REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIP MORRIS PHILIPPINES MANUFACTURING INC., Petitioner,	**CTA CASE NO. 9228** Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 02 2018 4:00 pm

x -x

RESOLUTION

CASANOVA, *J.*:

For resolution of this Court is petitioner's **Motion for Reconsideration (of the Decision dated 3 April 2018)**, filed on April 19, 2018 with respondent's **Opposition (Re: Motion for Reconsideration)**, filed on May 2, 2018.

Petitioner seeks reconsideration of this Court's Decision dated April 3, 2018, the dispositive portion of which reads:

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

In the assailed Decision, the Court held the following: (1) The two-year prescriptive period under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 applies, hence, petitioner's claim for refund/issuance of TCC was considered filed out of time; (2) Prescriptive period of six years under Article 2154 of the Civil Code pursuant to *solutio indebiti* principle is not applicable; and (3) The provisions of Revenue Regulation (RR) No. 3-08 are not contrary to Sections 129 and 130(D) of the NIRC of 1997, as amended.

Petitioner moves for reconsideration of the Court's Decision based on the following grounds:

> "The two-year prescriptive period under Sections 204 (C) and 229 of the Tax Code does not apply in this case.
>
> A. Section 130(D) of the Tax Code does not prescribe a time limit for filing a claim for refund.
>
> B. The amounts paid pursuant to RR No. 3-08 are not erroneously paid taxes but rather in the nature of advanced or deposited taxes, which would be returned under the principle of *solutio indebiti*.
>
> C. RR No. 3-08 is void because it requires the payment of excise tax on articles that are not subject to such tax under the Tax Code."

Petitioner posits that the prescriptive period for filing claims for refund based on erroneous payment or illegal collection in general under Section 229 of the Tax Code should not be applied when there is a specific applicable provision which allows a taxpayer to file claim for refund which allegedly in this case is Section 130 (D) of the Tax Code. Petitioner maintains that the time limit to file for a tax refund/credit on the excise tax paid on exported goods is based only on RR No. 3-08, since nowhere in Section 130 (D) of the Tax Code does it state that there is a limit within which a manufacturer may claim a refund of the excise tax on exported goods.

Petitioner submits that a taxpayer's right to recover taxes which it paid in advance for goods that are actually exported and, therefore, not subject to excise tax is not subject to the two-year prescriptive period for refund under Sections 204(C) and 229 of the Tax Code.

Further, petitioner argues that the amounts they paid pursuant to RR No. 03-08 should be returned under the principle of *solutio indebiti*. Petitioner contends that in the case of *Commissioner of Internal Revenue vs. Manila Electric Company*[1], the binding relation between Manila Electric Company and the taxing authority was clearly established, unlike in the present case. According to petitioner, Section 129 of the Tax Code does not require payment of excise taxes on goods or products manufactured that are not for domestic sale or consumption. Allegedly, there is no binding relationship created between petitioner and respondent in this particular instance.

More so, petitioner states that assuming *arguendo*, that advanced payment/deposit was not made through mistake and voluntarily made, the decision in *Genova vs. De Castro*[2] should be considered by the Court wherein notwithstanding the lack of the element – mistake in payment, the refund of what the petitioner had paid was ordered based on equitable grounds.

Lastly, petitioner avers that RR No. 3-08 is void because it requires payment of excise tax on excisable articles for export or consumption outside the Philippines when these articles are not subject to excise tax under the Tax Code. Petitioner contends that the imposition of the refund mechanism in the case of excise tax may be within the powers of the legislature but it is a measure that certainly cannot be validly imposed by the executive department on its own through the mere issuance of an administrative regulation such as RR 3-08 since it has the effect of amending the law. Petitioner maintains that in line with the doctrine laid down in the case of *Purisima vs. Lazatin*[3], the Court should declare RR No. 3-08 void in so far as it requires the payment of excise tax subject to a product replenishment or refund mechanism which finds no basis in fact and in law.

On the other hand, respondent states that petitioner is not correct in its contention that the two-year prescriptive period under Sections 204(C) and 229 of the Tax Code is not applicable. Respondent maintains that petitioner must show that it has complied with the said provisions in claiming tax refund/credit.

---

[1] G.R. No. 181459, June 9, 2014.
[2] G.R. Nos. 132076 & 140989, July 22, 2003.
[3] G.R. No. 210588, November 29, 2016.

Further, respondent expressly assents to the Court's ruling that the principle of *solutio indebiti* is not applicable in the case. Respondent maintains that petitioner has a binding relationship with the tax authorities to pay the subject excise tax under RR No. 3-08.

Moreover, respondent maintains that RR No. 3-08 is valid. BIR's interpretation of tax laws are entitled to great weight because of its recognized expertise on matters falling within its exclusive administration domain. Respondent alleges that assuming *arguendo* that the BIR exercised administrative legislation, the same is not illegal *per se*. Administrative agencies in the exercise of their rule making power can formulate rules and regulations in order to achieve the declared policies of the congress. Respondent posits that the latest in our jurisprudence indicates that delegation of legislative power has become the rule and its non-delegation the exception.

Lastly, respondent avers that petitioner must not only prove its entitlement to a refund but also its strict compliance with the periods provide by Section 112 (C) and that petitioner must be aware non-observance of the prescriptive periods within which to file administrative and judicial claims would result in the denial of its claim.

We find petitioner's allegations unconvincing.

It is worthy to reiterate that the two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, (formerly Sections 309 and 306 of the Tax Code) applies. In the early case of *Commissioner of Internal Revenue vs. Insular Lumber Company and Court of Tax Appeals*[4], the Supreme Court held that:

> "Sections 306 and 309 [now Sections 204(C) and 229, respectively] of the National Internal Revenue Code **were intended to govern all kinds of refunds of internal revenue taxes** — those taxes imposed and collected pursuant to the National Internal Revenue Code. Thus, this Court stated that 'this provision', referring to Section 306, '**which is mandatory, is not subject to qualification, and, hence, it applies regardless of the conditions under which payment has been made**'. And to hold that the instant claim for refund of a

[4] G.R. No. L-24221, December 11, 1967.

> specific tax, an internal revenue tax imposed in Section 142 of the National Internal Revenue Code, is beyond the scope of Sections 306 and 309 is to thwart the aforesaid intention and spirit underlying said provisions. (*Emphasis supplied.*)

Thus, petitioner is not correct in its contention that the prescriptive period for filing claims for refund under Section 229 of the Tax Code should not be applied when there is a specific applicable provision which allows a taxpayer to file claim for refund which in this case is Section 130 (D) of the Tax Code.

As to petitioner's contention that the principle of *solutio indebiti* applies, this Court maintains its ruling that the same is not applicable in this case. Petitioner's reliance in the case of *Genova vs. De Castro,* wherein notwithstanding the lack of the element of mistake in payment, the refund of what the petitioner had paid was ordered based on equitable grounds is misplaced.

We reiterate that petitioner has a binding relationship with respondent to pay the subject excise tax, thus, the principle of *solutio indebiti* is not applicable. Tax refund, partakes of the nature of an exemption, thus, the rule of strict interpretation against the taxpayer-claimant similarly applies. The same is never presumed nor be allowed solely on the ground of equity.

Also, the case of *Commissioner of Internal Revenue vs. Philippine National Bank*[5] as relied by herein petitioner, where the 2-year prescriptive period was considered inequitable to impose, is not applicable since the special circumstances surrounding the said case is not present in the case at bench.

The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence, hence, the dictum that taxes are the lifeblood of the government. For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption.[6]

---

[5] G.R. No. 161997, October 25, 2005.

[6] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,* G.R. No. 163835, July 7, 2010.

Lastly, on petitioner's argument that the Court should declare RR No. 3-08 void, which allegedly finds no basis in fact and in law, is untenable.

As correctly explained by respondent, administrative agencies, in the exercise of their rule making power, can formulate rules and regulations in order to achieve the declared policies of the congress.

Again, this Court finds that there is no conflict between the provisions of the NIRC of 1997 [Sec. 129 and 130(D) of the NIRC of 1997, as amended] and RR No. 3-08. RR No. 03-08 was issued to effectively implement Sec. 130(D). It only prescribes the procedure for availing claims for refund and product replenishment and the same regulations provide for remedies after payment of the tax subject to procedural due process.

In sum, the instant motion dwells on issues already resolved in the assailed Decision. The bulk of the grounds raised are mere rehash of petitioner's previous arguments and position as discussed in its petition.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 3 April 2018)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice