**REPUBLIC OF THE PHILIPPINES**
# Court of Tax Appeals
**QUEZON CITY**

## *SECOND DIVISION*

SAN MIGUEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7487

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

**Promulgated:**

SEP 2 6 2007

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# DECISION

UY, J.:

Before Us is a Petition for Review filed under Section 11 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, filed by petitioner San Miguel Corporation against respondent Commissioner of Internal Revenue, seeking for the refund or issuance of a Tax Credit Certificate (TCC) in the amount of P58,213,294.92 representing allegedly erroneously paid excise tax for the period from June 1, 2004 to December 31, 2004.

## THE FACTS

As culled from the records and as stipulated by the parties in their Joint Stipulation of Facts and Issues,[1] these are the facts of the case.

Petitioner, San Miguel Corporation (SMC), is a domestic corporation duly organized and existing under Philippine laws, with principal office or place of business located at No. 40 San Miguel Avenue, Ortigas Center, Mandaluyong City. It is principally a manufacturer of fermented liquors for sale in the domestic and export markets. One of its products is the beer brand *"Red Horse"* that comes in 1 liter and 500 ml. bottles.

On the other hand, respondent, Commissioner of Internal Revenue (CIR), is the head of the Bureau of Internal Revenue (BIR) and is vested by law with the power to decide, approve, and grant claims for refund or tax credit of internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 1, 1997, Republic Act No. 8240 (otherwise known as the Tax Reform Act of 1997), took effect whereby a shift from the ad valorem tax system to the specific tax system was made, subjecting beer to specific tax under Section 143 of the NIRC, as amended, pertinent portions of Section 143 are quoted hereunder, as follows:

> "SEC. 143. Fermented Liquor. -- There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter, and other fermented liquors except *tuba, basi, tapuy* and similar domestic fermented liquors in accordance with the following schedule:
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> **(a) If the net retail price (excluding the excise tax and value-added tax) per liter of volume capacity is less**

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[1] Docket, pp. 141-146.

**than Fourteen pesos and fifty centavos (P14.50), the tax shall be Six pesos and fifteen centavos (P6.15) per liter;**

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fourteen pesos and fifty centavos (P14.50) up to Twenty-two pesos (P22.00), the tax shall be Nine pesos and fifteen centavos (P9.15) per liter;

(c) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Twenty-two pesos (P22.00), the tax shall be Twelve pesos and fifteen centavos (P12.50) per liter.

Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.

Fermented liquor which are brewed and sold at micro-breweries or small establishments such as pubs and restaurants shall be subject to the rate in paragraph (c) hereof.

**The excise tax from any brand of fermented liquor within the next three (3) years from the effectivity of Republic Act No. 8240 shall not be lower than the tax which was due from each brand on October 1, 1996.**

**The rates of excise tax on fermented liquor under paragraphs (a), (b) and (c) hereof shall be increased by twelve percent (12%) on January 1, 2000."** *(Emphasis Ours)*

In order to implement the provision on the twelve percent (12%) increase of excise tax on, among others, fermented liquors by January 1, 2000, the Secretary of Finance, upon recommendation by the CIR, issued Revenue Regulations No. 17-99 (RR 17-99), dated December 16, 1999, providing an increase in the applicable tax rates on fermented liquor as follows:[2]

[2] Paragraph 4, Joint Stipulations (Of Facts and Issues), Docket, p. 143.

| SECTION | DESCRIPTION OF ARTICLES | PRESENT SPECIFIC TAX RATE PRIOR TO 1 JAN. 2000 | NEW SPECIFIC TAX RATES EFFECTIVE 1 JAN 2000 |
|---|---|---|---|
| 143 | FERMENTED LIQUORS | | |
| | (a) Net Retail Price per liter (excluding VAT & Excise) is less than P14.50 | P6.15/liter | P6.89/liter |
| | (b) Net Retail Price per liter (excluding VAT & Excise) is P14.50 up to P22.00 | P9.15/liter | P10.25/liter |
| | (c) Net Retail Price per liter (excluding VAT & Excise) is more than P22.50 | P12.15/liter | P13.61/liter |

The last paragraph of Section 1 of RR 17-99 also provides:

"PROVIDED, however, **that the new specific tax rate** for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors **shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.**" *(Emphasis Ours)*

Pursuant to RR 17-99, for the period covering June 1, 2004 to December 31, 2004, petitioner paid excise taxes for the total removals (323,407,194 liters) from its plants of Red Horse beer brand at the specific rate of P7.07 per liter, which is the specific tax rate being paid by petitioner prior to January 1, 2000. The total excise tax paid by petitioner amounted to P2,286,488,861.58, computed as follows:

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|---|---|
| Total Removal per GL [Liter] | 323,407,194 |
| Tax Rate Used | x 7.07 |
| Tax Paid | **P2,286,488,861.58** |

On May 22, 2006, petitioner filed with respondent a Letter Claim for refund or tax credit for the amount of P60,778,519.56, representing allegedly erroneous and excess excise tax payments on the removal of its Red Horse heer brand from May 22, 2004 to December 31, 2004, in accordance with Section 204(C) of the NIRC of 1997, as amended. However, the claim was reduced to P58,213,294.92 due to prescription.[3]

For failure of respondent to act on petitioner's claim, it filed the instant petition on June 1, 2006, in accordance with Section 229, in relation to Section 204(C) of the NIRC, as amended.

On August 22, 2006, respondent filed his Answer,[4] interposing the following Special and Affirmative Defenses:

> "4. Petitioner has no cause of action against respondent. Petitioner itself admits in paragraph 4.5 of its Petition that it pays excise taxes at P7.07 per liter of removal of its product Red Horse in compliance with Revenue Regulations No. 17-99. Petitioner's payment of excise taxes is in accordance with law. There is, therefore, no erroneously paid taxes that petitioner may claim for refund within two years from its payment.
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> 5. Granting *por arguendo* that petitioner has a cause of action against respondent, the instant petition is prematurely filed. As stated in paragraph 6.4 of the Petition, the cases questioning the validity of Revenue Regulations Nos. 17-99 are still pending before the courts. It is only when the Supreme Court finally rules that Revenue Regulations Nos. 17-99 is invalid that petitioner's right to claim for refund of the excise taxes paid may be determined by this Honorable Court."

The issues having been joined, pre-trial was held on November 23, 2006; and thereafter, both parties submitted their Joint Stipulation (Of Facts and Issues) on February 15, 2007, and duly approved in the Resolution dated February 27, 2007.[5]

During the scheduled initial presentation of petitioner's evidence on February 28, 2007, both parties' counsel manifested that they are not

[3] Memorandum for Commissioner Jose Mario C. Buñag, BIR Records, p. 48.
[4] Docket, pp. 52-56.
[5] Ibid., at p. 148.

presenting any evidence; and upon their motion, the Court ordered them to file their respective Memorandum within thirty (30) days therefrom. Petitioner filed its Memorandum on March 29, 2007; while respondent failed to do so. Subsequently, this case was deemed submitted for decision in the Resolution dated April 19, 2007[6]. Hence, this Decision.

## ISSUES

In their Joint Stipulations (Of Facts and Issues), petitioner and respondent interposed the following issues for the consideration of this Court:

> 1. Whether or not the last paragraph of Section 1 of RR 17-99 is in accord with the pertinent provisions of RA 8240, which provisions have been incorporated in Section 143 of the NIRC of 1997, as amended; and
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> 2. Whether or not petitioner is entitled to its claim for refund or issuance of a TCC in the amount of P58,213,294.92 representing allegedly overpaid excise taxes for the removals from its plants of its Red Horse beer brand from June 1, 2004 to December 31, 2004.[7]

These issues are inter-related. The first issue is a legal issue pertaining to the validity of the provisions mentioned in the last paragraph of Section 1 of RR 17-99. The answer to the second issue is dependent upon how the first issue shall be resolved.

## THE COURT'S RULING

Before proceeding to discuss the defined issues in this petition, We first look into the timeliness of the filing of both petitioner's administrative claim and the instant judicial claim.

Pursuant to Section 229, in relation to Section 204, of the NIRC of 1997, as amended, no suit or proceeding in Court for the refund of

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[6] Id., at p. 171.
[7] Id., at p. 146.

erroneously or illegally assessed or collected national revenue taxes 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.

In this connection, Section 130 (A)(2) of the same Code provides that the return should be filed and the excise tax be paid by the manufacturer or producer before removal of domestic products from the place of production. Corollary thereto, the reckoning of the two-year period shall be from the date of payment of the tax and prior to the removal of the subject products from the place of production. Thus, petitioner has a period of two (2) years from the date of its payment or remittance of the subject excise tax within which to file its claim for refund or issuance of a TCC.

Applying the applicable provisions of law in the present case, as already stipulated by both parties and based on the records of this case, petitioner remitted its payments daily for the subject excise tax from June 1, 2004 to December 31, 2004. Hence, petitioner had until June 1, 2006 to file both its administrative and judicial claims for refund. Petitioner filed its administrative claim for refund on May 22, 2006 and the instant petition for review on June 1, 2006, both of which are well within the two-year prescriptive period.

We now proceed to the main issues in this case.

The issue on the validity of the last paragraph of Section 1 of RR 17-99 is not of first impression as this Court had already thoroughly scrutinized RR 17-99 in ***Fortune Tobacco Corporation vs. Commissioner of Internal***

***Revenue***[8] and as likewise pronounced in another similar case also of the same title and docketed as CTA Case No. 6612.[9] In said cases, this Court found that the subject provision in Section 1 of RR 17-99 is inconsistent with RA 8240 which it seeks to interpret, because in effect, the former increases the tax rate fixed by the latter, in clear derogation of the respondent Commissioner's authority to issue interpretative rules. These cases were affirmed on appeal before the Court of Appeals, and We adopt and quote the discussions elucidated by the appellate court, wherein it said that:

> "The disputed provision of Revenue Regulation No. 17-99 has the inevitable effect of increasing the tax rate fixed by Republic Act No. 8240, because it makes as basis the rate imposed at the end of the three-year transition period when the shift from the former ad valorem tax scheme to the specific tax scheme is to be undertaken, to wit:
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> > 'The new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.'
>
> This is not the situation contemplated by Republic Act No. 8240, now Section 145 of the National Internal Revenue Code:
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> > 'The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of RA 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996. Provided, however, that in cases where the excise tax rates imposed in paragraphs (1) (2) (3) and (4) hereinabove will result in an increase in the excise tax of more than 70%, for a brand of cigarette, the increase shall take effect in two tranches: 50% of the increase shall be effective in 1997 and 100% of the increase shall be effective in 1998.

[8] CTA Case Nos. 6365 and 6383, both promulgated on October 21, 2002.
[9] Decision dated December 4, 2003 entitled Fortune Tobacco Corporation vs. Commissioner of Internal Revenue.

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**The rates of excise tax on cigars and cigarettes under paragraphs 1, 2, 3 and 4 hereof, shall be increased by 12% on January 1, 2000.'** (emphasis supplied)

It can be gleaned from the above-quoted provisions of Republic Act No. 8240 that the target of the government at the end of the three-year transition period is to effect a 12% tax rate increase using as tax base the figures provided in Section 145, subsection C, paragraphs (1), (2), (3) and (4) of Republic 8424 otherwise known as the Tax Reform Act of 1997, in lieu of the tax rate being imposed prior to January 1, 2000, which is the rate imposed during the transition period of three years. At most, Section 145 of the Tax Code imports that the excise tax shall not be lower than the tax which is due from each brand on October 1, 1996, but which qualification is not present as to the increase by 12% on January 1, 2000 under paragraphs (1), (2), (3), and (4) of the said section.

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Thus, in foreseeing an increase in the tax rate in consonance with the shift from ad valorem to specific tax, the legislature contemplated two periods: the transition period of three years fixing for the purpose the applicable tax rate; and the rate applicable after its expiration. At the end of the transition period which is 1999, the legislature meant that the rate to be applicable shall be that fixed under the last paragraph, which is the rate provided under paragraphs (1), (2), (3) and (4), increased by twelve per cent (12%) in lieu of the rate fixed during the transition period. This is the only conclusion that may be reached when the said provision is read in harmony with first sentence of the disputed paragraph of Section 145 — that **'the excise tax from any brand of cigarettes within the next three (3) years from the effectivity of RA 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996.'** This, to Our mind, is the intent of the legislature in enacting RA 8240.

At this juncture, We reiterate the oft-repeated rule that administrative regulations must be in harmony with the provisions of the law. In case of discrepancy between the basic law which is Republic Act 8240 and Revenue Regulation 17-99, an implementing rule or regulation, the former prevails.

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> In the case at bar, Revenue Regulation No. 17-99 inserted into Republic Act 8240 a provision which is not there — either in letter or in spirit. It created a clear inconsistency with the provision of Section 145 of the 1997 Tax Reform Act, as the said law did not contemplate the increase in tax rate as understood by the petitioner. Being tantamount to an act of administrative legislation, We agree with the CTA's conclusion that the assailed provision of Revenue Regulation 17-99, ought to be nullified."[10]

In the light of the foregoing discussions, We rule that respondent went beyond the legal parameters defining the boundaries of its authority when it issued RR 17-99. It bears stressing that RR 17-99 is an interpretative rule and as such it is designed to provide guidelines to the law which the administrative agency is in charge of enforcing, RA 8240 in this case. Accordingly, the disputed provision of RR 17-99 has fallen short of a valid and authorized administrative issuance.

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. However, when the administrative rule goes beyond in merely providing for the means that can facilitate or render least cumbersome the implementation of the law but rather substantially adds to or increases the burden of those governed, it behooves the agency to show the taxpayers that it is within the confines of the law which it seeks to interpret.[11] Administrative agencies may

[10] Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, CA GR. SP Nos. 80675 and 83165, September 28, 2004.
[11] Commissioner of Internal Revenue vs. Court of Appeals, 261 SCRA 236 (1996).

not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers.[12]

A reading of Section 143 of the NIRC of 1997, as amended, clearly shows that the law contemplated two periods with applicable excise tax rate for each one: the first is the three-year transition period beginning January 1, 1997, the date when RA 8240 took effect, until December 31, 2000; and the second is the period thereafter. During the transition period, ***the excise tax rate shall not be lower than the tax rate which is due from each brand on October 1, 1996***. After the transitory period, ***the excise tax rate shall be the figures provided under paragraphs (a), (b) and (c) of Section 143 of the NIRC of 1997, as amended, but increased by 12%, regardless of whether such rate is lower or higher than the tax rate that is actually being paid prior to January 1, 2000***.

On the other hand, an analysis of the last paragraph of RR 17-99 would reveal that it created a new tax rate or a new requirement when it provided that "***the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000***". This is indeed a situation not intended by Section 143 of the NIRC of 1997, as amended, both in letter and in spirit. Rather, it is a clear contradiction to the import of the law.

This Court is mindful of the authority of the Secretary of Finance to promulgate tax rules and regulations in order to implement and effectively enforce the provisions of the NIRC of 1997, as amended. However, equally

[12] Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, supra.

important is the well settled rule that administrative regulations must be in harmony with the provisions of the law. In case of discrepancy between the basic law and the implementing rule or regulation, the former prevails.[13] Rules and regulations must not override, but must remain constant and in harmony with the law they seek to apply and implement. They must neither supplant nor modify the law.[14]

Consequently, the net retail price per liter (excluding VAT and Excise) of petitioner's Red Horse beer brand is less than P14.50,[15] the applicable tax therefore would be P6.89, the figure arrived at after adding 12% to P6.15, pursuant to Section 143(a) of the NIRC of 1997, as amended.

Although the Court is not unaware that tax refunds are in the nature of a tax exemption and should be construed *strictissimi juris* against the taxpayer,[16] it is however convinced, that petitioner was able to establish its claim for refund or issuance of a TCC in its favor based on the applicable legal provisions and jurisprudence mentioned earlier.

**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of FIFTY EIGHT MILLION TWO HUNDRED THIRTEEN THOUSAND TWO HUNDRED NINETY FOUR and 92/100 (P58,213,294.92) PESOS,

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[13] Philippine Petroleum Corp. vs. Municipality of Pilila, Rizal, 198 SCRA 82 (1991) citing Shell Philippines, Inc. vs. Central Bank of the Philippines, 162 SCRA 628 (1988).
[14] Commissioner of Internal Revenue vs. Court of Appeals, 240 SCRA 368 (1995); Republic vs. Court of Appeals, 324 SCRA 237 (2000).
[15] Paragraph 8, Joint Stipulations (On Facts and Issues), Docket, p. 144.
[16] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc. and Court of Appeals, 309 SCRA 87(1999); Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332 (1995); Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corporation and the Court of Tax Appeals, 204 SCRA 377 (1991).

representing erroneously paid excise tax on the removals of its Red Horse beer brand from June 1, 2004 to December 31, 2004, computed as follows:

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|---|---|
| Excise Tax paid at P7.07 | P2,286,488,861.58 |
| Excise Tax that should have been paid at P6.89 | 2,228,275,566.66 |
| Erroneously paid Excise Tax | **P 58,213,294.92** |

**SO ORDERED.**

ERLINDA P. UY
Associate Justice

WE CONCUR:

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## 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.**
Associate Justice
Chairperson