REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SAN MIGUEL BREWERY INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8955

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, JJ.

Promulgated:

JAN 05 2018
2:39 p.m.

x--x

RESOLUTION

BAUTISTA, J:

For resolution is petitioner's Motion for Reconsideration filed on September 6, 2017; with respondent's Opposition Re: Petitioner's Motion for Reconsideration filed on October 13, 2017.

On August 18, 2017, the Court promulgated a Decision[1] (the "Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED,** petitioner having availed of the wrong mode of appeal.
>
> **SO ORDERED.**[3]

In the Assailed Decision, the Court ruled that a collateral attack on a presumably valid law is prohibited; that the constitutionality or validity of laws, orders, or such other rules with the force of law

---

[1] *Records, Vol. 2, CTA Case No. 8955,* pp. 652-673.
[2] *Id.,* pp. 667.
[3] Emphases retained.

cannot be attacked collaterally; and that there is a legal presumption of validity of these laws and rules, and unless a law or rule is annulled in a direct proceedings the legal presumption of its validity stands.

In its Motion for Reconsideration, petitioner avers that the rule on collateral attack by the Court has no application in the instant case. Petitioner states that the petition for review directly challenges the validity of the excise tax rate of Php20.57 specified in *Revenue Memorandum Circular ("RMC") No. 90-2012* for "San Mig Light", on the ground that the said excise tax rate is in direct violation of the rates imposed by *Section 143 of the 1997 NIRC;* and that the same was issued without prior notice and hearing to the petitioner in utter disregard of the due process provision of the *Constitution* and the process required by the *Administrative Code of 1987.* Petitioner avers that the attack on the validity of *RMC No. 90-2012* is not secondary to the claim for refund.

Petitioner insists that there is no legal basis for the Court to hold that petitioner should have directly attacked *RMC No. 90-2012 via* a Petition for *Certiorari* at the earliest opportunity, rather than through a collateral attack *via* judicial claim for refund; that the Court should, and need to, resolve both claims for refund and the issue of validity of the aforesaid excise tax rate in one and the same proceedings; that the filing of a Petition f or Certiorari with the Regional Trial Court challenging *RMC No. 90-2012* and institution subsequently of a Petition for Review before the Court of Tax Appeals will run counter to the established judicial policy against multiplicity of suits.

On the other hand, respondent argues that the Court correctly ruled that it has no jurisdiction over the instant case; that petitioner is primarily seeking the nullification of a provision from *Revenue Memorandum Circular ("RMC") No. 90-2012* under the guise of an alleged claim for refund; that the claim for refund is merely consequential, and absent a nullification of *RMC No. 90-2012,* petitioner's cause of action would have no leg to stand on.

The Court resolves.

After a careful consideration and evaluation of the parties' respective arguments, the Court finds no compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Consequently, the Court finds respondent's Motion for Reconsideration devoid of merit.

Prior to the filing of the Petition for Review before the Court of Tax Appeals, petitioner filed its administrative claim for refund[4] in the amount of Php83,019,296.21, together with BIR Form No. 1914[5], Summary List[6], and Monthly Removals and Tax Payments for 2013[7] on December 9, 2014. It is clear that the primary cause of action in the case at bar is the tax refund, which the Court cannot determine without ruling on the validity of *RMC No. 90-2012*. In the case at bar, petitioner availed of the wrong remedy when it filed its judicial claim for refund.

To reiterate, a collateral attack on a presumably valid law is prohibited.[8] Nothing is more settled than the rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally.[9] A collateral attack on a presumably valid law is not permissible. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[10] The constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules; and unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[11]

---

[4] *Records, Vol. 1, Exhibit "P-1," Administrative Claim for Refund,* pp. 56-60.
[5] *Id., Exhibit "P-1-b," BIR Form No. 1914 (Application for Tax Credits/Refunds),* p. 61.
[6] *Id., Exhibit "P-1-c," Summary List,* p. 62.
[7] *Id., Exhibits "P-1-d" to "P-1-aa," Monthly Removals and Tax Payments,* pp. 63-86.
[8] *Dasmarias Water District v. Monterey Foods Corporation,* G.R. No. 175550, September 17, 2008, 565 SCRA 624.
[9] *Alfeo D. Vivas, on his behalf and on behalf of the sahreholders of EuroCRedit Community Bank vs. The Monetary Board of the Bangko Sentral ng Pilipinas and the Philippine Deposit Insurance Corporation,* G.R. No. 191424, August 7, 2013, 703 SCRA 290.
[10] *Id.,* citing *Dasmarias Water District v. Monterey Foods Corporation,* G.R. No. 175550, September 17, 2008, 565 SCRA 624.
[11] *Dasmarias Water District v. Monterey Foods Corporation,* G.R. No. 175550, September 17, 2008, 565 SCRA 624, citing *Tan v. Bausch & Lomb, Inc.,* G.R. No. 148420, December 15, 2005, 478 SCRA 115, citing *Olsen and Co. v. Aldanese,* G.R. No. L-18740, April 28, 1922, 43 Phil. 259; *San Miguel Brewery v. Magno,* G.R. No. L-21879, September 29, 1967, 21 SCRA 292.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated August 18, 2017 is **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice