REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SAN MIGUEL BREWERY INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9513

Members:

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

Promulgated:

JUN 1 3 2019

2:55 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This Petition for Review filed by San Miguel Brewery Inc., seeks for the following reliefs:

(1) To declare as invalid the excise tax rate of ₱22.25 per liter imposed by respondent on petitioner's relevant beer products;

(2) To be refunded or be issued a Tax Credit Certificate in the total amount of ₱48,266,780.24, representing erroneous, excessive or illegal collection of excises taxes on its beer products for the period January 1, 2015 to December 31, 2015; and

(3) To declare as void pertinent portions of Revenue Memorandum Circular No. 90-2012 and Revenue Regulations No. 17-2012, respectively.

THE FACTS

Petitioner alleges that it is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[1]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner alleges that it is engaged in the business of manufacture, sale and distribution of fermented and malt-based beverages, as follows: (1) San Mig Light in bottle and in can, Pale Pilsen in can, San Mig Zero in bottle, San Mig Zero in carton, San Miguel Premium All Malt in bottle, San Miguel Premium All Malt in can, San Miguel Premium All Malt in carton, Super Dry in can, Red Horse in can, San Miguel Flavored Beer-Apple in bottle and San Miguel Flavored Beer-Lemon in bottle (San Mig Light in bottle and in can and other products); and (2) San Mig Light in Keg.[2]

On January 1, 2013, Republic Act (RA) No. 10351 took effect and effectively amended Section 143 of the National Internal Revenue Code (NIRC) of 1997, as amended. Thus:

> "SEC. 143. *Fermented Liquors.* – There shall be levied, assessed and collected an excise tax on beer, lager beer, ale porter and other fermented liquors except tuba, basi, tapuy and similar fermented liquors in accordance with the following schedule:

[1] The Parties, Petition for Review, Docket, Vol. I, p. 13.
[2] Statement of Facts, Petition for Review, Docket, Vol. I, p. 14.

xxx xxx xxx

Effective on January 1, 2015

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (P50.60) or less, the tax shall be Nineteen pesos (P19.00) per liter; and

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (P50.60), the tax shall be Twenty-two pesos (P22.00) per liter.

xxx xxx xxx

The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance. However, in case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this Section, the four percent (4%) increase shah apply to their respective applicable tax rates.

xxx xxx xxx

Any downward reclassification of present categories, for tax purposes, of fermented liquors duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited.

xxx xxx xxx

All fermented liquors existing in the market at the time of the effectivity of this Act shall be classified according to the net retail prices and the tax rates provided above based on the latest price survey of the fermented liquors conducted by the Bureau of Internal Revenue."

RA No. 10351 effectively increased the excise taxes imposed on fermented liquors, as follows:

Net Retail Price per liter of Volume Capacity (Effective January 1, 2015)	**Excise Tax**
Tier 1. Less than or equal to ₱50.60	₱19.00
Tier 2. Greater than ₱50.60	₱22.00

Meanwhile, RA No. 10351 veered from the previous classifications set forth under RA No. 9334, *i.e.*, variants of existing brands and new brands, by simplifying the classification to two (2) tiers based on net retail price per liter of volume capacity, as illustrated above. The data on net retail price shall be based on the latest price survey under oath conducted by the BIR. Further, such proper tax classification of fermented liquors, whether registered before or after the effectivity of the said law, shall be determined every two (2) years from the date of its effectivity.

It also adopted the "no downward reclassification" provision which was previously set forth under RA No. 9334, where duly registered fermented liquors at the time of the effectivity of RA No. 10351 are prohibited from making downward reclassification of their present categories, *i.e.*, from Tier 2 to Tier 1, in order to reduce the imposable excise taxes.

To implement the said law, the BIR issued Revenue Regulations (RR) No. 17-2012. Relevant to this case is its Section 5, which provides:

> "**SEC. 5. DOWNWARD RECLASSIFICATION OF FERMENTED LIQUORS.** – Any downward reclassification of any fermented liquor product that is duly registered with the BIR at the time of effectivity of the Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited. Starting January 1, 2014, the applicable tax rate shall be increased by four percent (4%) annually; *Provided, however*, it shall not be lower than the rates prescribed under Section 3 of these regulations."

Meanwhile, the BIR likewise issued Revenue Memorandum Circular (RMC) No. 90-2012. Annex A-1 of the said RMC imposed a uniform excise tax of ₱22.25 on petitioner's (1) San Mig Light in bottle and in can and other products and (2) San Mig Light in Keg.

In order for petitioner to make removals of its products, it paid the excise taxes thereon at ₱22.25 per liter thereof. Consequently, petitioner alleges that it wrongfully or excessively paid the total amount of ₱48,266,780.24, representing excise taxes on its removals from January 1, 2015 to December 31, 2015.[3]

Thus, on December 15, 2016,[4] petitioner filed a claim for refund or issuance of tax credit dated December 14, 2016. Then, on December 28, 2016,[5] petitioner filed the instant Petition due to respondent's inaction.

On March 29, 2017, respondent filed his Answer.[6] He essentially argued that this Court has no jurisdiction to entertain the instant Petition because petitioner is collaterally assailing the validity of RMC No. 90-2012 issued in accordance with respondent's rule making or quasi-legislative power. Further, respondent asserts that petitioner is not entitled to its present claim for refund or issuance of tax credit certificate.

On April 20, 2017, respondent filed his Respondent's Pre-Trial Brief[7] while on April 24, 2017, petitioner filed its Petitioner's Pre-Trial Brief.[8] On July 6, 2017, the Court issued a Pre-Trial Order.[9]

During trial, petitioner presented the following witnesses: (1) Ms. Noemi L. Ronquillo[10] – Manager of petitioner's Accounting and Financial Services; and (2) Mrs. Katherine O. Constantino[11] – Court-Appointed Independent Certified Public Accountant (ICPA).

On the other hand, during the hearing held on May 21, 2018, respondent's counsel manifested that she will not present any witness in this case.[12] On the same date, the Court issued an Order[13] requiring the parties to submit their memoranda.

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[3] Exhibit "P-6" and series.
[4] Exhibit "P-3", which is also Annex "C" of the Petition for Review, Docket, Vol. I, pp. 55-65.
[5] Petition for Review, Docket, pp. 10-37.
[6] Docket, Vol. I, pp. 127-150.
[7] Docket, Vol. I, pp. 247-250.
[8] Docket, Vol. I, pp. 253-263.
[9] Docket, Vol. I, pp. 327-330.
[10] Exhibit "P-4", Judicial Affidavit of Ms. Noemi L. Ronquillo, Docket, Vol. I, pp. 158-175; Minutes of the Hearing dated May 29, 2017, Docket, Vol. I, p. 323.
[11] Exhibit "P-7", Judicial Affidavit of Mrs. Katherine O. Constantino, Docket, Vol. I, pp. 339-350; Minutes of the Hearing dated August 7, 2017, Docket, Vol. I, p. 352.
[12] Minutes of the Hearing dated May 21, 2018, Docket, Vol. I, p. 445.
[13] Order, Docket, Vol. I, p. 446.

On June 28, 2018, petitioner filed its Memorandum for Petitioner[14] while on July 20, 2018, respondent filed his Memorandum.[15] Consequently, on July 30, 2018,[16] the Court issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUES

The Court shall resolve the following issues:

(1) Whether the Court has jurisdiction over the case;

(2) Whether pertinent portions of Revenue Memorandum Circular No. 90-2012 and Revenue Regulations No. 17-2012, respectively, should be invalidated;

(3) Whether the excise tax rate of ₱22.25 per liter imposed by respondent on petitioner's relevant beer products is erroneous, excessive or illegal; and

(4) Whether petitioner is entitled to its present claim.

THE RULING

The Court has jurisdiction to entertain the instant Petition

Respondent argues that petitioner is primarily seeking for the nullification of a provision from RMC No. 90-2012 under the guise of an alleged claim for refund, and its claim for refund is merely consequential to the said primary action.[17]

Respondent's argument is incorrect.

The Court of Tax Appeals is a court of special or limited jurisdiction. As such, it can only take cognizance of matters that are

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[14] Docket, Vol. II, pp. 457-509.
[15] Docket, Vol. II, pp. 510-530.
[16] Docket, Vol. II, p. 532.
[17] See Note 15, p. 511.

clearly within its jurisdiction.[18] The CTA's jurisdiction is found in RA No. 1125, as amended by RA No. 9282. Thus:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> xxx xxx xxx
>
> (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 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;"

Similarly, Section 3 of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (2) Inaction by 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

[18] *Cathay Pacific Airways, Ltd. v. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

> under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx *Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;"

Based on the above-quoted provisions, the Court shall exercise jurisdiction over cases involving respondent's inaction in refund claims, among others.

In this case, an examination of the instant Petition shows that petitioner is appealing the inaction of respondent on its refund claim. Incidentally, petitioner's claim is anchored on the ground that the imposable excise taxes are ₱19.00 and ₱22.00, respectively, and not the uniform ₱22.25 as per Annex A-1 of RMC No. 90-2012, in relation to Section 5 of RR No. 17-2012. In other words, there is only one main cause of action in this case, *i.e.*, claim for refund on the ground of excessive, erroneous or illegal imposition of excise tax, which is within the jurisdiction of this Court.

Meanwhile, the pronouncement of the Supreme Court in the case of *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue*[19] is instructive as to what matters may be adjudicated by this Court in cases falling within its exclusive appellate jurisdiction. The Supreme Court said:

> "In the recent case of *City of Manila v. Grecia-Cuerdo*, the Court *en banc* has ruled that the CTA now has the power of certiorari in cases within its appellate jurisdiction. To elucidate:
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> xxx xxx xxx

[19] G.R. No. 210987, November 24, 2014.

> On the strength of the above constitutional provisions, it can be fairly interpreted that **the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.**
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> xxx xxx xxx

> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**"[20]

Under the above-quoted jurisprudence, this Court has the power of *certiorari* in cases within its appellate jurisdiction. The Supreme Court then concludes that this Court can rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.

While the *Philam* case involves an assessment, this Court may apply the above-quoted doctrine to cases that involve claims for refund, as in this case, the same being within its exclusive appellate jurisdiction. In other words, in order to fully adjudicate the issues

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[20] Id., citing *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014.

involved in this case, the Court is also tasked to determine whether the uniform imposition of ₱22.25 excise taxes on petitioner's subject beer products is correct.

Considering the foregoing, the Court rules that it has jurisdiction over the present case.

Annex A-1 of RMC No. 90-2012 exceeded the rates imposed under RA No. 10351

Section 5 of RR No. 17-2012 applies only in instances of downward reclassification of fermented liquors

There is no downward reclassification of petitioner's beer products in this case

On this score, the Court reiterates the pertinent provision of the amendments introduced by RA No. 10351 to Section 143 of the NIRC of 1997, as follows:

> "Effective on January 1, 2015
>
> (a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (P50.60) or less, the tax shall be Nineteen pesos (P19.00) per liter; and
>
> (b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (P50.60), the tax shall be Twenty-two pesos (P22.00) per liter."

However, as stated earlier, the BIR issued Annex A-1 of RMC No. 90-2012, which was used as basis for the imposition of the uniform ₱22.25 excise tax against petitioner's beer products. Incidentally, it appears that the additional excise tax imposed by the BIR emanated from the pertinent provisions of the amendment introduced by RA No. 10351 to Section 143 of the NIRC of 1997 and

Section 5 of RR No. 17-2012, as quoted above. Simply put, the BIR imposed an additional four percent (4%) excise tax on the said products.

The "no downward reclassification" provision under RA No. 10351 and under Section 5 of RR No. 17-2012, clearly contemplate a situation where there is downward reclassification of fermented liquors for the purpose of reducing imposable taxes. Stated otherwise, when there is no downward reclassification, said provisions have no operative effect.

In *Commissioner of Internal Revenue v. Philippine-Aluminum Wheels, Inc.*,[21] the Supreme Court reiterated the hornbook doctrine that "in case there is a discrepancy between the law and a regulation issued to implement the law, the law prevails because the rule or regulation cannot go beyond the terms and provisions of the law".

In this case, the Court finds that there is no basis for imposing the additional four percent (4%) excise tax as explained above. At the time of effectivity of RA No. 10351 as well as at the time when petitioner's cause of action arose, no downward reclassification, *i.e.*, from Tier 2 to Tier 1, of petitioner's beer products was made. Therefore, the BIR has no basis to impose additional excise taxes under Annex A-1 of RMC No. 90-2012.

Furthermore, the BIR automatically imposed the automatic four percent (4%) increase mentioned in RA No. 10351 without, however, observing the parameters provided for by law, as follows: (1) Effective January 1, 2018 and every year thereafter, the tax rate may be increased through revenue regulations issued by the Secretary of Finance; or (2) In case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this Section, the four percent (4%) increase shah apply to their respective applicable tax rates.

Thus, it is obvious that at the time when petitioner's cause of action arose in 2015, the first (1^{st}) parameter mentioned above was impossible to satisfy, *i.e.*, the same is effective on January 1, 2018. On the other hand and as it was discussed eariler, respondent could not have imposed the four percent (4%) increase without factual basis, *i.e.*, downward reclassification of the subject products to

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[21] G.R. No. 216161, August 9, 2017, citing *National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 (1999).

reduce the tax payable. Hence, the second (2nd) parameter imposed by law was likewise unsatisfied.

Finally, it is worth mentioning that RA No. 10351 deleted the previous classifications of fermented liquors introduced by RA No. 9334, *i.e.*, variants of existing brands and new brands. Evidently, the intent of our legislature in enacting RA No. 10351 is to simplify our taxation system, so that fermented liquors shall be classified only according to their net retail prices under Tier 1 or Tier 2, as discussed above. Thus, whether petitioner's beer products are variants of existing brands or new brands under RA No. 9334 are inconsequential in determining the applicable tax rates under RA No. 10351.

In fact, RA No. 10351 explicitly states that all fermented liquors existing in the market at the time of its effectivity shall be classified according to the net retail prices and the tax rates provided based on the latest price survey of the fermented liquors conducted by the BIR. Hence, considering that petitioner's cause of action arose in 2015, downward reclassifications should be understood under the simplified context introduced by RA No. 10351, *i.e.*, either Tier 1 or Tier 2, and should not be based on the previous classifications mentioned in RA No. 9334, *i.e.*, variants of existing brands and new brands.

Considering the foregoing, the Court finds that respondent erroneously imposed a uniform ₱22.25 excise tax on petitioner's beer products.

Petitioner is partially entitled to its claim

To proceed, the Court shall first determine the timeliness of filing of the instant claim.

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

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

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." *(Emphasis supplied)*

"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 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)*

With regard to excise taxes, the goods subject thereto cannot leave their place of production without paying the same. Section 130(A)(2) of the NIRC of 1997, as amended, states:

"SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.-*

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.-*

xxx xxx xxx

(2) *Time for Filing of Return and Payment of the Tax.-* **Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production:** xxx" *(Emphasis supplied)*

Meanwhile, Section 11 of Revenue Regulations (RR) No. 02-97, provides thus:

"SECTION 11. *Time, Manner and Place of Payment.-*
11. 1 *For Locally produced Alcohol Products.*

1) *FILING OF RETURN* - Any person liable to pay specific tax on locally produced alcohol products shall before removal of such products, file in triplicate a consolidated return (BIR Form 2200) and supporting attachments (BIR Form 220 1 and 2207) setting forth the registered brand names and brand codes, the total production during the return period, the quantity to be removed and the excise tax due.

2) *PAYMENT OF SPECIFIC TAX*

a) When to Pay - Unless otherwise especially allowed, excise tax due locally manufactured or produced alcohol products shall be paid by the manufacturer before removal from the place production, or by the person who is found in possession of untaxed domestically produced alcohol products.

b) ***Advance Payment or Deposit*** - **Every person liable to pay specific tax who is authorized to avail of the advance payment scheme may be allowed to effect removals of exciseable articles from his place of production without prior filing of**

> **the prescribed excise tax return and supporting attachments provided he has sufficient balance of deposits with the BIR to cover full payment of the excise tax due on said removals. The prescribed excise tax return and all attachments may be filed with a duly accredited bank or duly authorized collection agents not later than the first working day of the calendar week immediately after the week of actual removals. Payment of excise tax deposits shall be made by filing in triplicate a Payment Form (BIR Form No. 0605).**"*(Emphasis supplied)*

The ICPA[22] reported that petitioner paid excise taxes in advance before the actual removal of its domestic beer products from its six (6) plants, namely: 1) Polo, Valenzuela; 2) Mandaue, Cebu; 3) San Fernando, Pampanga; 4) Davao; 5) Bacolod; and 6) Sta. Rosa, Laguna.[23] Thus, applying the two-year period prescribed in Section 229 of the NIRC of 1997, as amended, the same should be reckoned from the date of actual withdrawal/removal of the beer products from their place of production, as it was only at that point that the deposits were recognized as payments for excise tax.

Per examination of petitioner's Excise Taxpayer's Removal Declarations (BIR Form No. 2299), Official Register Books (ORB) and Sworn Statements of the Volume Removals (SSR), the earliest removal occurred on January 3, 2015 and the latest on December 29, 2015.[24] Thus, petitioner had two years beginning January 3, 2015 or until January 3, 2017 and so forth up to December 29, 2017, within which to file its administrative and judicial claims for refund. Here, petitioner's administrative claim was filed on December 15, 2016,[25] while the instant Petition for Review was filed on December 28, 2016.[26] Thus, both claims were timely filed.

Next, the Court shall determine whether petitioner was able to substantiate its claim for refund amounting to ₱48,266,780.24. *Jl*

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[22] Katherine O. Constantino of Constantino Guadalquiver & Co.
[23] Exhibit P-5, p. 6.
[24] Exhibits P-6-e to P-6-e-2356, P-6-d to P-6-d-71 and Exhibit P-5, pp. 7-9.
[25] Exhibit P-3, Docket, Vol. I, pp. 193-203.
[26] Docket, Vol. I, pp. 10-37.

It is represented that as of December 31, 2015, the net retail price per liter of petitioner's SML and other beer products[27] were as follows:

	PER LITER			
	Suggested Retail Price (SRP)	**Value Added Tax (VAT)**	**Excise Tax**	**Net Retail Price (NRP)**
PALE PILSEN				
PP Can	109.09	11.69	22.25	75.15
SUPER DRY				
SD Can	142.42	15.26	22.25	104.91
PREMIUM ALL MALT BEER				
PAM Beer Btl	121.21	12.99	22.25	85.98
PAM Beer Btl (1-W)	157.58	16.88	22.25	118.44
PAM Beer Can	148.48	15.91	22.25	110.33
SAN MIG LIGHT				
SML PPL-Btl 330ml	84.85	9.09	22.25	53.51
SML Can	115.15	12.34	22.25	80.56
FLAVORED BEER				
SM Apple 330ml	75.76	8.12	22.25	45.39
SM Lemon 330ml	75.76	8.12	22.25	45.39
SAN MIG ZERO				
SM Zero 330ml	90.91	9.74	22.25	58.92
SM Zero (1-W)	109.09	11.69	22.25	75.15
SML Keg				
SML 30L Draft	78.47	8.41	22.25	47.81
SML 50L Draft	78.56	8.42	22.25	47.89

As evidenced by ORBs and ETRDs, the BIR assessed and collected ₱22.25 on all of petitioner's SML and other beer products for the said year. However, pursuant to Section 143 of the NIRC of 1997, as amended by R.A. No. 10351, excise taxes shall be assessed and collected in the amount of ₱19.00 per liter if the net retail price per liter is ₱50.60 or less, otherwise, the excise tax shall be ₱22.00. These rates shall be effective January 1, 2015.

The BIR issued RR No. 17-2012 to implement R.A. No. 10351. Pertinent provisions are quoted hereafter for easy reference:

> "SEC. 12. *Transitory Provisions.* - Upon the effectivity of the Act, the following transitory provisions shall be strictly observed by all concerned: *ge*

[27] Exhibit P-6-i.

> (a) **All alcohol and tobacco products existing in the market at the time of the effectivity of this Act shall be initially classified according to the tax rates prescribed by the Act based on the 2010 price survey of these products conducted by the Bureau of Internal Revenue (BIR), subject to the prohibition against downward reclassification on fermented liquors:** *Provided, however,* That in case of alcohol and or tobacco products that were introduced after the 2010 price survey but before the effectivity of the Act, their respective tax classification or rate shall be based on the suggested net retail price declared in latest sworn statement filed by the local manufacturer or importer, as the case may be. **The Commissioner of Internal Revenue shall issue a Revenue Memorandum Circular containing the tax classifications/rates applicable to all alcohol and tobacco products existing in the market at the time of the effectivity of the Act.**" *(Emphasis supplied)*

RMC No. 90-2012 provided the lists of the different brands of locally manufactured fermented liquors according to the type of packaging and content per type of packaging with their corresponding net retail price and applicable excise tax rate per liter. It should be noted, however, that SML in kegs is not included in the list.

With respect to alcohol products not included in the list per RMC No. 90-2012, RMC No. 3-2013 clarified that their initial classification shall be based on the net retail price declared in the latest sworn statement filed by the manufacturer or importer, as the case may be, thus:

> "This Circular is, likewise, issued in order to further amend and clarify the initial tax classifications of alcohol and tobacco products published under Revenue Memorandum Circular (RMC) No. 90-2012 dated December 27, 2012, as follows:
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> xxx xxx xxx
>
> 2. With respect to other alcohol and tobacco products that were not included in any of the Annexes of

the said RMC, their respective **initial tax classification or rate shall be based on the suggested net retail price declared in the latest sworn statement filed by the manufacturer and importer, as the case maybe.**"*(Emphasis supplied)*

Section 7 of RR No. 17-2012 provides for the submission of the sworn statement, to wit:

"SEC. 7. *Submission of Sworn Statement.* - Every local manufacturer or importer of alcohol and tobacco products shall a [sic] **duly notarized manufacturer's or importer's sworn statement** for alcohol or tobacco product showing, among others, the following information:

(a) Name, address, TIN and assessment number of the manufacturer or importer;

(b) Complete root name of the brand as well as the complete brand name with modifiers, if any;

(c) Complete specifications of the brand detailing the specific measurements, weights, manner of packaging, etc.;

(d) Name(s) of the region(s) where the brand is/are to be marketed;

(e) Wholesale price per case, gross and net of VAT and excise tax;

(f) Suggested retail price, gross and net of VAT and excise tax, per pack or per bottle, as the case may be;

(g) Detailed production/importation costs and all other expenses incurred or to be incurred until the product is finally sold *(e.g.,* materials, labor, overhead, selling and administrative expenses) per case;

(h) Applicable rate of excise tax per unit of measure or value, as the case may be; and

(i) Corresponding excise and value-added taxes per case."*(Emphasis supplied)*

Records show that petitioner did not submit such sworn statement. The submitted schedule of net retail price per liter[28] does not constitute a sworn statement in accordance with the requirements under the rules. Consequently, the same cannot be used as basis of the net retail price of SML in kegs. For this reason, it is therefore deemed proper to deny petitioner's claim for refund with respect to excise taxes on SML in kegs.

Petitioner's claim for refund is computed, thus:[29]

Date	Removals (in liters)	2015 Payment @ P22.25	San Mig Light in Bottles and Cans and Other Beer Products should be @ P22.00	San Mig Light in Keg should be @ P19.00	Difference
January					
Bottles and Cans	11,647,817.00	₱ 259,163,934.48	₱ 256,251,980.16		₱ 2,911,954.32
Other Beer Products	2,134,693.44	47,496,929.04	46,963,255.68		533,673.36
Kegs	97,050.00	2,159,362.50		₱ 1,843,950.00	315,412.50
February					
Bottles and Cans	11,376,138.00	253,119,059.82	250,275,025.44		2,844,034.38
Other Beer Products	2,012,392.80	44,775,739.80	44,272,641.60		503,098.20
Kegs	83,800.00	1,864,550.00		1,592,200.00	272,350.00
March					
Bottles and Cans	11,993,058.00	266,845,540.50	263,847,276.00		2,998,264.50
Other Beer Products	2,520,912.24	56,090,297.34	55,460,069.28		630,228.06
Kegs	111,430.00	2,479,317.50		2,117,170.00	362,147.50
April					
Bottles and Cans	11,827,997.00	263,172,939.48	260,215,940.16		2,956,999.32
Other Beer Products	2,651,837.76	59,003,390.16	58,340,430.72		662,959.44
Kegs	58,290.00	1,296,952.50		1,107,510.00	189,442.50
May					
Bottles and Cans	12,946,673.00	288,063,483.60	284,826,815.24		3,236,668.36
Other Beer Products	2,317,423.68	51,562,676.88	50,983,320.96		579,355.92
Kegs	105,520.00	2,347,820.00		2,004,880.00	342,940.00
June					
Bottles and Cans	11,540,921.00	256,785,493.14	253,900,262.88		2,885,230.26
Other Beer Products	1,988,411.04	44,242,145.64	43,745,042.88		497,102.76
Kegs	91,650.00	2,039,212.50		1,741,350.00	297,862.50
July					
Bottles and Cans	11,330,732.00	252,108,790.56	249,276,107.52		2,832,683.04
Other Beer Products	2,032,208.64	45,216,642.24	44,708,590.08		508,052.16

[28] Exhibit P-6-i.
[29] Exhibit P-5, pp. 5-6.

Kegs	87,300.00	1,942,425.00		1,658,700.00	283,725.00
August					
Bottles and Cans	11,119,339.00	247,405,302.54	244,625,467.68		2,779,834.86
Other Beer Products	2,436,540.48	54,213,025.68	53,603,890.56		609,135.12
Kegs	94,540.00	2,103,515.00		1,796,260.00	307,255.00
September					
Bottles and Cans	11,930,704.00	265,458,160.44	262,475,484.48		2,982,675.96
Other Beer Products	2,384,664.48	53,058,784.68	52,462,618.56		596,166.12
Kegs	80,540.00	1,792,015.00		1,530,260.00	261,755.00
October					
Bottles and Cans	12,712,709.00	282,857,770.87	279,679,593.67		3,178,177.20
Other Beer Products	2,699,951.76	60,073,926.66	59,398,938.72		674,987.94
Kegs	95,050.00	2,114,862.50		1,805,950.00	308,912.50
November					
Bottles and Cans	13,684,081.00	304,470,801.36	301,049,781.12		3,421,020.24
Other Beer Products	3,086,297.28	68,670,114.48	67,898,540.16		771,574.32
Kegs	109,040.00	2,426,140.00		2,071,760.00	354,380.00
December					
Bottles and Cans	16,297,594.00	362,621,462.94	358,547,064.48		4,074,398.46
Other Beer Products	3,224,453.76	71,744,096.16	70,937,982.72		806,113.44
Kegs	152,680.00	3,397,130.00		2,900,920.00	496,210.00
TOTAL	**179,064,440.36**	**₱3,984,183,810.99**	**₱3,913,746,120.75**	**₱22,170,910.00**	**₱48,266,780.24**

The total claimed excise taxes on SML in kegs amounts to ₱3,792,392.50, computed as follows:[30]

Month	**Removals (in liters)**	**2015 Payment @ P22.25**	**San Mig Light in Keg should be @ P19.00**	**Difference**
January	97,050.00	₱ 2,159,362.50	₱ 1,843,950.00	₱ 315,412.50
February	83,800.00	1,864,550.00	1,592,200.00	272,350.00
March	111,430.00	2,479,317.50	2,117,170.00	362,147.50
April	58,290.00	1,296,952.50	1,107,510.00	189,442.50
May	105,520.00	2,347,820.00	2,004,880.00	342,940.00
June	91,650.00	2,039,212.50	1,741,350.00	297,862.50
July	87,300.00	1,942,425.00	1,658,700.00	283,725.00
August	94,540.00	2,103,515.00	1,796,260.00	307,255.00
September	80,540.00	1,792,015.00	1,530,260.00	261,755.00
October	95,050.00	2,114,862.50	1,805,950.00	308,912.50
November	109,040.00	2,426,140.00	2,071,760.00	354,380.00
December	152,680.00	3,397,130.00	2,900,920.00	496,210.00
TOTAL	**1,166,890.00**	**₱25,963,302.50**	**₱22,170,910.00**	**₱ 3,792,392.50**

The ICPA examined petitioner's balance of excise tax advance payments carried from the previous return and the excise tax payments/deposits made in the year 2015, then compared the same

[30] Exhibit P-5, p. 6.

with all the removals/application of excise taxes for the same year, to wit:[31]

Advance Excise Tax Payments and Excise Taxes Due per Excise Tax Return (BIR Form 2200-A) Filed through EFPS for the period from January 3, 2015 to December 29, 2015

Plant Location	**Balance of Deposits Carried Over From Previous Return**	**Excise Tax payments/Deposits**	**Excise Tax Due/Applied**	**Balance of Deposits to be Carried Over to Next Return**
Bacolod	₱ 13,088,914.56	₱ 1,727,806,900.00	(₱ 1,701,976,925.37)	₱ 38,918,889.19
Davao	26,817,624.41	2,619,086,000.01	(2,592,986,607.00)	52,917,017.42
Mandaue, Cebu	31,486,691.01	6,406,035,000.01	(6,332,104,244.80)	105,417,446.22
Polo, Valenzuela	4,751,221.31	5,320,000,000.09	(5,214,219,485.88)	110,531,734.72
San Fernando, Pampanga	37,508,286.02	8,724,494,000.00	(8,589,671,510.08)	172,330,775.93
Sta. Rosa, Laguna	7,622,549.31	2,158,451,000.01	(2,123,248,059.07)	42,825,490.25
TOTAL	**₱ 121,275,286.62**	**₱26,955,872,900.12**	**(₱26,554,206,832.20)**	**₱522,941,353.72**

From the foregoing, petitioner had enough excise tax payments/deposits to cover for all the removals made in the year 2015. The payments made in the aggregate amount of ₱26,955,872,900.12 are properly supported by Excise Tax Returns (BIR Form No. 2200-A),[32] bank tax payment confirmations,[33] and Official Register Books (ORB) and Sworn Statements of the Volume Removals (SSR),[34] which contain information such as total volume of removals of petitioner's domestic beer products and the corresponding excise taxes due, as well as the beginning balance of excise tax deposits, total deposits paid and the ending balance thereof. A comparison of the foregoing documents reveals the following:[35]

Total Advance Excise Tax Deposits Paid and Total Excise Taxes Due on Removals of All Beer Products for the period from January 1, 2015 to December 31, 2015	**Beginning Balance (a)**	**Advance Excise Tax Deposits (b)**	**Excise Tax Due (c)**	**Ending Balance (d = a + b -c)**
Per Monthly ORB and SSR	₱121,275,282.64	₱26,955,872,900.12	₱26,940,409,556.02	₱136,738,626.74
Per Excise Tax	121,275,286.62	26,955,872,900.12	26,940,409,553.23	136,738,632.69

[31] *Id.*, pp. 7-8.
[32] Exhibits P-6-a to P-6-a-2918, inclusive.
[33] Exhibits P-6-b to P-6-b-716 and P-6-c to P-6-c-715.
[34] Exhibits P-6-d to P-6-d-71.
[35] Exhibit P-5, p. 13.

Returns (BIR Form No. 2200-A)				
Difference	**₱ (3.98)***	**₱ -**	**₱ 2.79***	**₱ (5.95)***

** Difference due to rounding off*

For the year 2015, petitioner had removals of 1,361,821,338.48 liters of all domestic beer products as supported by ORBs and SSRs, broken down as follows:[36]

Exhibit	Plant	Total Removals of All Beer Products (including "San Mig Light" and "Other Beer Products") in liters	Excise Tax Amount
P-6-d to P-6-d-11	Bacolod	83,973,072.24	₱ 1,733,556,108.78
P-6-d-12 to P-6-d-23	Davao	135,944,227.68	2,626,992,793.14
P-6-d-24 to P-6-d-35	Cebu	332,020,394.88	6,432,903,155.94
P-6-d-36 to P-6-d-47	Valenzuela	254,936,579.76	5,284,628,165.20
P-6-d-48 to P-6-d-59	Pampanga	445,101,843.12	8,702,878,355.88
P-6-d-60 to P-6-d-71	Laguna	109,845,220.80	2,159,450,977.08
	TOTAL	**1,361,821,338.48**	**₱26,940,409,556.02**

Of these removals, 179,064,441.04 liters pertain to the instant claim of SML and other beer products on which the BIR imposed a uniform rate of ₱22.25 instead of ₱19.00 and ₱22.00. These removals are likewise supported by the ORBs and SSRs from petitioner's six plants.[37]

Exhibit	Plant	Total "San Mig Light" and "Other Beer Products" Removals in liters	Excise Tax Amount
P-6-d to P-6-d-11	Bacolod	11,898,097.20	₱ 264,732,662.70
P-6-d-12 to P-6-d-23	Davao	6,667,776.72	148,358,032.02
P-6-d-24 to P-6-d-35	Cebu	14,666,026.32	326,319,085.62
P-6-d-36 to P-6-d-47	Valenzuela	95,767,337.92	2,130,823,268.72
P-6-d-48 to P-6-d-59	Pampanga	33,233,412.96	739,443,438.36
P-6-d-60 to P-6-d-71	Laguna	16,831,789.92	374,507,325.72
	TOTAL	**179,064,441.04**	**₱3,984,183,813.14**

Upon examination of the corresponding ETRDs of the foregoing removals, the ICPA reported the following findings:[38]

[36] *Id.*, pp.15-19.
[37] Exhibit P-5, p.20
[38] *Id.*

Findings	Exhibit	Location	Quantity (in liters)	Excise Tax Rate	Excise Tax Amount
"San Mig Light" removals supported by original ETRDs duly signed and attested by the BIR ROOP	P-6-e to P-6-e-320	Bacolod	11,898,097.20	22.25	₱ 264,732,662.70
	P-6-e-973 to P-6-e-1298	Davao	6,667,776.72	22.25	148,358,032.02
	P-6-e-321 to P-6-e-660	Mandaue, Cebu	14,666,026.32	22.25	326,319,085.62
	P-6-e-1718 to P-6-e-2298	Polo, Valenzuela	66,277,534.72	22.25	1,474,675,147.52
	P-6-e-1299 to P-6-e-1662	San Fernando, Pampanga	33,233,412.96	22.25	739,443,438.36
	P-6-e-661 to P-6-e-972	Sta. Rosa, Laguna	16,720,981.20	22.25	372,041,831.70
"San Mig Light" removals supported by certified true copy of ETRD	P-6-e-2356	Sta. Rosa, Laguna	110,808.72	22.25	2,465,494.02
"Other Beer Products" removals supported by original ETRDs duly signed and attested by BIR ROOP	P-6-e-1663 to P-6-e-2355	Polo, Valenzuela	29,489,803.20	22.25	656,148,121.20
Grand Total			**179,064,441.04**		**₱3,984,183,813.14**

After due consideration, the Court finds that the ICPA report is in order. The removal of SML supported by a certified copy of ETRD is corroborated by the SSRs from the Sta. Rosa, Laguna plant, particularly for the month of February 2015, thus:[39]

Exhibit	Month	Total Removals	Excise Tax Amount	Removals of SML and Other Beer Products	Excise Tax Amount
P-6-d-60	January	8,270,703.36	₱ 162,618,927.12	1,299,196.80	₱ 28,907,128.80
P-6-d-61	February	7,563,626.88	149,263,105.74	1,294,769.52	28,808,621.82
P-6-d-62	March	8,413,814.64	165,821,779.20	1,396,644.48	31,075,339.68
P-6-d-63	April	8,640,204.72	170,105,143.02	1,398,204.72	31,110,055.02
P-6-d-64	May	10,263,616.08	201,635,826.90	1,560,580.56	34,722,917.46
P-6-d-65	June	9,203,718.96	180,480,027.96	1,332,603.36	29,650,424.76
P-6-d-66	July	8,439,860.64	165,643,360.14	1,248,168.24	27,771,743.34
P-6-d-67	August	9,029,234.88	176,984,503.92	1,243,218.24	27,661,605.84
P-6-d-68	September	9,605,106.96	188,889,929.52	1,456,329.60	32,403,333.60
P-6-d-69	October	8,844,065.04	174,199,037.34	1,406,409.84	31,292,618.94
P-6-d-70	November	9,733,205.76	191,222,998.98	1,472,225.04	32,757,007.14
P-6-d-71	December	11,838,062.88	232,586,337.24	1,723,439.52	38,346,529.32
	TOTAL	**109,845,220.80**	**₱2,159,450,977.08**	**16,831,789.92**	**₱374,507,325.72**

Based on the foregoing, the total removals of all domestic beer products and total removals of SML and other beer products from the

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[39] *Id.*, p. 19.

Sta. Rosa, Laguna plant for the year 2015, with the corresponding excise tax amounts, tally with the findings of the ICPA as previously shown. Moreover, the ICPA examined other supporting documents such as shipping memoranda,[40] Issue/Receipt Documents (IRD), Plant Breakages Report, Gate Pass, Delivery Receipts (DR), Claim Memoranda and Stock Transfer Receipts.[41]

In fine, petitioner is entitled to its claim for refund in the reduced amount of ₱44,474,387.74, computed as follows:

Total excise taxes claimed for refund	₱ 48,266,780.24
Less: Excise taxes on SML in kegs	3,792,392.50
Refundable Excise Taxes	**₱ 44,474,387.74**

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of ₱44,474,387.74. Accordingly, respondent is **ORDERED** to **REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner for the erroneously, excessively, and/or illegally collected excise taxes on its San Mig Light and other beer products in bottles and cans for the taxable year 2015.

SO ORDERED.

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

I CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[40] Exhibits P-6-f to P-6-f-29051.
[41] Exhibits P-6-g-1490.

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

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