22-000035-0072

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10745

SAN MIGUEL BREWERY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
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105 Paseo de Roxas, Makati City

GREETINGS:

You are hereby notified by these presents that on **May 6, 2025,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 7, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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SAN MIGUEL BREWERY, INC.,
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- versus -

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Respondent.

CTA CASE NO. 10745

Members:

DEL ROSARIO, *P.J., Chairperson*,
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:

MAY 0 6 2025; 10:15AM

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RESOLUTION

***DEL ROSARIO, P.J.*:**

For the Court's resolution is respondent Commissioner of Internal Revenue's **Motion for Partial Reconsideration (Re: Decision promulgated 18 November 2024)**[1] filed personally on December 11, 2024 and via email on December 12, 2024, with petitioner's **Opposition (to the Motion for Partial Reconsideration dated December 6, 2024)**[2] filed through registered mail on January 6, 2025 and via email on January 7, 2025.

In his Motion, respondent prays for the reversal and setting aside of the assailed Decision promulgated on November 18, 2024, the dispositive portion thereof reads:

> **WHEREFORE**, the Petition for Review is **GRANTED**. Accordingly:
>
> (i) Section 5 of Revenue Regulations No. 17-2012 dated December 21, 2012 insofar as it implements the "no downgrading" rule embedded in the "no downward reclassification" provision is deemed null and void;

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[1] CTA Docket, Vol. IV, pp. 1876-1903.
[2] CTA Docket, Vol. IV, pp. 1916-1988.

(ii) Annex "A-1" of Revenue Memorandum Circular No. 90-2012 dated December 27, 2012 insofar as it prescribes the excise tax rate of ₱20.57 is deemed null and void;

(iii) Revenue Memorandum Circular No. 65-2020 dated June 22, 2020 and Revenue Memorandum Circular No. 113-2020 dated October 14, 2020 insofar as they provide an erroneous effectivity date of Republic Act No. 11467 are deemed null and void;

(iv) The excise tax rate of ₱27.07 per liter imposed during the period from January 23, 2020 to February 9, 2020 pursuant to Revenue Regulations No. 17-2012 in relation to Revenue Memorandum Circular No. 90-2012 is void; and,

(v) Respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of petitioner San Miguel Brewery, Inc. in the amount of ₱1,068,775,829.04 representing the excise taxes erroneously, excessively, illegally and/or wrongfully collected from petitioner for the period from January 23, 2020 to February 9, 2020.

SO ORDERED.

In support of his prayer, respondent effectively argues that:

(i) the Court has no jurisdiction over the subject matter;

(ii) the doctrine of exhaustion of administrative remedies is applicable in this case;

(iii) there was no reclassification of San Mig Light because it has always been classified as a variant of an existing brand; and,

(iv) Republic Act (RA) No. 11467 was made effective upon its complete publication in the website of the Official Gazette, or on January 23, 2020.

In its Opposition, petitioner counter-argues that:

(i) the Court has thoroughly considered and resolved all the points and arguments raised in the Motion for Partial Reconsideration, which merely reiterates previously rejected contentions and lacks any new or substantial basis; as such, it qualifies as a pro forma motion and should be summarily denied;

(ii) the Court acted in accordance with law and jurisprudence in resolving the Petition for Review considering that the principal prayer is the refund of taxes with the declaration of nullity of the BIR issuances being a necessary ancillary relief;

(iii) the Court correctly held that the excise tax rate of ₱27.07 per liter imposed by respondent on petitioner's subject beer products, as well as Revenue Memorandum Circular (RMC) No. 90-2012 and Revenue Regulations (RR) No. 17-2012, are void for violating Section 143 of the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 10351; and,

(iv) the assailed Decision correctly held that the excise tax rate of ₱35.00 per liter provided under RA No. 11467 could only take effect starting February 10, 2020, or the date of its complete publication in the Official Gazette, pursuant to Article 2 of the Civil Code and the ruling in *Garcillano vs. House of Representatives, et al.*

THE COURT'S RULING

The Court finds that the arguments raised by respondent are essentially a mere rehash or reiteration of the matters judiciously discussed and passed upon in the assailed Decision dated November 18, 2024. Nevertheless, the Court shall discuss the issue raised in the present Motion for a thorough and comprehensive disposition of this case.

In the assailed Decision, the Court held that in line with the Supreme Court's pronouncement in *Banco De Oro, et al. vs. Republic of the Philippines, et al.*[3] which held that the CTA has the exclusive authority to adjudicate the constitutionality or validity of tax laws, regulations or administrative issuances, whether in a direct challenge or as a defense in an assessment case or refund case, the Court has jurisdiction to determine the validity of RMC No. 90-2012 and RR No. 17-2012.

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[3] G.R. No. 198756, August 16, 2016.

Respondent maintains that the Court has no jurisdiction to nullify RMC No. 90-2012 and RR No. 17-2012. Specifically, he argues that the nullification of the ₱20.57 per liter excise tax rate in RMC No. 90-2012 and the assailed provision under RR No. 17-2012 does not fall under the special jurisdiction of this Court.

Relatedly, he contends that the phrase "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue" under Section 7(a)(1) of RA No. 1125 does not cover cases involving the invalidity or constitutionality of BIR issuances. Remarkably, respondent recognizes the Supreme Court rulings in *Banco De Oro* and *Commissioner of Internal Revenue vs. Court of Tax Appeals and Petron Corporation*[4] but claims that they are inapplicable in the present case.

Moreover, respondent characterizes the present case as a direct challenge on RMC No. 90-2012 and RR No. 17-2012 that should be subject to the exclusive review by the Secretary of Finance, then eventually, on appeal to the regular courts.

The Court finds that respondent's characterization of the prayer for nullification of RMC 90-2012 and RR 17-2012 as the ultimate relief sought in the Petition for Review is grossly misleading.

The challenge against these revenue issuances is not a direct attack but merely an incidental issue arising in the prosecution of petitioner's judicial claim for refund. This is evident from the fact that the primary relief sought in this case is the refund of the excise taxes. The inclusion of a prayer for the nullification of the assailed issuances is in support of petitioner's claim of erroneous payment of excise taxes. The Court therefore can review the basis of respondent's imposition of excise taxes, that is RMC No. 90-2012 and RR No. 17-2012, since the same are the very *lis mota* of the present controversy. Their validity is inextricably linked to the issue of whether petitioner is entitled to the refund of the claimed erroneously paid excise taxes.

Even assuming that the present case constitutes a direct challenge, *Banco De Oro* is categorical in holding that the CTA has jurisdiction to take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuances, including revenue orders, revenue memorandum circulars, rulings. Unless and until abandoned, the doctrine laid down in *Banco de Oro* remains valid and effective.

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[4] G.R. No. 207843, February 14, 2018.

Respondent also argues that the doctrine of exhaustion of administrative remedies applies to the present case. According to respondent, since petitioner failed to exhaust administrative remedies in assailing the BIR issuances, the petition should be dismissed.

Undoubtedly, RMC No. 90-2012 and RR No. 17-2012 were issued by respondent in view of his power to interpret the provisions of the NIRC and other tax laws pursuant to Section 4 of the NIRC of 1997, as amended. This authority has been characterized as a rule-making or quasi-legislative power delegated by Congress to the CIR.[5]

In *Alliance of Non-Life Insurance Workers of the Philippines, et al. vs. Hon. Leandro R. Mendoza, et al.*,[6] the Supreme Court clarified that the doctrine of exhaustion of administrative remedies does not apply when the questioned act is quasi-legislative in character.

Verily, petitioner need not file an appeal before the Secretary of Finance seeking a review of the validity of the aforesaid issuances, as its recourse to this Court to seek judicial redress is proper.

Curiously, respondent still maintains that San Mig Light is merely a variant of an existing brand, specifically of San Miguel Pale Pilsen. On this premise, respondent contends that San Mig Light should be subjected to excise tax based on the highest classification applicable to any variant of the same brand.

This argument has long been laid to rest. As early as eight years ago, in *Commissioner of Internal Revenue vs. San Miguel Corporation*,[7] the Supreme Court definitively held that "San Mig Light" is a new brand, and not a mere variant of an existing brand. Said the Supreme Court:

> **"San Mig Light" and "Pale Pilsen" do not share a root word. Neither is there an existing brand in the list (Annexes C-1 and C-2 of the Tax Code) called "San Mig" to conclude that "Light is a suffix rendering "San Mig Light" as its "variant." As discussed in the Court of Tax Appeals Decision, "San Mig Light" should be considered as one brand name.**
>
> Respondent's statements describing San Mig Light as a low-calorie variant is not conclusive of its classification as a variant for excise tax purposes. Burdens are not to be imposed nor presumed to

[5] *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*, G.R. No. 207843, July 15, 2015.
[6] G.R. No. 206159, August 26, 2020.
[7] G.R. Nos. 205045 and 205723, January 25, 2017.

> be imposed beyond the plain and express terms of the law. "The general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication."
>
> Furthermore, respondent's payment of the higher taxes starting January 30, 2004 after deficiency assessments were made cannot be considered as an admission that its San Mig Light is a variant. Section 130(A)(2) of the Tax Code requires payment of excise tax "before removal of domestic products from place of production." These payments were made in protest as respondent subsequently filed refund claims.
>
> xxx xxx xxx
>
> While estoppel generally does not apply against government, especially when the case involves the collection of taxes, an exception can be made when the application of the rule will cause injustice against an innocent party.
>
> **Respondent had already acquired a vested right on the tax classification of its San Mig Light as a new brand**. To allow petitioner to change its position will result in deficiency assessments in substantial amounts against respondent to the latter's prejudice.

In the above case, the Supreme Court underscored the differential treatment of variants of existing brands *vis-à-vis* new brands. Specifically, variants of a brand that were introduced in the market after January 1, 1997 are taxed under the highest classification of any variant of the brand. In contrast, new brands are initially classified and taxed according to their suggested net retail price, until a survey is conducted by the Bureau of Internal Revenue to determine their current net retail price in accordance with the specified procedure.[8]

As explicitly held in the aforesaid case, the Supreme Court categorically held that San Mig Light is a new brand. Accordingly, since the time of its introduction in 1999, its applicable excise tax rate has been consistently based on its net retail price.

However, with the enactment of Republic Act No. 10351, the distinction between variants of existing brands and new brands of beer products was rendered moot. Beginning with taxable year 2013, all beer products, regardless of their previous classification, have been uniformly subjected to excise tax based on their prevailing net retail price.

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[8] *Commissioner of Internal Revenue vs. San Miguel Corporation*, G.R. Nos. 205045 and 205723, January 25, 2017.

Pursuant to Section 3 of R.A. No. 10351, a unitary excise tax rate of ₱23.50 per liter was imposed effective January 1, 2017. Such rate is subject to an annual four percent (4%) indexation beginning in 2018. Applying the 4% indexation rate starting January 1, 2018, the correct excise tax rate applicable to petitioner's beer products for taxable year 2020 is ₱26.44 per liter. Accordingly, the assailed Decision correctly ordered the refund of the excise tax paid, representing the difference between the amount actually paid at the rate of ₱27.07 per liter and the correct excise tax rate of ₱26.44 per liter.

Notably, despite respondent's insistence that San Mig Light is a variant of an existing brand, he fails to demonstrate how such position – which had been rendered irrelevant upon the effectivity of R.A. No. 10351 – would result in the application of the excise tax rate of ₱27.07, as he claims.

Finally, respondent insists that publication of RA No. 11467 in the online website of the Official Gazette sufficiently meets the requirement of publication.

As explained by the Court in the assailed Decision, the requirement of publication is intended to satisfy the basic requirements of due process and it is imperative for it will be the height of injustice to punish or otherwise burden a citizen for the transgressions of a law or rule of which he had no notice whatsoever.[9]

In the absence of a law expressly declaring that publication through online medium constitutes valid publication to impute constructive notice upon the citizenry, the State cannot presume that the mere uploading of a law on the Official Gazette's website is adequate notice. To hold otherwise would be to indulge in a presumption upon a presumption, which unduly prejudices the people, especially the taxpayers in the case of RA No. 11467.

Indeed, the pendency of several bills in both Houses of Congress seeking to amend Article 2 of the Civil Code and Section 18 of EO No. 292 to include online publication as a legal mode of publication of laws only confirms that online publication has yet to be legally recognized as a substitute for publication in the Official Gazette or in a newspaper of general circulation.

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[9] *Garcillano vs. House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communication Technology, and Suffrage and Electoral Reforms*, G.R. No. 170338, December 23, 2008.

In fine, respondent's repeated attempts to relitigate issues that have already been definitively resolved by the Supreme Court fail to persuade this Court.

In view of the foregoing, the Court finds no compelling reason to modify or reverse the Decision dated November 18, 2024.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (Re: Decision promulgated 18 November 2024)** is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice