REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN MIGUEL BREWERY INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9743

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

OCT 14 2019 ; 3:05 pm

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review dated December 27, 2017 involves a claim for refund or issuance of tax credit certificate (TCC) in the amount of Thirty Million Five Hundred Ninety-One Thousand Four Hundred Ten Pesos and 67/100 (₱30,591,410.67), allegedly representing erroneously and/or excessively collected excise taxes imposed upon petitioner San Miguel Brewery Inc.'s *San Mig Light* (SML), in bottle, in can, and in keg, and other beer products for the period from January 1, 2016 to December 31, 2016.

Petitioner San Miguel Brewery Inc., a subsidiary of San Miguel Corporation, is a domestic corporation, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) who has the power to, among others, grant refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR Building, BIR Road, Diliman, Quezon City.

On December 14, 2017, petitioner filed with the BIR a letter re: claim for refund[1] dated December 13, 2017, allegedly representing overpayment of excise taxes erroneously assessed on and collected on removals of petitioner's various products for the period from January 1, 2016 to December 31, 2016, in the amount of ₱30,591,410.67.

Shortly thereafter, or on December 29, 2017, petitioner filed the instant Petition for Review[2] before the Court.

In his Answer[3] filed on February 23, 2018, respondent basically questions the jurisdiction of the Court to entertain the present action as petitioner endeavors, as a relief, to nullify RMC No. 90-2012, which is not among the cases over which the Court can exercise its jurisdiction, citing Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282, as its authority. Jurisprudence also have it that the authority to declare an administrative issuance such as RMC No. 90-2012 void is conferred on courts of general jurisdiction and not on special courts such as the Court of Tax Appeals (CTA).

Assuming in *gratia argumenti* that the prayer for nullification of RMC No. 90-2012 is not the main action but merely an incident to petitioner's claim for refund, still the Court cannot rule on the prayer for nullification of the said RMC, it being a collateral attack on a presumably valid administrative issuance which is proscribed under prevailing jurisprudence. There being a presumption of correctness of administrative issuances in its favor, RMC No. 90-2012 may only be assailed in a legal proceeding directly questioning its validity. Otherwise, the same is deemed valid and correct.

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[1] Exhibit "P-3".
[2] Docket, pp. 10-43.
[3] *Id.*, pp. 94-120.

Moreover, petitioner failed to exhaust administrative remedies before elevating the matter to the Court through the instant Petition. As an administrative issuance by respondent pursuant to his rule-making power under the NIRC, as amended, any question as to its validity must first be lodged before the Secretary of Finance, then to the President. And only after exhausting these administrative remedies that petitioner may seek judicial intervention before this Court.

As to its claim for refund/TCC, respondent is of the opinion that petitioner is not entitled thereto as the alleged excise taxes were not erroneously collected. There was never any reclassification of San Miguel Light (SML) as it has always been classified as a variant of an existing brand pursuant to Section 143 of the NIRC, as amended. That being the case, the subject excise taxes were correctly collected based on RMC No. 90-2012 which remains valid and with force and effect of law.

Finally, respondent posits that petitioner has the burden of proof to establish its claim as refunds of taxes are strictly construed against the claimant and in favor of the government.

After the Pre-trial Conference, a Pre-Trial Order[4] was issued on May 21, 2018 thereby terminating the said proceeding.

Trial ensued during which petitioner presented as witnesses the Manager of its Accounting and Financial Services, Noemi L. Ronquillo[5] and the Independent Certified Public Accountant (ICPA), Katherine O. Constantino[6], both of whom testified on direct examination by way of their respective judicial affidavits.

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[4] *Id.*, pp. 252-255.
[5] Exhibits "P-4" and "P-4-a"; Judicial Affidavit of Ms. Noemi L. Ronquillo In Lieu of Direct Testimony dated April 5, 2018, docket, pp. 137-156; no cross examination, see TSN dated May 23, 2018 p. 9.
[6] Exhibits "P-7" and "P-7-a"; Judicial Affidavit of Mrs. Katherine O. Constantino In Lieu of Direct Testimony dated July 5, 2018, docket, pp. 269-284; no cross-examination, see TSN dated July 11, 2018 p. 2.

Petitioner's Manager of Accounting and Financial Services **Noemi L. Ronquillo** testified that her employer is engaged in the business of manufacture, sale, and distribution of fermented malt-based beverages.

Commencing January 1, 2013 to December 31, 2013, petitioner paid excise taxes on its beer products at the rate of ₱20.57 per liter as required by the BIR pursuant to RMC No. 90-2012 issued by respondent which took effect on December 21, 2012, amending the provision pertaining to fermented liquor in Section 143 of the NIRC. Petitioner protested the tax rate on the ground that it was unlawfully applied to its SML which the BIR deemed as a variant of an existing brand. Nevertheless, petitioner paid the prescribed rate under protest to be able to make removals of its beer products without penalty, maintaining that SML is a new, medium priced brand subject to a different rate of only ₱15.49. This incident is the subject of a different case filed with this Court.

During the period of January 1, 2016 to December 31, 2016, petitioner paid excise taxes on its removals of its products at an increased rate of ₱23.14 per liter, as required by the BIR, based on Section 5 of RR No. 17-2012. Prior to this, the rate imposed by the BIR was ₱22.25.

The witness believed that the tax rates imposed by the BIR through administrative issuances were higher than what is provided under the NIRC. In any event, petitioner paid the required rate if only to be able to make removals of its products without penalty. Thus, on December 14, 2017, petitioner filed a claim for refund through a Letter dated December 13, 2017 for the amount of ₱30,591,410.67, representing erroneously collected excise taxes for the period January 1, 2016 to December 31, 2016.

The witness allegedly supervised the preparation of supporting documents pertinent to the present claim for refund/TCC, i.e., schedules/tables showing petitioner's removals of its products for the period, the actual excise taxes paid, and the correct amount of excise taxes it ought to pay.

The witness claimed that petitioner was not given any notice of hearing nor an opportunity to be heard on the matter before RMC No. 90-2012 and RR No. 17-2012 were issued by respondent. Besides, there was no time to assail RMC No. 90-2012 before the Secretary of Finance as it was issued on December 27, 2012 and took effect five (5) days thereafter or on January 1, 2013. The same with RR No. 17-2012 which was issued on December 21, 2012 and became effective barely seven (7) days thereafter or on December 28, 2012, the day it was published in leading newspapers of general circulation.

ICPA Katherine O. Constantino testified that her Report submitted to the Court on June 22, 2018 contains the results of her examination and audit of petitioner's supporting documents pertinent to the present case.

Her audit revealed that petitioner paid excise taxes in advance before the actual removal of its beer products from six plants, and filed the corresponding excise tax returns. These advance payments served as deposits to be applied on the excise taxes due on actual removals of its beer products. Petitioner also filed separate excise tax returns for the application of advance excise tax payments on the excise taxes due on the actual removal of all beer products. The advance excise tax deposits/payments made by petitioner for the subject period are sufficient to cover the total excise taxes incurred on actual removals of its beer products from its six plants, as supported by excise tax returns filed manually or through EFPS.

The ICPA further testified that the actual volume and the excise taxes due and paid for the subject period correspond to the volume and amount of excise taxes paid as reported in the document Total Removals Report and Monthly Removals Schedule, duly stamped received by the BIR.

Thus, the excise tax due and paid by petitioner for the subject period amounted to ₱4,651,049,570.73. However, per her computation based on the alleged correct rate the amount should be ₱4,620,458,157.84 with the amount of ₱30,591,375.88 for possible refund.

In the Resolution[7] dated August 7, 2018, the Court admitted all the documentary exhibits formally offered[8] by petitioner who then rested its case.

During the hearing for the reception of evidence for respondent, his counsel manifested[9] that respondent would not present any.

In the Resolution[10] dated October 16, 2018, the present case was submitted for decision.

The parties raised the following issues in their respective Pre-Trial Briefs, to wit:

For Petitioner[11]

4.01 The main issue for resolution of the Court is:

4.01.a Whether petitioner San Miguel Brewery, Inc. is entitled to a refund by the Bureau of Internal Revenue of the amount of ₱30,591,410.67 as having been erroneously, excessively, illegally and/or wrongfully collected from and overpaid by it as excise taxes on its subject beer products for the period from January 1, 2016 up to December 31, 2016.

4.02 The following are the corollary issues:

4.02.a Whether the excise tax rate of ₱23.14 per liter imposed by the respondent on SMB's subject beer products during the period

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7 *Id.*, pp. 308-309.
8 Docket, pp. 287-303.
9 Minutes of the Hearing dated July 11, 2018, *id.*, p. 285.
10 Docket, p. 392.
11 Statement of Issues, Petitioner's Pre-Trial Brief, *id.*, p. 198.

from January 1, 2016 to December 31, 2016, is directly contradictory to and inconsistent with, and violative of, the express provisions of Section 143 of the National Internal Revenue Code (NIRC), as amended by Republic Act No. 10351 and therefore not valid.

4.02.b Whether RMC No. 90-2012, particularly the excise tax rate of '₱20.57' imposed by said RMC on the subject beer products, is valid.

4.02.c Whether RR No. 17-2012, particularly Section 5 thereof providing that 'Starting January 1, 2014, the applicable tax rate shall be increased by four percent (4%) annually', is valid.

For Respondent[12]

1. Whether the Honorable Court has jurisdiction to nullify the provision of Revenue Memorandum Circular (RMC) No. 90-2012 which provides the subject excise tax rate.

2. In the alternative that the Court will assume jurisdiction, whether petitioner is entitled to a refund or tax credit allegedly in the amount of ₱30,591,410.67 representing excise tax on its subject beer products for the fiscal year 2016.

The arguments of the parties:

Petitioner claims that the imposition of excise tax in the amount of ₱23.14, on its SML (in bottle, in can, and in keg) and other beer products is contradictory to and inconsistent with Section 143 of the NIRC of 1997, as amended by Republic Act (RA) No. 10351[13], hence, invalid. In the latest

[12] Issues to be Tried or Resolved, Respondent's Pre-Trial Brief, docket, p. 129.
[13] 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.

amendment, only two excise tax rates are provided for the period January 1, 2016 to December 31, 2016, to wit: ₱21.00 for fermented liquors with net retail price of ₱50.60 or less, and ₱23.00 for fermented liquors with net retail price of more than ₱50.60. Similarly invalid is the four percent (4%) increase applied by respondent. As expressly stated, the said increase shall only be applicable effective January 1, 2018, and not January 1, 2016.

BIR Revenue Memorandum Circular (RMC) No. 90-2012, imposing an excise tax rate of ₱20.57 for petitioner's SML (in bottle and in can) and other beer products, is likewise invalid having been issued without prior notice and hearing afforded to it in violation of its constitutional and statutory right to due process justifying its claim for refund/TCC in the total amount of ₱30,591,410.67, representing erroneous, excessive, illegal and/or wrongfully collected excise taxes on the subject beer products for the period from January 1, 2016 to December 31, 2016.

To counter the foregoing, respondent reiterated its arguments in his Answer saying that there was no erroneous or illegal collection of excise taxes, or any reclassification made with regard to SML since it has always been classified as a variant of an existing brand. San Miguel Pale Pilsen and SML are the same beer both being pale pilsens, and that SML is only a variant or derivative of San Miguel Pale Pilsen.

Finally, the Court, being a special court, has no jurisdiction to declare as null and void RMC No. 90-2012. Besides, petitioner failed to exhaust available administrative remedies in assailing the validity of RMC No. 90-2012.

THE RULING OF THE COURT

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the periods within which to file both

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8424. Otherwise Known As The National Internal Revenue Code Of 1997, As Amended By Republic Act No. 9334, And For Other Purposes.

the administrative and judicial claims for refund of erroneously or illegally collected tax, to wit:

> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> x x x
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding 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: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Sections 204(C) and 229 of the NIRC of 1997, as amended, govern all kinds of refund or credit of internal revenue taxes which are collected erroneously or illegally.[14] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. Perforce, both claims for refund with the BIR and its subsequent appeal to the CTA must be filed within the two (2)-year period from the date of payment of tax.[15]

However, to determine the reckoning for the two (2)-year prescriptive period, the law and rules regarding the time of payment of excise taxes must first be examined.

In the case of excise taxes, Section 130(A)(2) of the NIRC of 1997, as amended, requires payment of corresponding excise tax before the goods subject thereto can be removed from the place of production, thus:

> **SEC. 130.** *Filing of Return and Payment of Excise Tax on Domestic Products.* –
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> (A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –
>
> x x x
>
> **(2)** ***Time for Filing of Return and Payment of the Tax.*** - Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: x x x

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[14] See *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro,* G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue vs. Insular Lumber* Co. *et al.*, G.R. No. L-24221, December 11, 1967.

[15] *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. Nos. 193383-84, January 14, 2015 *and Commissioner of Internal Revenue vs. CBK Power Company Limited,* G.R. Nos. 193407-08, January 14, 2015.

Relative thereto, Section 11 of its implementing rules, RR No. 02-97, further provides that:

SEC. 11. *Time, Manner and Place of Payment.* –

11.1 *For Locally produced Alcohol Products.*

1) *FILING OF RETURN* – Any person liable to pay specific tax on locally produced alcohol products shall before removal of such products, file in triplicate a consolidated return (BIR Form 2200) and supporting attachments (BIR Form 2201 and 2207) setting forth the registered brand names and brand codes, the total production during the return period, the quantity to be removed and the excise tax due.

2) *PAYMENT OF SPECIFIC TAX* –

a) *When to Pay* - Unless otherwise especially allowed, excise tax due locally manufactured or produced alcohol products shall be paid by the manufacturer before removal from the place production, or by the person who is found in possession of untaxed domestically produced alcohol products.

b) *Advance Payment or Deposit* –Every person liable to pay specific tax who is authorized to avail of the advance payment scheme may be allowed to effect removals of exciseable articles from his place of production without prior filing of the prescribed excise tax return and supporting attachments provided he has sufficient balance of deposits with the BIR to cover full payment of the excise tax due on said removals. The prescribed excise tax return and all attachments may be filed with a duly accredited bank or duly authorized collection agents not later than the first working day of the calendar week immediately after the week of actual removals. Payment of excise tax deposits shall be made by filing in triplicate a Payment Form (BIR Form No. 0605)."

The record shows that petitioner availed of the advance payment or deposit scheme respecting the excise taxes due on its locally manufactured fermented liquor or beer products. However, the 2-year period prescribed in Sections 204 and 229 of the NIRC of 1997, as amended, should only be reckoned from the date of the actual withdrawal/removal of the beer products from the place of its production, since it was only at that point that the deposits were recognized as payments for excise tax.

It appears that for the year 2016, petitioner paid advance excise tax deposits for its beer products from all of its six (6) plant locations, namely, 1) Bacolod; 2) Davao; 3) Mandaue, Cebu; 4) Sta. Rosa, Laguna; 5) San Fernando, Pampanga; and 6) Polo, Valenzuela, in the aggregate amount of ₱33,916,801,000.52[16]. The payments were evidenced by the Excise Tax Returns[17] (BIR Form No. 2200-A) duly filed and paid by petitioner through the BIR's Electronic Filing and Payment System (eFPS), from January 4, 2016[18] to December 29, 2016[19].

Thus, counting two (2) years from the earliest date the Excise Tax Returns (BIR Form No. 2200-A) were filed and paid for, which was on January 4, 2016, petitioner had until January 4, 2018 to file both its administrative and judicial claims for refund/TCC.

Evidently, petitioner's administrative and judicial claims for refund/TCC were seasonably filed on December 14, 2017[20] and December 29, 2017[21], respectively. In fine, the Court has jurisdiction over the present Petition.

Further, contrary to respondent's allegation, the Court of Tax Appeals (CTA) has jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the BIR, as explained by the Supreme Court, *viz.*:

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[16] Exhibit "P-5" (ICPA Report, Table 8, p. 9).
[17] Exhibits "P-6-a" to "P-6-a-2954".
[18] Exhibit "P-6-a".
[19] Exhibit "P-6-a-2954".
[20] Exhibit "P-3".
[21] Exhibit "P-6".

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or

> opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.[22]

With the foregoing pronouncement of the Highest Court of the Land, the jurisdiction of the Court to determine the validity of an administrative issuance is now settled.

On the rates of excise tax imposed on fermented liquors, Section 143 of the NIRC of 1997, as amended by RA No. 10351, relevantly provides as follows:

> **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:
>
> x x x
>
> '*Effective on January 1, 2016*
>
> (a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (₱50.60) or less, the tax shall be Twenty-one pesos (₱21.00) per liter; and

[22] Banco De Oro, Bank of Commerce, China Banking Corporation, Metropolitan Bank & Trust Company, Philippine Bank of Communications, Philippine National Bank, Philippine Veterans Bank, and Planters Development Bank vs. Rizal Commercial Banking Corporation and RCBC Capital Corporation; Caucus of Development NGO Networks vs. Revenue, Secretary of Finance, Department of Finance, The National Treasurer, and Bureau of Treasury, G.R. No. 198756, August 16, 2016.

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (₱50.60), the tax shall be Twenty-three pesos (₱23.00) per liter.'

x x x

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.

x x x

Any downward reclassification of present categories, for tax purposes, of fermented liquors duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited.

x x x

All fermented liquors existing in the market at the time of the effectivity of this Act shall be classified according to the net retail prices and the tax rates provided above based on the latest price survey of the fermented liquors conducted by the Bureau of Internal Revenue.

x x x.

Based on the foregoing, RA No. 10351 effectively increased the excise taxes imposed on fermented liquors, as follows:

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Net Retail Price per liter of Volume Capacity	
(effective January 1, 2016)	*Excise Tax*
Tier 1. Less than or equal to ₱50.60	₱21.00
Tier 2. Greater than ₱50.60	₱23.00

RA No. 10351 veered from the previous classifications set forth under its predecessor RA No. 9334, *i.e.,* variants of existing brands and new brands, by simplifying the classification to two (2) tiers based on net retail price per liter of volume capacity, as illustrated above. It was further decreed in the latest amendment that, the net retail price shall be based on the latest price survey under oath as determined by the BIR, and proper tax classification of fermented liquors, whether registered before or after the effectivity of the said RA, shall be determined every two (2) years from the date of its effectivity.

RA No. 10351 likewise reiterated the "no downward reclassification" provision which was previously set forth under RA No. 9334, where duly registered fermented liquors at the time of the effectivity of RA No. 10351 were prohibited from making downward reclassification of their present categories, *i.e.,* from Tier 2 to Tier 1, for the purpose of reducing the imposable excise taxes.

Accordingly, to implement the said law, the BIR issued RR No. 17-2012, of which Section 5 thereof is relevant to the present case, it reads:

> **SEC. 5.** *DOWNWARD RECLASSIFICATION OF FERMENTED LIQUORS.* – Any downward reclassification of any fermented liquor product that is duly registered with the BIR at the time of effectivity of the Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited. Starting January 1, 2014, the applicable tax rate shall be increased by four percent (4%) annually; *Provided, however,* it shall not be lower than the rates prescribed under Section 3 of these regulations.

Evidently, the "no downward reclassification" provision under RA No. 10351 and Section 5 of RR No. 17-2012, contemplates a situation where there was downward reclassification of fermented liquors for the purpose of reducing imposable taxes.

Apropos, the BIR issued Annex A-1 of RMC No. 90-2012, which was used as basis for the imposition of the uniform ₱23.14 excise tax against petitioner's beer products. Incidentally, it appears that the additional excise tax imposed by the BIR emanated from the pertinent provisions of the amendment introduced by RA No. 10351 to Section 143 of the NIRC of 1997 and Section 5 of RR No. 17-2012, as quoted above. Simply put, the BIR imposed an additional four percent (4%) excise tax on the said products.

However, elementary is the rule 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, x x x". [23]

In the case of petitioner, there is no basis for the imposition of the additional four percent (4%) excise tax earlier explained. 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.

Notably, the BIR automatically imposed the four percent (4%) increase under RA No. 10351 without, however, observing the parameters provided for by law, namely: (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 shall apply to their respective applicable tax rates.

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[23] Commissioner of Internal Revenue vs. Philippine-Aluminum Wheel, Inc., G.R. No. 216161, August 9, 2017, citing *National Tobacco Administration vs. Commission on Audit,* 370 Phil. 793 (1999).

Obviously, at the time when petitioner's cause of action arose in 2016, the first (1st) parameter set forth under RA No. 10351 cannot be complied with, *i.e.,* the same shall be effective on January 1, 2018. Moreover, under the obtaining circumstances, respondent also could not have imposed the four percent (4%) increase since no downward reclassification of the subject products to reduce the tax payable occurred in this case. Therefore, the second (2nd) parameter imposed by the said RA could not as well be satisfied.

Worthy to mention 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 intention of the legislature in enacting RA No. 10351 was to simplify our tax system, in the sense that fermented liquors shall only be classified according to their net retail prices under Tier 1 or Tier 2. Therefore, whether petitioner's subject beer products were variants of existing brands or new brands under RA No. 9334 is inconsequential in determining the applicable tax rates under RA No. 10351.

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 2016, downward reclassifications should be understood under the simplified context introduced by RA No. 10351, *i.e.,* either Tier 1 or Tier 2, and not based on the previous classifications used in RA No. 9334, *i.e.,* variants of existing brands and new brands.

In view of the foregoing, the Court finds that respondent erroneously imposed a uniform rate of ₱23.14 excise tax on removals of petitioner's beer products based on a mere administrative issuance.

Now on petitioner's claim for refund/TCC in the amount of ₱30,591,410.67, representing erroneously paid excise taxes on its SML and other beer products for the period January 1, 2016 to December 31, 2016.

Petitioner claims that commencing January 1, 2016, the applicable tax rate for SML (in bottle and in can) and Other Beer Products should be ₱23.00 per liter, since the Net Retail Price (NRP) per liter is more than ₱50.60; and, the applicable tax rate for SML in keg is ₱21.00, as the NRP per liter is ₱50.60 or less. Further, as of December 31, 2016,[24] the NRP per liter of volume capacity of petitioner's SML and Other Beer Products were as follows:

Product		**Net Retail Price (NRP) per Liter**	**Rate of Excise Tax paid**	**Rate under RA No. 10351 for CY 2016**
SML 330ml Can	SML in bottle or can	₱ 80.56	₱ 23.14	₱ 23.00
SML 330ml Bottle		53.51	23.14	23.00
SML Keg 30L	SML in keg	42.33	23.14	21.00
SML Keg 50L		42.41	23.14	21.00
Pale Pilsen in Can	Other Beer Products	75.15	23.14	23.00
San Mig Zero in Bottle		58.92	23.14	23.00
San Mig Zero in Carton		75.15	23.14	23.00
San Miguel Premium All-Malt in Bottle		85.98	23.14	23.00
San Miguel Premium All-Malt in Can		118.44	23.14	23.00
San Miguel Premium All-Malt in Carton		118.44	23.14	23.00
San Miguel Super Dry in Can		104.91	23.14	23.00
Red Horse Beer in Can		75.15	23.14	23.00
San Miguel Flavored Beer - Apple in Bottle		45.39	23.14	23.00
San Miguel Flavored Beer - Lemon in Bottle		45.39	23.14	23.00

Per the above schedule, petitioner submits that the erroneous and/or excessive assessment and collection of excise taxes arose from respondent's imposition on its SML (in bottle, in can, and in keg) and Other Beer Products, the excise tax rate of ₱23.14 per liter, despite the rate provided under RA No. 10351. Thus, for the period January 1, 2016 to December 31, 2016, petitioner was constrained to pay respondent excise taxes at the rate of ₱23.14 per liter on its removals of beer products.

[24] Exhibit "P-5" (ICPA Report, p. 4); as indicated in Exhibit "P-3".

Simply stated, it excessively paid the amount of ₱0.14 per liter for SML (in bottle and can) and Other Beer Products, and ₱2.14 per liter for SML in keg, or in the aggregate amount of ₱30,591,410.67.

RA No. 10351 provides 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. In relation thereto, Section 12 of RR No. 17-2012, which implemented the said law, provides that alcohol and tobacco products shall be initially classified according to the tax rates prescribed by the Act based on the 2010 price survey of the said products, to wit:

> **SEC. 12.** *Transitory Provisions.* – Upon the effectivity of the Act, the following transitory provisions shall be strictly observed by all concerned:
>
> (a) All alcohol and tobacco products existing in the market at the time of the effectivity of this Act shall be initially classified according to the tax rates prescribed by the Act based on the 2010 price survey of these products conducted by the Bureau of Internal Revenue (BIR), subject to the prohibition against downward reclassification on fermented liquors: *Provided, however,* **That in case of alcohol and or tobacco products that were introduced after the 2010 price survey but before the effectivity of the Act, their respective tax classification or rate shall be based on the suggested net retail price declared in latest sworn statement filed by the local manufacturer or importer, as the case may be.** The Commissioner of Internal Revenue shall issue a Revenue Memorandum Circular containing the tax classifications/rates applicable to all alcohol and tobacco products existing in the market at the time of the effectivity of the Act. *(Emphasis supplied)*

Consequently, when the BIR issued RMC No. 90-2012 which listed the different brands of locally manufactured fermented liquors with their corresponding type of packaging, content per type of packaging, net retail price, and applicable excise tax rate per liter, however, the said list did not include SML in kegs.

Subsequently, RMC No. 3-2013 clarified with respect to alcohol products not included in the enumeration in RMC No. 90-2012. The attached Annexes states that their respective initial classification or rate shall be based on the suggested net retail price declared in the latest sworn statement filed by the manufacturer and importer, as the case may be, to wit:

> This Circular is, likewise, issued in order to further amend and clarify the initial tax classifications of alcohol and tobacco products published under Revenue Memorandum Circular (RMC) No. 90-2012 dated December 27, 2012, as follows:
>
> x x x
>
> 2. With respect to other alcohol and tobacco products that were not included in any of the Annexes of the said RMC, their respective initial tax classification or rate shall be based on the suggested net retail price declared in the latest sworn statement filed by the manufacturer and importer, as the case maybe.

From the above provision, the initial tax classification of SML in kegs should be based on the suggested net retail price declared in the latest sworn statement filed by petitioner. In Section 7 of RR No. 17-2012, the BIR prescribed the information to be shown in the said Sworn Statement, to wit:

> **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:

(a) Name, address, TIN and assessment number of the manufacturer or importer;

(b) Complete root name of the brand as well as the complete brand name with modifiers, if any;

(c) Complete specifications of the brand detailing the specific measurements, weights, manner of packaging, etc.;

(d) Name(s) of the region(s) where the brand is/are to be marketed;

(e) Wholesale price per case, gross and net of VAT and excise tax;

(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;

(h) Applicable rate of excise tax per unit of measure or value, as the case may be; and

(i) Corresponding excise and value-added taxes per case.

However, an examination of the record reveals that <u>petitioner failed to submit the sworn statement</u> in the format required under the existing rules and regulations. Petitioner's Schedule of Net Retail Price of SML Products per the ICPA Report, and as indicated in petitioner's administrative claim[25] for refund, did not qualify as the Sworn Statement required under the rules, hence, the same could not be utilized as basis of the NRP of SML in kegs.

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[25] Exhibit "P-5" (ICPA Report, p. 4); Exhibit "P-3".

As such, this Court deems it proper to deny petitioner's claimed rate of excise taxes on SML in kegs, as it failed to substantiate its allegation that the NRP of SML keg 30 liters and SML keg 50 liters, were ₱42.33 and ₱42.41 per liter, respectively.

Further, in the ICPA report[26] dated June 22, 2018, petitioner's total refund claim of ₱30,591.410.67 is categorized into "bottles and cans" and "kegs" as follows:

Product	Removals (in liters)	2016 Excise Tax Payment @ ₱23.14	SML in Bottle and Can and Other Beer Products should be @ ₱23.00	San Mig Light in Keg should be @ ₱21.00	Difference
San Mig Light - Can	11,914,222.32	₱ 275,695,104.48	₱ 274,027,113.36		₱ 1,667,991.12
San Mig Light - Bottle	151,007,677.92	3,494,317,667.07	3,473,176,592.16		21,141,074.91
San Miguel Pale Pilsen - Can	5,841,910.80	135,181,815.91	134,363,948.40		817,867.51
San Miguel Premium All-Malt Beer	396,784.08	9,181,583.61	9,126,033.84		55,549.77
San Miguel Premium All-Malt Beer - Can	196,629.84	4,550,014.50	4,522,486.32		27,528.18
San Mig Zero	430,261.92	9,956,260.83	9,896,024.16		60,236.67
Super Dry – Can	245,187.36	5,673,635.51	5,639,309.28		34,326.23
Red Horse - Can	5,584,273.20	129,220,081.85	128,438,283.60		781,798.25
San Miguel Flavored Beer – Apple	20,894,837.04	483,506,529.11	480,581,251.92		2,925,277.19
San Miguel Flavored Beer – Lemon	3,258,311.76	75,397,334.13	74,941,170.48		456,163.65
San Mig Light in Kegs - 30 Liters	423,930.00	9,809,740.20		₱ 8,902,530.00	907,210.20
San Mig Light in Kegs - 50 Liters	802,050.00	18,559,437.00		16,843,050.00	1,716,387.00
	200,996,076.24	**₱4,651,049,204.20**	**₱4,594,712,213.52**	**₱25,745,580.00**	**₱30,591,410.68**

Thus, the total excise tax claim on SML in kegs in the total amount of ₱2,623,597.20[27] shall be disallowed and only the excise tax claim on SML (in bottles and cans) and Other Beer Products in the sum of ₱27,967,813.47[28] may be refunded.

Relevantly, the ICPA also examined petitioner's balance of excise tax advance payments carried from the previous

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[26] Exhibit "P-5" (ICPA Report, Table 2, p. 5).
[27] ₱907,210.20 add ₱1,716,387.00.
[28] ₱30,591,410.67 less ₱2,623,597.20.

return and the excise tax payments/deposits made in the CY 2016, then compared the same with all the removals/application of excise taxes for the same year, to wit:[29]

Advance Excise Tax Payments and Excise Taxes Due per Excise Tax Return (BIR Form 2200-A) for the period from January 1, 2016 to December 31, 2016				
Plant Location	**Balance of Deposits Carried Over from Previous Return**	**Excise Tax Payments/ Deposits**	**Excise Tax Due/Applied**	**Balance of Deposits to be Carried Over to Next Return**
Bacolod	₱ 7,339,706.30	₱ 2,114,164,000.10	(₱ 2,117,199,301.24)	₱ 4,304,405.10
Davao	18,910,831.57	3,693,513,000.10	(3,698,664,606.04)	13,759,224.82
Mandaue, Cebu	4,618,535.40	7,941,056,000.07	(7,926,922,859.27)	18,751,675.46
Sta. Rosa, Laguna	6,622,572.47	3,065,972,000.09	(3,066,960,550.70)	5,634,021.72
San Fernando, Pampanga	59,123,930.45	10,904,813,000.09	(10,900,756,400.82)	63,180,529.64
Polo, Valenzuela	40,123,056.50	6,197,283,000.07	(6,209,762,441.99)	27,643,614.50
Total	**₱136,738,632.69**	**₱33,916,801,000.52**	**(₱33,920,266,160.06)**	**₱133,273,471.24**

Evident from the foregoing that petitioner had enough excise tax payments/deposits to cover all its removals during the calendar year (CY) 2016.

As established, the beginning balance of deposits carried forward to January 2016 in the amount of ₱136,738,632.69[30] was properly supported by Excise Tax Returns (BIR Form No. 2200-A). While, the payments/deposits made for the year 2016 in the amount of ₱33,916,801,000.52 was properly supported by Excise Tax Returns (BIR Form No. 2200-A)[31], bank online payment confirmations,[32] bank deposit slips,[33] Monthly Movement Report with Allocated Deposits, Total Removals Report and Monthly Removals Schedules,[34] and Official Register Books (ORB) and Sworn Statement of the Volume of Removals (SSR),[35] which contain information such as total volume of removals of petitioner's domestic beer products and the corresponding excise taxes due, as well as the beginning balance of excise tax deposits, total deposits paid and the

[29] Exhibit "P-5" (ICPA Repot, Table 7, p. 8).
[30] Exhibits "P-6-a-2961" to "P-6-a-2966".
[31] Exhibits "P-6-a" to "P-6-a-2960".
[32] Exhibits "P-6-b" to "P-6-b-743", "P-6-c" to "P-6-c-734", and "P-6-e" to "P-6-e-14".
[33] Exhibits "P-6-d" to "P-6-d-21".
[34] Exhibits "P-6-f-1" to "P-6-f-12".
[35] Exhibits "P-6-g" to "P-6-g-71".

ending balance thereof. A comparison of the foregoing documents reveals the following, *viz.*:[36]

Total Advance Excise Tax Deposits Paid and Total Excise Taxes Due on Removals of All Beer Products for the period from January 1, 2016 to December 31, 2016					
	Annex Reference	**Beginning Balance (a)**	**Advance Excise Tax Deposits (b)**	**Excise Tax Due (c)**	**Ending Balance (d = a + b – c)**
Per Monthly Movement Report with Allocated Deposits	***Annex 3***	₱136,738,628.51	₱33,916,801,000.49	(₱33,920,266,168.77)	₱133,273,460.17
Per Excise Tax Returns (BIR Form No. 2200-A)	***Annex 1***	136,738,632.69	33,916,801,000.52	(33,920,266,160.06)	133,273,471.24
Difference*		**(₱4.18)**	**(₱0.03)**	**₱8.71**	**(₱11.07)**

**Difference due to rounding off*

Total Excise Tax Due and Paid on Total Removals of All Beer Removals for the period January 1, 2016 to December 31, 2016		
	Annex Reference	**Excise Tax Due and Paid**
Per Total Removals Report	***Annex 4***	₱33,920,266,168.83
Per Monthly Movement Report with Allocated Deposits	***Annex 3***	33,920,266,168.77
Difference*		**₱0.06**

**Difference due to rounding off*

Accordingly, for the CY 2016, petitioner had removals of 1,578,085,975.48 liters of all beer products, as supported by Total Removals Report and Monthly Removals Schedules duly filed and stamped "Received" by the BIR, thus:[37]

Total Volume of Liters and Total Excise Taxes Paid on Actual Removals of All Beer Products per Total Removals Report and Monthly Removals Schedules for the period from January 1, 2016 to December 31, 2016						
On "San Mig Light" and "Other Beer Products"			**On other products**		**Total**	
2016 Month	**Volume of Removals (in Liters)**	**Excise Tax Paid**	**Volume of Removals (in Liters)**	**Excise Tax Paid**	**Volume of Removals (in Liters)**	**Excise Tax Paid**
January	15,750,911.52	₱364,476,092.57	106,652,400.24	₱2,265,856,301.05	122,403,311.76	₱2,630,332,393.62
February	16,089,381.36	372,308,284.67	110,887,833.60	2,357,024,908.81	126,977,214.96	2,729,333,193.48
March	17,836,040.88	412,725,985.96	120,368,823.28	2,561,438,156.36	138,204,864.16	2,974,164,142.32
April	15,396,272.72	356,269,750.74	109,088,957.04	2,320,631,939.31	124,485,229.76	2,676,901,690.05
May	15,544,435.52	359,698,237.93	117,306,951.28	2,491,596,672.74	132,851,386.80	2,851,294,910.67
June	16,637,347.60	384,988,223.46	115,065,492.44	2,443,473,712.17	131,702,840.04	2,828,461,935.63
July	15,229,088.56	352,401,109.28	102,369,538.76	2,175,244,783.28	117,598,627.32	2,527,645,892.56
August	13,310,870.56	308,013,544.76	102,135,129.44	2,168,804,371.67	115,446,000.00	2,476,817,916.43
September	16,406,524.88	379,646,985.72	112,648,191.60	2,394,071,106.54	129,054,716.48	2,773,718,092.26
October	16,678,847.84	385,948,539.02	114,664,692.28	2,434,933,322.76	131,343,540.12	2,820,881,861.78
November	18,863,495.52	436,501,286.33	126,310,698.88	2,684,608,416.53	145,174,194.40	3,121,109,702.86
December	23,252,875.12	538,071,530.28	139,591,174.56	2,971,532,906.89	162,844,049.68	3,509,604,437.17
Total	**200,996,092.08**	**₱4,651,049,570.73**	**1,377,089,883.40**	**₱29,269,216,598.11**	**1,578,085,975.48**	**₱33,920,266,168.83**

As reported by the ICPA, the claimed amount of ₱30,591,410.67 emanated from the ₱33,920,266,168.83 excise taxes due and applied on removals of all beer

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[36] Exhibit "P-5" (ICPA Report, Tables 11 and 12, p. 11).
[37] Exhibit "P-5" (ICPA Report, Table 13, p. 13); Exhibits "P-6-f-1" to "P-6-f-12".

products of petitioner's six brewery plants located in 1) Bacolod; 2) Davao; 3) Mandaue, Cebu; 4) Sta. Rosa, Laguna; 5) San Fernando, Pampanga; and 6) Polo, Valenzuela. The audit also revealed that the amount of ₱33,920,266,168.83 was as well duly supported by petitioner's Monthly Movement Report with Allocated Deposits as attached to the Total Removals Report and Monthly Removals Schedule[38] of the six (6) plants, which clearly showed that petitioner's subject beer products were subjected to excise tax rate of ₱23.14 for the period from January to December 2016, to wit:

TOTAL REMOVALS OF ALL BEER PRODUCTS (INCLUDING "SAN MIG LIGHT AND OTHER BEER PRODUCTS")			***TOTAL "SAN MIG LIGHT AND OTHER BEER PRODUCTS" REMOVALS AND EXCISE TAX PAID***			
EXHIBIT	**PERIOD**	**EXCISE TAX PAID**	**PRODUCT**	**VOLUME (IN LITERS)**	**TAX RATE**	**EXCISE TAX PAID**
P-6-f-1	JANUARY	₱ 2,630,332,393.62	SAN MIG LIGHT BOTTLE	12,018,069.36	23.14	₱ 278,098,124.99
			SML CAN	860,808.96	23.14	19,919,119.33
			CAN RPT PP	425,905.92	23.14	9,855,462.99
			SML DRAFT 30 LITERS	36,420.00	23.14	842,758.80
			PREMIUM 330ML	30,943.44	23.14	716,031.20
			PREMIUM 330ML - CAN	9,171.36	23.14	212,225.27
			SAN MIG ZERO 330ML BTL	24,227.28	23.14	560,619.26
			SM APPLE	1,625,912.64	23.14	37,623,618.49
			SM LEMON	228,444.48	23.14	5,286,205.27
			SUPERDRY-CANS	14,461.92	23.14	334,648.83
			RED HORSE-CANS	409,646.16	23.14	9,479,212.14
			SML DRAFT 50 LITERS	66,900.00	23.14	1,548,066.00
			SUB-TOTAL	**15,750,911.52**		**₱ 364,476,092.57**
P-6-f-2	FEBRUARY	2,729,333,193.48	SAN MIG LIGHT BOTTLE	12,234,578.40	23.14	₱ 283,108,144.18
			SML CAN	782,361.36	23.14	18,103,841.87
			CAN RPT PP	420,948.00	23.14	9,740,736.72
			SML DRAFT 30 LITERS	40,890.00	23.14	946,194.60
			PREMIUM 330ML	20,528.64	23.14	475,032.73
			PREMIUM 330ML - CAN	14,232.24	23.14	329,334.03
			PREMIUM 330ML - CARTON	15.84	23.14	366.54
			SAN MIG ZERO 330ML BTL	26,476.56	23.14	612,667.60
			SM APPLE	1,821,972.24	23.14	42,160,437.63

[38] Exhibit "P-5" (ICAP Report, Annex 4).

			SM LEMON	246,597.12	23.14	5,706,257.36
			SUPERDRY-CANS	16,837.92	23.14	389,629.47
			RED HORSE-CANS	406,193.04	23.14	9,399,306.95
			SML DRAFT 50 LITERS	57,750.00	23.14	1,336,335.00
			SUB-TOTAL	**16,089,381.36**		**₱ 372,308,284.67**
P-6-f-3	MARCH	2,974,164,142.32	SAN MIG LIGHT BOTTLE	14,046,785.28	23.14	₱ 325,042,611.38
			SML CAN	843,274.08	23.14	19,513,362.21
			CAN RPT PP	463,533.84	23.14	10,726,173.06
			SML DRAFT 30 LITERS	32,670.00	23.14	755,983.80
			PREMIUM 330ML	37,825.92	23.14	875,291.79
			PREMIUM 330ML - CAN	14,351.04	23.14	332,083.07
			SAN MIG ZERO 330ML BTL	40,312.80	23.14	932,838.19
			SM APPLE	1,439,325.36	23.14	33,305,988.83
			SM LEMON	402,193.44	23.14	9,306,756.20
			SUPERDRY-CANS	25,066.80	23.14	580,045.75
			RED HORSE-CANS	422,302.32	23.14	9,772,075.68
			SML DRAFT 50 LITERS	68,400.00	23.14	1,582,776.00
			SUB-TOTAL	**17,836,040.88**		**₱ 412,725,985.96**
P-6-f-4	APRIL	2,676,901,690.05	SAN MIG LIGHT BOTTLE	11,564,910.72	23.14	₱ 267,612,034.06
			SML CAN	1,081,246.32	23.14	25,020,039.84
			CAN RPT PP	449,570.88	23.14	10,403,070.16
			SML DRAFT 30 LITERS	30,060.00	23.14	695,588.40
			PREMIUM 330ML	25,945.92	23.14	600,388.59
			PREMIUM 330ML - CAN	18,746.64	23.14	433,797.25
			SAN MIG ZERO 330ML BTL	16,513.20	23.14	382,115.45
			SM APPLE	1,410,821.28	23.14	32,646,404.42
			SM LEMON	299,098.80	23.14	6,921,146.23
			SUPERDRY-CANS	14,327.28	23.14	331,533.26
			RED HORSE-CANS	435,631.68	23.14	10,080,517.08
			SML DRAFT 50 LITERS	49,400.00	23.14	1,143,116.00
			SUB-TOTAL	**15,396,272.72**		**₱ 356,269,750.74**
P-6-f-5	MAY	2,851,294,910.67	SAN MIG LIGHT BOTTLE	11,637,077.76	23.14	₱ 269,281,979.37
			SML CAN	880,284.24	23.14	20,369,777.31
			CAN RPT PP	477,013.68	23.14	11,038,096.56
			SML DRAFT 30 LITERS	38,550.00	23.14	892,047.00
			PREMIUM 330ML	22,674.96	23.14	524,698.57
			PREMIUM 330ML -		23.14	346,378.03

			CAN	14,968.80		
			SAN MIG ZERO 330ML BTL	26,722.08	23.14	618,348.93
			SM APPLE	1,761,368.40	23.14	40,758,064.78
			SM LEMON	178,889.04	23.14	4,139,492.39
			SUPERDRY-CANS	24,195.60	23.14	559,886.18
			RED HORSE-CANS	431,940.96	23.14	9,995,113.81
			SML DRAFT 50 LITERS	50,750.00	23.14	1,174,355.00
			SUB-TOTAL	**15,544,435.52**		**₱ 359,698,237.93**
P-6-f-6	JUNE	2,828,461,935.63	SAN MIG LIGHT BOTTLE	12,877,032.96	23.14	₱ 297,974,542.69
			SML CAN	884,727.36	23.14	20,472,591.11
			CAN RPT PP	482,922.00	23.14	11,174,815.08
			SML DRAFT 30 LITERS	29,820.00	23.14	690,034.80
			PREMIUM 330ML	26,223.12	23.14	606,803.00
			PREMIUM 330ML - CAN	7,761.60	23.14	179,603.42
			SAN MIG ZERO 330ML BTL	30,792.96	23.14	712,549.09
			SM APPLE	1,535,117.76	23.14	35,522,624.97
			SM LEMON	220,651.20	23.14	5,105,868.77
			SUPERDRY-CANS	14,850.00	23.14	343,629.00
			RED HORSE-CANS	473,948.64	23.14	10,967,171.53
			SML DRAFT 50 LITERS	53,500.00	23.14	1,237,990.00
			SUB-TOTAL	**16,637,347.60**		**₱ 384,988,223.46**
P-6-f-7	JULY	2,527,645,892.56	SAN MIG LIGHT BOTTLE	11,430,833.04	23.14	₱ 264,509,476.55
			SML CAN	919,345.68	23.14	21,273,659.04
			CAN RPT PP	369,404.64	23.14	8,548,023.37
			SML DRAFT 30 LITERS	31,590.00	23.14	730,992.60
			PREMIUM 330ML	25,114.32	23.14	581,145.36
			PREMIUM 330ML - CAN	7,318.08	23.14	169,340.37
			SAN MIG ZERO 330ML BTL	32,963.04	23.14	762,764.75
			SM APPLE	1,665,750.24	23.14	38,545,460.55
			SM LEMON	259,601.76	23.14	6,007,184.73
			SUPERDRY-CANS	14,865.84	23.14	343,995.54
			RED HORSE-CANS	411,451.92	23.14	9,520,997.43
			SML DRAFT 50 LITERS	60,850.00	23.14	1,408,069.00
			SUB-TOTAL	**15,229,088.56**		**₱ 352,401,109.28**
P-6-f-8	AUGUST	2,476,817,916.43	SAN MIG LIGHT BOTTLE	9,803,613.60	23.14	₱ 226,855,618.70
			SML CAN	767,764.80	23.14	17,766,077.47
			CAN RPT PP	438,134.40	23.14	10,138,430.02

			SML DRAFT 30 LITERS	26,250.00	23.14	607,425.00
			PREMIUM 330ML	23,593.68	23.14	545,957.76
			PREMIUM 330ML - CAN	16,172.64	23.14	374,234.89
			SAN MIG ZERO 330ML BTL	37,936.80	23.14	877,857.55
			SM APPLE	1,512,015.12	23.14	34,988,029.88
			SM LEMON	253,044.00	23.14	5,B55,438.16
			SUPERDRY-CANS	9,678.24	23.14	223,954.47
			RED HORSE-CANS	366,767.28	23.14	8,486,994.86
			SML DRAFT 50 LITERS	55,900.00	23.14	1,293,526.00
			SUB-TOTAL	**13,310,870.56**		**₱ 308,013,544.76**
P-6-f-9	SEPTEMBER	2,773,718,092.26	SAN MIG LIGHT BOTTLE	12,284,688.24	23.14	₱ 284,267,685.87
			SML CAN	943,454.16	23.14	21,831,529.26
			CAN RPT PP	468,673.92	23.14	10,845,114.51
			SML DRAFT 30 LITERS	35,250.00	23.14	815,685.00
			PREMIUM 330ML	32,741.28	23.14	757,633.22
			PREMIUM 330ML - CAN	14,509.44	23.14	335,748.44
			SAN MIG ZERO 330ML BTL	41,754.24	23.14	966,193.11
			SM APPLE	1,824,609.60	23.14	42,221,466.14
			SM LEMON	252,006.48	23.14	5,831,429.95
			SUPERDRY-CANS	17,439.84	23.14	403,557.90
			RED HORSE-CANS	434,047.68	23.14	10,043,863.32
			SML DRAFT 50 LITERS	57,350.00	23.14	1,327,079.00
			SUB-TOTAL	**16,406,524.88**		**₱ 379,646,985.72**
P-6-f-10	OCTOBER	2,820,881,861.78	SAN MIG LIGHT BOTTLE	12,368,576.88	23.14	₱ 286,208,869.00
			SML CAN	1,060,115.76	23.14	24,531,078.69
			CAN RPT PP	520,613.28	23.14	12,046,991.30
			SML DRAFT 30 LITERS	34,290.00	23.14	793,470.60
			PREMIUM 330ML	45,144.00	23.14	1,044,632.16
			PREMIUM 330ML - CAN	18,889.20	23.14	437,096.09
			SAN MIG ZERO 330ML BTL	51,590.88	23.14	1,193,812.96
			SM APPLE	1,693,573.20	23.14	39,189,283.85
			SM LEMON	252,853.92	23.14	5,851,039.71
			SUPERDRY-CANS	28,258.56	23.14	653,903.08
			RED HORSE-CANS	538,742.16	23.14	12,466,493.58
			SML DRAFT 50 LITERS	66,200.00	23.14	1,531,868.00
			SUB-TOTAL	**16,678,847.84**		**₱ 385,948,539.02**
P-6-f-11	NOVEMBER	3,121,109,702.86	SAN MIG LIGHT BOTTLE	13,474,866.24	23.14	₱ 311,808,404.79

			SML CAN	1,369,938.24	23.14	31,700,370.87
			CAN RPT PP	657,645.12	23.14	15,217,908.08
			SML DRAFT 30 LITERS	37,320.00	23.14	863,584.80
			PREMIUM 330ML	42,554.16	23.14	984,703.26
			PREMIUM 330ML - CAN	21,494.88	23.14	497,391.52
			SAN MIG ZERO 330ML BTL	36,828.00	23.14	852,199.92
			SM APPLE	2,142,811.44	23.14	49,584,656.72
			SM LEMON	302,789.52	23.14	7,006,549.49
			SUPERDRY-CANS	31,466.16	23.14	728,126.94
			RED HORSE-CANS	672,431.76	23.14	15,560,070.93
			SML DRAFT 50 LITERS	73,350.00	23.14	1,697,319.00
			SUB-TOTAL	**18,863,495.52**		**₱ 436,501,286.33**
P-6-f-12	DECEMBER	3,509,604,437.17	SAN MIG LIGHT BOTTLE	17,266,645.44	23.14	₱ 399,550,175.48
			SML CAN	1,520,901.36	23.14	35,193,657.47
			CAN RPT PP	667,545.12	23.14	15,446,994.08
			SML DRAFT 30 LITERS	50,820.00	23.14	1,175,974.80
			PREMIUM 330ML	63,494.64	23.14	1,469,265.97
			PREMIUM 330ML - CAN	39,013.92	23.14	902,782.11
			SAN MIG ZERO 330ML BTL	64,144.08	23.14	1,484,294.01
			SM APPLE	2,461,559.76	23.14	56,960,492.85
			SM LEMON	362,142.00	23.14	8,379,965.88
			SUPERDRY-CANS	33,739.20	23.14	780,725.09
			RED HORSE-CANS	581,169.60	23.14	13,448,264.54
			SML DRAFT 50 LITERS	141,700.00	23.14	3,278,938.00
			SUB-TOTAL	**23,252,875.12**		**₱ 538,071,530.28**
GRAND TOTAL		**₱33,920,266,168.83**		**200,996,092.08**		**₱4,651,049,570.73**

Furthermore, petitioner submitted the Monthly Official Register Book (ORB) and Sworn Statement of the Volume of Removals (SSR) duly signed and attested by BIR Revenue Officer-On-Premise (ROOP),[39] which were all examined by the ICPA. The ORB and SSR included information, among others, the total volume of removals of each beer products including SML and Other Beer Products with the corresponding excise taxes due as well as the beginning balance of excise tax deposits, total deposits paid and the

[39] Exhibits "P-6-g" to "P-6-g-71".

ending balance of the outstanding excise tax deposits. The ORBs and SSRs were signed by a designated BIR ROOP in the brewery plants and were filed with the BIR on or before the 8th day of each month.[40]

Furthermore, petitioner presented the Excise Tax Removal Declarations (ETRDs)[41] duly signed and attested to by BIR ROOP, and which were likewise scrutinized by the ICPA. The ICPA noted, however, that a total amount of excise tax of ₱8,103.83 pertaining to SML removals were not supported by ETRDs. In any event, the said amount was reflected in the ORB/SSR duly signed by the BIR ROOP.

Lastly, the ICPA examined other related documents such as Shipping Memoranda,[42] Issue/Receipt Documents (IRD), Plant Breakages Report, Gate Pass, Delivery Receipts (DR), Claim Memoranda, and Stock Transfer Receipts[43] supporting the removals of SML and Other Beer Products for the period covered.

In summation, petitioner is entitled to its claim for refund/TCC in the reduced amount of ₱27,967,813.47, computed as follows:

Total excise taxes claimed for refund	₱ 30,591,410.67
Less: Excise taxes on SML in kegs	2,623,597.20
Refundable Excise Taxes	**₱ 27,967,813.47**

WHEREFORE, the Petition for Review dated December 27, 2017 filed by petitioner San Miguel Brewery Inc. is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱27,967,813.47**, representing erroneously and excessively collected excise taxes on its removals of SML (in

[40] Exhibit "P-5" (ICPA Report, Table 15, p. 14); *see* also Annex 7 of the ICPA Report; SML removals supported by the ORBs and SSRs tallied the amount of ₱4,651,049,570.73.
[41] Exhibits "P-6-h" to "P-6-h-2426".
[42] Exhibits "P-6-i" to "P-6-i-35264".
[43] Exhibits "P-6-j" to "P-6-j-1793".

bottles and in cans) and Other Beer Products for the period covering January 1, 2016 to December 31, 2016.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified 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.

ROMAN G. DEL ROSARIO
Presiding Justice