REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SAN MIGUEL CORPORATION,
Respondent.

C.T.A. EB No. 360
(C.T.A. Case No. 7487)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

Promulgated: **AUG 07 2008** GNApolinario 1:10 p.m.

x---x

DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review[1] filed pursuant to Rule 8, Section 3 (b) of the Revised Rules of the Court of Tax Appeals, praying for the reversal of:

[1] *Rollo*, pp. 6 - 60 with Annexes.

1. the Decision dated September 26, 2007 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7487, granting herein respondent's claim for refund in the amount of Fifty Eight Million Two Hundred Thirteen Thousand Two Hundred Ninety Four and 92/100 (P58,213,294.92), representing respondent's erroneously paid excise tax for the period from June 1, 2004 to December 31, 2004; and
2. the Resolution dated January 17, 2008, denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

The facts of the case are as follows:

Herein petitioner 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. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

Herein respondent San Miguel Corporation, on the other hand, 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

[2] *Records,* C.T.A. Case No. 7487, p.142, Joint Stipulations (Of Facts And Issues).

1. the Decision dated September 26, 2007 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7487, granting herein respondent's claim for refund in the amount of Fifty Eight Million Two Hundred Thirteen Thousand Two Hundred Ninety Four and 92/100 (P58,213,294.92), representing respondent's erroneously paid excise tax for the period from June 1, 2004 to December 31, 2004; and
2. the Resolution dated January 17, 2008, denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

The facts of the case are as follows:

Herein petitioner 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. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

Herein respondent San Miguel Corporation, on the other hand, 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

[2] *Records*, C.T.A. Case No. 7487, p.142, Joint Stipulations (Of Facts And Issues).

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.[3]

On January 1, 1997, Republic Act No. 8240 ("RA 8240") 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 1997 National Internal Revenue Code ("NIRC").[4]

On December 16, 1999, the Secretary of Finance, upon recommendation by the CIR, issued Revenue Regulations No. 17-99 ("RR 17-99"), providing for an increase in the applicable tax rates on fermented liquor as follows:[5]

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO JAN. 1, 2000	NEW SPECIFIC TAX RATES EFFECTIVE JAN. 1, 2000
143	FERMENTED LIQUIORS		
	(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

[3] *Records*, C.T.A. Case No. 7487, p. 141, Joint Stipulations (Of Facts And Issues).
[4] *Id.*, p. 142.
[5] *Id.*, p. 143.

The last paragraph of the said provision states that:

> "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 supplied)*

Accordingly, respondent paid the excise tax on its Red Horse beer brand at the specific tax rate of P7.07 per liter, which is equivalent to the specific tax rate it actually paid prior to January 1, 2000.[6]

On May 22, 2006, respondent filed with petitioner a Letter Claim for Refund or Tax Credit for the amount of P60,778,519.56, representing its alleged erroneous and excess excise tax payments on the removal of its Red Horse beer brand from May 22, 2004 to December 31, 2004, in accordance with Section 204 (c) of NIRC.[7] However, the claim was reduced to P58,213,294.92 due to prescription.[8]

Petitioner's inaction on respondent's request prompted the latter to file a Petition for Review[9] before the Court of Tax Appeals.

On August 22, 2006, petitioner filed her Answer setting up the main defense of lack of cause of action, arguing that respondent's payment of excise taxes is in compliance with RR 17-99. Petitioner likewise raised as a

---

[6] *Records*, C.T.A. Case No. 7487, pp. 143 - 144, Joint Stipulations (Of Facts And Issues).
[7] *Id.*, p. 144.
[8] *Rollo*, p. 42.
[9] *Records*, C.T.A. Case No. 7487, pp. 1 – 28.

defense the premature filing of the Petition, pointing out that the validity of RR 17-99 has not yet been declared invalid by the Supreme Court.[10]

On November 23, 2006, a pre-trial conference was held.[11]

On February 15, 2007, both parties submitted their Joint Stipulation (Of Facts and Issues), which the Court in Division approved in a Resolution dated February 27, 2007.[12]

During the scheduled initial presentation of respondent's evidence on February 28, 2007, both parties manifested that they are not presenting any evidence. Accordingly, the Court in Division, upon motion of both parties, ordered them to file their respective Memorandum.[13]

On April 19, 2007, the case was submitted for decision sans the Memorandum of petitioner.[14]

The Ruling of the Court in Division

On September 26, 2007, the Court in Division granted respondent's claim for refund or issuance of tax credit. It ordered petitioner to refund respondent the amount of P58,213,294.92, representing erroneously paid excise tax on the removals of its Red Horse beer brand from June 1, 2004 to December 31, 2004.

---

[10] *Records*, C.T.A. Case No. 7487, pp. 52 – 56.
[11] *Id.*, p. 114.
[12] *Id.*, p. 148.
[13] *Id.*, p. 149.
[14] *Id.*, p. 171.

Initially, the Court in Division determined the timeliness of the filing of respondent's administrative and judicial claims. It then proceeded to resolve the two issues interposed by the parties, to wit:

> "1. Is the last paragraph of Section 1 of Revenue Regulation No. 17-99 in accordance with the pertinent provisions of Republic Act 8240, which provisions have been incorporated in Section 143 of NIRC?
>
> 2. Is SMC entitled to its claim for refund of Issuance of a Tax Credit Certificate in the amount of Fifty Eight Million Two Hundred Thirteen Thousand Two Hundred Ninety Four Pesos and Ninety Two Centavos (P58,213,294.92) representing overpaid excise taxes for the removals by SMC from its plants of its Red Horse beer brand from 1 June 2004 to 31 December 2004?"[15]

According to the Court in Division, the answer to the second issue hinges on the resolution of the first issue, which pertains to the validity of the last paragraph of Section RR 17-99.

In resolving the legal issue, the Court in Division cited the cases of *Fortune Tobacco Corporation v. Commissioner of Internal Revenue,*[16] which were affirmed by the Court of Appeals.[17] In the said CTA cases, the last paragraph of Section 1 of RR 17-99 was found to be inconsistent with RA 8240 which it seeks to interpret, because the former, in effect, increases the tax rate fixed by the latter, in clear derogation of the CIR's authority to issue interpretative rules.

---

[15] *Records*, C.T.A. Case No. 7487, p. 146.

[16] C.T.A. Case Nos. 6365 and 6383, both promulgated on October 21, 2002, and C.T.A. Case No. 6612, promulgated on December 4, 2003.

[17] Commissioner of Internal Revenue v. Fortune Tobacco Corporation, CA G.R. SP Nos. 80675 and 83165, September 28, 2004.

The Court in Division ruled that petitioner went beyond the legal parameters defining the boundaries of its authority when it issued RR 17-99 because, as an administrative agency, it may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers.

The Court in Division explained that the last paragraph of RR 17-99 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."*[18]

To the mind of the Court in Division, this is a situation not intended by the law, both in letter and in spirit, as Section 143 of the NIRC contemplates 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 first period, the excise tax rate shall not be lower than the tax rate which is due from each brand on October 1, 1996. In the second period, the excise tax rate shall be the figures provided under paragraphs (a), (b), and (c) of Section 143 of the NIRC, but increased

[18] *Rollo,* p. 48.

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.

The Court in Division emphasized that rules and regulations must not override, but must remain constant and in harmony with the law they seek to apply and implement. Neither may they supplant nor modify the law. It further enunciated that in case of discrepancy between the basic law and the implementing rule or regulation, the former prevails.

Thus, the Court in Division declared that since the net retail price per liter (excluding VAT and Excise) of herein respondent's Red Horse beer brand is less than P14.50, 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, as amended.

In view of the foregoing, the Court in Division disposed of the case in this wise:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **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, 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:

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."[19]

On October 15, 2007, herein petitioner filed a Motion for Reconsideration[20] of the Decision dated September 26, 2007, to which respondent filed an Opposition.[21]

On January 17, 2008, the Court in Division issued a Resolution denying petitioner's Motion for Reconsideration.[22] It stood pat on its ruling that RR 17-99 has in effect, increased the tax rate fixed by Section 143 of the NIRC because it makes as basis the rate imposed at the end of the three-year period when the shift from ad valorem tax scheme to the specific tax scheme is to be assumed. The Court in Division went on to say that: "If the lawmakers had intended it otherwise, they could readily have made reference that the 12% increase shall be based on the rate prevailing as of the end of the three-year period from the effectivity of the Code. However, no such reference was made. Moreover, there were no qualifications as to the January 1, 2000 rate increase except that paragraphs (a), (b), and (c) shall be increased by 12%. Hence, it cannot be construed in any other perspective than that the bases of the twelve percent (12%) increase are those indicated in paragraphs (a), (b), and (c)."[23]

---

[19] *Rollo,* pp. 49 – 50.
[20] *Records*, C.T.A. Case No. 7487, pp. 188 - 215.
[21] *Id.*, pp. 216 – 230.
[22] *Rollo,* pp. 53 – 57.
[23] *Id.*, p. 56.

The Issue

Hence, the instant recourse where petitioner contends that:

> "THE HONORABLE COURT ERRED IN RULING THAT THE PROVISION IN THE LAST PARAGRAPH OF SECTION 1 OF REVENUE REGULATIONS NO. 17-99 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 THAT THE EXCISE TAX THAT IS ACTUALLY PAID PRIOR TO JANUARY 1, 2000.' IS AN INVALID ADMINISTRATIVE INTERPRETATION."[24]

Petitioner's Arguments

Petitioner's main contention is that the Court in Division erred in holding that the last paragraph of Section 1 of RR 17-99 is an invalid administrative interpretation.

Petitioner argues that since Section 143 of the NIRC admits of several interpretations, it should be interpreted according to its legislative intent which, in this case, is to increase the collection of excise taxes. The legislative intent to increase the collection of excise taxes, by increasing the tax rate, is allegedly bolstered by the sponsorship speech of Senator Juan Ponce Enrile of Senate Bill No. 7198 (which became RA 8240), where he declared that the measure can raise as much as P6 Billion in additional revenue annually and that among the guiding principles of the excise tax reform is to generate buoyant and stable revenues for the government.

[24] *Rollo*, p. 8.

In order to give life to the legislative intent of the law, petitioner insists that the higher tax rate, between that imposed under the specific tax system and that due on October 1, 1996 under the ad valorem tax system, should be the basis of the 12% increase.

In this case, since the tax due on October 1, 1996 (under the ad valorem tax system), which was P7.07, was higher than the tax imposed in Section 143 (under the specific tax system), which is P6.15, the former was the tax rate during the 3-year period from January 1, 1997 to December 31, 1999. Consequently, the 12% increase beginning January 1, 2000 should be based on the existing tax rate of P7.07.

Petitioner also avers that a literal interpretation of the 12% provision would result in absurdity and contradiction for while the law precisely provides for an increase in the rate of excise tax, the consequence thereof would be to decrease the excise tax to be paid. Thus, petitioner alludes to the established principle that when adherence to the letter of the law would result in absurdity and contradiction, its spirit and intent must prevail over its letter.

As petitioner sees it, to impose the new rates of excise tax under paragraphs (a) to (c) increased by 12% would result to a lowering of the rate at which fermented liquor is to be taxed. She views this decrease in the rate of tax as an exemption which cannot be effected based on an ambiguous provision, but must be expressly authorized by law.

In addition, petitioner contends that the BIR as an administrative agency responsible for revenue collection and enforcement is duty-bound to carry out the congressional policy of regulating specified activities and to raise revenues through proper collection of due taxes. Therefore, the issuance of RR 17-99, particularly the last paragraph of Section 1 thereof, is within the prerogative of the administrative agency concerned, which is the Department of Finance.

Respondent's Counter-arguments

Respondent, on the other hand, counter-argues that Section 143 of the NIRC is clear and unambiguous. Hence, there is no room for interpretation.

Respondent posits that during the transition period, from January 1, 1997 to December 31, 1999, the tax shall not be lower than the tax imposed for each brand on October 1, 1996, and that at the end of the transition period, the excise tax rate should be 12% higher than that imposed under paragraphs (a), (b), and (c) of Section 143 of the NIRC. This is regardless of whether the excise tax rate in paragraphs (a), (b), and (c) of Section 143, after having been increased by 12%, are higher or lower than the tax imposed before January 1, 2000. Simply put, respondent believes that effective January 1, 2000, the correct base of the 12% increase are the rates prescribed under paragraphs (a), (b), and (c) of Section 143 of the NIRC and not the rate imposed at the end of the transition period.

Respondent also maintains its stance that the last paragraph of Section 1 of RR 17-99 is an unauthorized and illegal extension of the three-year transitory period under Section 143 of the NIRC. It claims that the said three-year period is merely transitory or temporary and that there is nothing in the NIRC that allows the BIR to extend the three-year transitory period.

The Ruling of the Court En Banc

The Petition for Review must fail.

In the very recent case of *Commissioner of Internal Revenue v. Fortune Tobacco Corporation,*[25] the Supreme Court, as the Highest Tribunal of the land, has declared that **"Revenue Regulations No. 17-99 is indeed indefensibly flawed."** It affirmed the Decision dated September 28, 2004[26] and the Resolution dated March 1, 2005 of the Court of Appeals, upholding the ruling of the Court of Tax Appeals in the cases of *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*[27] which were cited by the Court in Division in the instant case.

---

[25] G.R. Nos. 167274 -75, July 21, 2008.
[26] *Supra*, at note 18.
[27] *Supra*, at note 17.

In resolving whether RR 17-99 has exceeded the allowable limits of legislative delegation, the Supreme Court explained that:

> "Parenthetically, Section 145 states that during the transition period, *i.e.*, within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, **Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date.**
>
> By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, **Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12%—a situation not supported by the plain wording of Section 145 of the Tax Code."** *(Emphasis supplied)*

The argument that the law should be interpreted according to its legislative intent which, in this case, is to increase the collection of excise taxes was likewise struck down by the Supreme Court. It said:

> "**The Commissioner cannot seek refuge in his claim that the purpose behind the passage of the Tax Code is to generate additional revenues for the government.** Revenue generation has undoubtedly been a major consideration in the passage of the Tax Code. However, as borne by the legislative record, the shift from the *ad valorem* system to the specific tax system is likewise meant to promote fair competition among the players in the industries concerned, to ensure an equitable distribution of the tax burden and to simplify tax administration by classifying cigarettes, among others, into high, medium and low-priced based on their net retail price and accordingly graduating tax rates.

At any rate, this advertence to the legislative record is merely gratuitous because, as we have held, the meaning of the law is clear on its face and free from the ambiguities that the Commissioner imputes. **We simply cannot disregard the letter of the law on the pretext of pursuing its spirit.**" *(Emphasis supplied)*

In the case at bar, Section 143 of the NIRC reads:

"**SECTION 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:

(a) If the net retail price (excluding the excise tax and value-added tax) per liter of volume capacity is less 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 (P12.15) 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.** xxx" *(Emphasis supplied)*

Clearly, there is no ambiguity in the wording of Section 143 of the NIRC. Settled is the rule that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. [28] This rule derived from the maxim *Index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. *Verba legis non est recedendum,* or from the words of a statute there should be no departure. [29] Thus, Section 143 of the NIRC must be taken to mean exactly what it says. We have no choice but to see to it that its mandate is obeyed.

The provision mandates that during the three-year transition period, from January 1, 1997 to December 31, 1999, the tax shall not be lower than the tax imposed for each brand on October 1, 1996; and that thereafter, effective January 1, 2000, a 12% increase would take effect using as tax base the figures provided in Section 143, subsection C, paragraphs (1), (2), (3) and (4) of the NIRC.

---

[28] Bicolandia Drug Corporation (formerly Elmas Drug Corporation) v. Commissioner of Internal Revenue, G.R. No. 142299, June 22, 2006, 492 SCRA 159.
[29] Republic of the Philippines v. Lacap, G.R. No. 158253, March 2, 2007, 517 SCRA 255.

Considering that there is nothing in the law that allows the BIR to extend the three-year transitory period, and considering further that there is no provision in the law mandating that the new specific tax rate should not be lower than the excise tax that is actually being paid prior to January 1, 2000, the last paragraph of RR 17-99 has no basis in law and is inconsistent with the situation contemplated under the provisions of Section 143 of the NIRC.[30] It is an unauthorized administrative legislation and, therefore, invalid.[31]

In view of the foregoing, the Court in Division aptly ruled that the last paragraph of Section 1 of RR 17-99 has fallen short of a valid and authorized administrative issuance. Let it be stressed that tax burdens are not to be imposed, nor presumed to be imposed beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government.[32]

We end by saying: "Once the Supreme Court has spoken, there the matter must rest."[33]

---

[30] San Miguel Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 6607, March 15, 2006; San Miguel Corporation v. Commissioner of Internal Revenue and *vice versa,* C.T.A. EB Nos. 190 & 192 (C.T.A Case No. 6607), September 25, 2007.
[31] Commissioner of Internal Revenue v. Fortune Tobacco Corporation, C.T.A. EB No. 228 (C.T.A. Case No. 7015), July 12, 2007.
[32] Commissioner of Internal Revenue v. Court of Appeals, G.R. No. 107135, 303 SCRA 508, February 23, 1999.
[33] In Re: Joaquin T. Borromeo, Adm. Matter No. 93-7-696-0, 241 SCRA 405, February 21, 1995.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED.** Accordingly, the Decision dated September 26, 2007 and Resolution dated January 17, 2008 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice