Assessment<sup>15</sup> for deficiency taxes, fees, and charges amounting to ₱4,670,384.44, which covered TYs 2013 to 2017 (2018 Assessment), pursuant to Letter of Authority LA-2018 Nos. 0003. In the 2018 Assessment, respondent was assessed

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<sup>6</sup> *Id.*

<sup>7</sup> Par. 4, Order dated June 7, 2021, Annex "B", Petition, Docket, p. 40.

<sup>8</sup> *Id.*

<sup>9</sup> Order dated June 7, 2021, Annex "B", Petition, Docket, pp. 40-41; Joint Stipulation of Facts, Issues and Documents with Joint Motion (JSFI), RTC *rollo* – Vol. 2, pp. 7-12.

<sup>10</sup> Exhibit "A", Exhibit "1", JSFI, RTC *rollo* – Vol. 2, p. 13.

<sup>11</sup> Exhibit "B", Exhibit "2", JSFI, RTC *rollo* – Vol. 2, p. 14.

<sup>12</sup> Exhibit "C", Exhibit "4", JSFI, RTC *rollo* – Vol. 2, p. 16.

<sup>13</sup> Exhibit "D", Exhibit "5", JSFI, RTC *rollo* – Vol. 2, p. 17.

<sup>14</sup> Par. 6, JSFI, RTC *rollo*, p. 8; Exhibit "E", Exhibit "6", JSFI, RTC *rollo* – Vol. 2, p. 18.

<sup>15</sup> Exhibit "G", JSFI, RTC *rollo* – Vol. 2, p. 110.

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additional deficiency business taxes for TY 2016 amounting to ₱704,097.22 plus surcharge and interest, in the total amount of ₱1,302,579.86.<sup>16</sup>

On July 30, 2018, respondent formally protested the 2018 Assessment amounting to ₱4,670,384.44 and submitted VAT returns and other supporting documents for the protest.<sup>17</sup>

On October 26, 2018, respondent filed a petition for review<sup>18</sup> entitled "*Kurimoto (Philippines) Corporation v. City Treasurer of Makati City, represented by Acting City Treasurer Jesusa E. Cuneta,*" with the RTC Makati City<sup>19</sup> to appeal petitioner's inaction on the protest to the 2018 Assessment within 30 days from the lapse of the 60 days to decide on the protest under Section 195 of the Local Government Code (LGC). The case was assigned to RTC Makati City-Branch 149 and docketed as Civil Case No. R-MKT-18-04608-CV (assessment case). During the pendency of the assessment case, petitioner, with the approval of RTC Makati City-Branch 149, proceeded with reinvestigation of the 2018 Assessment.<sup>20</sup>

Meanwhile, on December 21, 2018, respondent filed with petitioner a letter dated December 14, 2018,<sup>21</sup> requesting a refund or tax credit of the additional business tax payment for TY 2016 amounting to ₱162,400.86 that was paid on January 23, 2017.

On January 23, 2019, respondent filed a petition<sup>22</sup> for a tax refund with the RTC Makati City within two years from the payment of the additional business tax for TY 2016 of ₱162,400.86 on January 23, 2017. The case was raffled to the court *a quo* and docketed as R-MKT-19-00308-CV (refund case).

On July 18, 2019, petitioner, after the reinvestigation of the 2018 Assessment, issued a Revised Notice of Assessment<sup>23</sup> for deficiency taxes, fees, and charges amounting to ₱210,567.34 for TYs 2014, 2015, 2016, and 2017 (Revised Assessment). The Revised Assessment also indicates a tax overpayment by respondent for TY 2016 amounting to

<sup>16</sup> Exhibit "G-1", Worksheet attached to the Notice of Assessment, JSFI, RTC *rollo* – Vol. 2, p. 111.

<sup>17</sup> Par. 8, JSFI, RTC *rollo* – Vol. 2, p. 8.

<sup>18</sup> Exhibit "H", RTC *rollo* – Vol. 2, pp. 112-136.

<sup>19</sup> Docket, pp. 180-203.

<sup>20</sup> Par. 10, JSFI, RTC *rollo* – Vol. 2, p. 9.

<sup>21</sup> Exhibit "F", RTC *rollo* – Vol. 2, pp. 23-109, with annexes.

<sup>22</sup> RTC *rollo* – Vol. 1, pp. 1-302, with annexes.

<sup>23</sup> Exhibit "I", RTC *rollo* – Vol. 2, pp. 137.

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₱243,491.99, with a note that it is subject to “Sec. 7B.14 (d) Claim for Refund of Tax Credit.”<sup>24</sup> The said finding was reflected in the attached computation worksheet of the Revised Assessment.<sup>25</sup>

Respondent paid the Revised Assessment amounting to ₱210,567.34 on September 5, 2019.<sup>26</sup> As a result, petitioner and respondent executed a Judicial Compromise Agreement<sup>27</sup> dated September 5, 2019, for the assessment case before the RTC Makati City-Branch 149.<sup>28</sup>

On October 11, 2019, the RTC Makati City-Branch 149 promulgated a Judgment (Based on Compromise Agreement) approving the Judicial Compromise Agreement dated September 5, 2019 executed by the parties and adopting the terms and conditions therein as part of the dispositive portion of the judgment in Civil Case No. R-MKT-18-04608-CV. Accordingly, the assessment case has been terminated.<sup>29</sup>

Meanwhile, in the refund case before the court *a quo*, respondent filed a Motion for Summary Judgment<sup>30</sup> on February 9, 2021, with petitioner’s Comment<sup>31</sup> filed on March 4, 2021.<sup>32</sup>

On May 19, 2021, respondent filed with the court *a quo* Memorandum,<sup>33</sup> while petitioner had yet to file her Reply Memorandum.<sup>34</sup>

On June 7, 2021, the court *a quo* resolved the said motion and issued the first assailed Order,<sup>35</sup> the dispositive portion of which reads:

**WHEREFORE**, premises considered, the *Motion for Summary Judgment* filed by Petitioner Kurimoto (Philippines) Corporation on 09 February 2021 is hereby **GRANTED**.

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<sup>24</sup> *Id.*, pp. 138.

<sup>25</sup> *Id.*

<sup>26</sup> Par. 14, JSFI, RTC *rollo* – Vol. 2, p. 9.

<sup>27</sup> Exhibit “J”, RTC *rollo* – Vol. 2, pp. 145-158, with annexes.

<sup>28</sup> Par. 14, JSFI, RTC *rollo* – Vol. 2, p. 9.

<sup>29</sup> Par. 15, JSFI, RTC *rollo* – Vol. 2, p. 9.

<sup>30</sup> RTC *rollo* – Vol. 3, pp. 1-205, with annexes.

<sup>31</sup> RTC *rollo* – Vol. 3, pp. 208-233.

<sup>32</sup> Par. 1, Order dated June 7, 2021, Annex “B”, Petition, Docket, p. 38.

<sup>33</sup> RTC *rollo* – Vol. 3, pp. 239-260.

<sup>34</sup> Par. 2, Order dated June 7, 2021, Annex “B”, Petition, Docket, p. 40.

<sup>35</sup> *Supra*, note 3.

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Respondent City [T]reasurer of Makati City, represented by Acting City Treasurer Jesus E. Cuneta, is hereby ordered to **REFUND** to Petitioner Kurimoto (Philippines) Corporation the amount of **₱162,400.86** representing the tax overpayment for TY 2016.

**SO ORDERED.**

On July 29, 2021, petitioner filed a Motion for Reconsideration,<sup>36</sup> with respondent's Comment filed on October 5, 2021.<sup>37</sup>

On November 17, 2021, the court *a quo* issued the second assailed Order<sup>38</sup> denying petitioner's Motion for Reconsideration, the dispositive portion of which reads:

**WHEREFORE**, premises considered, finding no cogent reason why this Court should reconsider its *Order* dated 07 June 2021, the *Motion for Reconsideration* filed by petitioner respondent City Treasurer of Makati rep. by Acting City Treasurer Jesusa E. Cuneta on July 29, 2021 is hereby ordered **DENIED**.

**SO ORDERED.**

**PROCEEDINGS WITH THE COURT**

On December 17, 2021, petitioner filed the instant Petition for Review.

On January 12, 2022, the Court ordered respondent to file a comment within ten (10) days from notice, and petitioner may file her reply within five (5) days from receipt of respondent's comment.<sup>39</sup>

Respondent then filed a *Comment (Re: Petition for Review dated 16 December 2021)*<sup>40</sup> on February 18, 2022.

On March 15, 2022, the Court gave the parties thirty (30) days from notice to file their respective memoranda.<sup>41</sup> Also, the Court ordered the Branch Clerk of Court or the Officer-In-Charge of the court *a quo* to elevate the entire original records

<sup>36</sup> Annex "C", Petition, Docket, pp. 43-52.

<sup>37</sup> Par. I. Order dated November 17, 2021. Annex "D". Petition. Docket. p. 53.

<sup>38</sup> *Supra*, note 4.

<sup>39</sup> Resolution, Docket, p. 57.

<sup>40</sup> Docket, pp. 58-74.

<sup>41</sup> Resolution, Docket, p. 439.

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of R-MKT-19-00308-CV, entitled “*Kurimoto (Philippines) Corporation v. City Treasurer of Makati City, represented by Acting City Treasurer Jesusa E. Cuneta,*” within ten (10) days from notice.<sup>42</sup>

On April 4, 2022, the Court received the entire records of this case from the Branch Clerk of Court of the court *a quo*,<sup>43</sup> which the Court noted on April 7, 2022.<sup>44</sup>

On May 13, 2022, the Court received respondent’s *Motion for Extension*<sup>45</sup> to file a memorandum until May 13, 2022, which the Court granted on May 13, 2022.<sup>46</sup>

On May 18, 2022, respondent’s counsel filed a *Notice of Withdrawal of Appearance*,<sup>47</sup> which the Court noted on May 31, 2022.<sup>48</sup> Accordingly, the Court ordered respondent to cause the appearance of its new counsel within ten (10) days from notice.<sup>49</sup>

On July 8, 2022, the Court received petitioner’s Memorandum<sup>50</sup> filed through registered mail on June 30, 2022.

On August 3, 2022, the Court issued a Resolution<sup>51</sup> expunging petitioner’s Memorandum for a clear breach of the period allowed to file the same, reiterating the order to respondent to cause the appearance of its new counsel as ordered in the Minute Resolution dated May 31, 2022; and submitting the case for decision.

On September 2, 2022, petitioner filed a *Motion for Reconsideration (on the Resolution of the Court promulgated on August 3, 2022)*<sup>52</sup> and *Manifestation*<sup>53</sup> with attached Memorandum.<sup>54</sup>



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<sup>42</sup> *Id.*

<sup>43</sup> Transmittal Letter dated March 30, 2022, Docket, pp. 440-443.

<sup>44</sup> Resolution, Docket, p. 445.

<sup>45</sup> Docket, pp. 446-449. Filed through registered mail on April 28, 2022.

<sup>46</sup> Resolution, Docket, p. 452.

<sup>47</sup> Docket, pp. 453-456.

<sup>48</sup> Minute Resolution, Docket, pp. 457-458.

<sup>49</sup> *Id.*

<sup>50</sup> Docket, pp. 459-474.

<sup>51</sup> Docket, pp. 494-496.

<sup>52</sup> Docket, unpagged.

<sup>53</sup> Docket, unpagged.

<sup>54</sup> Docket, unpagged.

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On September 12, 2022, the Court granted petitioner's *Motion for Reconsideration (on the Resolution of the Court promulgated on August 3, 2022)*; considered petitioner's Memorandum as timely filed; noted petitioner's *Manifestation* and the corrections underlined in the attached Memorandum; and, recalled and set aside the Resolution dated August 3, 2022, submitting this case for decision. Accordingly, the case is submitted anew for decision.<sup>55</sup>

**THE ISSUES<sup>56</sup>**

Petitioner raised the following issues for the Court's resolution:

- I. WHETHER OR NOT THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THAT THE PETITIONER IS ESTOPPED FROM CLAIMING THE RULE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.
  
- II. WHETHER OR NOT THE HONORABLE REGIONAL TRIAL COURT ERRED IN GRANTING THE TAX REFUND PRAYED BY THE RESPONDENT WHEN THE SUBJECT ASSESSMENT HAS BECOME FINAL AND UNAPPEALABLE BASED ON SECTION 195 OF THE LOCAL GOVERNMENT CODE.

**Petitioner's arguments**

Petitioner argues that the court *a quo* erred in holding that petitioner is estopped from invoking the rule of exhaustion of administrative remedies. Petitioner asserts that respondent raised the issue on estoppel as an afterthought in a desperate attempt to get a favorable ruling since the Revised Assessment reflecting the overpayment was formally issued by it only on July 18, 2019, while respondent's petition for refund was filed with the court *a quo* on January 23, 2019.<sup>57</sup>



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<sup>55</sup> Resolution, Docket, unpagged.

<sup>56</sup> Docket, pp. 9-10.

<sup>57</sup> Par. 21, Petition, Docket, p. 14.

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Petitioner insists that respondent should have filed a protest within 60 days from the 2017 Assessment of the tax deficiency for TY 2016 under Section 195 of the LGC despite respondent opting to pay the assessed tax under the said billing assessment.<sup>58</sup> As such, petitioner concludes that the court *a quo* erred in ruling in favor of respondent despite the assessment being final and unappealable.<sup>59</sup>

**Respondent's arguments**

Respondent argues that estoppel on the part of petitioner falls under the exception to the doctrine of exhaustion of administrative remedies.<sup>60</sup> Since petitioner admitted respondent's claim for a refund or tax credit, it cannot now say that respondent is barred from claiming a refund due to the non-exhaustion of remedies.<sup>61</sup> Respondent denies that it raised estoppel as an afterthought because the Revised Assessment dated July 18, 2019 was issued when the refund case before the court *a quo* was already pending. Respondent found out about the overpayment as early as during its protest of the 2018 Assessment, the reinvestigation of which yielded a tax overpayment for TY 2016 amounting to ₱243,491.99, as reflected in petitioner's computation worksheet.<sup>62</sup>

Respondent insists that it complied with the requirement to file a protest to claim the refund subject of this case, *i.e.*, the 2018 Assessment.<sup>63</sup> Respondent did not protest the 2017 Assessment because it was superseded by the 2018 Assessment, both covering TY 2016.<sup>64</sup> Respondent maintains that this is still a claim for refund under Section 196 of the LGC because the tax sought to be refunded was erroneously or illegally collected under the 2018 Assessment finding tax overpayment for TY 2016; hence, the logical step is for respondent to file a claim for refund within the prescriptive period, which it did.<sup>65</sup> Respondent claims that despite the overpayment amount of ₱243,491.99, it is only claiming a refund of ₱162,400.86 because it concedes that the right to refund the difference had already prescribed.<sup>66</sup>

<sup>58</sup> Par. 26, Petition, Docket, p. 16.

<sup>59</sup> Par. 23, Petition, Docket, p. 15.

<sup>60</sup> Par. 11, *Comment (Re: Petition for Review dated 16 December 2021)* (Comment), Docket, p. 63.

<sup>61</sup> Par. 19, Comment, Docket, p. 67.

<sup>62</sup> Par. 25, Comment, Docket, pp. 68-69.

<sup>63</sup> Pars. 27-29, Comment, Docket, pp. 69-70.

<sup>64</sup> Par. 29, Comment, Docket, p. 70.

<sup>65</sup> Pars. 30-31, Comment, Docket, p. 70.

<sup>66</sup> Par. 34, Comment, Docket, p. 70.



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**THE COURT’S RULING**

***The Court has jurisdiction over the instant Petition.***

Before the Court delves into the merits of the case, We shall first resolve whether the *Petition* was timely filed and whether the Court has jurisdiction to take cognizance of this case.

Section 7(a)(3) of RA No. 9282,<sup>67</sup> amending RA No. 1125,<sup>68</sup> reads:

SEC. 7. *Jurisdiction.* — The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

... ..

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction.

On the other hand, Section 3(a)(3), Rule 4 of the RRCTA<sup>69</sup> implementing the above provision states:

SEC. 3. *Cases within the jurisdiction of the Court in Division.* — The Court in Division shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

... ..

(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction.

<sup>67</sup> An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes, March 30, 2004.

<sup>68</sup> An Act Creating the Court of Tax Appeals, June 16, 1954.

<sup>69</sup> A.M. No. 05-11-07-CTA, November 22, 2005.

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Petitioner, through counsel, alleges that she received the second assailed Order on November 17, 2021.<sup>70</sup> Under Section 3(a), Rule 8<sup>71</sup> of the RRCTA, petitioner had thirty (30) days from receipt of the denial of her Motion for Reconsideration on November 17, 2021, or until December 17, 2021, to file a petition for review with this Court.

Petitioner filed the instant *Petition of Review* on December 17, 2021,<sup>72</sup> within the reglementary period.

Having settled that the *Petition* was timely filed, We likewise rule that We have the requisite jurisdiction to take cognizance of this case.

Proceeding on the merits of the case, We shall first rule on the **second issue** of “*Whether or not the Regional Trial Court erred in granting the tax refund prayed by respondent when the subject assessment has become final and unappealable based on Section 195 of the Local Government Code.*”

**The court *a quo* did not err in granting petitioner’s refund claim.**

Sections 195 and 196 of the LGC, which govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes, read:

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

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<sup>70</sup> Par. 10, Petition, Docket, p. 9.

<sup>71</sup> SEC. 3. *Who May Appeal; Period to File Petition.* — (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

<sup>72</sup> Docket, p. 81.

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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.

SEC. 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.

In the *City of Manila v. Cosmos Bottling Corporation*<sup>73</sup> (Cosmos), the Supreme Court distinguished Sections 195 and 196 of the LGC in this wise:

[Section 195] provides the procedure for contesting an assessment issued by the local treasurer; whereas [Section 196] 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

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<sup>73</sup> G.R. No. 196681, June 27, 2018.

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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.**

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. (*Emphasis supplied*)**

In fine, Section 195 provides the procedure for contesting an *assessment* issued by the local treasurer, while Section 196 provides the procedure for recovering an erroneously paid or illegally collected tax, fee, or charge through a *refund* or *credit*. Both sections require that the taxpayer should first exhaust the administrative remedies referred to therein before bringing the appropriate action in court, such as a ***written protest*** with the

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local treasurer, in case of Section 195, and a **written claim for refund or credit** with the same office, in case of Section 196.

Under Section 196, a taxpayer who claims that a tax, fee, or charge has been erroneously paid or illegally collected must first file an administrative claim for refund or credit with the local treasurer before instituting a judicial claim within 30 days from the denial of or inaction on the administrative claim, both within two years from the date of payment.<sup>74</sup>

Petitioner insists that the proper way for respondent to claim the refund is by filing a *protest* pursuant to Section 195 of the LGC in 2016.<sup>75</sup> She claims that had respondent filed a protest within 60 days from the deficiency assessment, it would have been given the same accommodation as that in the assessment case. It would have been permitted to submit additional documents for recomputation of its deficiency taxes.<sup>76</sup>

The Court could not decipher the logic in petitioner's argument, considering that, as borne by the records, respondent properly and timely availed the administrative remedies provided under Sections 195 and 196 of the LGC.

It is undisputed that petitioner assessed respondent thrice for TY **2016** through the issuance of the 2016 Assessment, 2017 Assessment, and 2018 Assessment. Respondent paid the 2016 and 2017 Assessments on January 20, 2016 and January 23, 2017, respectively. Upon receipt of the 2018 Assessment, respondent filed a protest to it on July 30, 2018. Due to petitioner's *inaction*, respondent appealed the protest to the RTC Makati City within 30 days from the lapse of the 60 days prescribed under Section 195.<sup>77</sup>

On December 21, 2018, respondent filed with petitioner an administrative claim for refund of the additional assessed amount of ₱162,400.86 for TY **2016**, paid on January 23, 2017 under the 2017 Assessment. Further, respondent filed a petition for refund with the RTC Makati City on January 23, 2019, within the 2-year prescriptive period provided under Section 196.

  
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<sup>74</sup> *Id.*

<sup>75</sup> Pars. 15-16, Petition, pp. 12-13.

<sup>76</sup> Par. 16, Petition, p. 13; par. 25, Memorandum dated September 2, 2022, pp. 6-7.

<sup>77</sup> Under Section 195 of the LGC, the local treasurer has sixty (60) days to decide said protest. In case of inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction:

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On July 18, 2019, petitioner issued the Revised Assessment for deficiency taxes amounting to ₱210,567.34 for TYs 2014, 2015, **2016**, and 2017. The Revised Assessment states a tax overpayment for TY 2016 amounting to ₱243,491.99, which is subject to refund under Section 7B.14 (d) of the Revised Makati Revenue Code (RMRC).<sup>78</sup> Said Section of the RMRC is a verbatim restatement of Section 196 of the LGC.<sup>79</sup> Petitioner noted that the ₱243,491.99 tax overpayment includes the January 23, 2017 payment made by respondent for TY 2016.<sup>80</sup> Respondent contends that it did not file a refund of the total amount of ₱243,491.99 because its right to refund the amount of ₱81,091.13 (₱243,491.99 minus ₱162,400.86), which formed part of the 2016 Assessment, had already prescribed.<sup>81</sup>

It is clear from the foregoing circumstances that respondent went through the process of exhausting the administrative remedies available to it by protesting the 2018 Assessment, which covered TY **2016**, and filing a claim for refund of the additional assessment paid on January 23, 2017, which is the subject of the refund claim in this case, within the periods provided under Sections 195 and 196, viz.:

**Protest on 2018 Assessment:**

| <b>TYs</b>                            | <b>Assessed tax</b> | <b>Date of filing of a protest</b> | <b>End of the 30-day period (from the lapse of the 60 days) to appeal to the court</b> | <b>Date of filing of an appeal with the court</b> |
|---------------------------------------|---------------------|------------------------------------|--|---|
| [2013, 2014, 2015, <b>2016</b> [2017] | ₱4,670,384.44       | July 30, 2018                      | October 28, 2018   | October 26, 2018                                  |

<sup>78</sup> Makati City Ordinance No. 025-A-04, October 27, 2005.

<sup>79</sup> Below is a side-by-side comparison of Section 7B.14 of the RMRC and Section 196 of the LGC:

| <b>Section 7B.14 (d) of the RMRC</b>  | <b>Section 196 of the LGC</b>   |
|---|---|
| SEC. 7B.14. <i>Taxpayer's Remedies.</i> — ...<br>(d) <i>Claim for Refund of Tax Credit.</i> —<br>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 of refund or credit has been filed with the City 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. | SEC. 196. Claim for Refund of Tax Credit. —<br>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. |

<sup>80</sup> Exhibit "I", Computation worksheet, RTC *rollo* – Vol. 2, pp. 137.

<sup>81</sup> Pars. 33-35, Comment, Docket, p. 71; The 2016 Assessment was paid on January 13, 2016; hence, the two-year prescriptive period to file administrative and judicial claims for refund ended on January 13, 2018.

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**Claim for refund:**

| <b>TY</b> | <b>Amount paid</b> | <b>Date paid</b> | <b>Date of filing of admin claim for refund</b> | <b>End of the 2-year reglementary period</b> | <b>Date of filing of judicial claim for refund</b> |
|-----------|--------------------|------------------|---|--|--|
| 2016      | ₱162,400.86        | January 23, 2017 | December 21, 2018                               | January 23, 2019                             | January 23, 2019                                   |

It must be stressed that after respondent elevated its protest on the 2018 Assessment to the RTC Makati City on *October 26, 2018*, and filed a judicial claim for refund with the court *a quo* on *January 23, 2019*, petitioner came up with a Revised Assessment with a finding of tax overpayment of ₱243,491.99 for TY **2016** on *July 18, 2019*, or barely six (6) months after respondent filed its judicial refund claim.

Clearly, the filing of the judicial refund claim was not triggered by petitioner's finding of tax overpayment. Nonetheless, such a finding supports and confirms respondent's entitlement for refund.

Petitioner's stance that respondent's filing of a judicial claim for refund with the court *a quo* shows respondent's failure to exhaust administrative remedies, as it removed an opportunity for petitioner to correct its reversible errors,<sup>82</sup> is undoubtedly without merit.

Respondent timely filed its written claim for refund with petitioner. It could not be made to wait for the latter's decision on its administrative claim before filing a judicial claim since respondent only had two years from payment to do so under Section 196.

As pronounced in *Cosmos*, the taxpayer cannot be required to await the decision of the local treasurer any longer; otherwise, its judicial action shall be barred by prescription.

Rightly so, respondent filed its judicial claim for refund within two years after it erroneously paid the amount of ₱162,400.86 and satisfied the twin conditions for prosecuting an action for refund before the court *a quo*.<sup>83</sup>

<sup>82</sup> Pars. 20 to 22, Petition, p. 14.

<sup>83</sup> *City of Manila v. Cosmos Bottling Corp.*, G.R. No. 196681, June 27, 2018.

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Anent petitioner's claim that the assessment for TY 2016 had already become final and unappealable under Section 195, We reiterate that the 2018 Assessment, which includes TY 2016, had been timely protested, administratively, and judicially. Thus, to the Court, respondent's timely protest meant that the assessment had not attained finality.

Considering the foregoing disquisitions, We find it unnecessary to pass upon the **first issue** of "*whether or not the Regional Trial Court erred in finding that petitioner is estopped from claiming the rule of exhaustion of administrative remedies.*" As discussed above, respondent showed, to the Court's satisfaction, that it had exhausted the administrative remedies provided under Sections 195 and 196 of the LGC before resorting to the courts.

Indeed, the court *a quo* is correct in granting respondent's Motion for Summary Judgment and ordering petitioner to refund respondent the amount of ₱162,400.86, representing its tax overpayment for TY 2016.

**WHEREFORE**, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the assailed Orders dated June 7, 2021 and November 17, 2021 of the RTC Branch 132, Makati City, in Civil Case No. R-MKT-19-00308-CV are **AFFIRMED**.

**SO ORDERED.**

  
**LANEE S. CUI-DAVID**  
Associate Justice

*I CONCUR:*

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice



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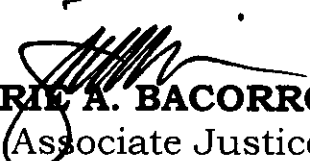
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**ATTESTATION**

I attest 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's Division.

  
**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice  
Special 2<sup>nd</sup> Division Acting Chairperson

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, and the Special Second Division Acting Chairperson's Attestation, 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's Division.

  
**ROMAN G. DEL ROSARIO**  
Presiding Justice

