REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SAN MIGUEL BREWERY INC., *Petitioner,*	**CTA CASE NO. 10223**
	Members:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 09 2023 2:11 pm

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RESOLUTION

CUI-DAVID, J.:

For the resolution of this Court is respondent's *Motion for Reconsideration [Decision dated 5 July 2023]* posted on July 25, 2023, with petitioner's *Opposition to Respondent's "Motion for Reconsideration..... dated July 25, 2023)* filed on August 22, 2023.

Respondent's *Motion for Reconsideration* prays that the Decision dated July 5, 2023 (assailed Decision), with the following dispositive portion, be reversed and set aside:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED**.
>
> For being contrary to Section 143 of the NIRC of 1997, as amended by RA No. 10351, the following portions of Annex "A-1" of RMC No. 90-2012, prescribing the applicable excise tax rates per liter of fermented liquors, are declared invalid, and have no force and effect, *viz*:
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> ... ...
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> Also, the proviso in Section 5 of RR No. 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 is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱146,874,555.07**, without legal interest, representing erroneously, excessively, and/or illegally collected excise taxes due on the removals of "San Mig Light" in can, in bottle and kegs, "San Miguel Premium All Malt Beer," in bottle and in can, "San Miguel Pale Pilsen" in can, "Super Dry" in can, "Red Horse" in can, "San Mig Zero" in bottle, "San Miguel Flavored Beer-Apple" in bottle, and San Miguel Flavored-Lemon" in bottle for the period covering January 1, 2018 to December 31, 2018.
>
> **SO ORDERED.**

Respondent argues that the Court erred in assuming jurisdiction over the case as it involves the validity or constitutionality of the BIR issuances, which the regular courts should take cognizance of. Respondent claims that petitioner failed to observe the doctrine of exhaustion of administrative remedies when it filed the instant petition as it did not appeal with the Secretary of Finance. Respondent maintains that there was no erroneous or illegal collection of excise taxes because there was no reclassification of San Mig Light because it has always been classified as a variant of an existing brand. Lastly, claims for refund are construed strictly against the taxpayer and in favor of the government.

Petitioner opposes respondent's arguments by raising that the same are mere verbatim reproductions of the arguments already presented in his Answer and Memorandum, which the Court had already considered in the assailed Decision.

Indeed, the arguments raised by respondent have all been passed upon and pronounced without merit by the Court.

Respondent's claim that the Court has no jurisdiction over the case involving the constitutionality and validity of the pertinent provisions of RMC No. 90-2012 and RR No. 17-2012 is baseless.

The landmark case of *Banco De Oro et al. v. Republic, et al.* (*Banco De Oro*)[1] settled the matter that the CTA has jurisdiction to rule on the constitutionality or validity of tax laws, regulations, and administrative issuances as Section 7[2] of the

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[1] G.R. No. 198756 (Resolution), August 16, 2016.
[2] SEC. 7. *Jurisdiction.* — The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

Republic Act (RA) No. 1125, as amended, "intends the [CTA] to have exclusive jurisdiction to resolve all tax problems" except in cases questioning the legality or validity of assessment of local taxes where the RTC has jurisdiction.[3]

The *En Banc* ruling in *Banco De Oro* was affirmed by the Supreme Court in numerous cases[4] and has not been overturned, so it stands as the prevailing jurisprudence on the matter.[5]

Hence, the Court has the authority to pass upon the validity and constitutionality of the subject BIR issuances, which led to the setting aside of Annex "A-1" of RMC No. 90-2012 and the pertinent part of Section 5 of RR No. 17-2012 for being contrary to the law, *i.e.*, Section 143[6] of the NIRC of 1997,

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1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;
4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;
5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;
6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;
7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

[3] *Games and Amusements Board v. Klub Don Juan De Manila, Inc.*, G.R. No. 252189, November 3, 2020, citing *National Power Corp. v. Municipal Government of Navotas*, G.R. No. 192300, November 24, 2014.

[4] *Department of Energy v. Court of Tax Appeals*, G.R. No. 260912, August 17, 2022; *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, G.R. Nos. 210501, 211294 & 212490, March 15, 2021; *Province of Nueva Vizcaya v. CE Casecnan Water and Energy Co., Inc.*, G.R. No. 241302, February 1, 2021; *St. Mary's Academy of Caloocan City, Inc. v. Henares*, G.R. No. 230138, January 13, 2021; *Games and Amusements Board v. Klub Don Juan De Manila, Inc.*, G.R. No. 252189, November 3, 2020; *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 & 218924, January 15, 2020; *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 207843 (Resolution), February 14, 2018; *Steel Corporation of the Philippines v. Bureau of Customs (BOC), et al.*, G.R. No. 220502, February 12, 2018.

[5] *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 207843 (Resolution), February 14, 2018.

[6] SEC. 143. *Fermented Liquors.* – 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 fermented liquors in accordance with the following schedule:

... ...

Effective on January 1, 2017, the tax on all fermented liquors shall be Twenty-three pesos and fifty centavos (₱23.50) per liter.

The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance. However, in case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this Section, the four percent (4%) increase shall apply to their respective applicable tax rates. ...

as amended by Section 3 of RA No. 10351,[7] that they sought to implement.

Consequently, the excise taxes paid by petitioner from January 1, 2018, up to December 31, 2018, pursuant to the invalidated portions of the aforesaid BIR issuances, are erroneously or illegally collected. The fact of payment of the excise taxes is evidenced by official register books, sworn statements, shipping memoranda, transfer and delivery receipts, and excise tax removal declarations that were attested by the BIR, which respondent did not controvert.

At this point, the Court finds no compelling reason to deviate from the assailed Decision as it is clear that the removals of the subject beer products for the year 2018 should have been subjected to an excise tax rate of only ₱24.44 per liter as contemplated in Section 143 of the NIRC of 1997, as amended by RA No. 10351.

WHEREFORE, respondent's *Motion for Reconsideration [Decision dated 5 July 2023]* is **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[7] 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. Approved on December 19, 2012.