REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SENECA TOBACCO PHILIPPINES, INC.
Petitioner,

CTA CASE NO. 9137

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 20 2017
3:25 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

Before this Court is a Petition for Review filed by petitioner Seneca Tobacco Philippines, Inc. ("Seneca") on September 7, 2015, pursuant to Sections 7 and 9 of Republic Act No. 9282, in relation to Rule 42 of the 1997 Rules of Civil Procedure, to interpose a judicial claim for refund of the amount of Php13,500,000.00 corresponding to the alleged 500,000 pieces of internal revenue stamps which were rendered unutilized pursuant to Revenue Regulations No. 7-2014, as amended by Revenue Regulations No. 8-2014.[1]

[1] Docket, p. 10.

THE FACTS

Respondent Commissioner of Internal Revenue is duly appointed and empowered to implement the provisions of the National Internal Revenue Code (NIRC) and other tax laws, as well as the power to resolve disputed assessments, claims for refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC or other laws or portions thereof administered by the Bureau of Internal Revenue.[2]

Petitioner Seneca Tobacco Philippines, Inc., is a corporation duly organized and existing under Philippine laws, and is engaged in the importation and wholesale distribution of cigarettes.[3]

Respondent BIR issued Revenue Regulations 07-2014, which prescribed the procedures for the affixture of the Internal Revenue Stamps on imported and locally manufactured cigarettes and mandated the use of the Internal Revenue stamp Integrated System (IRSIS) for the ordering, distribution and monitoring thereof. The said Revenue Regulations took effect on or about 27 September 2014.[4]

On October 17, 2014, respondent BIR issued ***Revenue Regulations 8-2014*** amending the provisions of ***Revenue Regulations No. 7-2014,*** specifically the deadlines prescribed under Section 13 thereof.[5] ***Revenue Regulations 8-2014*** states thus:

> "No imported cigarettes shall be found in the market without the new stamps effective April 1, 2015; provided, however, that even prior to such date, imported cigarettes should bear either the old stamps or the new stamps."[6]

On March 31, 2015 and April 6, 2015, petitioner, through its President, Carel O. Ng, wrote a letter and a supplemental letter addressed to Finance Secretary Cesar V. Purisima requesting for an extension period of six (6) months within which they could still use the old revenue stamps.[7]

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[2] Joint Stipulation of Facts and Issued (JSFI), par. 1, Docket, p. 210.
[3] JSFI, par. 2, Docket, p. 210.
[4] JSFI, par. 3, Docket, pp. 210-211.
[5] JSFI, par. 4, Docket, p. 211.
[6] *Id.*
[7] JSFI, par. 5, Docket, p. 211.

Petitioner's request for extension was denied by respondent BIR through its letter dated May 19, 2015. In the same vein, the Department of Finance summarily denied the petitioner's request for extension on June 15, 2015 through its letter of even date.[8]

In light of the respondent's denial of its request, petitioner was unable to utilize the internal revenue stamps it had fully paid for.[9]

On August 27, 2015, petitioner filed an administrative claim for refund of taxes paid for the 500,000 pieces of internal revenue stamps subject matter of the instant case.[10] The respondent Commissioner has not replied to the said administrative claim up to this date.[11]

On September 7, 2015, petitioner filed its judicial claim for refund of Php13.5 Million excise tax payments for internal revenue stamps.

In its petition, petitioner cited the following grounds:

> A. Revenue Regulations No. 7-2014, as amended by Revenue Regulations No. 8-2014 created an iniquitous situation for the importers which rendered it impossible [to] meet the 01 April 2015 deadline. Hence, Resulting to wastage of stamps already paid for.
>
> B. Revenue Regulations Nos. 7-2014 and 8-2014 setting the deadline for the effectivity of the old stamps purchased by the petitioner under Revenue under Revenue Regulations No. 03-2006 should not have been applied retroactively.
>
> C. Revenue Regulations No. 7-2014, as amended, resulted to deprivation of property without due process of law.
>
> D. The refund requested is due the petitioner upon the principle of unjust enrichment.

On October 2, 2015, CIR filed her Answer. CIR alleged the following as Special and Affirmative Defenses:[12]

[8] JSFI, par. 6, Docket, p. 211.
[9] JSFI, par. 7, Docket, p. 211.
[10] JSFI, par. 8, Docket, p. 211.
[11] JSFI, par. 9, Docket, p. 211.
[12] Docket, pp. 71-73.

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of P13,500,000.00 allegedly representing the amount petitioner paid for the 500,000 pieces of old internal revenue stamps was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescribed period for claiming tax refund/credit.

8. The provisions of Section 8 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 10351, popularly known as the Sin Tax law, specifically stipulates that the Commissioner of Internal Revenue is mandated to prescribe, provide, and distribute, among others, internal revenue stamps with adequate security features for affixture on each pack of cigars and cigarettes. Pursuant thereto, the production of these stamps was initiated and the Internal Revenue Stamp Integrated System was developed to cover the ordering, distribution and real-time monitoring thereof. Accordingly, Revenue Regulations are hereby issued to implement the said mandate and initiatives.

9. Thus, Section 1 of Revenue Regulations No. 7-2014 *(Prescribing the Affixture of Internal Revenue Stamps on Imported and Locally Manufactured Cigarettes and the Use of the Internal Revenue Stamp Integrated System (IRSIS) for the Ordering, Distribution and Monitoring Thereof)* provides:

> SECTION 1. SCOPE. – Pursuant to the provisions of Section 8, in relation to Sections 244 and 245 of the

National Internal Revenue Code (NIRC) of 1997, as amended, these Regulations are hereby promulgated to prescribed the affixture of new internal revenue stamps on imported and locally manufactured cigarettes, whether for domestic sale or for export, and the use of the Internal Revenue Stamp Integrated System (IRSIS) for the ordering, distribution and monitoring thereof.

10. Hence, before petitioner could validly sell its imported cigars and cigarettes into the country, it should comply with certain revenue regulations for the affixture of the internal revenue stamps on each pack of cigars and cigarettes. Thus, the internal revenue stamps petitioner purchased sometime in 2013 was necessary and the amount it paid for the said purchase was not illegally or erroneously collected by respondent.

11. Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997), categorically provides:

> **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 payment was made,

> such payment appears clearly to have been erroneously paid. (emphasis supplied)

12. It is thus clear from the above-cited provision of law that the Honorable Court has no jurisdiction to act on the instant petition for review. The amount petitioner paid for the purchase of the old internal revenue stamps was not illegally or erroneously collected by respondent. Hence, the said amount cannot be the proper subject of a claim for refund.

13. Moreover, Revenue Regulations No. 8-2014 categorically provides:

> SEC. 13. TRANSITORY PROVISIONS. The following transitory provisions shall be strictly observed:
>
> (a) xxx
> (b) xxx
> (c) No later than November 1, 2014, all locally manufactured packs of cigarettes shall be affixed with the internal revenue stamps prescribed by these Regulations.
> (d) xxx
> (e) Effective March 1, 2015, all locally manufactured cigarettes found in the market shall be affixed with the said stamps.
>
> No imported cigarettes shall be found in the market without the new stamps effective April 1, 2015; provided, however, that even prior to such date, imported cigarettes should bear either the old stamps or the new stamps.

14. Respondent has already issued Revenue Regulations No. 7-2014, as amended by Revenue Regulations No. 8-2014 and further amended by Revenue Regulations No. 9-2014 mandating all imported cigarettes found in the market to be affixed with the new stamps effective 1 April 2015. Hence, ample time was given to

petitioner to dispose of or use the old internal revenue stamps.

15. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all, tax refunds, like tax exemptions are construed strictly against the taxpayer (Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Coo., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).

Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language (**Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999).** Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).**

Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*

On October 23, 2015, petitioner filed a Reply[13] to respondent's Answer.

On November 27, 2015, the parties filed their Joint Stipulation of Facts and Issues.[14] On January 21, 2016, this Court issued its Pre-Trial Order.[15]

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[13] Docket, pp. 77-86.
[14] Docket, pp. 210-218.
[15] Docket, pp. 227-231.

On February 10, 2016, petitioner's witness, Carel O. Ng, testified on direct by judicial affidavit and completed her testimony.[16] Ms. Ng testified that she is the President of petitioner, Seneca Tobacco Philippines, Inc. since its incorporation on April 30, 2013. One of her functions as President is to oversee the Company's compliance with the laws and regulations implemented by the government agencies such as the Bureau of Internal Revenue. No cross-examination was made.[17]

On March 9, 2016, petitioner presented witness Mr. Isidro M. Muñoz whose testimony was deemed completed and terminated.[18] The testimony of Mr. Muñoz was offered to corroborate the testimony of Carel O. Ng, and to prove matters within his personal knowledge and experience in marketing and retail of local and imported cigarettes, including brands that are new and/or being introduced to the Philippine market for the first time. Witness is the Operations Manager of Golden Lights Global Cigars, a company owned and operated by Golden Lights Philippines, Inc. Petitioner and Golden Lights, Inc. entered into an agreement for the consignment of Seneca Cigarettes and Tobacco products. Golden Lights Philippines, Inc. is a retailer of local and imported cigarettes with eighteen (18) retail outlets, kiosks, and booths located in various malls nationwide. No cross-examination was made.[19]

Petitioner's Formal Offer of Evidence was filed through registered mail on April 22, 2016 and received by the Court on May 6, 2016.[20] Respondent filed its Comment (Re: Petitioner's Formal Offer of Evidence) on May 10, 2016.[21]

On June 8, 2016, the Court admitted all exhibits offered by petitioner except Exhibits "P-1", "P-20" and "P-20-A".[22] Subsequently, upon oral motion of petitioner, the Court reconsidered and admitted Exhibits "P-20" and "P-20-A" as part of petitioner's evidence. [23]

On June 29, 2016, respondent presented witness Ms. Ma. Rosario O. Puno, OIC –Chief, assigned at the Excise LT Regulatory

[16] Docket, p. 232; Judicial Affidavit of Carel O. Ng, Docket, pp. 96-119; Exhibit P-18.
[17] TSN, Hearing: February 10, 2016, p. 2.
[18] Docket, p. 251.
[19] TSN, Hearing: March 9, 2016, p. 4.
[20] Docket, pp. 268-284.
[21] Docket, p. 285.
[22] Docket, pp. 290-291.
[23] Docket, p. 305.

Division (ELTRD), BIR National Office. As the OIC-Chief of the ELTRD, among her functions are the following: (a) recommend for the approval of all continuing permits, registration-related functions such as issuance of certificates of registration, permits to operate as manufacturer or importer; (b) review and approve Authority to Release Imported Goods (ATRIGs) and transactional permits; and (c) recommend for the issuance of internal revenue stamps for both advance requisitions of stamps and those who applies upon arrival of both tobacco and alcohol products.[24] There was a cross-examination conducted by petitioner's counsel.[25]

On July 15, 2016, respondent filed a Formal Offer of Evidence.[26] On July 26, 2016, petitioner filed through registered mail its Comment/Objections to Respondent's Formal Offer of Evidence.[27]

On August 23, 2016, this Court admitted the exhibits formally offered by respondent.[28]

On September 5, 2016, respondent filed her Memorandum.[29] On the other hand, petitioner filed its Memorandum on September 29, 2016.[30]

On October 5, 2016, this case was submitted for decision.

Hence, this decision.

THE ISSUES

A. WHETHER OR NOT REVENUE REGULATIONS 7-2014 AND REVENUE REGULATIONS 8-2014 MAY BE VALIDLY APPLIED RETROACTIVELY AND ENFORCED TO PROHIBIT THE PETITIONER'S COMMERCIAL USE AFTER 01 APRIL 2015 OF THE

[24] Exhibit "R-5", Judicial Affidavit (of Ma. Rosario O. Puno), Division Docket, p. 296.
[25] TSN, Hearing: June 29, 2016, pp. 5-33.
[26] Docket, pp. 311-316.
[27] Docket, pp. 318-330.
[28] Docket, p. 332.
[29] Docket, pp. 335-343.
[30] Docket, pp. 344-368.

500,000 INTERNAL REVENUE STAMPS IT HAD ALLEGEDLY PURCHASED ON 05 SEPTEMBER 2013.[31]

B. WHETHER OR NOT PETITIONER IS LEGALLY ENTITLED TO THE REFUND OF PHP13,500,000 IN EXCISE TAXES THAT IT HAD ALLEDGEDLY PAID THROUGH ITS 05 SEPTEMBER 2013 PURCHASE OF THE 500,000 INTERNAL REVENUE STAMPS SUBJECT MATTER OF THE INSTANT CASE.[32]

In its Memorandum, petitioner alleges that the Honorable Court has jurisdiction to act on the instant petition. Petitioner alleges that the instant petition is an appeal for review arising from the inaction by the Commissioner of Internal Revenue (CIR) on the claim for refund of internal revenue taxes, falling squarely within the provision of Sec. 7 of RA 9282. According to petitioner, it filed an administrative claim for refund on August 28, 2015 with the CIR. However, the Commissioner has not officially acted on the said administrative claim for refund.

Also, petitioner believes that the admission made by respondent that the amount that petitioner paid for the purchase of the old internal revenue stamps was not illegally or erroneously collected in fact entitles the petitioner to the refund claimed. Because the fact remains that the taxes were actually paid by petitioner.

Petitioner posits that in citing Sec.229 of the NIRC, respondent conveniently missed another ground for a claim for refund, to wit:

> 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,

[31] JSFI, Joint Statement of the Issues, p. 219.
[32] *Id.*

> 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 payment was made, such payment appears clearly to have been erroneously paid. (emphasis supplied)

Petitioner alleges that its entitlement to the refund claimed arises not from the fact that the taxes were illegally or erroneously collected, but because Revenue Regulations 7-2014 rendered futile petitioner's payment of excise taxes and resultant enjoyment of a vested privilege and hence, the taxes collected were unnecessarily excessive.

Petitioner paid the excise taxes for the privilege to sell their products but was allegedly unduly prevented by the respondent from exercising such privilege. Petitioner alleges that respondent through the retroactive application of a revenue regulation prevented petitioner to exercise that privilege, thus, the claim for refund is due.

Petitioner alleges that events beyond petitioner's control contributed to the failure to sell the cigarettes – the fact that the cargo containing the first 500,000 pieces of cigarettes bearing the stamps arrived at the Port of Manila on or about 18 June 2014, but could not be released immediately because of the extreme port congestion that plagued the Port of Manila at that time.[33]

Petitioner states that the BIR Authority to Release Imported Goods was only issued on September 15, 2014.[34] Yet, Revenue Regulations 7-2014 and 8-2014 were issued setting a deadline on the sale of cigarettes bearing the old stamps to April 1, 2015. Thus, petitioner alleges that RR 7-2014, as amended by RR 8-2014 created

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[33] Docket, p. 352; Petitioner's Memorandum, p.9 citing A27 and A28, Judicial Affidavit of Ms. Carel O. Ng, and Exhibits P-5, P-5-A and P-5-B, Petitioner.
[34] *Id.*, citing A37 Judicial Affidavit of Ms. Carel O. Ng, and Exhibit P-6, Petitioner.

an iniquitous situation for the importers which rendered it impossible to meet the 01 April 2015 deadline. According to petitioner, this resulted in a wastage of stamps already paid for and petitioner's inability to exercise its privilege to sell the cigarettes.

Petitioner states that as testified by witness Mr. Isidro Muñoz, the deadline given by the respondent to sell the cigarettes was too short for them to develop the market and soon after they had to pull out the products and return them to the petitioner.[35]

Petitioner alleges that Revenue Regulations (RR) Nos. 7-2014 and 8-2014 violate the provision on non-retroactivity of rulings. (Sec. 246 of the NIRC). Petitioner believes that it was prejudiced by the retroactive application of the said RRs.

Petitioner alleges that RR No. 7-2014, as amended, resulted to deprivation of property without due process of law.

Petitioner alleges that the refund requested is due the petitioner upon the principle of unjust enrichment.

Petitioner also alleges that its evidence in support of its claim for refund remains uncontroverted, moreso since the only evidence presented by the respondent is inadmissible for being hearsay.

In her Memorandum, respondent alleges that before petitioner could validly sell its imported cigars and cigarettes into the country, it should comply with certain revenue regulations for the affixture of the internal revenue stamps on each pack of cigars and cigarettes. Respondent concludes that the internal revenue stamps petitioner purchased sometime in 2013 was necessary and the amount it paid for the said purchase was not illegally or erroneously collected by respondent.

Respondent alleges that based on Section 229 of the 1997 NIRC, as amended, this Court has no jurisdiction to act on the petition for review. The amount petitioner paid for the purchase of the old internal revenue stamps was not illegally or erroneously collected by respondent. *Jc*

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[35] Id., citing A15, Judicial Affidavit of Mr. Isidro Muñoz.

Respondent also states that ample time was given to petitioner to dispose of or use the old internal revenue stamps.

Further, respondent argues that based on the Summary of Advance Payment of Excise Taxes and Requisition of Internal Revenue Strip Stamps of petitioner for the period 2013-2014 (Exh. "R-3"), specifically at the rate of P27.00, petitioner has an outstanding requisition balance of only 5,649 stamps for excise tax balance amounting to P152,523.00 (P27.00 x 5,649).

Respondent also argues that petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to its claim. Respondent alleges that tax refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*

RULING

The petition lacks merit.

CTA has jurisdiction to entertain the refund

This case pertains to the refund of internal revenue stamps, which is a proof of payment of excise tax paid for the importation of cigarettes.

Section 23(E) of RR 3-2006, states that:

> "SECTION 23. Administrative Requirements. — All manufacturers, exporters and importers of alcohol or tobacco products shall comply with the following administrative requirements:
>
> xxx xxx xxx

E. Requisition of Internal Revenue Labels and Strip Stamps on Imported Alcohol or Tobacco Products and Manner of Affixture

Regular labels (for locally produced ethyl alcohol, imported distilled spirits and wines), auxiliary labels (for imported distilled spirits and wines), and **internal revenue strip stamps (for imported chewing tobacco, cigars and cigarettes) shall be requisitioned from the BIR Office where the importer is registered or required to be registered for excise tax purposes.** For imported alcohol or tobacco products, the said labels and strip stamps shall be firmly affixed on the said products under the supervision of an authorized representative from the Bureau of Customs in the manner provided below before the products are removed from the customs' warehouse. For locally produced ethyl alcohol, the regular labels shall be firmly affixed in the manner provided below before the said product is removed from the distillery.

xxx xxx xxx

3. Internal Revenue Strip Stamps

Each internal revenue strip stamp shall be affixed across the upper end of the pack and tin can, as the case may be, overlapping both sides of the immediate container before the same is wrapped in cellophane or transparent wrapper in such a manner as to effectively seal the container and prevent the removal of the cigarettes or cigars without breaking the stamps.

The internal revenue labels and strip stamps may be **requisitioned in advance** from the concerned BIR Office for purposes of sending them abroad and subsequent affixture thereof while the alcohol or tobacco products are still being packed by the foreign manufacturer/supplier: *Provided, however,* That the corresponding excise tax on the alcohol or tobacco products where the internal revenue labels and strip stamps are to be attached shall be paid to the BIR prior to the issuance of the labels and stamps.

A notarized liquidation statement indicating therein the beginning balance, usage/affixture, breakage/loss and ending balance of the quantity and serial numbers of internal revenue labels and strips stamps previously requisitioned, shall be submitted and attached as one of the required supporting documents in the application for ATRIG covering the imported alcohol or tobacco products upon which the advanced internal revenue labels and strips stamps are intended to be affixed. The importer shall, likewise, surrender all internal revenue labels and strip stamps that were not affixed by reason of breakage during the packaging process. For this purpose, a broken internal revenue label or strip stamp shall be acceptable in the liquidation only if at least three-fourths (3/4) of its original size is being surrendered. In case of failure to surrender any internal revenue label or revenue stamp or the same is surrendered in an unacceptable state (less than 3/4 of the original size), the corresponding excise tax otherwise due thereon shall be immediately assessed and collected by the BIR."

Sec. 5 of RR 7-2014, states:

"SECTION 5. ***Prior Payment of Excise Tax on Orders of Internal Revenue Stamps.*** — Each and every order of internal revenue stamp submitted by the authorized user of the importer or local manufacturer of cigarettes shall be approved by the BIR: *Provided, however,* That the excise tax due on the total number of internal revenue stamps ordered has been paid by the importer or local manufacturer of cigarettes.

xxx xxx xxx"

Pertinent to this case are Sections 204 (C) and 229 of the 1997 National Internal Revenue Code, as amended, as follow:

"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.

xxx xxx xxx"

"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 payment was made, such payment appears clearly to have been erroneously paid. *(Emphasis Supplied)*

Based on the foregoing provisions, the claim for refund must be made within two (2) years from payment of the tax or penalty. In this case, the first purchase of 500,000 pieces of internal revenue stamps were paid on September 5, 2013. The administrative claim for refund was filed on August 27, 2015. On the other hand, the judicial claim for refund was timely filed on September 7, 2015, which is the next working after the due date which falls on a Saturday. In this case, considering that the 2-year period is about to expire, it is correct for petitioner to file judicial claim. ge

Considering that there is an **allegation** "of any sum alleged to have been excessively or in any manner wrongfully collected," pertaining to a national internal revenue tax, which is the excise tax paid on the requisitioned internal revenue stamps, this Court correctly took cognizance of this case.

Petitioner failed to substantiate its claim

"The burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refund is construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why **a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."**[36]

In the administrative claim for refund, petitioner asked respondent to redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction pursuant to Sec. 204 (C) of the 1997 NIRC.[37]

> "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

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[36] *Winebrenner & Iñigo Insurance Brokers,Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.
[37] *Rollo*, p. 64.

the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

xxx xxx xxx" *(Emphasis Supplied)*

Based on the foregoing provision, it is within the respondent's discretion, to redeem or change **unused stamps** that have been rendered unfit for use and refund their value upon proof of destruction.

In this case, the 500,000 internal revenue stamps were **already affixed** to the cigarette and tobacco products, as admitted by witness Carel O. Ng, as follows:

"Q14: Where are the 500,000 internal revenue stamps subject matter of the instant case presently located?
A14: Those 500,000 internal revenue stamps remain affixed to our Company's cigarette and tobacco products, which products are all presently stored in our Company's warehouse at the Clark Freeport.

Counsel's Manifestation: in light of the witness's testimony that the 500,000 internal revenue stamps subject of the instant case are in fact existing and presently affixed to the Petitioner's cigarette and tobacco products stored in its Clark Freeport warehouse, Petitioner respectfully invites the Respondent and its counsel to stipulate on the following:

a) The BIR's due receipt from Petitioner of the excise stamp taxes represented by the 500,000 internal revenue stamps subject matter of the instant action; and
b) The genuineness, existence and Respondent BIR's due issuance of the 500,000 internal revenue stamps subject matter of the instant action.

In the event of the Respondent BIR's refusal for whatever reason to make the foregoing stipulations, Petitioner respectfully move that the Honorable Court proceed to the Petitioner's Clark Freeport warehouse and conduct an ocular inspection of the Petitioner's cigarette and tobacco products as well as the subject internal revenue stamps affixed thereon."[38]

In this case, petitioner failed to substantiate its claim for refund for failure to present proof that the internal revenue stamps were unused. This is a requirement in the administrative refund which must also be shown to be complied with by the petitioner when it filed its judicial claim for refund before this Court. To emphasize, it even invited the Court to make an ocular inspection in petitioner's warehouse to prove that the internal revenue stamps were affixed to the cigarettes. The burden of proof that the stamps purchased were unutilized is on the part of the petitioner. For failure to prove its claim, petitioner's claim for refund of the internal revenue stamps is denied.

Based on the foregoing, this Court will no longer delve on the other issues in this case.

WHEREFORE, premises considered, the Petition for Review filed by petitioner Seneca Tobacco Philippines, Inc. on September 7, 2015, is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[38] Division Docket, p. 100; Exhibit "P-18", Judicial Affidavit of Carel O. Ng.

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