REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SAN MIGUEL BREWERY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10000

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

APR 28 2022
9:26 a.m.

x---x

RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion for Reconsideration (Decision dated September 22, 2021)** filed on November 18, 2021, with petitioner's **Opposition to Respondent's Motion for Reconsideration… dated November 18, 2021** filed on March 23, 2022.

On September 22, 2021, the Court promulgated a Decision partially granting petitioner's claim for refund of erroneously paid excise taxes due on the removals of "San Mig Light" and "Other Beer Products" for calendar year 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**.
>
> For being contrary to Section 143 of the NIRC of 1997, as last amended by RA 10351, the following portions of Annex 'A-1' of RMC 90-2012, prescribing the applicable excise tax rates per liter, are declared invalid, and have no force and effect, *viz.*:

x x x

Moreover, also for being contrary to Section 143 of the NIRC of 1997, as last amended by RA 10351, the portion of Section 5 of RR 17-2012, which states that '[s]*tarting January 1, 2014, the applicable tax rate shall be increase*[d] *by four percent (4%) annually*' is likewise declared as invalid and has no force and effect of law.

Lastly, Respondent is **ORDERED TO REFUND** in favor of Petitioner the amount of **₱122,620,732.71,** representing erroneously, excessively, and/or illegally collected excise taxes due on the removals of '*San Mig Light*' and '*Other Beer Products*' for the period covering January 1, 2017 to December 31, 2017, **WITHOUT LEGAL INTEREST THEREON.**

SO ORDERED."

In his Motion, respondent assails the above Decision praying that it be reconsidered and set aside based on the following grounds, *viz*:

I.
WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN ASSUMING JURISDICTION OVER THE INSTANT CASE.

II.
THE HONORABLE COURT ERRED IN DECLARING THAT 'ANNEX A-1' OF RMC NO. 90-2012 IS INVALID.

III.
THE HONORABLE COURT ERRED IN RULING THAT PETITIONER IS ENTITLED TO THE TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

As to the first ground, respondent insist that the Court has no jurisdiction over the instant case. He asserts that the Court of Tax Appeals (CTA) is a court of special jurisdiction and, as such, it can only hear such matters that are clearly within its jurisdiction. Respondent further states that the CTA can only try cases permitted by statute, specifically, Section 7 of Republic Act (RA) No. 1125,[1] as amended by RA No. 9282,[2] and in relation to Section 3, Rule 4 of the Revised Rules of Court of Tax Appeals (RRCTA). As such, respondent submits

[1] "AN ACT CREATING THE COURT OF TAX APPEALS," June 16, 1954.
[2] "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES," March 30 2004.

that the present case does not fall under any of the cases contemplated by the aforementioned provisions.

With regard to the second ground, respondent claims that the Court's nullification of the excise tax rate under "Annex A-1" of Revenue Memorandum Circular (RMC) No. 90-2012,[3] and the portion of Section 5 of Revenue Regulations (RR) No. 17-2012,[4] are both invalid since they do not fall under the special jurisdiction granted to the CTA.

Respondent explains that the present case does not fall under Section 7(a)(1) of RA No. 1125, as amended, specifically, the *"other matters arising under the National Internal Revenue Code"* portion, considering that the provision does not cover cases involving the validity or constitutionality of the issuances made by the Bureau of Internal Revenue (BIR). Respondent cites the case of *The Acting Collector of Customs v. The Court of Tax Appeals, et al.,*[5] wherein the Supreme Court rationalized that the "other matters" mentioned under Section 7(a)(1) of RA 1125 should be understood to mean matters of the same kind as "disputed assessment" and "claim for refund", following the by the doctrine of *ejusdem generis.* Applying the foregoing, respondent argues that the present case does not fall under the CTA mandate since it assails the validity of the RMC and RR which, unlike assessment and refund cases, does not have direct relation to government collection.

Respondent further posits that RMC No. 90-2012 and RR No. 17-2012 were issued in accordance with respondent's rule-making or quasi-legislative power or the power to interpret tax laws under Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended, precisely the part, "[t]he power to interpret the provisions of this Code and other tax laws shall be **under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.** x x x."

Respondent contends that the power to interpret the provisions of the NIRC and other tax laws in the exercise of his quasi-legislative power is appealable to the Secretary of Finance; then eventually to the regular courts, as part of the general power conferred by Section 1, Article VIII of the 1987 Philippine Constitution – on courts of general jurisdiction and not on courts of special jurisdiction. Thus, respondent stresses that the present case should be dismissed due to petitioner's failure to comply with the condition of resorting

---

[3] SUBJECT: Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products Amending Sections 141, 142, 143, 144, 145, 8, 131, and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes," dated December 27, 2012.

[4] SUBJECT: Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations," dated December 21, 2012.

[5] G.R. No. L-8811, October 31, 1957.

to proper administrative remedy, specifically contained under the above-quoted Section, which is a condition *sine qua non.*

Respondent submits that a collateral attack on a presumably valid administrative issuance is not allowed, citing the case of *Dasmariñas Water District v. Leonardo-de Castro, JJ., et al.,*[6] where the Supreme Court held that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. Respondent argues that there is a legal presumption of validity of these laws and rules; and unless the law or rule is annulled in a direct proceeding, the legal presumption of its validity stands. Accordingly, respondent avers that unless and until RMC No. 90-2012 is declared invalid and unconstitutional through proper proceedings, the same is valid and binding, as such, there is no basis for petitioner's claim for tax refund.

As to third and final ground, respondent claims that the Court erred in ruling that petitioner is entitled to the tax refund or issuance of tax credit certificate because there was no erroneous payment or illegal collection of excise taxes to speak of in the present case. Respondent maintains that there was no reclassification of San Mig Light as it has always been classified as a variant of an existing brand. Also, respondent contends that petitioner should be considered estopped from questioning the classification of San Mig Light as a variant of San Miguel Pale Pilsen, on account of its prior representations.

Lastly, respondent points out that petitioner denied him the opportunity to review the claim for refund by filing its administrative claim on December 12, 2017 and, subsequently, filing its judicial claim on December 27, 2017, with merely 15 days in between. Respondent likewise avers that claims for refund are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

On the other hand, in its comment, petitioner opposes respondent's Motion for Reconsideration stating that the same should be denied for lack of merit. Petitioner points out that the arguments raised by respondent in his Motion are rehashes of the same arguments he have raised in his Answer, which have already been dealt with by petitioner in its Memorandum dated September 22, 2020; and by the Court in the Decision he assails.

The Court finds respondent's Motion for Reconsideration bereft of merit.

As correctly pointed out by petitioner, the arguments raised by respondent in the present Motion are the same arguments brought forth in his *Answer* and *Memorandum*, which have already been considered by this Court in

---

[6] G.R. No. 175550, September 17, 2008.

the assailed Decision. Be that as it may, the Court shall still resolve the main issue brought up by respondent.

The bone of respondent's contention is the propriety of the CTA's jurisdiction to hear the present case. Respondent prays for the dismissal of petitioner's Petition for Review as it should have first lodged its appeal before the Secretary of Finance.

Incidentally, contrary to respondent's assertion, the Court has the jurisdiction to hear the petitioner's claim for tax refund including auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. In the case of *City of Manila, et al., v. Hon. Caridad H. Grecia-Cuerdo, et al.*,[7] the Supreme Court had the opportunity to discuss the CTA's inherent powers which may be said to be implied from the grant of its jurisdiction, to wit:

> "A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The Court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its original jurisdiction in cases pending before it.
>
> Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.
>
> x x x
>
> Thus, this Court has held that 'while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has

[7] G.R. No. 175723, February 4, 2014.

power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates.' Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance."

Furthermore, in the case of *Banco de Oro, et al., v. Republic of the Philippines, et al.*,[8] the Supreme Court explicitly pronounced that the CTA has jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance, *viz*:

"In *Commissioner of Internal Revenue v. Leal*, citing *Rodriguez v. Blaquera*, this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau of Internal Revenue, thus:

While the Court of Appeals correctly took cognizance of the petition for certiorari, however, **let it be stressed that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not to the RTC.**

The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops...

x x x

The Court, in *Rodriguez, etc. vs. Blaquera, etc.*, ruled:

'Plaintiff maintains that this is not an appeal from a ruling of the Collector of Internal Revenue, but merely an attempt to nullify General Circular No. V-148, which does not adjudicate or settle any controversy, and that, accordingly, this case is not within the jurisdiction of the Court of Tax Appeals.

We find no merit in this pretense. General Circular No. V-148 directs the officers charged with the collection of taxes and license fees to adhere

---

[8] G.R. No. 198756, January 13, 2015.

> strictly to the interpretation given by the defendant to the statutory provisions abovementioned, as set forth in the Circular. **The same incorporates, therefore, a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) on the manner of enforcement of the said statute, the administration of which is entrusted by law to the Bureau of Internal Revenue.** As such, it comes within the purview of Republic Act No. 1125, Section 7 of which provides that the Court of Tax Appeals 'shall exercise exclusive appellate jurisdiction to review by appeal . . . decisions of the Collector of Internal Revenue in . . . matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue.'
>
> In exceptional cases, however, this court entertained direct recourse to it when 'dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.'" *(Citations omitted and emphases supplied)*

From the foregoing jurisprudence, it was undoubtedly shown that the CTA has 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 in 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 RA No. 1125, as amended.

It bears stressing that the law cannot be amended by a mere regulation. Given that that there is a discrepancy between Section 143 of the NIRC of 1997, as amended, and Section 5 of RR No. 17-2012 which implements RA No. 10351, the said Section of the pertinent administrative issuance must therefore be held invalid. The same is true for Annex A-1 of RMC No. 90-2012.

Indeed, the provisions of the NIRC of 1997, as amended, must prevail over administrative issuances that override it. Although an administrative agency is authorized to exercise its discretion in the exercise of its power of subordinate legislation, nevertheless, no similar authority exists to validate an arbitrary or capricious enactment of rules and regulations. Rules which have the effect of extending or conflicting with the authority-granting statute do not represent a valid exercise of rule-making power but constitute an attempt by the agency to legislate. In such a situation, it is said that the issuance becomes void not only for being *ultra vires* but also for being unreasonable. The law therefore prevails over the administrative issuance.[9]

In the same vein, the Supreme Court also reminded the head of administrative agencies to be cautious in order that their issuances remain consistent with law as held in the case of *Commissioner of Internal Revenue v. Bicolandia Drug Corporation (Formerly known as Elmas Drug Co.),*[10] to wit:

> "This case should remind all heads of executive agencies which are given the power to promulgate rules and regulations, that they assume the roles of lawmakers. **It is well-settled that a regulation should not conflict with the law it implements.** Thus, those drafting the regulations should study well the laws their rules will implement, even to the extent of reviewing the minutes of the deliberations of Congress about its intent when it drafted the law. They may also consult with the Secretary of Justice or the Solicitor General for their opinions on the drafted rules. **Administrative rules, regulations and orders have the efficacy and force of law so long as they do not contravene any statute or the Constitution It is then the duty of the agencies to ensure that their rules do not deviate from or amend acts of Congress, for their regulations are always subordinate to the law.**"

It is true that tax refunds are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. However, unless a statute imposes a tax clearly, expressly, and unambiguously, the equally well-settled rule that the imposition of a tax cannot be presumed will apply. There must be a clear delineation between a claim for refund premised on a tax exemption under a statute and a claim for refund based on erroneous payment when the taxpayer or article, as the case may be, is not subject to tax. The former should be construed against the claimant-taxpayer, whereas the latter should be construed against the Government.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on September 22, 2021.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Decision dated September 22, 2021) is **DENIED** for lack of merit.

---

[9] *Re: Entitlement to Hazard Pay of SC Medical and Dental Clinic Personnel*, A.M. No. 03-9-02-SC, November 27, 2008.
[10] G.R. No. 148083, July 21, 2006.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice