REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SAN MIGUEL BREWERY, INC.,
Respondent.

CTA *EB* NO. 2625
(CTA Case No. 10000)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:

JAN 0 8 2024

x- -x

RESOLUTION

CUI-DAVID, J.:

For resolution is petitioner's *Motion for Reconsideration (Re: Decision promulgated on 2 August 2023)* filed on August 23, 2023, with respondent's *Comment on/Opposition to "Motion for Reconsideration....." dated August 16, 2023 of Commissioner of Internal Revenue* filed on September 26, 2023.

Petitioner assails the Decision dated August 2, 2023 (assailed Decision) with the following dispositive portion:

> **WHEREFORE**, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated September 22, 2021, and the Resolution dated April 28, 2022, of the Court's Third Division in CTA Case No. 10000 are **AFFIRMED WITH MODIFICATION**, thus:

x---x

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**.

For being contrary to Section 143 of the NIRC of 1997, as last amended by RA 10351, the following portions of Annex "A-1" of RMC 90-2012, prescribing the applicable excise tax rates per liter, are declared invalid, and have no force and effect, *viz.*:

... ...

Moreover, also for being contrary to Section 143 of the NIRC of 1997, as last amended by RA 10351, the portion of Section 5 of RR 17-2012, which states that "[s]*tarting January 1, 2014, the applicable tax rate shall be increase*[d] *by four percent (4%) annually*" is likewise declared as invalid and has no force and effect of law.

... ...

Lastly, Respondent [CIR] is **ORDERED TO REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** in favor of Petitioner [SMBI] in the amount of ₱122,620,732.71, representing erroneously, excessively, and/or illegally collected excise taxes due on the removals of "*San Mig Light*" and "*Other Beer Products*" for the period covering January 1, 2017 to December 31, 2017, **WITHOUT LEGAL INTEREST THEREON**.

SO ORDERED.

Petitioner argues that the Court in Division erred in ruling that it has jurisdiction over the nullification of Revenue Memorandum Circular (RMC) No. 90-2012[1] and the assailed provision in Revenue Regulations (RR) No. 17-2012[2] under Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, and Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA). Petitioner explains that RMC No. 90-2012 and RR No. 17-2012 were issued in accordance with his rule-making or quasi-legislative power to interpret tax laws under Section 4 of the National Internal Revenue Code (NIRC) of 1997,

[1] Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes", December 27, 2012.

[2] Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations, December 21, 2012.

as amended. Thus, the said issuances are appealable to the Secretary of Finance (SOF) and then eventually to the regular courts. Petitioner adds that a collateral attack on presumably valid administrative issuance is not allowed.

Petitioner further argues that even assuming that this Court may take cognizance of cases involving the validity or constitutionality of BIR issuances, this Court should dismiss the case due to respondent's non-exhaustion of administrative remedies since petitioner was denied the opportunity to review the claim for refund considering that respondent filed a judicial claim fifteen (15) days after it filed its administrative claim.

Petitioner maintains that even assuming that this Court has jurisdiction and/or respondent has a cause of action, respondent is not entitled to a tax refund because there was no erroneous or illegal collection of excise taxes since there was no reclassification of San Miguel Light as it has always been classified as a variant of an existing brand.

Lastly, petitioner claims that claims for refund are construed strictly against the taxpayer and in favor of the government.

For its part, respondent counters that the arguments raised by petitioner on alleged lack of jurisdiction of the Court, alleged collateral attack, denial of opportunity to review respondent's claim for refund, failure to exhaust administrative remedies, reclassification of San Miguel Light as a variant, and strict construction of refund claims, are mere verbatim reproduction of the same arguments outlined in his Petition for Review, which had already been taken into account by the Court when it rendered the assailed Decision.

Thus, respondent argues that petitioner offers nothing new that may serve as the basis for the Court to reconsider the assailed Decision.

The instant motion is without merit.

As correctly observed by respondent, the arguments raised by petitioner in his motion had already been considered by the Court in Division and by the Court *En Banc*. Unfortunately, petitioner failed to put forth any compelling reason to modify the findings of the Court.

By way of emphasis, the CTA has jurisdiction to pass upon the constitutionality or validity of a tax law, regulation, or administrative issuance when raised by the taxpayer as a *direct challenge* or even as a *defense* in disputing or contesting an assessment or claiming a refund.[3] Respondent did not violate the doctrine of exhaustion of administrative remedies when it filed its judicial claim without awaiting petitioner's action on its administrative claim, notwithstanding that the claims were filed only fifteen (15) days apart since Section 229 of the NIRC only requires that an administrative claim be filed first.[4] Finally, respondent was able to prove its entitlement to a refund or issuance of a tax credit certificate for ₱122,620,732.71; hence, it overcame the principle that tax refunds are construed *strictissimi juris* against the taxpayer.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (Re: Decision promulgated on 2 August 2023)* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[3] *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 & 218924, January 15, 2020.
[4] *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice