REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIP MORRIS PHILIPPINES MANUFACTURING INC., *Petitioner,*	CTA EB No. 1893 (CTA CASE No. 9228)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 13 2019 3:34 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision, on September 20, 2018, of this Court *En Banc* is a Petition for Review filed by petitioner Philip Morris Philippines Manufacturing Inc., under *Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals*[1] *and Rule 43 of the Rules of Court, as amended,* seeking the reversal of the Decision dated April 3, 2018[2] and the Resolution dated July 2, 2018[3] rendered by the Second Division of this Court, the dispositive portions of which, respectively, read as follows:

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[1] *SEC. 4. Where to appeal; mode of appeal.*-x x x

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> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.

[2] Penned by Associate Justice Caesar A. Casanova concurred in by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan, En Banc Docket, pp.44-63.
[3] *Id.*, pp.64-69.

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Decision dated April 3, 2018:

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

Resolution dated July 2, 2018:

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

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record, read as follows:

> Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at 27th Floor, Tower One, The Enterprise Centre, 6766 Ayala Avenue, corner Paseo de Roxas, Makati City.
>
> Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") with office address at Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City where summons and other legal processes may be served.
>
> On January 22, 2008, respondent issued RR 3-08 in order to regulate the collection and administration of excise tax on certain excisable articles.
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> Section 2, RR No. 3-08 provides:
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[4] Supra note 2.

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"SECTION 2. Imposition of Excise Tax on Removal of Excisable Articles for Export or Sale/Delivery to International Carriers and Other Tax-Exempt Entities/Agencies. -

Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, **all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation** or sale/delivery to international carriers or to tax -exempt entities/agencies: Provided, That in case the said articles are likewise being sold in the domestic market, the applicable excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.

In the absence of a similar article that is being sold in the domestic market, the applicable excise tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable." (Emphasis supplied)

In compliance with RR 3-08, petitioner allegedly paid in advance its excise tax on tobacco and cigarette products it exported for the period January 7, 2010 until December 31, 2012, broken down as follows:

Taxable Year	Excise Taxes Paid
2010	P 74,586,194.02
2011	111,898,582.45
2012	17,992,341.60
Total	**P 204,477,118.07**

Petitioner availed the product replenishment option in claiming refund of the excise taxes paid for its exported tobacco products as can be shown

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by the Product Replenishment Debit Memos (PRDMs) and Product Replenishment Certificates (PRCs) issued by the BIR in favor of petitioner.

On December 4, 2015, petitioner filed with the BIR Large Taxpayers Excise Audit Division II an administrative claim for refund or issuance of a tax credit certificate (TCC) in the total amount of P204,477,118.07, representing excise tax advanced or deposited by petitioner on tobacco and cigarette products it exported for the period January 7, 2010 until December 31, 2012 which has not been replenished or refunded under RR 3-08, including PRCs with outstanding balances and PRDMS for replenishment.

On January 4, 2016, petitioner filed the instant Petition for Review.

On February 2, 2016, respondent filed his Answer interposing the defense that petitioner's right to claim for refund had already prescribed and, therefore, the petition should be dismissed for lack of jurisdiction."

After trial on the merits, the Court in Division directed both parties to submit their respective Memoranda. Respondent filed his Memorandum on February 16, 2017 while petitioner filed its Manifestation with Tender of Excluded Evidence on February 28, 2017, which was duly noted by the Court in Division.

Accordingly, petitioner filed its Memorandum on April 4, 2017, after a Motion for Extension was granted by the Court *a quo*.

Thereafter, the case was considered submitted for decision.

On April 3, 2018, the Court in Division rendered the assailed Decision which dismissed the Petition for Review for lack of merit. Aggrieved, petitioner filed a Motion for Reconsideration, but the same was denied in a Resolution dated July 2, 2018. Hence, this Petition for Review was filed.

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In the instant petition, petitioner insists that the amounts it advanced or deposited under Revenue Regulations (RR) No. 03-08 should be refunded pursuant to the principle of *solutio indebiti* and Section 130(D) of the NIRC of 1997, as amended.

Petitioner further asserts that the two-year prescriptive period under Section 204(C) and 229 of the NIRC of 1997, as amended, is not applicable to this case as it purportedly seeks the recovery of excise tax advanced or deposited to the government and not erroneously or illegally collected tax and Section 130(D) of the NIRC of 1997, as amended, does not provide a deadline for filing a claim for refund.

At the outset, the Petition for Review must fail for being time-barred.

Judicious evaluation of the arguments presented by petitioner warrants the dismissal of the case for the same is patently without merit. Notably, the Court in Division aptly concluded that the claim for refund is already barred by prescription.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the period within which to claim a refund of internal revenue taxes, which are erroneously, illegally and wrongfully collected. Sections 204 and 229 of the NIRC of 1997, as amended, state:

> *"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**

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> **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)

Likewise, Section 229 of the NIRC, as amended, reads as follows:

> "*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)

Accordingly, Section 6(A)(b) of RR No. GFL 3-08 provides that at the option of the manufacturer, it may also file a claim for tax credit/refund with the appropriate office in the BIR, subject to the prescriptive period requirements of the NIRC of 1997, as amended, to wit:

> "*SEC. 6. Claim for Product Replenishment.* -In case the excisable products were removed by the manufacturer thereof from his place of production or from any storage facility located outside his place of production after prepayment of the excise

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tax for purposes of exportation or sale/delivery to tax-exempt entities/agencies or international carriers pursuant to these Regulations, the said manufacturer may, at its option, avail a claim for product replenishment, instead of filing a claim for tax credit/refund of the excise tax that has been previously paid on the articles removed for such purposes, subject to the following requirements:

A. CONDITIONS FOR PRODUCT REPLENISHMENT

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(b) In case the excise tax that has been actually paid in the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers is LESS than the excise tax that is otherwise due on the articles applied for product replenishment, the difference shall be paid by the manufacturer before removal thereof from the place of production. On the other hand, in case the same is MORE than the excise tax that is otherwise due on articles applied for product replenishment, the difference thereof may be utilized for any future application for product replenishment. In lieu thereof, and at the option of the manufacturer, he may also file a claim for tax credit/refund with the appropriate office in the BIR, **subject to the prescriptive period requirements of the Tax Code**." (Emphasis supplied)

In the case at bar, petitioner advanced or deposited the excise taxes from January 7, 2010 until March 31, 2012 and also exported its products within the same period. Counting two years from the said period, petitioner only had until January 7, 2012 to March 31, 2014 to file both its administrative and judicial claims for refund of said taxes. However, records reveal that petitioner filed its administrative claim for refund or issuance of tax credit certificate only on December 4, 2015[5], while the judicial claim was subsequently filed on January 4, 2016[6]. Clearly,

[5] Division Docket, Exhibit "P-5"
[6] Ibid., pp. 10-34

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both claims were filed way beyond the two-year prescriptive period.

In its attempt to dissuade the Court of its ruling, petitioner justifies the filing of its administrative and judicial claims for refund of the aforesaid excise taxes beyond the two-year prescriptive period by anchoring its argument on the assumption that Section 130(D) of the NIRC of 1997, as amended, does not prescribe a time limit for filing a claim for refund of excise taxes paid in advance, and that the amounts paid under RR 03-08 are in the nature of advance or deposited taxes and not erroneously paid taxes.

In citing *Commissioner of Internal Revenue vs. Philippine National Bank*[7] *(PNB)*, involving a claim for refund of advance income tax payment, petitioner contends that it has a period of six (6) years from the time of payment within which to seek refund of the excise taxes paid in advance pursuant to the principle of *solutio indebiti*. Such contention is misplaced.

In the afore-stated case, the subject of the recovery is the **advance income tax payment of PNB** for the bank's 1991 operations which was remitted in response to then President Corazon C. Aquino's call to generate more revenues for national development. In this case, the advance income tax payment made by the Philippine National Bank is **NOT** in the nature of erroneously or illegally paid tax. The Supreme Court ruled in this wise:

> "Section 230 of the Tax Code, as couched, particularly its statute of limitations component, is, in context, intended to apply to suits for the recovery of internal revenue taxes or sums erroneously, excessively, illegally or wrongfully collected.
>
> Black defines the term erroneous or illegal tax as one levied without statutory authority. In the strict legal viewpoint, therefore, PNB's claim for tax credit did not proceed from, or is a consequence of overpayment of tax erroneously or illegally collected. It is beyond cavil that respondent **PNB issued to the BIR the check for P180 Million in**

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

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the concept of tax payment in advance, thus eschewing the notion that there was error or illegality in the payment. What in effect transpired when PNB wrote its July 28, 1997 letter was that respondent **sought the application of amounts advanced to the BIR to future annual income tax liabilities**, in view of its inability to carry-over the remaining amount of such advance payment to the four (4) succeeding taxable years, not having incurred income tax liability during that period.

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Analyzing the underlying reason behind the advance payment made by respondent PNB in 1991, the CA held that it would be improper to treat the same as erroneous, wrongful or illegal payment of tax within the meaning of Section 230 of the Tax Code. So that even if the respondent's inability to carry-over the remaining amount of its advance payment to taxable years 1992 to 1996 resulted in excess credit, it would be inequitable to impose the two (2)-year prescriptive period in Section 230 as to bar PNB's claim for tax credit to utilize the same for future tax liabilities. We quote with approval the CA's disquisition on this point:

> Thus, in no sense can the subject amount of advance income tax voluntarily remitted to the BIR by the [respondent], **not as a consequence of prior tax assessment or computation by the taxpayer based on business income**, be treated as similar to those national revenue taxes erroneously, illegally or wrongfully paid as to be automatically covered by the two (2)-year limitation under Sec. 230 for the right to its recovery. **When the P180 million advance income tax payment was tendered by [respondent], no tax had been assessed or due, or actually imposed and collected by the BIR. Neither can such payment be considered as illegal having been made in response to a call of patriotic duty to**

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help the national government . . . We therefore hold that the tax credit sought by [respondent] is not simply a case of excess payment, but rather for the application of the balance of advance income tax payment for subsequent taxable years after failure or impossibility to make such application or carry over the preceding four (4)-year period when no tax liability was incurred by petitioner due to losses in its operations. **It is truly inequitable to strictly impose the two (2)-year prescriptive period as to legally bar any request for such tax credit certificate considering the special circumstances under which the advance income tax payment was made and the unexpected event (four years of business losses) which prevented such application or carry over**. Ironically, both the [petitioner] and CTA would fault the [respondent] for electing to credit or carry over the excess amount of tax payment advanced instead of choosing to refund any such excess amount, holding that such decision on the part of petitioner caused the two (2)-year period to lapse without the petitioner filing such a request for the issuance of a tax credit certificate. They emphasized that the advance tax payment was made with the understanding that any excess amount will be either carried over to the next taxable year or refunded. It appears then that the request for issuance of a tax credit certificate was arbitrarily interpreted by respondent as a simple claim for refund instead of a request for application of the balance (excess amount) to tax liability for the succeeding taxable years, as was the original intention of [respondent] when it tendered the advance payment in 1991. (Emphasis in the original; words in bracket added)" (Additional boldfacing supplied).

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In sum, PNB's advance income tax payment was not pursuant to any law or regulation requiring such advance payment, but simply out of its own volition to heed the call of then President Aquino. Thus, such voluntary payment was not construed as erroneous, illegal or wrongful that would warrant the application of the two (2)-year prescriptive period provided in Sections 204 and 229 of the NIRC of 1997, as amended.

Contrary to petitioner's case, the excise taxes it allegedly advanced was made in accordance with the provisions of the NIRC and its implementing regulations. It is specifically provided under RR 03-08, which requires among others, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, **<u>to pay the excise tax</u>** on every removal thereof from the place of production even if intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies, **<u>subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment</u>**.

Consequently, in view of the patent disparity of the factual premises that triggered the advance payment of income tax by PNB as contrasted to that of petitioner, the application of the doctrine laid down in the PNB case cannot be justified in this case.

In the PNB case, the Supreme Court, citing *Citibank, N.A. vs. Court of Appeals* and *Commissioner of Internal Revenue vs. TMX Sales, Inc.* distinguished the advance tax payment as requested by the President Aquino from the concept of withholding and remittance of income tax and quarterly payment of income tax, *viz*:

> "The instant case ought to be distinguished from a situation where, owing to net losses suffered during a taxable year, a corporation was also unable to apply to its income tax liability taxes which the law requires to be withheld and remitted. In the latter instance, such creditable withholding taxes, albeit also legally collected, are in the nature of erroneously collected taxes which entitled the corporate taxpayer to a refund under Section 230 of the Tax Code. So it is that in Citibank, N.A. vs. Court of Appeals, we held:

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> The taxes thus withheld and remitted are provisional in nature. We repeat: five percent of the rental income withheld and remitted to the BIR pursuant to Rev. Reg. No. 13-78 is, unlike the withholding of final taxes on passive incomes, a creditable withholding tax; that is, creditable against income tax liability if any, for that taxable year.
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> In Commissioner of Internal Revenue vs. TMX Sales, Inc., this Court ruled that the payments of quarterly income taxes (per Section 68, NIRC) should be considered mere installments on the annual tax due. These quarterly tax payments ... should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. The same holds true in the case of the withholding of creditable tax at source. Withholding taxes are 'deposits' which are subject to adjustments at the proper time when the complete tax liability is determined.
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> In this case, the payments of the withholding taxes for 1979 and 1980 were creditable to the income tax liability, if any, of petitioner-bank, determined after the filing of the corporate income tax returns on April 15, 1980 and April 15, 1981. As petitioner posted net losses in its 1979 and 1980 returns. it was not liable for any income taxes. Consequently and clearly, the taxes withheld during the course of the taxable year, while collected legally under the afore cited revenue regulation, became untenable and took on the nature of erroneously collected taxes at the end of the taxable year." (Underscoring and additional boldfacing added)

Under the premises, the Citibank N.A. and TMX Sales, Inc., cases, in turn, declare that the two-year prescriptive

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period should be applied to claims for refund of excess withholding tax credits and overpaid quarterly income tax, as they partake the nature of erroneously collected taxes at the end of the taxable year. Similarly, petitioner's advance excise tax payment may be equated with withholding of income tax or quarterly payment of income tax considering that they are provided under the NIRC of 1997 and its implementing regulations.

When petitioner allegedly exported the goods it locally manufactured, said advance payment became erroneously collected, thus petitioner is entitled to claim a refund or credit of the excise taxes paid in advance. However, petitioner's entitlement to the refund is subject to it's compliance with the requirements set forth in Section 130(D) of the NIRC of 1997. We reiterate:

> *"SEC 130. Filing of Return and Payment of Excise Tax on Domestic Products. -*
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> xxx xxx xxx
>
> (D) Credit for Excise Tax on Goods Actually Exported. - When goods **locally produced or manufactured are removed and actually exported without returning to the Philippines**, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, **any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment**: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported." (Boldfacing supplied)

While it is true that the afore-quoted provision is silent on the period within which a claim for refund may be filed, nonetheless, the Court finds Sections 204 and 229 of the NIRC of 1997, as amended, applicable to refund of excise taxes that were paid in advance on locally manufactured products which were eventually exported. The fact that aforesaid provisions of the NIRC refer to erroneously collected taxes, it therefore necessarily includes excise tax, which, as in this case, are erroneously paid.

Relative thereto, the Supreme Court, in *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue*[8], held that:

> "Inasmuch as its liability for the payment of the excise taxes accrued immediately upon importation and prior to the removal of the petroleum products from the customs house, Chevron was bound to pay, and actually paid such taxes. **But the status of the petroleum products as exempt from the excise taxes would be confirmed only upon their sale to CDC in 2007** (or, for that matter, to any of the other entities or agencies listed in Section 135 of the NIRC). **Before then, Chevron did not have any legal basis to claim the tax refund or the tax credit as to the petroleum products**.
>
> Consequently, **the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed illegal and erroneous upon the sale of the petroleum products to CDC. Section 204 of the NIRC explicitly allowed Chevron as the statutory taxpayer to claim the refund or the credit of the excise taxes thereby paid**, xxx." (Boldfacing supplied)

Otherwise stated, in claiming a refund of excise taxes paid in advance for locally manufactured products which were subsequently exported, the two (2)-year period to file the administrative and judicial claims as provided in Sections 204 and 229 of the NIRC of 1997, as amended, applies since the excise taxes paid in advance have become illegally paid or erroneous.

Lastly, petitioner's stance that it has a period of six (6) years within which to initiate its claim for refund pursuant to the principle of *solutio indebiti* is bereft of merit.

[8] G.R. No. 210836, September 1, 2015.

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It is a long-standing principle in our legal system that no one should unjustly enrich himself at the expense of another[9]. This known principle of *solutio indebiti* is found in Articles 2142[10] and 2154[11] of the New Civil Code of the Philippines.

In the case of *Commissioner of Internal Revenue vs. Manila Electric Company*[12], the Supreme Court rejected the application of *solutio indebiti* to tax refund cases in the following manner:

> "In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: **(1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause**. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid." (Boldfacing supplied)

Applying the foregoing elements, the Court finds that the six-year prescriptive period under the principle of *solutio indebiti* is evidently inapplicable in the case at bar for the following reasons:

(a) Petitioner has a binding relation to pay the subject excise tax under RR No. 3-08; and

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[9] CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 198729-30, January 15, 2014.
[10] Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that **no one shall be unjustly enriched or benefited at the expense of another**.
[11] Art. 2154. If **something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises**.
[12] G.R. No. 181459, June 9, 2014.

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(b) The advance payment or deposit was not made through mistake but was made by petitioner in compliance with the said revenue regulations.

In the same vein, it bears stressing that the CIR's obligation to refund erroneously collected excise taxes is an obligation created by law, specifically by Section 130(D) of the NIRC of 1997, as amended. Articles 1138, 1144 and 1148 of the New Civil Code of the Philippines state:

> "**Art. 1139**. Actions prescribe by the mere lapse of time fixed by law."
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> xxx xxx xxx
>
> "**Art. 1144**. The following actions must be brought within ten years from the time the right of action accrues:
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> xxx xxx xxx
>
> (2) Upon an obligation created by law;"
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> xxx xxx xxx
>
> "**Article 1148**. The **limitations of action** mentioned in Articles 1140 to 1142, and **1144** to 1147 **are without prejudice to those specified in other parts of this Code, in the Code of Commerce, and in special laws**." (emphasis supplied)

Since the two-year prescriptive period is found in Sections 204 and 229 of the NIRC of 1997, as amended, which is a special law, the same should accordingly prevail over the prescriptive period provided under the New Civil Code of the Philippines.

Even though the Tax Code recognizes a taxpayer's right to claim the refund of excess or erroneous payments from the government, a taxpayer must prove not only its entitlement to a refund, but also its compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.[13]

Needless to say, this Court is enjoined to adhere to judicial precedents, such as the afore-mentioned cases. In *Commission on Higher Education vs. Dasig*[14], the Supreme Court ruled in this wise:

> " ... it is the duty of lower courts to obey the decisions of the Supreme Court and render obeisance to its status as the apex of the hierarchy of courts. **'A becoming modesty of inferior courts demands conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation**.' 'There is only one Supreme Court from whose decision all other courts should take their bearings,' so declared Justice J. B. L. Reyes." (Emphases supplied)

At this juncture, it must be pointed out that the right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise. For failure to comply with the statutory conditions, petitioner must therefore bear the consequences. It has lost its right to claim a refund by virtue of its own failure to observe the prescriptive period.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated 3 April 2018 and the Resolution dated 02 July 2018 rendered by the Second Division of this Court are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[13] Metropolitan Bank and Trust Co. vs. The Commissioner of Internal Revenue, G.R. No. 182582, April 17, 2017.
[14] G.R. No. 172776, December 17, 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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 En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice