REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SAN MIGUEL BREWERY INC., Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9513

Members:

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

Promulgated:

SEP 17 2019 4:00 pm

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RESOLUTION

For resolution of the Court are the following:

(1) Petitioner's **Motion for Partial New Trial** filed on June 26, 2019; and

(2) Respondent's **Motion for Partial Reconsideration Re: Decision dated 13 June 2019** filed on July 1, 2019.

For easy reference, the dispositive portion of the assailed Decision reads:

> "WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of ₱44,474,387.74. Accordingly, respondent is **ORDERED** to **REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner for the erroneously, excessively, and/or

illegally collected excise taxes on its San Mig Light and other beer products in bottles and cans for the taxable year 2015.

SO ORDERED."

In its motion, petitioner seeks for the partial new trial of this case on the ground of excusable negligence and mistake. Apparently, it failed to present part of its evidence, *i.e.*, Sworn Declarations, allegedly due to time constraints and due to the voluminous documents involved in this case.

On the other hand, respondent moves for the partial reconsideration of this case based on the following grounds: (1) The Court has no jurisdiction over the case; and (2) Petitioner is not entitled to its refund claim.

The Court shall first resolve the issues raised by respondent.

Initially, the Court observes that respondent failed to present any new argument which was not addressed in the assailed Decision. At any rate, the Court deems it proper to reiterate the foregoing discussion.

The CTA has jurisdiction in this case pursuant to the ruling of the Supreme Court in the *Philam* case

As previously discussed in the assailed Decision, the Court, under the *Philam* case, can rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based. Thus:

"Meanwhile, the pronouncement of the Supreme Court in the case of *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue* is instructive as to what matters may be adjudicated by this Court in cases falling within its exclusive appellate jurisdiction. The Supreme Court said:

> 'In the recent case of *City of Manila v. Grecia-Cuerdo*, the Court *en banc* has ruled that the CTA now has the power of certiorari in cases within its appellate jurisdiction. To elucidate:
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> xxx xxx xxx
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> > On the strength of the above constitutional provisions, it can be fairly interpreted that **<u>the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction</u> on the part of RTC in issuing an interlocutory order <u>in cases falling within the exclusive appellate jurisdiction of the tax court</u>. It, thus, follows that <u>the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases</u>.**
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> xxx xxx xxx
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> Evidently, *City of Manila* can be considered as a departure from *Ursal* in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes *British American Tobacco* to the effect that it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. **Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.**'

> Under the above-quoted jurisprudence, this Court has the power of *certiorari* in cases within its appellate jurisdiction. The Supreme Court then concludes that this Court can rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.
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> While the *Philam* case involves an assessment, this Court may apply the above-quoted doctrine to cases that involve claims for refund, as in this case, the same being within its exclusive appellate jurisdiction. In other words, in order to fully adjudicate the issues involved in this case, the Court is also tasked to determine whether the uniform imposition of ₱22.25 excise taxes on petitioner's subject beer products is correct."*(Citations omitted)*

Considering the ruling of the Supreme Court *vis-à-vis* the jurisdiction of this Court, the Court sees no cogent reason to disturb its previous ruling that it is within its power to determine whether the uniform imposition of ₱22.25 excise taxes on petitioner's subject beer products is correct.

Section 5 of RR No. 17-2012 applies only in instances of downward reclassification of fermented liquors

There is no downward reclassification of petitioner's beer products in this case

Still, respondent insists that the uniform imposition of ₱22.25 excise taxes on petitioner's subject beer products was proper. In this regard, the Court reiterates the foregoing findings:

> "The 'no downward reclassification' provision under RA No. 10351 and under Section 5 of RR No. 17-2012, clearly contemplate a situation where there is downward reclassification of fermented liquors for the purpose of reducing imposable taxes. Stated otherwise, when there

is no downward reclassification, said provisions have no operative effect.

In *Commissioner of Internal Revenue v. Philippine-Aluminum Wheels, Inc.*, the Supreme Court reiterated the hornbook doctrine that 'in case there is a discrepancy between the law and a regulation issued to implement the law, the law prevails because the rule or regulation cannot go beyond the terms and provisions of the law'.

In this case, the Court finds that there is no basis for imposing the additional four percent (4%) excise tax as explained above. At the time of effectivity of RA No. 10351 as well as at the time when petitioner's cause of action arose, no downward reclassification, *i.e.*, from Tier 2 to Tier 1, of petitioner's beer products was made. Therefore, the BIR has no basis to impose additional excise taxes under Annex A-1 of RMC No. 90-2012.

Furthermore, the BIR automatically imposed the automatic four percent (4%) increase mentioned in RA No. 10351 without, however, observing the parameters provided for by law, as follows: (1) Effective January 1, 2018 and every year thereafter, the tax rate may be increased through revenue regulations issued by the Secretary of Finance; or (2) In case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this Section, the four percent (4%) increase shah apply to their respective applicable tax rates.

Thus, it is obvious that at the time when petitioner's cause of action arose in 2015, the first (1^{st}) parameter mentioned above was impossible to satisfy, *i.e.*, the same is effective on January 1, 2018. On the other hand and as it was discussed eariler, respondent could not have imposed the four percent (4%) increase without factual basis, *i.e.*, downward reclassification of the subject products to reduce the tax payable. Hence, the second (2^{nd}) parameter imposed by law was likewise unsatisfied.

Finally, it is worth mentioning that RA No. 10351 deleted the previous classifications of fermented liquors

> introduced by RA No. 9334, *i.e.*, variants of existing brands and new brands. Evidently, the intent of our legislature in enacting RA No. 10351 is to simplify our taxation system, so that fermented liquors shall be classified only according to their net retail prices under Tier 1 or Tier 2, as discussed above. Thus, whether petitioner's beer products are variants of existing brands or new brands under RA No. 9334 are inconsequential in determining the applicable tax rates under RA No. 10351.
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> In fact, RA No. 10351 explicitly states that all fermented liquors existing in the market at the time of its effectivity shall be classified according to the net retail prices and the tax rates provided based on the latest price survey of the fermented liquors conducted by the BIR. Hence, considering that petitioner's cause of action arose in 2015, downward reclassifications should be understood under the simplified context introduced by RA No. 10351, *i.e.*, either Tier 1 or Tier 2, and should not be based on the previous classifications mentioned in RA No. 9334, *i.e.*, variants of existing brands and new brands."

In this case, there is no showing that there was any downward reclassification of petitioner's beer products from Tier 1 to Tier 2, or vice versa, which could merit the automatic four percent (4%) increase mentioned in RA No. 10351. Again, the amendment obviously deleted the previous classifications under the old law, *i.e.*, new brand or variant of an existing brand, and simplified it to net retail prices under Tier 1 or Tier 2. Thus, the Court finds no merit to respondent's position which is based on an old and already amended law.

Considering the foregoing, the Court sees no reason to deviate from its previous ruling. Hence, the denial of respondent instant motion is proper.

Finally, the Court shall resolve petitioner's Motion for Partial New Trial.

In *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*,[1] the petitioner therein failed to present invoices,

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[1] G.R. No. 141973, June 28, 2005.

among others, to substantiate its claims. Thus, the CTA was constrained to deny its refund claim. Consequently, petitioner moved for the new trial of its case. Ruling in favor of petitioner, the Supreme Court held that:

> "In this case, there is no dispute that petitioner is entitled to exemption from the payment of excise taxes by virtue of its being an EPZA registered enterprise. As stated by the CTA, the only thing left to be determined is whether or not petitioner is entitled to the *amount* claimed for refund.
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> Petitioner's entire claim for refund, however, was denied for petitioner's failure to present invoices allegedly in violation of CTA Circular No. 1-95. But nowhere in said Circular is it stated that invoices are *required* to be presented in claiming refunds. What the Circular states is that:
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> xxx xxx xxx
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> The CTA also could not deny that in its previous decisions involving petitioner's claims for refund, invoices were not deemed necessary to grant such claims. It merely said that in said decisions, CTA Circular No. 1-95 was not yet in effect. Since CTA Circular No. 1-95 did not make it mandatory to present invoices, coupled with the previous cases of petitioner where the certifications issued by Petron sufficed, it is understandable that petitioner did not think it necessary to present invoices and the accompanying certifications when it filed the present case for refund before the CTA.
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> Even then, petitioner, in its motion for reconsideration, asked the CTA for an *opportunity* to present invoices to substantiate its claims. But this was denied by the CTA explaining that its prayer to present additional evidence partakes of the nature of a motion for new trial under Section 1, Rule 37 of the Rules of Court. The CTA held that under such rule, failure to present evidence already existing at the time of trial does not warrant the grant of a new trial because such evidence is not newly discovered but is more in the nature of forgotten evidence which is not excusable.

On this point, we agree with the dissenting opinion of CTA Presiding Judge Ernesto D. Acosta who stated that:

> The reason advanced by the Petitioner...that they thought the presentation by the Manager of Petron Corporation of a duly notarized certification (supporting the schedules of invoices), coupled with testimonies of witness, Mrs. Sylvia Osorio of Petron Corporation, are enough to prove their case... could easily fall under the phrase 'mistake or excusable negligence' as a ground for new trial under Sec. 1(a) of Rule 37 and not under the phrase 'newly discovered evidence' as stated in our said resolution. The denial of this motion is too harsh considering that this case is only civil in nature, govern (sic) merely by the rule on preponderance of evidence.

xxx xxx xxx

It is true that petitioner could not move for new trial on the basis of newly discovered evidence xxx. This does not mean however, that petitioner is altogether barred from having a new trial. As pointed out by Judge Acosta, the reasons put forth by petitioner could fall under mistake or excusable negligence.

The 'mistake' that is allowable in Rule 37 is one which ordinary prudence could not have guarded against. Negligence to be 'excusable' must also be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired. The test of excusable negligence is whether a party has acted with ordinary prudence while transacting important business.

In this case, it cannot be said that petitioner did not act with ordinary prudence in claiming its refund with the CTA, in light of its previous cases with the CTA which did not require invoices and the non-mandatory nature of CTA Circular No. 1-95."

Unfortunately, the facts of the above-cited case are not on all fours with the facts of this case.

First, Section 7 of RR No. 17-2012 is categorical as to the required submission of sworn statement, thus:

> "SEC. 7. *Submission of Sworn Statement.* - Every local manufacturer or importer of alcohol and tobacco products shall a [sic] **duly notarized manufacturer's or importer's sworn statement** for alcohol or tobacco product showing, among others, the following information:
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> (a) Name, address, TIN and assessment number of the manufacturer or importer;
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> (b) Complete root name of the brand as well as the complete brand name with modifiers, if any;
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> (c) Complete specifications of the brand detailing the specific measurements, weights, manner of packaging, etc.;
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> (d) Name(s) of the region(s) where the brand is/are to be marketed;
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> (e) Wholesale price per case, gross and net of VAT and excise tax;
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> (f) Suggested retail price, gross and net of VAT and excise tax, per pack or per bottle, as the case may be;
>
> (g) Detailed production/importation costs and all other expenses incurred or to be incurred until the product is finally sold *(e.g.,* materials, labor, overhead, selling and administrative expenses) per case;
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> (h) Applicable rate of excise tax per unit of measure or value, as the case may be; and
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> *(i)* Corresponding excise and value-added taxes per case."*(Emphasis supplied)*

In the *Fertilizer* case, the CTA, in its previous rulings, did not require the presentation of invoices in refund claims, which led the petitioner therein to believe that CTA Circular No. 1-95 is non-mandatory in nature. In this case, however, there is no good faith reliance of such nature due to the categorical requirement of Section 7 of RR No. 17-2012.

Finally, the reasons advanced by petitioner do not fall under the definition of mistake or excusable neglect. Had petitioner exercised ordinary diligence and prudence in preparing the evidence in support of its claim, it could not have failed to comply with the categorical requirement laid down under Section 7 of RR No. 17-2012.

Considering the foregoing, the Court cannot likewise grant petitioner's plea for partial new trial. Hence, the denial of its motion is likewise in order.

In sum, both parties failed to convince the Court that their respective positions are meritorious. Petitioner failed to prove that its failure to present evidence was due to excusable negligence or mistake. On the other hand, respondent merely rehashed his arguments which were already addressed by the Court in the assailed Decision. As such, the Court is constrained to deny the subject motions.

WHEREFORE, petitioner's **Motion for Partial New Trial** and respondent's **Motion for Partial Reconsideration Re: Decision dated 13 June 2019** are both **DENIED**, for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.	**CATHERINE T. MANAHAN**
Associate Justice	Associate Justice