REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

NESTLE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10276

Members:

RINGPIS-LIBAN, *Chairperson and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
OCT 06 2023
8:00 a.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

The *Petition for Review* prays that judgment be rendered as follows: (1) declaring petitioner not liable to pay the Sweetened Beverage Tax ("SBT") on its removals of MILO Products; (2) declaring petitioner entitled to a refund of erroneously paid SBT in the amount of Php1,266,599,459.91; and (3) ordering respondent to refund petitioner the said amount.[1]

The Facts

Petitioner Nestlé Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Barrio Niugan, Cabuyao, Laguna.[2]

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1 Docket, Pre-Trial Order dated July 21, 2021, Statement of the Case, p. 785.
2 *Id.*, Joint Stipulation of Facts and Issues (JSFI), Stipulation of Facts, Par. 1, p. 627.

Respondent is the duly appointed Commissioner of Internal Revenue with office at the BIR Building, Diliman, Quezon City.[3]

Petitioner is engaged in the manufacture of food and beverages, including MILO - a powdered chocolate malt flavored milk drink which is marketed by petitioner in the following packs, to wit:

(a) Nestle MILO Hot Mix Choco Malt Powdered Milk Drink (Institutional Pack) which is registered with the Food and Drug Administration ("FDA") under Certificate of Product Registration ("CPR") No. FR-4000003074211;[4]

(b) Nestle MILO Cold Mix Choco Malt Powdered Milk Drink (Institutional Pack) which is registered with the FDA under CPR No. FR-4000003086801;[5]

(c) Nestle MILO Choco Malt Powdered Milk Drink/ Powdered Choco Malt Milk Drink which is registered with the FDA under the following CPR Nos.: FR-4000002772505 (22g),[6] FR-4000002780597 (88g),[7] and FR-4000002780601 (220g, 300g, 600g, 1 Kg);[8]

(d) Nestle MILO Choco Malt Powdered Milk Drink/ Powdered Choco Malt Milk Drink which is registered with the FDA under CPR Nos. FR-4000002780614 (22g)[9] and FR-4000002780627 (600g, 1Kg)[10] for products packed by Antonina Industrial Corporation; FR-4000002780643 (22g)[11] for products packed by Cofipac Corporation; FR-4000002780656 (22g)[12] for products packed by Portion Fillers; FR-4000002780669 (22g)[13] for products packed by R.M. Foods, Inc.;

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3 *Id.*, JSFI, Summary of Admitted Facts, Par. 1, p. 627.
4 Exhibit "P-51-1".
5 Exhibit "P-51-2".
6 Exhibit "P-51-10".
7 Exhibit "P-51-3".
8 Exhibit "P-51-4".
9 Exhibit "P-51-5".
10 Exhibit "P-51-6".
11 Exhibit "P-51-7".
12 Exhibit "P-51-8".
13 Exhibit "P-51-9".

(e) Nestle MILO Nutri-Up Choco Malt Powdered Milk Drink/Powdered Choco Malt Milk Drink For Adults which is registered with the FDA under CPR Nos. FR-4000002652050 (24g)[14] and FR-4000002759331 (390g);[15] and

(f) Nestle MILO Nutri-Up Choco Malt Powdered Milk Drink/Powdered Choco Malt Milk Drink For Adults which is registered with the FDA under CPR No. FR-4000002759399 (24g)[16] for products packed by Antonina Industrial Corporation.

On January 01, 2018, Republic Act ("RA") No. 10963, or the Tax Reform for Acceleration and Inclusion Act (TRAIN Law), took effect, and added Section 150-B to the National Internal Revenue Code ("NIRC") of 1997, which imposed for the first time an excise tax on sweetened beverages (*i.e.*, the SBT).[17]

Thereafter, Revenue Regulations ("RR") No. 20-2018[18] was issued, implementing the imposition of excise tax on sweetened beverages, pursuant to Section 47 of RA No. 10963.

On April 7, 2020, pursuant to Section 204(C) of the NIRC of 1997, as amended, petitioner filed a written claim for refund of alleged erroneously paid SBT with respondent (Attention to the respondent's Large Taxpayers Service), through the letter dated April 6, 2020,[19] and a duly accomplished *Application for Tax Credits/Refund* (BIR Form 1914),[20] in the amount of Php1,266,599,459.91, for the period from May 1 to December 31, 2018.

Petitioner filed the present *Petition for Review* on April 22, 2020.[21]

On July 3, 2020, respondent filed his *Motion for Extension of Time to File Answer*,[22] which was granted in the Resolution dated July 22, 2020.[23] In the same

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14 Exhibit "P-51-11".
15 Exhibit "P-51-12".
16 Exhibit "P-51-13".
17 Exhibit "P-53".
18 SUBJECT: Prescribing the Implementing Rules and Guidelines on the Imposition of Excise Tax on Sweetened Beverages Pursuant to Section 47 of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law".
19 Docket Exhibit "P-9", pp. 205 to 211.
20 *Id.*, JSFI, Stipulation of Facts, Par. 2, p. 627; Exhibit "P-9-1", p. 216.
21 *Id.*, pp. 10 to 23.
22 *Id.*, pp. 47 to 50.
23 *Id.*, p. 55

Resolution, the Court ordered respondent to certify and elevate the *BIR Records* of this case.[24]

Subsequently, on July 24, 2020, respondent filed a *Second Motion for Extension of Time to File Answer*,[25] which was again granted by the Court in the Resolution dated August 26, 2020.[26]

On September 02, 2020, respondent transmitted the BIR Records of the case, consisting of one (1) folder, consecutively numbered as pages 1 to 159.[27]

Thereafter, on September 04, 2020, respondent filed his *Manifestation with Motion to Admit Attached Answer*,[28] which was granted in the Resolution dated October 05, 2020.[29] In the *Answer* attached therein,[30] respondent interposed the following special and affirmative defenses, to wit:

1) A plain reading of Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995) shows that MILO products cannot be considered under 'flavoured fluid milk drink' as argued by petitioner. All MILO products that are the subject of this case involve chocolate drink in powder form, not in liquid form. Therefore, the said products cannot fall under 01.1.4 of Codex Stan 192-1995; and

2) If petitioner's MILO products would be given an exemption on the excise tax on sweetened beverages tax, the purpose for which the law was imposed would be defeated.

The Pre-Trial Conference was set and held for on March 18, 2021.[31] Prior thereto, *Petitioners' Pre-Trial Brief* was filed on August 15, 2021,[32] while *Respondent's Pre-Trial Brief* was submitted on March 16, 2021.[33]

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[24] *Id.*
[25] *Id.*, pp. 56 to 59.
[26] *Id.*, p. 62.
[27] *Id.*, Compliance dated September 02, 2020, pp. 63 to 65.
[28] *Id.*, pp. 67 to 71.
[29] *Id.*, p. 87.
[30] *Id.*, pp. 73 to 83.
[31] *Id.*, Notice of Pre-Trial Conference dated October 12, 2020, pp. 88 to 89; Minutes of the hearing held on, and Order dated, March 18, 2021, pp. 621, and 624 to 626.
[32] *Id.*, pp. 567 to 575.
[33] *Id.*, pp. 613 to 620.

On May 24, 2021, the *Report* of the Independent Certified Public Accountant ("ICPA") was submitted;[34] and the parties filed their *Joint Stipulation of Facts and Issues*,[35] which was admitted and approved by the Court per its Resolution dated June 03, 2021,[36] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 21, 2021 was then issued by the Court.[37]

Trial then ensued.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Maria Josephine Gonzales,[38] Head of Regulatory and Scientific Affairs Department of petitioner; (2) Atty. Armi A. Perlas,[39] Head of petitioner's Tax Department; (3) Ms. Veronica Carmen V. Cruz,[40] petitioner's Business Executive Officer for MILO products; (4) Mr. Joselito Dalde,[41] petitioner's Project Consultant; (5) Dr. Kenneth Y. Hatigan-Go,[42] former Director General of the Food and Drugs Administration (FDA); and (6) Ms. Katherine O. Constantino,[43] the Court-commissioned ICPA.[44]

The *Formal Offer of Evidence for Petitioner* was filed on June 09, 2022;[45] and respondent's *Comment (Re: Petitioner's Formal Offer of Evidence)* was filed on June 14, 2022.[46] In the Resolutions dated July 22, 2022[47] and September 12, 2022,[48] the Court admitted all of petitioner's offered exhibits. Given respondent's manifestation that he will no longer present any evidence in this case, the Court gave the parties thirty (30) days within which to file their respective memorandum.[49]

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34 *Id.*, pp. 636 to 765.
35 *Id.*, pp. 627 to 635.
36 *Id.*, p. 769-770.
37 *Id.*, p. 785-793.
38 *Id.*, Exhibit "P-60", pp. 258-296; Minutes of hearing held on, and Order dated, July 27, 2021, pp. 802-804.
39 *Id.*, Exhibit "P-59", pp. 851-872; Minutes of hearing held on, and Order dated, October 28, 2021, pp. 938-940.
40 *Id.*, Exhibit "P-61", pp. 94-106; Minutes of hearing held on, and Order dated, October 28, 2021, pp. 938-940.
41 *Id.*, Exhibit "P-62", pp. 945-958; Minutes of hearing held on, and Order dated, February 23, 2022, pp. 983-985.
42 *Id.*, Exhibit "P-63", pp. 144-160; Minutes of hearing held on, and Order dated, February 23, 2022, pp. 983-985.
43 *Id.*, Exhibit "P-64", pp. 995-1006; Minutes of hearing held on, and Order dated, May 05, 2022, pp. 986-988.
44 *Id.*, Oath of Commission dated March 18, 2021, p. 622; Minutes of the hearing held on, and Order dated, March 18, 2021, pp. 621, and 624-626.
45 *Id.*, pp. 1019-1046.
46 *Id.*, pp. 3295-3297.
47 *Id.*, pp. 3303-3304.
48 *Id.*, pp. 3312-3313.
49 *Id.*, Resolution dated July 22, 2022, pp. 3303-3304.

On September 12, 2022, respondent posted its *Memorandum*,[50] and on October 17, 2022, petitioner filed its *Memorandum*.[51]

Thus, in the Resolution dated October 25, 2022,[52] the present case was deemed submitted for decision.

The Issue

The parties stipulated the following issues for the resolution of this Court, to wit:

> "1. Whether Petitioner is entitled to a claim for refund of sweetened beverage excise tax paid in the amount of PhP1,266,599459.91; and
>
> 2. Whether Petitioner's MILO Products are 'milk products' or 'sweetened beverages' as contemplated in Section 150-B of the Tax Code."[53]

Petitioner's arguments:

Petitioner argues that petitioner's MILO® Products are milk products excluded from the coverage of the SBT imposed under Section 150-B of the Tax Code; that the FDA issued Certificates of Product Registration for the MILO® Products with the product name Choco Malt Powdered Milk Drink or Powdered Choco Malt Milk Drink; that MILO® Products are Choco Malt powdered milk drinks that fall under Category 01.1.4 "Flavored Fluid Milk Drinks" of Codex Stan 192-1995; that milk is an essential ingredient of the MILO® Products, and as such, are classified as composite milk products under Codex Stan 206-1999 or the Codex General Standard for the Use of Dairy Terms; that petitioner's MILO® Products are not "sweetened beverages" as the term is defined under Section 150-B(B)(1) of the Tax Code; that imposing SBT on sweetened beverages and excluding "all milk products" therefrom, the intent of the legislature is to encourage milk consumption by Filipino consumers – especially, the children; and that during the hearings of the Senate Committee on Ways and Means on SBT, MILO® Products was discussed as an example of a milk product, and therefore contemplated as among the excluded milk products.

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[50] *Id.*, pp. 3314-3324.
[51] *Id.*, pp. 3328-3387.
[52] *Id.*, p. 3392.
[53] *Id.*, JSFI, Stipulation of Issues, p. 628.

Petitioner further argues that respondent's reliance on the "enrolled bill doctrine" is misplaced; that it is well-established that where there is doubt as to what a provision of a statute means, courts may avail themselves of the actual proceedings of the legislative body to assist in determining the construction of the statute; that petitioner's MILO® Products are healthful and nutritious milk products consumed mostly by Filipino children; that the imposition of SBT on petitioner's MILO® Products will result in a decline in the intake of important vitamins and nutrients by Filipino children; and that the said MILO® Products significantly help in the fight against undernutrition of children in the Philippines.

Moreover, petitioner claims that it is entitled to a refund of illegally collected and erroneously paid SBT in the amount of Php1,266,599,459.91; that the remittance of SBT imposed on petitioner's MILO® Products is meticulously recorded by petitioner, and the collection thereof is supervised and monitored by respondent; and that the duly commissioned ICPA verified and confirmed that SBT in the amount of Php1,266,599,459.91 was paid by petitioner on the removals of the MILO® Products.

Respondent BIR's counter-arguments:

Respondent contends that MILO Products are subject to SBT; that petitioner's claim that MILO Products are considered as "flavored milk", hence, exempt from the payment of excise tax must fail; and that nowhere in RR No. 20-2018 that the BIR adopted "flavored fluid milk drink" along with its corresponding Codex Standard as a basis in the exemption of milk products, and neither could petitioner seek refuge to consider their products as "milk powder and cream powder" to claim an exemption on SBT for Codex Stan 207-1999 provides only plain milk powders, cream powders, or combination of the two and not flavored ones.

In addition, respondent disagrees that to qualify as a milk product, the essentiality of the milk, milk product, or milk constituent is standard, not the dominance in quantity.

Respondent further avers that the Courts cannot go beyond the controlled act.

Discussion/Ruling

The present *Petition for Review* is denied.

Governing provisions for refund claims.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

"SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —

xxx xxx xxx

(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."[54]

"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

[54] *Emphasis supplied.*

payment was made, such payment appears clearly to have been erroneously paid."[55]

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[56]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[57]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise taxes paid are "erroneous or illegal".

Petitioner timely filed its administrative and judicial claims.

For excise tax on domestic products in general, the return is filed and the excise tax is paid by the manufacturer or producer ***before*** removal of the products form the place of production. Hence, **the <u>date of payment of excise tax on domestic products</u> depends on <u>the date of actual removal of the taxable domestic products from the place of production</u>.**[58]

Thus, the reckoning of the two (2)-year prescriptive period under the aforequoted Sections 204(C) and 229 should be from the date of "actual removal" of the taxable domestic products from the place of production; and

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55 *Emphasis supplied.*
56 *Commissioner of Internal Revenue v. San Miguel Corporation, et. al.*, G.R. Nos. 180740 and 180910, November 11, 2019.
57 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
58 *Commissioner of Internal Revenue v. San Miguel Corporation, et. al.*, G.R. Nos. 180740 and 180910, November 11, 2019.

not from the date when the pertinent excise tax return was filed and/or when the corresponding excise tax was paid.

In this case, from May 1 to December 31, 2018, petitioner actually removed its MILO Products from its plants,[59] the earliest of which was made on May 1, 2018.[60] Such being the case, petitioner had two (2) years from the said date or until May 1, 2020, within which to file its administrative and judicial claims for refund.

Considering that petitioner's administrative claim for refund filed on April 7, 2020,[61] and the judicial claim for refund filed before this Court on April 22, 2020,[62] both fell within the two-year prescriptive period. Correspondingly, petitioner timely filed its administrative and judicial claims.

Petitioner, however, failed to prove that there was an illegal or erroneous collection of SBT at the time of the removal of MILO® products.

Petitioner argues that its MILO products are not subject to SBT.

This Court disagrees. Petitioner's MILO products fall within the enumeration of the Tax Code of sweetened beverages subject to SBT, and are also not among those excluded in the Code.

First, the Court shall discuss why MILO products are included in the sweetened beverages subject to SBT.

Section 47 of RA No. 10963 introduced Section 150-B in the NIRC of 1997, as amended, which pertains to the coverage of excise tax on sweetened beverages or SBT. It reads:

> "Section 150-B. *Sweetened B everages.* —
>
> (A) *Rate and Base of Tax.* — Effective January 1, 2018.

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59 Exhibits "P-57-1" to "P-57-2".
60 Exhibit "P-57-1".
61 Docket, JSFI, Stipulation of Facts, Par. 2, p. 627.
62 *Id.*, pp. 10-42.

(1) A tax of six pesos (P6.00) per liter of volume capacity shall be levied, assessed, and collected on **sweetened beverages using purely caloric sweeteners, and purely non-caloric sweeteners**, or a mix of caloric and non-caloric sweeteners: *Provided*, That this tax rate shall not apply to sweetened beverages using high fructose corn syrup: *Provided, further*, That sweetened beverages using purely coconut sap sugar and purely steviol glycosides shall be exempt from this tax; and

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(B) Definition of Terms. — As used in this Act:

(1) Sweetened beverages (SBS) refer to **non-alcoholic beverages** of any constitution (liquid**, powder**, or concentrates) that are pre-packaged and sealed in accordance with the Food and Drug Administration (FDA) standards, that contain caloric and/or non-caloric sweeteners added by the manufacturers, and shall include, **but not be limited to** the following, **as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest) as adopted by the FDA**:

(a) Sweetened juice drinks;
(b) Sweetened tea;
(c) All carbonated beverages;
(d) Flavored water;
(e) Energy and sports drinks;
(f) **Other <u>powdered</u> drinks not classified as milk**, juice, tea, and coffee;
(g) Cereal and grain beverages; and
(h) Other non-alcoholic beverages that contain added sugar.

(2) Caloric sweetener refers to a substance that is sweet and includes sucrose, fructose, and glucose that produces a certain sweetness"[63]

Based on the foregoing provision, a tax of Php6.00 per liter of volume capacity shall be levied, assessed, and collected on sweetened beverages using purely caloric sweeteners, and purely non-caloric sweeteners, or a mix of caloric

[63] *Emphasis and underscoring supplied.*

and non-caloric sweeteners. Sweetened beverages, in turn, are defined as non-alcoholic beverages of any constitution (liquid, powder, or concentrates) that are pre-packaged and sealed in accordance with FDA standards, that contain caloric and/or non-caloric sweeteners added by the manufacturers.

The following are the FDA Certificates of Product Registration of MILO products, which were issued before and during the period subject of the instant claim for refund, specifically from May 01 to December 31, 2018,[64] to wit:

Exhibit No.	FDA Registration No.	Product Name	Manufacturer Name	Date of Issuance	Complete List of Ingredients
"P-51-1"	FR-4000003074211	Choco Malt Powdered Milk Drink (Institutional Pack)	Antonina Industrial Corp.	May 21, 2018	[redacted]

64 *Id.*, Refer to Exhibits "P-16" to "P-28", pp 355-396.

Exhibit No.	FDA Registration No.	Product Name	Manufacturer Name	Date of Issuance	Complete List of Ingredients
					[redacted]
"P-51-2"	FR-4000003086801	Choco Malt Powdered Milk Drink (Institutional Pack)	Antonina Industrial Corp.	July 25, 2018	

Exhibit No.	FDA Registration No.	Product Name	Manufacturer Name	Date of Issuance	Complete List of Ingredients
					[redacted]
"P-51-3"	FR-4000002780597	Powdered Choco Malt Milk Drink 88g	Nestle Philippines, Inc.	August 7, 2018	

Exhibit No.	FDA Registration No.	Product Name	Manufacturer Name	Date of Issuance	Complete List of Ingredients
					[redacted]
"P-51-4"	FR-4000002780601	Choco Malt Powdered Milk Drink 220g, 300g, 600g, 1Kg	Nestle Philippines, Inc.	May 22, 2018	
"P-51-5"	FR-4000002780614	Powdered Choco Malt Milk Drink 22g	Antonina Industrial Corp.	August 7, 2018	
"P-51-6"	FR-4000002780627	Powdered Choco Malt Milk Drink	Antonina Industrial Corp.	August 8, 2018	

Exhibit No.	FDA Registration No.	Product Name	Manufacturer Name	Date of Issuance	Complete List of Ingredients
					[redacted]
"P-51-7"	FR-4000002780643	Powdered Choco Malt Milk Drink	Cofipac Corporation	August 8, 2018	
"P-51-8"	FR-4000002780656	Choco Malt Powdered Milk Drink 22g	Portion Fillers, Inc.	April 17, 2018	

Exhibit No.	FDA Registration No.	Product Name	Manufacturer Name	Date of Issuance	Complete List of Ingredients
					[redacted]
"P-51-9"	FR-4000002780669	Choco Malt Powdered Milk Drink 22g	R.M. Foods Inc.	May 22, 2018	[redacted]
"P-51-10"	FR-4000002772505	Powdered Malt and Milk Drink 22g	Nestle Philippines, Inc.	August 31, 2018	[redacted]
"P-51-14"	FR-4000001305197	3IN1 Choco Malt Powdered Milk Drink Prepared for Adults	Nestle Philippines, Inc. Lipa	April 5, 2017	[redacted]

Exhibit No.	FDA Registration No.	Product Name	Manufacturer Name	Date of Issuance	Complete List of Ingredients
					[redacted]

A perusal of the above certifications, specifically the portion showing the Complete List of Ingredients, would show that **the above MILO Products of petitioner are under the category of sweetened beverages because such are non-alcoholic beverages that is in powdered form**, which are pre-packed and sealed in accordance with the FDA standards. **Moreover, MILO products contain caloric sweetener such as sugar, which is widely known as a substance that is sweet.**

Therefore, undoubtedly, MILO products fall within the taxing provision under Section 150-B(A)(1) in relation to (B)(1) of the NIRC of 1997, as amended by RA No. 10963.

And second, MILO's products are not excluded from the imposition of excise tax on sweetened beverages or SBT, pursuant to Section 150-B(C)(1) of the NIRC of 1997, as amended by RA No. 10963.

Section 150-B(C)(1) of the NIRC of 1997, as amended by RA No. 10963 provides the exclusions to the excise tax on sweetened beverages or SBT, as follows:

> "(C) *Exclusions.* — The following products, as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest) **as adopted by the FDA**, are excluded from the scope of this Act:
>
> (1) **All milk products**, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk and **flavored milk**, fermented milk, soymilk, and flavored soymilk;"[65]

Relative thereto is Section 6 of RR No. 20-2018, which states that milk products including flavored milk are not subject to SBT, to wit:

> "SEC. 6. EXCLUSIONS — The following products, as described in the food category from **Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev 2017 or the latest) as adopted by the FDA**, <u>**are not subject to the excise tax**</u> imposed under Section 150-B of the NIRC, as amended, to wit:
>
> a. **All milk products**, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk, **flavored milk**, and fermented milk.
>
> Milk product refers to products obtained by any processing of milk, which may contain food additives, and other ingredients functionally necessary for the processing Codex General Standard for the Use of Dairy Terms (Codex Stan 206-1999).
>
> In accordance with the Codex Alimentarius, the following Codex Standards for various milk products are adopted:
>
> 1. **Milk powders and cream powders** (Codex Stan 207-1999)
> 2. **Fermented milks** (Codex Stan 243-2003)
> 3. Blend of evaporated skimmed milk and vegetable fat (Codex Stan 250-2006)
> 4. Blend of skimmed milk and vegetable fat in powdered form (Codex Stan 251-2006)
> 5. Blend of sweetened condensed skimmed milk and vegetable fat (Codex Stan 252-2006)

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[65] *Emphasis supplied.*

6. Evaporated milk (Codex Stan 281-1971)
7. Sweetened condensed milks (Codex Stan 282-1971)

Dairy products are not synonymous with milk products. Only milk products are covered by the exemption.

xxx xxx xxx

The proper classification of beverages shall be subject to the determination by the FDA."[66]

Petitioner alleges that its MILO products are choco malt powdered milk drinks that are considered "flavoured milk" under Category 01.1.4 "flavored fluid milk drinks" of Codex Stan 192-1995, and therefore not subject to SBT. Petitioner however is mistaken since cocoa-sugar mixtures, such as its MILO products, are not included as "flavored milk".

A reading of the General Standard for Food Additives (Codex Stan 192-1995, Rev. 2018)[67] Codex Alimentarius International Food Standards, as adopted by the FDA, Annex B, Part I and Part II states:

"FOOD CATEGORY SYSTEM

PART I: Food Category System

01.0 Dairy products and analogues, excluding products of food category 02.0
01.1 Fluid Milk and Milk Products
01.1.1 Fluid Milk (plain)
01.1.2 Other Fluid Milk (plain)
01.1.3 Fluid Buttermilk
01.1.4 Flavoured Fluid Milk Drinks

xxx xxx xxx

PART II: Food Category Descriptors

01.1.4 **Flavoured fluid milk drinks**

Includes all mixes and ready-to-drink fermented or not fermented milk-based drinks with flavourings and/or food

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[66] *Emphasis and underscoring supplied.*
[67] *Id.*, Exhibit "P-14", pp. 2560-3033.

> ingredients that intentionally impart flavor, excluding **mixes for cocoa (cocoa-sugar mixtures, category 05.1.1)**. Examples, include but are not limited to, chocolate milk, **chocolate malt drinks**, strawberry-flavoured yoghurt drink, lactic acid bacteria drinks, whey-based drinks, and lassi (liquid obtained by whipping curd from the lactic acid fermentation of milk, and mixing with sugar or intense sweetener)."[68]

Based on the foregoing, all flavoured fluid milk drinks shall include all mixes and ready-to-drink fermented or not fermented milk-based drink with flavourings and/or food ingredients that intentionally impart flavor, however, excluding mixes for cocoa (cocoa-sugar mixtures, category 05.1.1). Relevantly, category 05.1.1 pertains to cocoa sugar mix (powder), while the succeeding category thereto, or 05.1.2, pertain to cocoa sugar mix (syrup). **Thus, while it can be said that flavoured fluid milk includes all types of mixes, whether powder or syrup, it specifically did not include cocoa-sugar mix.**

An examination of the ingredients of the MILO products mentioned in the FDA Certificates presented by petitioner clearly shows that, while the said products have malt as one of its ingredients and is marketed by petitioner as a choco malt powdered milk drink, cocoa and/or cocoa powder and sugar are likewise present in the said MILO products.

Such being the case, **the MILO products subject of the present petition cannot outrightly be categorized as fluid flavoured milk drinks as the same can also be categorized as cocoa-sugar mix.** Simply put, such cocoa-sugar mixtures cannot be considered as covered by the exclusion under Section 150-B(C)(1) of the NIRC of 1997, as amended by RA No. 10963. Being cocoa-sugar mixtures, the MILO products are not excluded from SBT.

From all the foregoing, the subject excise tax payments cannot be deemed as erroneous or illegal.

At this juncture, it must be pointed out that a tax exemption cannot arise from vague inference. Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[69]

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[68] *Id.*, Exhibit "P-14", pp. 2569 and 2577; *Emphasis supplied.*

[69] *The City of Iloilo, et al., v. Smart Communications, Inc. (SMART),* G.R. No. 167260, February 27, 2009.

As a corollary, in an action for refund, the taxpayer has the burden of showing that the taxes paid are erroneously collected and that failure to meet such a burden is fatal to his cause. Tax refunds partake of the nature of the tax exemptions and therefore cannot be allowed unless granted in the most explicit and categorical language. The grant of refund privileges must be strictly construed against the taxpayer and liberally in favor of the government.[70]

With the above findings, it is no longer necessary to address the remaining arguments raised by the parties.

WHEREFORE, in light of the foregoing disquisitions, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[70] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

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