REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

TANDUAY DISTILLERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9017 & 9035

Members:

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

Promulgated:

JUN 28 2019 11:45 AM

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RESOLUTION

MANAHAN, *J.*:

For this Court's resolution is petitioner's **Motion for Reconsideration (of the Decision promulgated on February 7, 2019)**, filed on February 22, 2019, with respondent's **Opposition (Re: Motion for Reconsideration dated 22 February 2019)**, filed on March 27, 2019.

Petitioner moves for the reconsideration of the Decision promulgated on February 7, 2019 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, petitioner's Petitions for Review in CTA Case Nos. 9017 and 9035 are **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In its motion, petitioner alleges that the Court erred in ruling that petitioner is not entitled to the refund or issuance of tax credit certificate (TCC) of its erroneously paid excise taxes on removals of compounded liquor produced from tax-paid raw materials for the periods covering March to April 2013 and May to July 2013, in the aggregate amount of ₱1,011,896,050.42, based on the following grounds:

> First, the parties, and as recognized by the Court, have stipulated that there is no factual issue to be resolved in the present consolidated cases.
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> Second, despite the admission of factual issues by the parties, the petitioner was able to prove its present claim in relation to the erroneously paid excise taxes.
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> Third and last, that there is disparity between the petitioner's claimed finished goods from January to July 2013 in proof liters, with the proof liters of raw materials inventory as of December 31, 2012 plus the proof liters of raw materials purchases during January and February 2013 which were allegedly still subjected to specific tax, resulting to a difference of 7,334,154.84 in proof liters.

On the other hand, respondent argues that petitioner's claim for refund has no basis in fact and in law; thus, the denial of petitioner's claim is justified.

First Issue

Petitioner opines that the Court erred in delving on the facts of the amounts of excise taxes on both the raw materials and finished goods despite the fact that the Court has already acknowledged in the hearing held on November 27, 2017, that "the presentation of respondent's last witness was dispensed with after the counsels of the parties stipulated that the denial of the claim for refund was based purely on legal issues." Thus, petitioner argues that by delving into the said factual issues, the importance of stipulations and admissions is watered down; and may in the future instill apprehension upon the parties to adopt again such trial tools which would otherwise spare the court of lengthy proceedings.

The Court does not agree.

Suffice it to say that the CTA Court in Division is a court of competent jurisdiction which has been vested with the authority to resolve even unassigned issues and it can do so when such a step is indispensable or necessary to a just resolution of issues raised in a particular pleading or when the unassigned issues are inextricably linked or germane to those that have been pleaded.[1]

Moreover, it has been held, time and again, that tax refunds, like tax exemptions, are construed strictly against the taxpayer and that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund.[2] Thus, this Court may not be abdicated of its solemn duty of ascertaining if petitioner has sufficiently proven its entitlement to its claim for refund by clear and convincing evidence. After all, a claim for tax refund is a mere statutory privilege and the mere existence of alleged erroneously paid excise taxes does not entitle the taxpayer as a matter of right, to it.[3]

<u>Second Issue</u>

a. Regarding the local purchases of alcohol from Asian Alcohol, Absolut Distillers & Kooll Company, that there were no documents to prove petitioner's actual payment of the excise taxes passed on by its local suppliers and the remittance thereof by its local suppliers to the Bureau of Internal Revenue (BIR).

Petitioner insists that the Court-commissioned Independent Certified Public Accountant (ICPA)'s Report shows that the local and imported purchases of alcohol for the period August to December 2012 were the source of the ending inventories as at December 31, 2012; and that the corresponding payments of excise taxes due thereon were validated and checked against the pertinent purchase documents (accounts payable vouchers, sales invoices and delivery

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[1] *Commissioner of Internal Revenue vs. Alpha Rigging & Moving Systems, Inc.*, CTA EB Case No. 1076 (CTA Case No. 8135), June 5, 2015.

[2] *Hitachi Global Storage Technologies Philippines Corp. (formerly Hitachi Computer Products (Asia) Corporation) vs. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010.

[3] *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, 201132 and 201133, April 18, 2018 (applied by analogy).

receipts) and the remittance of excise taxes to the BIR were confirmed with the local suppliers (certifications). To demonstrate the same, petitioner directs the attention of the Court to the following exhibits:

Exhibit "P-41-2" Purchases of Alcohol 140% - Asian Alcohol

For purchases of alcohol from Asian Alcohol, petitioner submits that it presented Exhibit "P-41-2" showing the summary of purchase documents, marked as Exhibits "P-41-2.1" to "P-41-2.4". Said documents allegedly indicate the amount of excise taxes passed on to petitioner. As for the actual remittance of the said excise taxes, petitioner points to Exhibit "P-42.3" which, accordingly, contains confirmation letters from suppliers which was verified by the ICPA.

Exhibit "P-41-3" Purchases of Alcohol 189% - Absolut Distillers

For purchases of alcohol from Absolut Distillers, petitioner argues that these are summarized in Exhibit "P-41-3", and the purchase documents (APV listings, Sales Invoices, Delivery Receipts, etc.), can be clearly seen in Exhibit "P-41-3.1" to "P-41-3.87", while Exhibit "P-42.1" shows the confirmation done by the ICPA for the remittance of excise taxes to the BIR.

Exhibit "P-41-4" Purchases of Alcohol 189% - Kooll Company

For purchases of alcohol from Kooll Company, petitioner claims that Exhibit "P-41-4" shows the summary of all the purchases for the subject period, which is supported by purchase documents marked as Exhibits "P-41-4.1" to "P-41-4.21", while Exhibit "P-42-2" is the result of the confirmation done by the ICPA to validate from the supplier the amount of excise taxes it collected from the sale.

Petitioner also claims that there are control measures instituted by the BIR in excise tax locations that can corroborate the fact that all alcohol inventory existing as of the inventory count of the BIR on January 3, 2013 (which was the basis of petitioner's claim) are all tax paid. Otherwise, the existence of any untaxed alcohol should have been reported during that stock taking and the petitioner would have been assessed with a deficiency excise tax on such untaxed alcohol.

While this Court agrees with petitioner's contention that the finished goods/products cannot be removed from the warehouse without first paying the corresponding excise tax thereon, there is still a need for petitioner to present the actual payment thereof, in order for the Court to ascertain both the date of payment and the exact amount of excise taxes paid.

As such, the Court revisited the pieces of evidence presented by petitioner and noted the following:

a. Supporting documents for purchases from Asian Alcohol, specifically, Exhibit "P-41-2.1" contains Official Delivery Invoices issued by the supplier that have reference to the Revenue Official Receipt (BIR Form No. 2524) number and date of payment, however, Exhibits "P-41-2.2" to Exhibits "P-41-2.4" do not contain the BIR Forms No. 2524.

b. Supporting documents for purchases from Absolut Distillers contains Sales Invoice issued by Absolut Distillers, which has a line item named "Rectified Alcohol Specific Tax paid under O/R No." with the Filing Reference # indicated therein, however, the actual Official Receipts being referred to in the said line item, were not submitted for the Court's verification.

c. Supporting documents for purchases from Kooll Company contains a Charge Invoice issued by Kooll that has a line item named "Paid O.R. No." with the official label reference number and ETRD number indicated thereunder; however, the Court cannot ascertain whether this "Paid OR" being referred to pertains to payment made for the subject excise taxes.

The Court finds the BIR Forms No. 207, issued by Asian Alcohol, sufficient in proving that the amount of excise tax indicated therein had been paid to the BIR. In fact, Asian Alcohol certifies in the the lower portion of BIR Forms No. 207 that each of the packages bears the official tax-paid labels shown thereon; and tax on the actual and total tax-liter content of all such packages was paid. The same also indicate the date of payment, as well as the Revenue Official Receipt (BIR Form No. 2524) number. In addition, the said certification was attested to by authorized revenue officer.

However, while the amount of ₱3,452,736.00[4] out of the total claimed excise taxes of ₱37,815,680.00 on petitioner's purchases of raw materials from Asian Alcohol was duly proven to have been paid to the BIR, through BIR Forms No. 207, the Court still finds that petitioner failed to establish the actual payment to Asian Alcohol of the entire claimed excise taxes of ₱37,815,680.00, as there was no official receipt or any other document presented by petitioner showing the payment of the total amount billed (including the excise tax) in the invoices issued by Asian Alcohol to petitioner.

With regard to the purchases from Absolut Distillers and Kooll Company which were found not to have been supported by BIR Forms No. 207, the Court still finds petitioner's present documentary evidence insufficient to prove that the related excise taxes were indeed paid by the supplier to the BIR. Without the actual Rectified Alcohol Specific Tax ORs being referred to in the said supporting documents, the Court cannot give credence to the Sales Invoices issued by supplier. Further, said documentary evidence are insufficient in proving that petitioner paid the total purchase price (including the excise tax) billed by Absolut Distillers and Kooll Company.

Again, the Court stresses that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund[5]. Tax refunds are in the nature of tax exemptions. As such, these are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[6]

a.1. Still on the local purchases of alcohol from Asian Alcohol, Absolut Distillers and Kooll Company that the Court cannot ascertain from the records which portion of the purchases actually remained in petitioner's inventory of raw materials.

Petitioner submits that, in handling its inventories, it uses the "First In, First Out" method. As such, the volume of the latest purchases is those that remained in the year-end inventory.

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[4] Exhibits "P-41-2.1", Invoice Nos. 31334 to 31340.

[5] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.

[6] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

Otherwise said, as much amount of the ending inventory balances are the amount of purchases going as far back until the year-end inventory is fully covered.

Further, citing Section 157 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner claims that, in case the excisable articles are commingled, the withdrawals shall be taxed and accounted on "first-in, first-out" (FIFO) basis.

Moreover, petitioner argues that it will be grossly impractical to account alcohol usage on a specific identification method as it will require the use of many storage tanks to segregate alcohol according to time of purchase.

This Court is not unaware of the concept of "FIFO", what is actually being questioned by it is the huge disparity between the raw materials ending inventory and the raw materials purchases from August 2012 to December 2012, which petitioner failed to reconcile, to wit:

Per Ending Inventories as of Dec. 31, 2012		**Per Raw Materials Purchases from Aug. 2012 to Dec. 2012**		**Difference**
Raw Materials	In Proof Liters	Supplier	In Proof Liters	In Proof Liters
On Hand	40,301,135.81	Imported	22,917,777.20	
In transit as at 12/31/2012	2,150,750.00	Asian Alcohol	2,576,000.00	
		Absolut Distillers	14,458,500.00	
		Kooll Company	9,529,669.17	
Total	**42,451,885.81**		**49,481,946.37**	**(7,030,060.56)**

Moreover, petitioner failed to point out the portions of the raw materials that have been used in producing the finished goods. As such, the Court is at a loss as to which portions of the tax-paid raw materials have been "first-out" by petitioner.

b. On raw materials imported from January 10, 2013 to February 15, 2013, which were similarly tax-paid; that the exhibits indicated by the ICPA were merely APV listings which do not prove actual importations of alcohol and payment of corresponding excise taxes.

Petitioner points out that Exhibits "P-43.1" to "P-43.8" give reference to the import transactions, which are entries made at or near the time of the transactions by persons who were in the position to know the facts therein stated. Thus, they should be considered as *prima facie* evidence of the said transactions.

The Court is not convinced.

This Court is not inclined to reconsider the validity of the alleged tax-paid raw materials importations for the period January 10, 2013 to February 15, 2013, as there was no Import Entry Internal Revenue Declarations (IEIRDs) machine validated as to the amount of total customs duties and taxes paid (including the excise taxes), Sworn Statement of Duties and Taxes (SSDTs), Bureau of Customs Official Receipts, or any equivalent document that can clearly prove the actual payment of the subject excise taxes.

c. Regarding the alleged failure of petitioner to match the tax-paid raw materials against the finished goods produced therefrom; that it cannot determine with certainty the volume of finished goods that were produced therefrom; and that absent documents supporting the quantity in proof liters of raw materials (alcohol) required to produce one (1) proof liter of finished goods (compounded liquor), the Court cannot verify the accuracy of the ICPA's attestation.

Petitioner submits that there is no need for a conversion factor. Accordingly, under Section 141 of the NIRC of 1997, as amended, a "proof liter" is "a liter of proof spirits". The same provision also defines "proof spirit" as "liquor containing one-half (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine thousandths (0.7939) at fifteen degrees centigrade (15°C)".

According to petitioner, the amounts of raw materials and of finished goods are already presented in proof liters, that is already a one to one (1:1) conversion ratio. The one being subjected to excise tax is the alcohol. Hence, one (1) proof liter of raw material is the same one (1) proof liter of finished goods. Both contain one-half (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine thousandths (0.7939) at fifteen degrees centigrade (15°C).

Again, the Court is not convinced.

It can be deduced from petitioner's argument that there is a 1:1 ratio between the raw materials and the finished goods per proof liter, as such, the 52,910,790.65 proof liters removed is also the actual proof liters of raw materials used to produce the bottles of finished goods.

However, such explanation is not supported by any documentary evidence or judicial affidavit of an expert who can fully elucidate to the Court how these raw materials are being processed into finished goods. The Court needs to ascertain that such 52,910,790.65 proof liters were the actual amount of the raw materials that went into production and converted into finished goods. Petitioner's explanations are lacking in concrete basis, and therefore, the Court finds no reason to overturn its original ruling.

Third Issue

On the purported difference of ₱7,334,154.84 proof liters came from the comparison between finished goods removals of 52,910,790.65 proof liters as against the raw materials inventory of 45,576,636.81 proof liters, petitioner argues that the Court should have considered the finished goods inventory, ending as at December 31, 2012, to arrive at the actual difference in proof liters, to wit:

	IN PROOF LITERS	
FINISHED GOODS removed from January to July 2013 (Exhibit P-44)		52,910,790.65
RAW MATERIALS used in the production of the above finished goods		
Raw Materials (on hand and in-transit) as of December 31, 2012 per BIR Count Sheets (Exhibit P-40)	42,451,135.81	
Raw Materials purchased in January and February 2013 that were subjected to specific tax under the old law per BIR Count Sheets (Exhibit P-43)	3,125,500.00	
Finished Goods (with raw materials as of 12/31/2012)	6,991,603.16	52,568,238.97
Difference in Proof Liters		**342,551.68**

Petitioner, therefore, concedes only to the unaccounted 342,551.68 proof liters of raw materials factored in the production of 52,910,790.65 proof liters of finished goods.

The Court does not agree.

It is clearly stated in petitioner's Petition for Review that the finished goods removed from March 2013 to July 2013 upon which excise taxes were erroneously imposed (52,910,790.65 Proof Liters) were sourced from the ending inventory of tax-paid raw materials as of December 31, 2012 (42,451,135.81 Proof Liters) plus tax-paid raw materials purchased from January 2013 to February 2013 (3,125,500 Proof Liters).

Hence, the comparison done by the Court in the assailed Decision is not to review the flow of inventory as petitioner is suggesting in its revised computation, but to compare the proof liters of the tax-paid raw materials to the finished good removed, which should not have any difference, if the Court will follow petitioner's allegations.

In sum, the Court finds no substantial argument to merit reconsideration of our Decision promulgated on February 7, 2019.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the Decision promulgated on February 7, 2019)** is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice