Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9228

Members:

CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

APR 03 2018
9:25 a.m.

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DECISION

CASANOVA, *J.*:

This case is a Petition for Review[1], filed on January 4, 2016 by Philip Morris Philippines Manufacturing, Inc. ("PMPMI"), with respect to its claim for refund of its alleged advance payment or deposit of excise tax on exported tobacco products amounting to Two Hundred Four Million Four Hundred Seventy Seven Thousand One Hundred Eighteen Pesos and Seven Centavos (₱204,477,118.07) for the period beginning January 7, 2010 until December 31, 2012, pursuant to Bureau of Internal Revenue Regulations No. 03-2008 ("RR 03-08") *("Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removals of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment")*.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office

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[1] Docket (Vol.I), pp. 10-34

address at 27th Floor, Tower One, The Enterprise Centre, 6766 Ayala Avenue, corner Paseo de Roxas, Makati City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City where summons and other legal processes may be served.[3]

On January 22, 2008, respondent issued RR 3-08 in order to regulate the collection and administration of excise tax on certain excisable articles.[4]

Section 2, RR No. 3-08 provides:

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> "SECTION 2. *Imposition of Excise Tax on Removal of Excisable Articles for Export or Sale/Delivery to International Carriers and Other Tax-Exempt Entities/Agencies.* — Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, **all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation** or sale/delivery to international carriers or to tax-exempt entities/agencies: Provided, That in case the said articles are likewise being sold in the domestic market, the applicable excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.
>
> In the absence of a similar article that is being sold in the domestic market, the applicable excise tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable." (*Emphasis supplied*)

In compliance with RR 3-08, petitioner allegedly paid in advance its excise tax on tobacco and cigarette products it exported for the period January 7, 2010 until December 31, 2012, broken down as follows:

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[2] Par. 1. I. Parties, Petition for Review, Docket (Vol.I), p. 11.
[3] Par. 1. I, Summary of Admitted Facts (SAF), Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 257.
[4] Par. 2, I, SAF, JSFI, Id., p. 257

Taxable Year	Excise Taxes Paid
2010	₱ 74,586,194.02
2011	111,898,582.45
2012	17,992,341.60
Total	**₱ 204,477,118.07**

Petitioner availed the product replenishment option in claiming refund of the excise taxes paid for its exported tobacco products as can be shown by the Product Replenishment Debit Memos (PRDMs)[5] and Product Replenishment Certificates (PRCs)[6] issued by the BIR in favor of petitioner.

On December 4, 2015, petitioner filed with the BIR Large Taxpayers Excise Audit Division II an administrative claim for refund or issuance of a tax credit certificate (TCC) in the total amount of ₱204,477,118.07, representing excise tax advanced or deposited by petitioner on tobacco and cigarette products it exported for the period January 7, 2010 until December 31, 2012 which has not been replenished or refunded under RR 3-08, including PRCs with outstanding balances and PRDMS for replenishment.[7]

On January 4, 2016, petitioner filed the instant Petition for Review.

On February 2, 2016, respondent filed his Answer[8] interposing the defense that petitioner's right to claim for refund had already prescribed and, therefore, the petition should be dismissed for lack of jurisdiction.

Pre-trial Conference[9] was set on March 17, 2016.

On February 17, 2016[10] and March 11, 2016[11], respondent and petitioner filed their respective Pre-Trial Briefs.

[5] Exhibits P-13.1 to 13.113.
[6] Exhibits P-14.1 to 14.79.
[7] Par. 10, Petition for Review, Docket (Vol. I), p. 12.
[8] Ibid, pp. 95-104
[9] Id., pp. 105-106
[10] Id., pp. 107-113
[11] Id., pp. 226-234

On April 6, 2016, the parties filed their Joint Stipulation of Facts and Issues.[12]

Subsequently, on April 18, 2016, a Pre-Trial Order[13] was issued thereby terminating the Pre-Trial Conference.

On August 6, 2016, petitioner filed its Formal Offer of Evidence[14], (FOE), where the Court in a Resolution[15] dated September 16, 2016 denied a number of exhibits offered by petitioner for failure to present the originals for comparison.

On October 5, 2016, petitioner filed its Motion for Reconsideration (Re: Resolution dated 16 September 2016) with Motion to Admit Supplemental Affidavit of Ms. Catherine S. De Asa[16]. Respondent also filed his Opposition (Re: Motion for Reconsideration)[17] on October 11, 2016.

On November 28, 2016, the Court granted petitioner a period of five (5) days to submit its Supplemental FOE[18] which was accordingly submitted on December 5, 2016[19].

On February 9, 2017, the Court issued a Resolution [20] partially granting petitioner's Motion for Reconsideration but still upheld the *denial* of admission of the herein below listed exhibits for failure to lay bases for submission of secondary evidence.

Exhibit No.	Description
"P-14.79"	Product Replenishment Certificate No. PRC2011-00003716 dtd. January 23, 2013
"P-15.150"	Permit to Export LTFOD-T-014-06-10-00084 dtd. June 8, 2010
"P-15.151"	Permit to Export LTFOD-T-014-08-10-00074 dtd. August 9, 2010
"P-15.153"	Permit to Export LTFOD-T-014-06-10-00186 dtd. June 22, 2010

[12] Id., pp. 257-262
[13] Id., pp. 264-267
[14] Docket (Vol.III), pp. 1062-1073
[15] Ibid, pp. 1107-1108
[16] Id., pp. 1115-1121
[17] Id., pp. 1131-1137
[18] Minutes of Hearing dated November 28, 2016, Id., p. 1178.
[19] Id., pp. 1180-1186.
[20] Id., pp. 1195-1201

"P-15.154"	Permit to Export LTFOD-T-014-01-11-00111 dtd. January 18, 2011
"P-17.1" to "P-17.609"	Bills of Lading
"P-19.1" to "P-19.16"	Bank Statements of Account

On February 16, 2017, respondent filed his Memorandum[21] while, petitioner filed its Manifestation with Tender of Excluded Evidence[22] on February 28, 2017 which was duly noted by the Court.

On April 4, 2017, petitioner filed its Memorandum[23] after a motion for extension of twenty (20) days to file the same was granted by the Court.

Hence, this case was submitted for decision.

The parties enumerated the following issues[24] to be resolved:

> "1. Whether or not the Honorable Court has jurisdiction to act on the instant Petition for Review.
>
> 2. Whether petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of ₱204,477,118.07.
>
> 3. Whether the amounts corresponding to the excise tax allegedly advanced by petitioner under RR 3-08 should be returned to petitioner in accordance with Section 130(D) of the Tax Code and/or the principle of solutio indebiti.
>
> 4. Whether the provisions of RR 3-08 should be declared null and void for being contrary to Sections 129 and 130(D) of the Tax Code.
>
> 5. Whether petitioner's right to claim for refund of the excise tax allegedly advanced by petitioner has already prescribed."

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[21] Id., pp. 1202-1211
[22] Id., pp. 1212-1210
[23] Id., pp. 1230-1261
[24] II. Stipulation of Issues, JSFI, Docket (Vol. I), pp. 258-259

Petitioner's Arguments

Petitioner claims that its alleged advanced payment of excise tax on its exported tobacco products under RR 03-08 should be returned/refunded pursuant to the provision of Section 130(D) of the NIRC of 1997, as amended and principle of solutio indebiti.

Petitioner further claims that RR 03-08 is void because it effectively amended Sections 129 and 130 (D) of the NIRC of 1997, as amended. Petitioner contends that under Section 129 of the NIRC of 1997, as amended, products manufactured in the Philippines for export are not subject to excise tax, while RR 03-08 allegedly goes beyond the scope of Section 129 of the NIRC of 1997, as amended as it requires the payment of excise tax on articles that are not subject to such tax.

Moreover, petitioner argues that product replenishment under RR 03-08 is in clear conflict with Section 130 (D) of the NIRC of 1997, as amended since Section 130(D) only requires the submission of the proof of actual exportation and the payment of corresponding foreign exchange as conditions in granting the claim for refund, while the advance tax payment mechanism provided in RR 03-08 imposes additional conditions before the taxpayer can enjoy the benefit of its tax exempt status.

Petitioner, likewise, contends that the two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, as amended is not applicable in this case as it allegedly seeks the recovery of excise tax paid in advance to the government and, not the erroneously or illegally collected tax; and, Section 130(D) of the NIRC of 1997, as amended does not prescribe a deadline for filing a claim for refund.

Lastly, petitioner claims that this Court has jurisdiction over the case under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.

Respondent's Arguments

Respondent asserts that petitioner's claim for refund of its alleged advance payments of excise tax for the period January 7, 2010 to December 31, 2012 has already prescribed pursuant to Section 229 of the NIRC, as amended.

Respondent also states that under RR 03-08, the remedies after payment of excise tax may either come in the form of (1) a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the NIRC or (2) a product replenishment, the mechanics of which is provided in the said regulation.

Respondent further claims that BIR's interpretation of laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain.

Respondent, finally, argues that considering petitioner's primary cause of action is the nullification of duly issued administrative issuance, this Court has no jurisdiction over the same. Conversely, assuming petitioner's primary cause of action is to seek refund and that the sought nullification is merely consequential, respondent avers that the same should not still be allowed as it is a well-established legal precept that a collateral attack on a presumably valid administrative issuance is not allowed.

The Court has jurisdiction over the case

The jurisdiction of the CTA is defined in Republic Act (R.A.) No. 1125,[25] as amended by R.A. No. 9282,[26] which provides in part:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
>> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>>
>> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue

[25] An Act Creating the Court of Tax Appeals.

[26] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), 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.

> Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> xxx xxx xxx."

Indubitably, this Court has jurisdiction even over "other matters" arising under the NIRC or other laws administered by the BIR.

In the present case, it is evident that petitioner's primary cause of action is to seek the return/refund of its alleged advanced payment of excise tax on its exported tobacco products under RR 03-08. Petitioner's contention that RR 03-08 is invalid as it goes beyond the scope of Section 129 of the NIRC, as amended, thus, the two-year prescriptive period under Sections 204(C) and 229 of the same law is not applicable were clearly made to controvert the issue on prescription.

If petitioner's primary cause of action is to assail the validity or constitutionality of the subject revenue regulation, it should have initially filed the same with the regular courts but, instead, petitioner filed the instant claim for refund/issuance of TCC.

In the case of *The City of Manila vs. Hon. Caridad H. Grecia-Cuerdo*[27], the Supreme Court held that while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates. Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Based on the foregoing jurisprudence, this Court holds that it has jurisdiction over the present petition.

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[27] G.R. No. 175723, February 4, 2014

We shall now proceed to resolve the remaining issues brought upon this Court.

Petitioner's claim for refund was filed out of time

A. Two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997 applies

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may – x x x

> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.
>
> No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within **two (2) years after the payment of the tax or penalty**: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund. *(Emphasis Supplied)*
>
> xxx xxx xxx
>
> **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, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, 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. *(Emphasis Supplied)*

In the present case, petitioner paid the excise taxes and was issued PRCs from January 7, 2010 to March 31, 2012. Counting two years from the respective periods, petitioner only had until January 7, 2012 to March 31, 2014 to file both its administrative and judicial claims for refund of said taxes. However, based on records, petitioner filed its administrative claim for refund or issuance of TCC in the total amount of ₱204,477,118.07 only on December 4, 2015[28], while the judicial claim was subsequently filed on January 4, 2016[29].

In view of the above, petitioner's claim for refund/issuance of TCC has already prescribed pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended.

Petitioner is not correct in claiming that the two-year prescriptive period for filing a claim under Sections 204(C) and 229 of the NIRC of 1997, as amended, does not apply in its case, since it seeks for the recovery of excise tax advanced or deposited to the government and not erroneously or illegally collected tax and that Section 130(D) of the NIRC of 1997, as amended does not prescribe a deadline for filing a claim for refund.

The Supreme Court, in *Commissioner of Internal Revenue vs. Central Luzon Drug Corp.*[30], held that Section 229 of the NIRC of 1997, as amended governs exclusively <u>all kinds of refund or credit of internal revenue taxes erroneously or illegally imposed or collected</u> pursuant to the NIRC of 1997, as amended.

In the instant case, the advance payment/deposit of excise taxes being claimed for refund may be deemed to have been <u>excessively/erroneously</u> collected, the same having remained unutilized after payment. As such, the refund of the excess advance payment falls under Section 229 of the NIRC.

Based on the foregoing, petitioner's claim for refund/issuance of TCC was considered filed out of time.

B. <u>Prescriptive Period under Solutio Indebiti is not applicable</u>

Petitioner argues that the principle of *solutio indebiti* applies considering that RR No. 3-08 is void because it requires petitioner to

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[28] Exhibit "P-5".
[29] Docket (Vol. I), pp. 10-34
[30] G.R. No. 148512, June 26, 2006.

pay excise tax on its exported tobacco and cigarette products under a product replenishment and/or refund mechanism that finds no basis in law. Thus, the BIR is not legally entitled to receive the amounts sought to be refunded by petitioner in these proceedings.

The Court finds petitioner's reliance in *solutio indebiti* principle untenable.

Art. 2154 of the Civil Code provides – "if something is received when there is no right to demand it, and it is unduly delivered through mistake, the obligation to return it arises."

The principle of *solutio indebiti* is a form of quasi-contract.[31] Being a quasi-contract, an action may be brought within six (6) years from the date of payment sought to be returned.[32]

In *CIR v. Manila Electric Company*[33], the Supreme Court rejected the application of said principle to tax refund cases, viz.:

> "In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi contract or solutio indebiti under Article 1145 of the New Civil Code. There is solutio indebiti where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of solutio indebiti is lacking. Moreover, such legal precept is inapplicable to the present case since the NIRC of 1997, as amended, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid."

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[31] *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, G.R. No. 167274-75, July 21, 2008.

[32] The following actions must be commenced within six years: (1) Upon an oral contract; **(2) Upon a quasi-contract.** *(Art. 1145, New Civil Code of the Philippines)*

[33] G.R. No. 181459, June 9, 2014, 725 SCRA 384, 398.

Applying the above ruling in the case at bench, petitioner has a binding relation to pay the subject excise tax under RR 3-08. The advanced payment/deposit was not made through mistake but was voluntarily made by petitioner in compliance with the said revenue regulations. Hence, the six (6) year prescriptive period under the principle of solutio indebiti is not applicable in the case at bar.

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the NIRC of 1997, as amended recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as nonobservance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim"[34].

The provisions of RR 3-08 are not contrary to Sections 129 and 130(D) of the NIRC of 1997, as amended.

Petitioner contests the validity of RR No. 3-08 on the basis that it allegedly goes beyond the scope of Sec. 129 and Sec. 130 (D) of the NIRC of 1997, as amended when it required the payment of excise tax on articles that are not subject to such tax and instead of outright exemption, manufacturers were required to file a claim either in the form (1) a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the NIRC; or (2) a product replenishment.

RR No. 3-08 or the rule "*Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment*" dated January 22, 2008 provides partially:

xxx xxx xxx

"SECTION 2. *Imposition of Excise Tax on Removal of Excisable Articles for Export or Sale/Delivery to International Carriers and Other Tax-Exempt Entities/Agencies.* — Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, **all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall**

[34]Metropolitan Bank & Trust Co. vs. CIR, G.R. No. 182582, April 17, 2017

> **pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation** or sale/delivery to international carriers or to tax-exempt entities/agencies: Provided, That in case the said articles are likewise being sold in the domestic market, the applicable excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.
>
> In the absence of a similar article that is being sold in the domestic market, the applicable excise tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable." (*Emphasis supplied*)

While Section 129 of the NIRC of 1997, as amended provides that:

> "**SEC. 129.** ***Goods Subject to Excise Taxes.*** - Excise taxes apply to **goods manufactured or produced in the Philippines for <u>domestic sales or consumption or for any other disposition</u> and to things imported.**
>
> The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit or measurement shall be referred to as "specific tax" and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as "ad valorem tax"." (*Emphasis and underscoring supplied*)

In relation thereto, Sec. 130(D) of the same law provides for the right of taxpayers to refund the excise taxes paid on articles which were actually exported, to wit –

> "**SEC. 130.** ***Filing of Return and Payment of Excise Tax on Domestic Products.*** – x x x
>
> **(D)** ***Credit for Excise Tax on Goods Actually Exported.***- When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, **<u>any excise tax paid</u> thereon <u>shall</u> be credited or refunded upon submission of the <u>proof of actual exportation</u> and upon <u>receipt of the corresponding foreign exchange payment</u>**: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported." (*Emphasis and underscoring supplied*)

RR No. 03-08 was issued to implement a refund mechanism available to taxpayers who exported excisable goods pursuant to Sec. 130(D) of the NIRC of 1997, as amended. As stated in the Background of the assailed Revenue Regulation, as a general rule, all withdrawals of excisable articles from their place of production must be subject to excise tax. The grant of an outright tax exemption is discouraged because it deprives the Bureau of Internal Revenue the opportunity to evaluate thoroughly the factual and legal bases of the tax relief sought. It is for these reasons that remedies after payment of the tax is more favored by the government because this option will give more protection to revenue collections without diminishing the impact of the tax relief to which the taxpayers are entitled.

Under the said regulation, the **remedies** of the taxpayer may either be in the form of: (1) **a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the NIRC**; or (2) **a product replenishment**, the mechanics of which are provided in these regulations. The procedure in availing the second option for refund provided under RR No. 03-08 was detailed in Sec. 6[35] of the said regulations.

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[35] **SECTION 6. *Claim for Product Replenishment.*** — In case the excisable products were removed by the manufacturer thereof from his place of production or from any storage facility located outside his place of production after prepayment of the excise tax for purposes of exportation or sale/delivery to tax-exempt entities/agencies or international carriers pursuant to these Regulations, the said manufacturer may, at its option, **avail a claim for product replenishment, instead of filing a claim for tax credit/refund of the excise tax that has been previously paid** on the articles removed for such purposes, subject to the following requirements:

A. CONDITIONS FOR PRODUCT REPLENISHMENT

The option of product replenishment may be availed of by the manufacturer only under the following conditions:

(a) Excisable articles, regardless of the volume and value, which are, likewise, intended for exportation or sale/delivery to international carriers or tax-exempt entities/agencies may be allowed to be removed from the place of production without the payment of the excise tax in order to replenish the excise tax-paid article that was previously exported or sold/delivered to international carriers or tax-exempt entities/agencies: Provided, That the total excise tax that has been previously paid is sufficient to cover the excise tax due on the subsequent exportation or sale/delivery to international carriers or tax-exempt entities/agencies;

(b) In case the excise tax that has been actually paid in the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers is LESS than the excise tax that is otherwise due on the articles applied for product replenishment, the difference shall be paid by the manufacturer before removal thereof from the place of production. On the other hand, in case the same is MORE than the excise tax that is otherwise due on articles applied for product replenishment, the difference thereof may be utilized for any future application for product replenishment. **In lieu thereof**, and at the option of the manufacturer, **he may also file a claim for tax credit/refund with the appropriate office in the BIR, <u>subject to the prescriptive period requirements of the NIRC of 1997, as amended.</u>**

(c) In case the rate of excise tax imposed at the time of application for replenishment shall be different from that imposed and paid at the time of the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers, or in case the articles applied for replenishment are no longer subject to excise tax, the following rules shall be observed:

(1) If the equivalent excise tax that was paid is MORE than the equivalent excise tax that is otherwise due on the articles applied for replenishment, the volume of articles representing the difference may be the subject of any future application for product replenishment, or the manufacturer, may, at his option, file a claim for tax credit/refund with the appropriate office in the BIR for the excess excise tax paid which represents such difference, subject to the prescriptive period requirements of the NIRC of 1997, as amended.

(2) If the equivalent excise tax that was previously paid is LESS than the equivalent excise tax that is otherwise due on the articles applied for replenishment, the volume of articles applied for replenishment representing the difference shall be disallowed from the said application and the corresponding excise tax due shall be paid by the manufacturer before removal from the place of production.

(3) If the articles applied for replenishment are no longer subject to excise tax, the manufacturer shall file a claim for tax credit/refund for the excise tax that has been paid on the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers, subject to the prescriptive period requirements of the NIRC of 1997, as amended.

(d) The excise tax on articles intended for export or sale/delivery to tax-exempt entity/agency or international carrier upon which a claim for replenishment shall be subsequently filed with the BIR should be actually paid before removal from the place of production using Payment Form No. 0605 on a "per shipment basis" in order to facilitate the processing of such claim. Accordingly, claims for replenishment of articles upon which the excise tax was paid under the advance deposit schemes shall not be accepted.

(e) For purposes of continuity on the availment of the product replenishment on subsequent exportations or sales/deliveries to international carriers or tax-exempt entities/agencies of excisable articles, the concerned excise taxpayer shall, for each and every shipment of the articles, file an application for product replenishment, together with the copy of Payment Form No. 0605 as proof of additional excise tax payment. The documentary proofs of the actual shipment prescribed under these Regulations for application for product replenishment shall be submitted within ninety (90) days from the date of actual shipment: Provided, however, That, in case of failure to submit the said documents within the said prescribed period, the corresponding excise taxes shall be assessed and collected from the concerned excise taxpayer, inclusive of increments. The BIR shall approve the application for product replenishment in the total amount of excise tax, including any additional excise tax that has been previously paid by the concerned excise taxpayer.

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B. APPLICATION FOR PRODUCT REPLENISHMENT

The manufacturer shall file a written application for Product Replenishment Certificate (Form No. _____) (Annex "A") with the Chief, Field Operations Division (LTFOD), Large Taxpayers Service in the National Office of the Bureau of Internal Revenue (BIR), together with the following copies of documents:

xxx xxx xxx

E. UTILIZATION OF PRODUCT REPLENISHMENT CERTIFICATE

A duly approved and issued PRC (BIR Form No. _____) (Annex "B") shall be utilized by filing an application for Product Replenishment Debit Memo (PRDM) (BIR Form No. _____) (Annex "C") with the Chief, LTFOD that will serve as the authority of the taxpayer to remove the excisable article from his place of production without the actual payment of the excise tax: Provided, Under the said product replenishment mechanism, the procedures for availment are summarized as follows:

1) The taxpayer shall pay the excise tax on locally manufactured excisable goods intended for export thru BIR Form No. 0605.

2) The taxpayer will then proceed with processing the actual exportation of said goods.

3) After the export has been completed, the taxpayer will file an application for Product Replenishment Certificate (PRC) within ninety (90) days from the date of export together with the complete documentation requirements provided under RR No. 3-08.

4) The BIR shall approve the PRC application upon satisfaction of the documents submitted by the taxpayer.

5) Utilize/apply the approved PRCs on subsequent excise tax liabilities of locally manufactured goods intended for export thru filing a Product Replenishment Debit Memo (PRDM).

a. If the excise tax credit reflected in the PRC is LESS than the excise tax due on the subsequent exportation, the taxpayer shall pay the deficiency thru BIR Form No. 0605 prior to removal of the goods within the Philippines.

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however, That any outstanding excise tax liability that is due and demandable from the concerned taxpayer shall be paid first before the said certificate shall be allowed to be utilized.

F. VALIDITY OF THE PRODUCT REPLENISHMENT CERTIFICATE

The PRC shall remain valid within five (5) years from the date of issuance thereof as indicated on the face of the said Certificate. In the event that the Certificate has not been utilized within the said prescribed period, a one-time revalidation thereof shall be allowed by filing an application for revalidation with the appropriate BIR Office before the expiration of its validity. A duly-approved PRC, based on its outstanding balance, may be converted into a Tax Credit Certificate (TCC) or Tax Refund at anytime during the validity thereof by filing a written application to the appropriate BIR Office: Provided, however, That, in case the PRC is converted into a TCC, the period of validity of the TCC shall be the same with the remaining period of validity of the PRC.

The sale, assignment or transfer of any Product Replenishment Certificate to another person is hereby prohibited.

b. If the excise tax credit reflected in the PRC is MORE than the excise tax due on the subsequent exportation, the unutilized portion of the PRC may be used on other subsequent exportations.

The duly approved PRC serves as proof of excise tax credits which can be utilized by the taxpayer on subsequent excise tax due on locally manufactured excisable goods intended for export, while the duly approved PRDM serves as proof of the utilization of the PRCs, which in effect serves as an authority to export said goods without the requisite payment of corresponding excise tax. Unutilized PRCs shall be available as excise tax credits for 5 years from the date of issuance.

The Court finds that there is no conflict between the law (Sec. 129 and 130(D) of the NIRC of 1997, as amended) and the implementing Revenue Regulations (RR 3-08).

As defined, Revenue Regulations are issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the NIRC and related statutes.

The purpose of the issuance of the assailed RR 3-08 is to minimize the rising incidents of reported diversions of declared articles for export to the local market, as well as domestic sales originally declared as intended to tax-exempt persons and entities but are subsequently found in possession of persons or entities that are not entitled to such tax exemption privilege. Moreover, these regulations also intend to rationalize the practice of some taxpayers of immediately availing outright tax exemption but are delaying and/or totally ignoring the prescribed submission and full liquidation of their claimed tax-exempt shipments with complete supporting documents.

Mainly, RR 3-08 was issued in order to regulate the collection and administration of excise tax on certain excisable articles.

The same is not in conflict with Sec. 130 (D), as Sec. 130(D) of the NIRC of 1997, as amended, clearly provides that a credit or refund of excise taxes paid shall be granted upon submission of proof of the following:

1) Payment of excise tax on excisable goods intended for export
2) Actual exportation of goods; and
3) Receipt of corresponding foreign exchange payment

Similarly, as laid down in Sec. 6(A)(e) of RR No. 3-08, the PRCs shall be issued by the BIR only upon submission of proofs of actual shipment.

The "documentary proofs" required under these Regulations are referred under Sec. 6(B)(1) of RR No. 3-08, specifically for direct export transactions:

> "SECTION 6. *Claim for Product Replenishment.* — x x x
>
> B. APPLICATION FOR PRODUCT REPLENISHMENT
>
> The manufacturer shall file a written application for Product Replenishment Certificate (Form No. _____) (Annex "A") with the Chief, Field Operations Division (LTFOD), Large Taxpayers Service in the National Office of the Bureau of Internal Revenue (BIR), together with the following copies of documents:
>
> (1) For Direct Export Transactions:
>
> a) "Export Permit" of product applied for replenishment
> b) Proof of payment of the excise tax due on the product
> c) Purchase order
> d) Commercial invoice and delivery receipt duly acknowledged by the purchaser or his authorized representative
> e) Packing list
> f) Bill of Lading
> g) Withdrawal Certificate, Official Delivery Invoice or any BIR-prescribed forms to document removal of excisable articles from the place of production
> h) Inward remittance of the export proceeds in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). In case the said remittance covers several exportations, the same shall be accompanied by a summary of the details thereof indicating the commercial invoice numbers, bills of lading numbers and the amounts of sales.
> i) "Certificate of Loading" issued by the Bureau of Customs (BOC)
> j) Certified true copy of the container scanner's report and **film negative** issued by the BOC
> k) Batch liquidation statements indicating receipts and removals
> l) Other documents as may be required, if warranted

Based on the foregoing, RR 3-08 was issued to effectively implement Sec. 130(D) of the NIRC of 1997 by prescribing procedures in availing claims for refund and product replenishment.

More so, while RR 3-08 imposes excise taxes on articles' removal from place of production that is intended for exportation, the same regulations provide for remedies after payment of the tax subject to procedural due process laid therein.

Although by its very nature, the power of taxation is indispensable and to some extent, it may even be considered unlimited, still, herein petitioner is not left without recourse. Remedies were provided under the regulations. However, in this case, petitioner failed to comply with the procedural due process when it belatedly filed the claim for refund/issuance of a TCC.

Jurisprudence dictates that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[36]

In view of the foregoing, the instant Petition for Review filed by petitioner is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[36] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166786, May 3, 2006; *Province of Abra v. Hernando,* No. L-49336, August 31, 1981; *Commissioner of Internal Revenue v. Court of Appeals,* G.R. Nos. 122161 & 120991, February 1, 1999; *Silkair(Singapore) PTE. Ltd. v. Commissioner of Internal Revenue,* G.R. No. 184398, February 25, 2010

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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.

ROMAN G. DEL ROSARIO
Presiding Justice