REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

LA SUERTE CIGAR AND CIGARETTE FACTORY, TELENGTAN BROTHERS & SONS, INC.,	**C.T.A. CASE NO. 7390**
Petitioner,	Members:
- versus -	BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** APR 26 2011 ABFernandez 4:10 p.m.

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DECISION

PALANCA-ENRIQUEZ, *J.*:

Revenue Regulations Nos. 9-2003 and 22-2003 are void insofar as they empower the BIR to periodically review or re-determine the current net retail prices of cigarettes for purposes of updating their tax classification every two years or earlier consistent with the Court's pronouncements in *British American Tobacco vs. Camacho*. Consequently, the upward reclassification of Astro and Memphis in Annex "A" of *Revenue Regulations No. 22-2003* is invalid *(Secretary of Finance vs. La Suerte Cigar and Cigarette Factory, 589 SCRA 72, 87).*

THE CASE

This is a Petition for Review filed by La Suerte Cigar and Cigarette Factory (hereafter "petitioner") praying for a refund or issuance of a TCC of erroneously collected excise and value-added taxes on the removals of its Astro Filter King (AFK), Astro Menthol King (ATMK), Memphis Menthol 100s (MP100) and Memphis Filter King (MPFK) brands, for the period covering the first semester of taxable year 2004 in the total amount of P297,999,010.84.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, doing business under the name and style of La Suerte Cigar and Cigarette Factory, with principal business address at Km. 14, South Super Highway, Parañaque, Metro Manila.

Respondent, on the other hand, is the Commissioner of Internal Revenue, who is the Chief of the Bureau of Internal Revenue, authorized and empowered under the *NIRC of 1997, as amended*, to *inter alia*, decide, approve and grant refunds or tax credit of national internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City, Metro Manila, where she may be served with summons and other court processes.

THE FACTS

The facts, as culled from the records, are, as follows:

Petitioner is engaged in the business of manufacturing and marketing tobacco products, such as cigarettes.

On January 1, 1997, upon recommendation of the then Commissioner of Internal Revenue, the Secretary of Finance issued *RR No. 1-97,* prescribing the specific tax method in computing the excise tax on cigars and cigarettes and implementing *Section 142* of *RA 8240*, which was subsequently incorporated in *toto* as *Section 145* of the *NIRC of 1997, as amended*.

RR No. 1-97 classifies brands of cigarettes into: a) duly registered or existing brand of cigarettes; b) new brands; c) variant of a brand, as defined under *Section 2* thereof.

Pursuant to *Section 2 of RR No. 1-97*, duly registered or existing brands are: (a) those brands listed under Annex "D" of the *NIRC of 1997, as amended*; and (b) all other brands, which are registered with the BIR prior to January 1, 1997, and were not classified by Congress in the said list.

On June 24, 1999, after the survey conducted pursuant to *RR No. 1-97*, petitioner's new brands, Astro Menthol 100s, Astro Filter King, Astro Menthol King, Memphis Menthol 100s and Memphis Filter King were classified under the P1.00 specific tax, per pack. Thereafter, the said excise tax was automatically increased by 12%, or P1.12 per pack on January 1, 2000, pursuant to *Section 145 of the NIRC of 1997, as amended.*

Thereafter, on February 17, 2003, upon the recommendation of the then CIR, the Secretary of Finance issued *RR No. 9-2003*, amending *RR No. 1-97*, prescribing the manner by which the "current net retail price" of the new brands of cigars and cigarettes and the variants of new brands of cigars and cigarettes can be established for purposes of determining their respective specific tax classification. *RR No. 9-2003* provides for a periodic review and determination of the "current net retail price" of new brands at an interval of two (2) years.

On August 8, 2003, upon recommendation of the then CIR, the Secretary of Finance issued another regulation, *RR No. 22-2003,* resulting to the reclassification of petitioner's new brands, Astro Menthol 100s, Astro Filter King, Astro Menthol King, Memphis Menthol 100s and Memphis Filter King, from P1.12/pack to P5.60 per pack excise tax bracket.

On March 14, 2003, petitioner filed a Complaint for Injunction with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, with the Regional Trial Court (RTC) of Parañaque City, Branch 194, docketed as Civil Case No. CV-03-0117, assailing the constitutionality of *RR Nos. 9-2003 and 22-2003*, in so far as they require the periodic reclassification of new brands for being violative of the uniformity and equal protection clauses of the Constitution.

On July 12, 2004, the RTC of Parañaque City, Branch 194, rendered a Decision declaring, in part, *RR Nos. 9-2003 and 22-2003*, as unconstitutional. The CIR and Secretary of Finance filed separate Motions for Reconsideration, which were both denied. Hence, on February 24, 2005, the CIR and Secretary of Finance jointly filed a Petition for Review with the Supreme Court.

While Civil Case No. CV-03-0117 was still pending with the RTC, petitioner had allegedly been paying excise and value-added taxes on the removals of its new brands based on their current net retail price of P5.60 per pack under *RR Nos. 9-2003 and 22-2003*. Thus, for the period covering the months of January to June 2004, respondent erroneously collected from petitioner the total amount of P297,999,010.84, representing excise and value-added taxes on petitioner's removals of its ATFK, ATMK, MP100 and MPFK brands.

On December 8, 2005, petitioner filed an administrative claim for refund or tax credit with the BIR for the total amount of P297,999,010.84, representing excise and value-added taxes on petitioner's removals of its

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ATFK, ATMK, MP100 and MPFK brands, covering the period January to June 2004.

In view of the inaction of respondent, on December 27, 2005, petitioner filed the instant Petition for Review.

In her Answer, respondent alleged by way of special and affirmative defenses that:

> "5. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;
> 6. Petitioner must prove that it paid the excise taxes so alleged;
> 7. Petitioner must prove that the alleged amount sought to be refunded were erroneously collected by respondent;
> 8. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the Tax Code of 1997;
> 9. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund;
> 10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

Petitioner presented Cesar Ong and Katherine Constantino, as witnesses, and documentary evidence, marked as *Exhibits "A"* to *"Y[20]"*, inclusive of their submarkings, which were all admitted by the Court in the Resolutions dated October 4, 2007 and November 14, 2007.

On January 28, 2009, upon motion of petitioner's counsel, respondent was deemed to have waived her right to present evidence for the

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repeated failure of her counsel to appear for the presentation of her evidence. Thus, the parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.

However, on March 19, 2009, petitioner filed a "Motion to Reopen Case" praying that petitioner be allowed to present additional documentary evidence relating to overpayment of VAT for taxable year 2005 and to recall its witness, Katherine Constantino, which the Court granted in a Resolution dated May 21, 2009.

Thus, petitioner presented Atty. Susan Resurrecion, Heidi Tiu and Gerald Louis Aquino, as additional witnesses, and additional documentary evidence, marked as *Exhibits "S*^{15}*-2" to "N*^{23}*"*, inclusive of their submarkings, which were admitted by the Court in a Resolution dated November 17, 2010, except for *Exhibit "O*^{22}*"* for failure of petitioner to submit the same to this Court.

Considering petitioner's "Memorandum" filed on January 28, 2011, and the Report of the Judicial Records Division dated January 12, 2011 that respondent failed to file her memorandum despite notice, the case was deemed submitted for decision on February 8, 2011.

ISSUE

As stipulated by the parties, the sole issue for this Court's consideration is:

> WHETHER OR NOT PETITIONER LA SUERTE IS ENTITLED TO THE REFUND OF THE EXCISE AND VALUE-ADDED TAXES IT PAID ON THE REMOVALS OF ITS ATFK, ATMK, MP100 AND MPFK BRANDS FOR THE PERIOD COVERING THE FIRST SEMESTER OF TAXABLE YEAR ENDED DECEMBER 2004.

THIS COURT'S RULING

The Petition is partly meritorious.

The legal issue raised in this case of whether the tax reclassification of petitioner's products, subject of the present Petition for Review, pursuant to *RR Nos. 9-2003 and 22-2003* is valid, had already been settled by the Supreme Court in the case of *Secretary of Finance vs. La Suerte Cigar and Cigarette Factory (589 SCRA 72, 86-87)*, thus:

> "The reclassification of Astro and Memphis pursuant to Revenue Regulations Nos. 9-2003 and 22-2003 constitutes the prohibited reclassification contemplated in British American Tobacco v. Camacho. It will be recalled that these brands were already classified by the BIR based on their current net retail prices in 1999 through a market survey. ***Consequently, their upward reclassification in 2003 by the BIR through another market survey is a prohibited reclassification***.
>
> Petitioners do not dispute that the BIR conducted a survey in 1999 to determine the actual net retail prices of Astro and Memphis months after their launch into the market. However, in their Supplemental Memorandum before the trial

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court, they contended that the classification of Astro and Memphis, as contained in the letter of BIR Assistant Commissioner Leonardo Albar, is invalid because (1) it was contained in a mere letter and not in a numbered ruling; and (2) it was not signed by the BIR Commissioner.

The subject letter of the Assistant Commissioner, reads:

June 24, 1999

LA SUERTE CIGAR & CIGARETTE FACTORY
Km. 14, West Service Road, South Superhighway
Parañaque, Metro Manila

ATTENTION: Mr. Antonio B. Yao
Vice-President for Operations

This refers to the retail price survey conducted by this Office for purposes of determining the official and final tax classification of new brands of cigarette that your company has initially manufactured and distributed in major supermarkets located on designated regions, re:

BRANDS	REGION
Astro Menthol 100's	Pangasinan
Astro Filter King	Pangasinan
Astro Menthol King	Pangasinan
Memphis Menthol 100's	Pangasinan
Memphis Filter King	Pangasinan

Based on the results of the survey conducted at the said regions, together with their tax classifications, the average retail price per pack of the different brands of cigarette are as follows:

Brand Names	Average Retail Price/Ream	VAT	Specific Tax	Average Net Retail Price/pack	**Specific Tax Per Pack**
1. Astro Menthol 100's	P63.71	P.579	P1.00	P 6.50	**P1.00**
2. Astro Filter King	60.06	.546	1.00	6.00	**1.00**
3. Astro Menthol King	62.40	.567	1.00	6.40	**1.00**

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4.Memphis Menthol 100's	64.00	.58	1.00	6.50	**1.00**
5.Memphis Filter King	59.00	.54	1.00	6.07	**1.00**

Accordingly, you are hereby required to submit the corresponding Manufacturer's Sworn Statement for each brand of cigarette prescribed under existing rules and regulations to the Assistant Commissioner, Excise Tax Service within ten (10) days from receipt hereof.

For your information and guidance.

Very truly yours,

LEONARDO B. ALBAR
Assistant Commissioner
Excise Tax Service

Contrary to petitioners' contention, the above classification of Astro and Memphis cigarettes is valid. The revenue regulations then in force merely required that the concerned taxpayer be notified of the result of the market survey which is then used as basis for fixing the official and final tax classification of a new brand. This has been sufficiently satisfied by the letter of the Assistant Commissioner, hence, the fact that the same was not in the form of a numbered ruling will not invalidate the classification contained therein.

Further, the Assistant Commissioner acted within his jurisdiction in signing the letter informing respondents of the conduct of the survey, the results thereof, as well as the applicable excise tax rates on Astro and Memphis. Under Section 7 of the NIRC, the Commissioner is authorized to delegate to his subordinates the powers vested in him except, among others, the power to issue rulings of first impression. Here, the subject matter of the letter does not involve the exercise of the power to rule on novel issues. It merely implemented the revenue regulations then in force. Verily, the classification of Astro and Memphis based on the 1999 market survey conducted by the BIR itself remains uncontroverted because petitioners neither denied that a survey was indeed conducted nor questioned the validity of the results thereof and

> of the applicable excise tax rates on Astro and Memphis as stated in the subject letter. Considering that the classification of Astro and Memphis based on their actual net retail prices in 1999 is valid, their upward reclassification in 2003 constituted a prohibited reclassification.
>
> In sum, the trial court correctly ruled that ***Revenue Regulations Nos. 9-2003 and 22-2003 are void*** insofar as they empower the BIR to periodically review or re-determine the current net retail prices of cigarettes for purposes of updating their tax classification every two years or earlier consistent with the Court's pronouncements in British American Tobacco v. Camacho. ***Consequently, the upward reclassification of Astro and Memphis in Annex "A" of Revenue Regulations No. 22-2003 is invalid."*** (Emphasis Ours)

Pursuant to the afore-quoted ruling of the Supreme Court, considering that the classification of Astro and Memphis based on their actual net retail prices in 1999 is valid, their upward reclassification in 2003 constituted a prohibited reclassification. *Revenue Regulations Nos. 9-2003 and 22-2003*, which empower the BIR to reclassify or update the classification of new brands of cigarettes based on their current net retail price every two years or earlier are, therefore, void. Accordingly, petitioner is entitled to a refund of its excess excise and the corresponding excess VAT payments made pursuant to said invalid regulations, subject to examination and verification of petitioner's evidence.

Timeliness of the claim for refund

As to the timeliness of petitioner's claim for refund, *Section 229 of the NIRC of 1997, as amended*, provides:

> "SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Corollary thereto, *Section 130* of the same Code provides:

> "SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. —
>
> (A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. —
>
> xxx xxx
>
> (2) Time for Filing of Return and Payment of the Tax. — Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production xxx"

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Pursuant to the aforequoted provisions, the reckoning of the two-year prescriptive period for the refund of erroneously paid tax shall be from the date of payment of the tax, which, in this case, is prior to removal of the subject products from the place of production.

In this case, petitioner's claim covers the first semester of taxable year 2004, or the period covering January to June 2004. The earliest payment by petitioner of its excise tax covered in this instant claim was made on January 16, 2004 *(Exhibit "S[15]-1")*, and as regards its excess VAT, the earliest payment was made on February 17, 2004 *(Exhibit "Y[19]-1")*. Thus, petitioner had until January 16, 2006 and February 17, 2006, within which to file a claim for refund of the erroneously collected excise and value-added taxes, respectively. Records show that petitioner filed its administrative claim for refund with respondent on December 8, 2005 *(BIR Records, p. 626)*, and its judicial claim on December 27, 2005 *(Petition for Review, CTA Case No. 7390 Docket, p.1)*. Clearly, both the administrative and judicial claims for refund were timely filed.

Substantiation of petitioner's claim

Petitioner's claim covers the first semester of taxable year 2004 amounting to P297,999,010.84, representing the excess excise tax paid on the actual removal of articles and related VAT payments made for the said period, broken down, as follows:

Excess Excise tax paid	P273,165,760.00
Excess VAT paid	24,833,250.84
Total	P297,999,010.84

a) Excess Excise tax

Petitioner presented:

1) various Sales Invoices to show the total articles removed for the period January 16, 2004 to June 30, 2004 *(Exhibits "A" to "R^{15}")*;

2) excise tax returns and BIR Electronic Filing Payment System (eFPS) to prove that it actually paid the excise taxes on each removal for the aforesaid period of claim *(Exhibits "S^{15}" to "Q^{19}")*; and

3) other documentary evidence to support its claim, such as: official register books of articles removed for the months of January to June 2004 *(Exhibits "N^{20}" to "S$^{20-4}$")*, zero rated sales invoices *(Exhibits "Z^{20}" to "C^{21}")*, petitioner's computation of excise tax and VAT to be refunded *(Exhibits "R^{19}" and "R$^{19-1}$" to "R$^{19-7}$")*, and BIR letter to petitioner, dated June 24, 1999, on the retail price survey *(Exhibit "F^{20}")*.

After a careful examination of the evidence on record, the Court finds that petitioner has fully substantiated its claim for refund. Evidence adduced by petitioner shows that it paid excise taxes on its removals for the period January 16, 2004 to June 30, 2004 based on the rate of P5.60 per pack, in accordance with *RR Nos. 9-2003 and 22-2003* *(Exhibits "S[15]" to "Q[19]")*. Considering that *RR Nos. 9-2003 and 22-2003* were declared void by the Supreme Court in the case of *Secretary of Finance vs. La Suerte Cigar and Cigarette Factory (supra.)*, petitioner's excise tax on its removals should be based at the rate of P1.12 per pack only.

As aptly found by the Independent CPA, Katherine O. Constantino:

> "6. For the period January to June 2004, the Company paid a total of P341,457,200 excise tax on tobacco products for the four brands included in this claim, namely, ATFK, ATMK, MP100, and MPFK (Annex 5). The amount paid was based on the rate of P5.60 per pack.
>
> 7. The excess excise tax paid per "Computation of Excise Tax and VAT to be Refunded" (Exhibits R[19] and R[19-1] to R[19-7]) prepared by the Company for the period January 16 to June 30, 2004 amounting to P273,165,760 ties up with our independent computation of excess excise taxes paid (Annex 5). The excess excise tax was computed by multiplying the number of packs removed with P4.48. The rate of P4.48 is the difference between P5.60 per pack used in the payment of the excise tax and P1.12 per pack which is the increased rate of the P1.00 per pack specific tax prescribed by the retail price survey conducted by the BIR (Exhibit F[20]) pursuant to Section 145 of the 1997 Tax Code." *(ICPA Report dated July 30, 2009, p.5, Exhibit "W[21]")*

Petitioner paid excise tax at the excessive rate of P5.60, which should be at the rate of P1.12 only. Since the reclassification was rendered void by the Supreme Court, the difference of P4.48 per pack on the excise tax payments for the period January to June 2004 must, therefore, be refunded to petitioner.

For all the foregoing, we rule that petitioner is entitled to the refund of the excess excise tax erroneously collected by respondent under a void regulation, in the total amount of P273,165,760.00.

b) <u>Excess VAT payments on excess excise tax paid</u>

Petitioner claims that it has excess VAT payments relative to its excess excise taxes paid, pursuant to the reclassification done by respondent. Considering that in the aforecited case of *Secretary of Finance vs. La Suerte Cigar and Cigarette Factory, supra*, the Supreme Court had already ruled that the reclassification is invalid, it is clear that petitioner is entitled to the refund of the excess excise tax paid.

We now proceed to determine petitioner's refundable VAT payments, in relation to the aforesaid excess excise taxes.

In order to prove its entitlement to the refund of the excess VAT on excess excise tax paid, petitioner presented:

1) sales invoices *(Exhibits "A" to "R^{15}");*

2) general ledgers *(Exhibits "V^{20}" to "V^{20-6}");*

3) monthly and quarterly VAT returns;

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4) eFPS and tax payment confirmations *(Exhibits "Y[19]" to "D[20-3]");*

5) petitioner's computation of excise tax and VAT to be refunded *(Exhibits "R[19]" and "R[19-1]" to "R[19-7]");* and

6) quarterly VAT returns for the 3rd quarter of 2004 to the 1st quarter of 2009 *(Exhibits "D[21]" to "V[21]").*

The Court finds that petitioner has a total output VAT due in the amount of P58,757,872.73 for the period January 16, 2004 to June 30, 2004, pertaining to all removals of articles, as evidenced by petitioner's Sales Invoices *(Exhibits "A" to "R[15]")* and general ledgers *(Exhibits "V[20]" to "V[20-6]"),* computed as follows:

Month	Per Invoices	Per General Ledger
January 2004	P3,009,727.27	P3,009,727.27
February 2004	15,868,072.73	15,868,072.73
March 2004	12,037,572.73	12,037,572.73
April 2004	8,365,700.00	8,365,700.00
May 2004	10,522,227.27	10,522,227.27
June 2004	8,954,572.73	8,954,572.73
Total	**P58,757,872.73**	**P58,757,872.73**

Of the said amount, P54,959,000.00 pertains to output taxes on articles removed, which is the subject of this claim for refund, while the remaining P3,798,872.73 pertains to output tax on other brands, thus:

	Output tax due
Astro Filter King (ATFK)	P 13,459,636.36
Astro Menthol King (ATMK)	16,266,090.91
Memphis Menthol 100s (MP100)	14,163,727.27
Memphis Filter King (MPFK)	11,069,545.46
	₱ 54,959,000.00

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Output tax on other brands	P3,798,872.73
Total output tax on all articles removed for the 1st semester of 2004	**P58,757,872.73**

A perusal of the records shows that the excess VAT claimed by petitioner amounting to P24,833,250.84 forms part of the output VAT on all removals of articles in the total amount of P58,757,872.73 *(Annex 8 of the ICPA Report dated July 30, 2009, Exhibit "W21").*

Moreover, petitioner's VAT returns *(Exhibits "Y19" to "D20-3")* for the period January to June 2004 reflected a total output VAT due on all its transactions, amounting to P73,901,721.91, broken down, as follows:

Month	Output tax on manufacturing tobacco	Output tax on lease of real property	Output tax on sale/lease of intangibles	Total output tax
January	P3,009,727.27	P31,500.00	P2,195,436.94	P5,236,664.21
February	15,868,072.73	31,500.00	12,730,398.6	28,629,971.33
March	12,037,572.73	31,500.00	636.36	12,069,709.09
April	8,365,700.00	31,500.00	0	8,397,200.00
May	10,522,227.27	31,500.00	27,272.73	10,581,000.00
June	8,954,572.73	31,500.00	1,104.55	8,987,177.28
TOTAL	**P58,757,872.73**	**P189,000.00**	**P14,954,849.18**	**P73,901,721.91**

Thus, for petitioner's claim to prosper, it must be able to prove that the entire output VAT of P73,901,721.91 was actually paid.

The evidence adduced by petitioner shows that for the 1st and 2nd quarters of taxable year 2004, petitioner made output VAT cash payments of P4,177,237.81 *(Exhibit "D20-3").* As to the remaining P69,724,484.10, petitioner claims that the same was charged against its accumulated input

VAT credits, as follows:

	Accumulated Input VAT
For periods prior to 2004	P46,577,537.63
From Jan to June 2004	23,146,946.47
Total	P69,724,484.10

Upon examination of petitioner's 2004 quarterly VAT returns *(Exhibits "A[20]" and "D[20]")*, it reflected its accumulated input VAT credits for the months of January to May 2004, which was applied to petitioner's output VAT due for said period, to wit:

	1st quarter	2nd quarter	Total
Total output VAT	45,936,344.63	27,965,377.28	73,901,721.91
Less Total input VAT – current period	(11,760,868.24)	(11,386,078.23)	(23,146,946.47)
Less Total input VAT carried over from previous return	(46,577,537.63)	(12,402,061.24)	(46,577,537.63)
Net Output VAT payment	(12,402,061.24)	4,177,237.81	4,177,237.81
Total Excess VAT from excess excise tax for the quarter	13,759,098.18	11,074,152.72	24,833,250.90

It must be stressed that the claimed excess output VAT of petitioner in the amount of P24,833,250.84 was arrived at after it applied its total input VAT of P69,724,484.10 against its total output VAT due, amounting to P73,901,721.91. Thus, it follows that in computing the claimed amount of excess output VAT, petitioner must also substantiate its input VAT credits. These documents aid the Court in determining the correct amount of input VAT credits, which may be applied against the output VAT due. In the absence of the official receipts and invoices evidencing the amount of input VAT credits, the Court cannot compute with accuracy the amount of excess output VAT that may be granted to petitioner. Such documents are vital to

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enable the Court to determine if petitioner has sufficient input VAT credits to apply against its output VAT due, for any discrepancy will affect petitioner's claim for refund.

However, upon a careful examination of the evidence on record, the Court finds that petitioner failed to present evidence, such as receipts and invoices, to prove its input VAT credits. Consequently, without these vital documents from which this Court may ascertain the veracity of the input VAT, petitioner's claim must necessarily fail. Petitioner failed to establish that its output VAT due was actually paid for it to be entitled to a refund corresponding to the excess VAT paid pursuant to the payment of a higher rate of excise tax. Petitioner failed to establish its full compliance with the prescribed substantiation requirements.

Well-settled is the rule that taxpayers have the burden of proving not only the legal basis of his claim for refund, but also its factual basis by sufficient and convincing evidence.

All the foregoing considered, petitioner is only entitled to the refund of its excess excise tax erroneously collected by respondent, under an invalid regulation.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE** in favor of petitioner in the total amount of **TWO HUNDRED SEVENTY THREE MILLION ONE HUNDRED SIXTY FIVE THOUSAND SEVEN HUNDRED SIXTY PESOS (P273,165,760.00)**, representing erroneously/illegally collected excise tax paid for the period January to June 2004.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice