REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

TANDUAY DISTILLERS, INC., Petitioner,	**CTA EB NO. 2101** (CTA Case Nos. 9017 & 9035)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 14 2020 3:59 p.m.

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DECISION

BACORRO-VILLENA, J.:

Assailing the Special Second Division's Decision dated 07 February 2019[1] and 28 June 2019 Resolution[2] in CTA Case Nos. 9017 & 9035, both entitled "*Tanduay Distillers, Inc. v. Commissioner of Internal Revenue*", petitioner Tanduay Distillers, Inc. (**petitioner/Tanduay**) filed the present Petition for Review[3] pursuant to Section 3(b), Rule 8,[4]

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1 Division Docket (CTA Case No. 9017), Volume VI, pp. 2697-2749; With Honorable Associate Justice Catherine Manahan as *ponente* and Honorable Senior Associate Justice Juanito C. Castañeda, Jr., concurring.

2 Id., pp. 2788-2797.

3 Filed 05 August 2019, *Rollo*, pp. 5-47.

4 **SEC. 3**. *Who may appeal; period to file petition.*

...

in relation to Section 2(a), Rule 4[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

Petitioner is a corporation duly organized and existing under Philippine laws and is primarily engaged in the business of manufacturing, compounding, bottling, importing, exporting, buying or selling or otherwise dealing in, wholesale and retail such goods as rhum, spirit, beverage, liquor and other liquor products.[6] On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**).[7]

FACTS OF THE CASE

Prior to this appeal to the Court *En Banc* or on 12 March 2015, petitioner filed two (2) separate administrative claims for refund or issuance of tax credit certificate[8] (**TCC**) with respondent relative to its allegedly erroneously paid excise taxes. Claiming that decisions on those administrative claims were not forthcoming at the time (although the Bureau of Internal Revenue [**BIR**] eventually denied them[9]), petitioner then filed two (2) separate Petitions for Review[10] before this Court, each pertaining to the following periods and amounts:

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

...

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

6 Consolidated Joint Stipulation of Facts and Issues (CJSFI), Division Docket (CTA Case No. 9017), Volume IV, p. 2006.

7 Id.

8 Exhibit "P-1", id., Volume IV, pp. 1849-1854; Exhibit "P-20", id., Volume V, pp. 2342-2347.

9 BIR Records (CTA Case No. 9017), Folder No. 1, pp. 115-118; id., Folder No. 2, pp. 108-117.

10 Id., Volume I, pp. 10-25; Division Docket (CTA Case No. 9035), Volume I, pp. 10-23.

Docket	Filed on	Period covered	Amount
CTA Case No. 9017	26 March 2015	March to April 2013	₱340,826,261.32
CTA Case No. 9035	30 April 2015	May to July 2013	₱671,069,789.10
Total			**₱1,011,896,050.42**

The filing of the said claims for refund or issuance of TCC was prompted by the passage of Republic Act (**RA**) No. 10351[11] that took effect on 01 January 2013, restructuring the excise tax on alcohol and tobacco products.

To implement the provisions of RA 10351, Revenue Regulations (**RR**) No. 17-2012[12] was issued, the transitory provisions of which contained the following, among others:

> ...
>
> (c) The specific tax that was paid on the physical inventory of ethyl alcohol held in possession by manufacturers of compounded liquors as of the effectivity of the Act subsequently used as raw materials in the production of compounded liquors shall not be entitled to tax credit/refund or shall not be deducted from the total excise tax due on compounded liquors.
>
> ...

Subsequently, Revenue Memorandum Circular (**RMC**) No. 3-2013[13] was also issued stating that:

> ...
>
> In line with the aforesaid definition of distilled spirits, **all end-products, such as ethyl alcohol, ethanol** or other similar products or mixtures **are separate and distinct distilled spirits apart from the above-enumerated alcoholic products** (i.e., whisky, brandy, rum, etc.) **and, therefore, the same should be**

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11 AN ACT RESTRUCTURING THE EXCISE TAX ON ALCOHOL AND TOBACCO PRODUCTS BY AMENDING SECTIONS 141, 142, 143, 144, 145, 8, 131 AND 288 OF REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED BY REPUBLIC ACT NO. 9334 AND FOR OTHER PURPOSES.

12 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.

13 Clarifying Certain Provisions of Revenue Regulations No. 17-2012 Implementing the Provisions of Republic Act No. 10351 as well as the Provisions of Revenue Memorandum Circular No. 90-2012 Providing the Initial Tax Classifications of Alcohol and Tobacco Products.

> **likewise subjected to the imposition of a separate and distinct excise tax** prescribed under the same Section of the Tax Code.[14]
>
> ...

Later, however, RMC 18-2013[15] was issued amending RMC 3-2013, insofar as the treatment of ethyl alcohol intended to be used as raw material is concerned, which reads:

> ...
>
> For this purpose, the importation of ethyl alcohol or ethanol intended for re-sale or for the manufacture of compounded liquors shall be subject to excise tax unless the importer thereof is a holder of a Permit to Operate as importer of ethyl alcohol or ethanol or as a manufacturer of compounded liquors, as the case may be, duly issued by this Bureau and has posted a surety bond, in addition to the importer's bond prescribed under Section 160 of the National Internal Revenue Code (NIRC) of 1997, as amended...
>
> In case of domestic sale of ethyl alcohol or ethanol by duly registered manufacturers thereof, otherwise known as distilleries, the sale and delivery of ethyl alcohol or ethanol directly to manufacturers of compounded liquors shall be subject to excise tax, unless a surety bond shall be posted by the distillery, in addition to the manufacturer's bond prescribed under Section 160 the NIRC of 1997... Moreover, the sale and delivery of ethyl alcohol or ethanol without the payment of the excise tax to be used as raw material in the manufacture of compounded liquors shall not be allowed unless the buyer thereof is a holder of a Permit to Operate as manufacturer of compounded liquors duly issued by this Bureau.
>
> ...
>
> **The excise tax that has already been paid on ethyl alcohol or ethanol pursuant to RMC No. 3-2013 shall not be entitled to tax credit/refund or shall not be deducted from the total excise tax due on compounded liquors.**[16]
>
> ...

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14 Emphasis supplied.

15 Further Clarifying the Taxability of Distilled Spirits Provided under Revenue Memorandum Circular No. 3-2013.

16 Emphasis supplied.

Thus, while RMC 18-2013 allowed non-payment of excise taxes on ethyl alcohol (provided it will be used as raw material in the manufacture of compounded liquors), it nonetheless disallowed tax credit/refund for purchases during the effectivity of RMC 3-2013.

Petitioner thus wrote respondent a letter[17] requesting the amendment of the last paragraph as cited above, as the same would, in effect, subject petitioner to paying excise tax twice; one on the inventory of alcohol and the other, on the removal of finished product. However, respondent denied the said request in a letter dated 02 April 2013.[18]

Petitioner thereafter appealed[19] to the Secretary of Finance who also denied the same in a letter dated 30 January 2014.[20] Still unsatisfied, petitioner moved for the reconsideration thereof in its letter dated 26 February 2014[21], which the Secretary of Finance again denied in a letter dated 21 July 2014.[22]

Petitioner then proceeded to file the aforementioned administrative and judicial claims for refund or issuance of TCC. The separate judicial cases before the Second Division were docketed as **CTA Case Nos. 9017** and **9035**, respectively, and were subsequently consolidated in a Resolution dated 23 September 2015.[23]

PROCEEDINGS BEFORE THE COURT

As its basis for the claims for refund, petitioner mainly assailed the validity of Section 12(c) or that portion of the Transitory Provisions of RR 17-2012[24] which disregarded the application of Section 170[25] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, for being an unauthorized administrative legislation.

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17 Exhibit "P-5", Division Docket (CTA Case No. 9017), Volume IV, pp. 1855-1856.
18 Exhibit "P-6", id., p. 1857.
19 Exhibit "P-7", id., pp. 1858-1862.
20 Exhibit "P-8", id., pp. 1863-1865.
21 Exhibit "P-9", id., pp. 1866-1868.
22 Exhibit "P-10", id., pp. 1869-1870.
23 Id., pp. 1971-1972.
24 Supra at p. 3.
25 **Sec. 170.** *Requirements Governing Rectification and Compounding of Liquors.*

After the trial on the merits, the Special Second Division rendered its 07 February 2019 Decision[26] invalidating such portion of the Transitory Provisions of RR 17-2012, as well as the penultimate paragraph of RMC 18-2013.[27] It upheld petitioner's entitlement to file a claim for refund of excise taxes paid on finished goods produced from tax-paid raw materials, to wit:

> ...
>
> At the outset, the Court reaffirms the time-honored doctrine that, the law prevails over the administrative regulations implementing it. The authority to promulgate implementing rules proceeds from the law itself. To be valid, a rule or regulation must conform to and be consistent with the provisions of the enabling statute. As such, it cannot amend the law either by abridging or expanding its scope.
>
> In the implementation of statutes, the will and intention of its authors must be determined. Legislative intent is part and parcel of the law, the controlling factor in interpreting a statute. In construing a statute, the proper course is to start out and follow the true intent of the legislature and to adopt the sense that best harmonizes with the context and promotes in the fullest manner the policy and objects of the legislature. In fact, any interpretation that runs counter to the legislative intent is unacceptable and invalid.
>
> **Under R.A. No. 10351, the clear legislative intent is that raw materials (such as ethyl alcohol) are not subject to tax since the excise tax on distilled spirits should be on the final product.**
>
> **However, Section 12(c) of its implementing regulation, RR No. 17-2012, and RMC No. 18-2013 disallowed the tax crediting of the excise taxes paid under the old law on the raw materials (i.e., ethyl alcohol/ethanol inventory at the time of the effectivity of the new excise tax law), against excise taxes due on the compounded liquor. This, in effect, subjected petitioner to paying excise tax twice, first on the raw materials and second on the finished products produced. Thus, this part of the transitory provision of RR 17-2012 and RMC No. 18-2013 should be struck down for lack of legal basis.**
>
> ...

26 Supra at note 1.
27 Supra at note 15.

Lastly, petitioner argues that the compounded liquors produced from the tax-paid raw materials are not subject to the new tax rates prescribed under RA No. 10351. It contends that Section 170 is still prevailing and in full force and effect as it has not been changed, amended or repealed by the new law. Thus, the payments made therein should be considered in light of said Section 170 of the NIRC of 1997, as amended, which reads as follows:

> "SEC. 170. **Requirements Governing Rectification and Compounding of Liquors.** — Persons engaged in the rectification or compounding of liquors shall, as to the mode of conducting their business and supervision over the same, be subject to all the requirements of law applicable to distilleries: *Provided,* That where a rectifier makes use of spirits upon which the excise tax has been paid, no further tax shall be collected on any rectified spirits produced exclusively therefrom: *Provided, further,* That compounders in the manufacture of any intoxicating beverage whatever, shall not be allowed to make use of spirits upon which the excise tax has not been previously paid."

Now, prior to the amendment of Section 141 of the NIRC of 1997, as amended, excise taxes were collected upon removal of the raw materials from place of production, and no additional taxes were paid by petitioner upon removal of the compounded liquors produced from such raw materials pursuant to Section 170 of the 1997 NIRC, as amended. When R.A. No. 10351 was implemented, the immediate payment of excise taxes on the removals of the compounded liquor was required.

This shift in taxation from raw materials to finished goods introduced in R.A. No. 10351, did not make said Section 170 inoperative.

Basic is the rule in statutory construction that a provision of a statute should be so construed as not to nullify or render nugatory another provision of the same statute. **Thus, to give life to the obvious intendment of the law and to avoid a construction which would render Sec. 170 of the 1997 NIRC, as amended, meaningless, these provisions should be interpreted that all finished goods, be it ethyl alcohol, compounded liquor or distilled spirits, etc. are subject to excise tax pursuant to R.A. No. 10351. However, if used as raw materials in the production of compounded liquor, then Section 170 should apply. This**

> **interpretation harmonizes the provisions of Section 141, as amended by R.A. No. 10351 and Section 170, both of the NIRC.**
>
> **Thus, ethyl alcohol and ethanol will not be subject to tax upon their importation or removal from place of production, if they will be used as raw materials in the production of compounded liquors.**
>
> **In this case, petitioner has existing tax paid ethanol or ethyl alcohol at the time of the effectivity of R.A. No. 10351, that were used as raw materials in the production of rectified spirits or compounded liquor. Thus, applying Section 170 of the 1997 NIRC, as amended, no further tax should have been collected on any rectified spirits or compounded liquor produced exclusively therefrom.**
>
> **Considering the foregoing, petitioner, therefore, has erroneously paid excise tax on the removals of compounded liquor which used tax-paid raw materials for the periods covering March to April 2013 and May to July 2013. Thus, petitioner is entitled to file a claim for refund of excise taxes paid on finished goods produced from these tax-paid raw materials.**[28]
>
> ...

As to the amount that petitioner was entitled to refund, the Special Second Division *however* noted that petitioner's right to claim for refund for the excise taxes paid on finished goods (from 01 to 25 March 2013) has already prescribed. Moreover, it ruled that petitioner failed to prove its factual claims, *viz*:

> ...
>
> Hence, only the remaining claim in the amount of ₱766,153,512.80 was timely filed within the two-year prescriptive period, computed as follows:
>
> ...
>
> Proceeding with the determination of the proper refundable amount on the basis that petitioner has lawful claim over the erroneous imposition of excise taxes on the removal of its finished goods for the period March 26, 2013 to July 31, 2013, **it is imperative for petitioner to convince the Court that the amount per instant claim is composed entirely of finished goods produced from tax-paid raw materials.**

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[28] Citations omitted and emphasis supplied.

Petitioner alleges that the finished goods it produced from January to July 2013 for which excise taxes have been paid and are being claimed for refund, were produced from raw materials which were previously subjected to excise taxes. These raw materials allegedly came from its inventory on hand and in transit as of December 31, 2012 and from its importations for the period January 10 to February 15, 2013.

...

With regard to petitioner's local purchases of alcohol, the documents submitted by petitioner such as the APV listings, Sales Invoices, Delivery Receipts, etc. and confirmation letters from suppliers prove that petitioner was charged and billed for its alcohol purchases including the corresponding excise taxes by its local suppliers, namely, Asian Alcohol, Absolut Distillers and Kooll Company. **However, these documents do not prove petitioner's actual payment of the excise taxes passed on by its local suppliers and the remittance thereof by its local suppliers to the BIR.**

...

However, the exhibits indicated in the above table were merely APV listings which do not prove actual importations of alcohol and payment of the corresponding excise taxes of ₱45,882,340.00.

To recapitulate, petitioner was able to establish actual payment of excise taxes only on its importation of raw materials for the period August 2012 to December 2012, detailed as follows:

	A	B	C	D	E
Supplier	Quantity (Liters)	Alcohol Content	In Proof Liters (A x B=C)	Specific tax rate	Specific Tax Paid (C x D=E)
Imported	12,061,988	190%	22,917,777.20	₱14.68	₱336,830,653.00

However, the Court cannot ascertain from the records which portion of the above purchases actually remained in petitioner's inventory of raw materials as of December 31, 2012.

Even granting, for the sake of argument, that the aforesaid entire purchases remained unutilized and formed part of petitioner's inventory as of December 31, 2012, the Court cannot determine with certainty the volume of finished goods that were produced therefrom.

The ICPA mentions in his report that the <u>proof liters of finished goods produced from January to July 2013 correspond to the proof liters quantity in the December 31, 2012 inventory and raw materials purchases of January and February 2013</u>. This allegedly proves the correctness of the petitioner's claim that the finished goods were produced from the tax paid raw materials.

However, absent documents supporting the quantity in proof liters of raw materials (alcohol) required to produce one (1) proof liter of finished goods (compounded liquor), the Court cannot verify the accuracy of the ICPA's concluding statement.

Moreover, a comparison of petitioner's claimed finished goods from January to July 2013 in proof liters with the proof liters of raw materials inventory as of December 31, 2012 plus the proof liters of raw materials purchases during January and February 2013 which were allegedly still subjected to specific tax, resulted to a difference of 7,334,154.84 in proof liters, to wit:

	In Proof Liters	
Finished Goods removed from January to July 2013 *(Exhibit "P-44")*		52,910,790.65
Raw Materials (on hand and in transit) as of December 31, 2012 per BIR count sheets *(Exhibit "P-40")*	42,451,135.81	
Raw Materials purchased during January and February 2013 that were still subjected to specific tax under the old law per BIR count sheets *(Exhibit "P-43")*	3,125,500.00	45,576,636.81
Difference (in Proof Liters)		7,334,154.84

Neither petitioner nor the ICPA provided an explanation or reconciliation for the same. Moreover, supporting documents such as petitioner's Audited Financial Statements for the year ended December 31, 2012 were not submitted as evidence of the ending balance of raw materials inventory, hence our review relies on the report of the inventory stock taking done by the BIR.

The fact that the quantity of finished goods removed from January 2013 to July 2013 is greater than the combined ending inventories as of December 31, 2012 and the additional tax-paid raw materials purchases during January to February 2013 means that a certain portion of the finished goods removed already made use of raw materials purchases that were not subjected to excise taxes.

In sum, the Court finds that petitioner failed to prove the factual aspect of its claim for refund.

> Well-settled is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund. Petitioner has the burden of proof to establish the factual basis of its claim for tax refund.[29]
>
> ...

The dispositive portion of the assailed 07 February 2019 Decision read:

> ...
>
> **WHEREFORE**, in view of the foregoing, petitioner's Petitions for Review in CTA Case Nos. 9017 and 9035 are **DENIED** for lack of merit.
>
> **SO ORDERED.**[30]
>
> ...

In its bid to have the above Decision set aside, petitioner filed a Motion for Reconsideration (**MR**)[31] anchored on the following grounds:

> ...
>
> First, the Parties, and as recognized by the Honorable Court, have stipulated that there is no factual issue to be resolved in the present consolidated cases.
>
> ...
>
> Second, despite the admission of factual issues by the Parties, the Petitioner was able to prove its present claim in relation to the erroneously paid excise tax.
>
> ...
>
> Third and last, that there is disparity between the Petitioner's claimed finished goods from January to July 2013 in proof liters, with the proof liters of raw materials inventory as of December 31, 2012 plus the proof liters of raw materials purchases during January and February 2013 which were allegedly still subjected to specific tax, resulted to a difference of 7,334,154.84 in proof liters.
>
> ...

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[29] Citations omitted, emphasis supplied and underscoring in the original text.
[30] Emphasis in the original text.
[31] Division Docket (CTA Case No. 9017), Volume VI, pp. 2750-2774.

It is noteworthy that only petitioner moved for the reconsideration of the Special Second Division's Decision dated 07 February 2019. In its Resolution[32], the Special Second Division stood firm and denied petitioner's MR.

Responding to petitioner's contentions in the MR, as to the first ground, the Special Second Division stated that it is duly vested with the authority to resolve even unassigned issues and it can do so when such a step is indispensable or necessary to a just resolution of issues raised in a particular pleading or when the unassigned issues are inextricably linked or germane to those that have been pleaded.

As to the second ground, the Second Division held:

> ...
>
> However, while the amount of ₱3,452,736.00 out of the total claimed excise taxes of ₱37,815,680.00 on petitioner's purchases of raw materials from Asian Alcohol was duly proven to have been paid to the BIR, through BIR Forms No. 207, the Court still finds that petitioner failed to establish the actual payment to Asian Alcohol of the entire claimed excise taxes of ₱37,815,680.00, as there was no official receipt or any other document presented by petitioner showing the payment of the total amount billed (including the excise tax) in the invoices issued by Asian Alcohol to petitioner.
>
> With regard to the purchases from Absolut Distillers and Kooll Company which were found not to have been supported by BIR Forms No. 207, the Court still finds petitioner's present documentary evidence insufficient to prove that the related excise taxes were indeed paid by the supplier to the BIR. Without the actual Rectified Alcohol Specific Tax ORs being referred to in the said supporting documents, the Court cannot give credence to the Sales Invoices issued by supplier. Further, said documentary evidence are insufficient in proving that petitioner paid the total purchase price (including the excise tax) billed by Absolut Distillers and Kooll Company.
>
> Again, the Court stresses that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds are in the nature of tax exemptions. As such, these are regarded as derogation of sovereign authority and to be

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32 Supra at note 2.

construed *strictissimi juris* against the person or entity claiming the refund.

...

This Court is not unaware of the concept of "FIFO", what is actually being questioned by it is the huge disparity between the raw materials ending inventory and the raw materials purchases from August 2012 to December 2012, which petitioner failed to reconcile, to wit:

Per Ending Inventories as of Dec. 31, 2012		**Per Raw Materials from Aug. 2012 to Dec. 2012**		**Difference**
Raw Materials	In Proof Liters	Supplier	In Proof Liters	In Proof Liters
On Hand	40,301,135.81	Imported	22,917,777.20	
In transit as at 12/31/2012	2,150,750.00	Asian Alcohol	2,576,000.00	
		Absolut Distillers	14,458,500.00	
		Kooll Company	9,529,669.17	
Total	**42,451,885.81**		**49,481,946.37**	**(7,030,060.56)**

Moreover, petitioner failed to point out the portions of the raw materials that have been used in producing the finished goods. As such, the Court is at a loss as to which portions of the tax-paid raw materials have been "first-out" by petitioner.

...

Petitioner points out that Exhibits "P-43.1" to "P-43.8" give reference to the import transactions, which are entries made at or near the time of the transactions by persons who were in the position to know the facts therein stated. Thus, they should be considered as *prima facie* evidence of the said transactions.

The Court is not convinced.

This Court is not inclined to reconsider the validity of the alleged tax-paid raw materials importations for the period January 10, 2013 to February 15, 2013, as there was no Import Entry Internal Revenue Declarations (IEIRDs) machine validated as to the amount of total customs duties and taxes paid (including the excise taxes), Sworn Statement of Duties and Taxes (SSDTs), Bureau of Customs Official Receipts, or any equivalent document that can clearly prove the actual payment of the subject excise taxes.

...

Petitioner submits that there is no need for a conversion factor. Accordingly, under Section 141 of the NIRC of 1997, as amended, a "proof liter" is "a liter of proof spirits." The same provision also defines "proof spirit" as "liquor containing one-half

> (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine thousandths (0.7939) at fifteen degrees centigrade (15°C)."
>
> According to petitioner, the amounts of raw materials and of finished goods are already presented in proof liters, that is already a one to one (1:1) conversion ratio. The one being subjected to excise tax is the alcohol. Hence, one (1) proof liter of raw material is the same one (1) proof liter of finished goods. Both contain one-half (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine thousandths (0.7939) at fifteen degrees centigrade (15°C).
>
> Again, the Court is not convinced.
>
> It can be deduced from petitioner's argument that there is a 1:1 ratio between the raw materials and the finished goods per proof liter, as such, the 52,910,790.65 proof liters removed is also the actual proof liters of raw materials used to produce the bottles of finished goods.
>
> However, such explanation is not supported by any documentary evidence or judicial affidavit of an expert who can fully elucidate to the Court how these raw materials are being processed into finished goods. The Court needs to ascertain that such 52,910,790.65 proof liters were the actual amount of the raw materials that went into production and converted into finished goods. Petitioner's explanations are lacking in concrete basis, and therefore, the Court finds no reason to overturn its original ruling.
>
> ...

With respect to the third ground in petitioner's MR, the Special Second Division explained that it merely compared the proof liters of the tax-paid raw materials to the finished good removed (which should not have any difference if it were to follow petitioner's allegations). It did not review the flow of inventory as petitioner suggested in its revised computation, *viz*:

> ...
>
> Petitioner, therefore, concedes only to the unaccounted 342,551.68 proof liters of raw materials factored in the production of 52,910,790.65 proof liters of finished goods.

> The Court does not agree.
>
> It is clearly stated in petitioner's Petition for Review that the finished goods removed from March 2013 to July 2013 upon which excise taxes were erroneously imposed (52,910,790.65 Proof Liters) were sourced from the ending inventory of tax-paid raw materials as of December 31, 2012 (42,451,135.81 Proof Liters) plus tax-paid raw materials purchased from January 2013 to February 2013 (3,125,500 Proof Liters).
>
> ...

The dispositive portion of the assailed 28 June 2019 Resolution consequently read:

> ...
>
> **WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration (of the Decision promulgated on February 7, 2019)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

ISSUES

Before the Court *En Banc*, in this present Petition for Review, petitioner reiterates the grounds invoked in its MR and similarly assigns the following errors to the Special Second Division's actions:

I.
THE SPECIAL SECOND DIVISION ERRED IN DISREGARDING THE PARTIES' STIPULATIONS OF FACTS, AS DULY APPROVED BY THE SAME COURT.

II.
THE SPECIAL SECOND DIVISION ERRED IN RULING THAT PETITIONER HAS FAILED TO PROVE ITS CLAIMS FOR REFUND/ISSUANCE OF TAX CREDIT CERTIFICATE IN RELATION TO THE ERRONEOUSLY PAID EXCISE TAXES.

III.
THE SPECIAL SECOND DIVISION ERRED IN IGNORING THE REVISED COMPUTATION PROVIDED BY PETITIONER, WHICH RESULTED TO A DIFFERENCE OF 7,334,154.84 IN PROOF LITERS.

In support of the above, petitioner argues that the Special Second Division erred in taking up unassigned issues in probing the amounts of excise taxes on both raw materials and finished goods. Petitioner maintains that "stipulation of facts" is of different nature compared to "unassigned issues" as the former is considered judicial admission which require no proof. Petitioner contends that the Special Second Division should not have delved into matters relating to the amounts of excise taxes on both the raw materials and finished goods, especially when respondent had already admitted the veracity of the amounts involved.

Likewise, petitioner states that the Special Second Division took an inconsistent stance when, after it acknowledged the fact that finished goods cannot be removed from the warehouse without first paying the corresponding tax thereon, it nonetheless required proof of actual payment. It asserts that purchase documents such as accounts payable voucher (**APV**) listings, sales invoices, delivery receipts, etc., coupled by its local suppliers' confirmation of receipt of payment, already sufficiently supported its local purchases.

With respect to the raw materials imported from January to February 2013, petitioner disagrees with the Special Second Division's findings that there were no Import Entry and Internal Revenue Declarations (**IEIRDs**) machine validated as to the amount of total customs duties and taxes paid, Sworn Statement of Duties and Taxes (**SSDTs**), Bureau of Customs (**BOC**) official receipts, or any equivalent document that can clearly prove the actual payment of the subject excise taxes. According to petitioner, Exhibits "P-43.1" to "P-43.8" (APVs), clearly give reference to the import transactions which are entries made at or near the time of the transactions by persons who were in the position to know the facts stated.

Petitioner further maintains that, as of 31 December 2012, the raw materials inventory could be reasonably attributed to the purchases of raw materials from August to December 2012. Following the flow of the 31 December 2012 raw materials inventory in the manufacturing process, petitioner posits that these raw materials have been factored in the production of finished goods removed from its depot for the period of January to July 2013. It adds that the corresponding excise tax for excess finished goods amounting to ₱10,089,055.90, attributable to unaccounted raw materials of 341,801.68 proof liters used in the production of compounded liquor from January to July 2013, should only diminish the unprescribed claim of ₱766,153,512.80 to ₱756,064,456.90.

In his Opposition/Comment[33], respondent counters that the Special Second Division correctly denied petitioner's claim for refund when it failed to discharge its burden of proof. In other words, petitioner fell short of proving its right to refund. Respondent adds that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

RULING OF THE COURT *EN BANC*

After an assiduous review of the records of the case, the Court *En Banc* finds no sufficient ground to reverse the assailed Decision and Resolution of the Special Second Division.

The reasons are essayed below, in *seriatim*.

THE COURT IS NOT BOUND BY THE ISSUES SPECIFICALLY RAISED BY THE PARTIES

In support of its contention that the parties stipulated that only legal issues are involved, petitioner claims that the following exchanges during the 27 November 2017 hearing would show that the denial of the claim for refund was based purely on legal issues, to wit:

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33 *Rollo*, pp. 122-126.

...

ATTY. YUMANG:	Your Honors, a while ago, Your Honors, I conferred with the counsel for the respondent for the respondent (*sic*), and we agreed that the respondent is willing to stipulate with me so that we could dispense the testimony of the presentation of the witness for the respondent on the following points, Your Honors; that the denial here of the application for refund is purely on a legal basis, Your Honors; that there is no issue as to the amount of excise tax paid by the petitioner in raw materials.
JUSTICE CASTAÑEDA:	Question in the amount *ha*.
ATTY. VICENTE:	That is a factual issue, Your Honors.
JUSTICE CASTAÑEDA:	Yes, factual. You are not questioning.
ATTY. VICENTE:	As to the legal issue, Your Honors, we admit the denial, but as to the factual findings our witness is present today.
JUSTICE CASTAÑEDA:	Is she confirming?
ATTY. VICENTE:	Your Honors, maybe she can confirm.
WITNESS:	Yes, Your Honors.
JUSTICE CASTAÑEDA:	She is confirming. All right.
ATTY. YUMANG	And as to the amount of excise tax paid by the petitioner on finish (*sic*) goods for raw material, there is no issue on that, Your Honors.
JUSTICE CASTAÑEDA:	... Let the witness confirm that. Are you confirming that? That will be your testimony. There is no question as to the amount.
WITNESS:	Yes, Your Honors.

JUSTICE CASTAÑEDA:	Anyway, you are under oath... So, stipulated as agreed upon by the counsels ... no need to present the witness then. In that case, we will just submit this case for decision after submission of the memoranda.[34]

...

According to petitioner, the above-quoted shows that there was already a stipulation of fact between the parties and that witness Revenue Officer (**RO**) Evangeline M. Casipe (**Casipe**) has already admitted the veracity of the amounts involved.

The Court disagrees.

Well-settled is the rule that this Court is not bound strictly by the issues raised specifically by the parties and it may also rule upon related issues subject only to the requirement that the same is necessary to achieve an orderly disposition of the case.[35] As such, even if We consider the mere affirmation of RO Casipe that the denial of the refund claim is purely based on legal issues, the Court is not bound thereby. Section 1, Rule 14 of the RRCTA provides:

> ...
>
> **SEC. 1.** *Rendition of judgment.* – ...
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.
>
> ...

This Court's discretionary power to rule upon issues not raised by the parties holds more significance when taken in conjunction with the rule that where the taxpayer claims a refund, it is bound to prove every minute aspect of its claim. As held in *KEPCO Philippines Corporation v. Commissioner of Internal Revenue*[36]:

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[34] TSN dated 27 November 2017, pp. 2-4.

[35] See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc*, G.R. No. 183408, 12 July 2017.

[36] G.R. No. 179356, 14 December 2009; Emphasis supplied.

> ...
>
> It is settled that tax refunds are in the nature of tax exemptions. Laws granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. **Where the taxpayer claims a refund, the CTA as a court of record is required to conduct a formal trial (*trial de novo*) to prove every minute aspect of the claim.**
>
> ...

Moreover, such affirmation on the part of RO Casipe is not unlikely since the BIR's position on the matter is that the subject of the claim for refund is not erroneously or illegally collected pursuant to Section 12 (c) of RR 17-2012 and the penultimate paragraph of RMC 18-2013. As such, the same affirmation could only mean that, since the claim's denial has been anchored on legal grounds, there was no need for the BIR to dwell on the propriety of the amounts involved.

At any rate, RO Casipe's statement (that the denial of the claim is based only on the legal issues involved) may not be taken against the government such that the Court could be precluded from determining the proper amount, if any, to be refunded to petitioner. Estoppel does not apply to the government, especially on matters of taxation.[37] Taxes are the nation's lifeblood through which government agencies continue to operate and with which the State discharges its functions for the welfare of its constituents. Thus, the government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents. Upon taxation depends the ability of the government to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people.[38]

In *China Banking Corporation v. Commissioner of Internal Revenue*[39], the Supreme Court reiterated the said rule and elucidated on its basis, to wit:

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[37] *The Heirs of Atty. Jose C. Reyes, et al. v. Republic of the Philippines*, G.R. No. 150862, 03 August 2006.

[38] *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, 04 June 2014.

[39] G.R. No. 172509, 04 February 2015; Citations omitted and emphasis supplied.

> ...
>
> **We are mindful of the rule in taxation that *estoppel* does not prevent the government from collecting taxes; it is not bound by the mistake or negligence of its agents. The rule is based on the political law concept "the king can do no wrong," which likens a state to a king: it does not commit mistakes, and it does not sleep on its rights.** The analogy fosters inequality between the taxpayer and the government, with the balance tilting in favor of the latter. This concept finds justification in the theory and reality that government is necessary, and it must therefore collect taxes if it is to survive. Thus, the mistake or negligence of government officials should not bind the state, lest it bring harm to the government and ultimately the people, in whom sovereignty resides.
>
> ...

PETITIONER MUST PROVE NOT ONLY ITS ENTITLEMENT THERETO BUT ALSO ITS COMPLIANCE WITH ALL THE DOCUMENTARY AND EVIDENTIARY REQUIREMENTS

It must be recalled that the Special Second Division already ruled that petitioner has erroneously paid excise tax on the removals of compounded liquor which used tax-paid raw materials and that it is entitled to file a claim for refund of excise taxes paid on finished goods produced from these tax-paid raw materials. On this aspect, respondent did not move for reconsideration.

The Special Second Division has likewise ruled that, since prescription had already set in insofar as the claim for the period of March 1-25 is concerned, only the entitlement to refund of excise taxes paid on petitioner's finished goods removed amounting to ₱766,153,512.80 remains to be determined. As regards this matter, petitioner did not likewise refute the said findings.

To answer the question preceding, determination must be made on whether the said finished goods were produced from tax-paid raw materials. Thus, to be entitled to the refund of ₱766,153,512.80, it is imperative for petitioner to sufficiently prove that: (1) it paid excise taxes on its raw materials existing in its inventory as of 31 December

2012 as well as its importations during the period of 10 January 2013 to 15 February 2013; and, (2) the very same raw materials were used to produce the finished goods removed from 26 March to 31 July 2013.

Whether petitioner was able to sufficiently prove the foregoing requirements during the proceedings before the Special Second Division, We discuss below:

(1) PETITIONER FAILED TO PROVE PAYMENT AND REMITTANCE OF EXCISE TAXES ON LOCAL PURCHASES AND IMPORTATION OF RAW MATERIALS.

Petitioner allegedly had the following sources of raw materials in producing the finished goods removed as of 31 December 2012:

	A	B	C	D	E
Supplier	**Quantity (Liters)**	**Alcohol Content**	**In Proof Liters (A x B=C)**	**Specific tax rate**	**Specific Tax Paid (C x D=E)**
Imported	12,061,988	190%	22,917,777.20	₱14.68	₱336,830,653.00
Local suppliers:					
Asian Alcohol	1,840,000	140%	2,576,000.00	₱14.68	37,815,680.00
Absolut Distillers	7,650,000	189%	14,458,500.00	₱14.68	212,250,780.00
Kooll Company	5,042,153	189%	9,529,669.71	₱14.68	139,895,543.42
	26,594,141		**49,481,946.37**		**₱726,394,972.71**

In addition, petitioner had importations of raw materials from 10 January 2013 to 15 February 2013 as shown by its Exhibits "P-43.1" to "P-43.8", summarized as follows:

Qty in Liters	Proof	Qty in Proof Liter	Excise Tax Rate	Excise Tax Paid
1,645,000	1.90	3,125,500	₱14.68	₱45,882,340.00

Before the Special Second Division, petitioner was able to prove that it paid excise taxes on its importation of raw materials during the period of August to December 2012, wherein the amount of ₱336,830,653.00 was supported by presenting APVs, BOC import entry declarations, BOC assessment notices, and bank debit tickets.[40] Said amount represented 22,917,777.20 proof liters of raw materials, as stated above.

Later on, the Special Second Division, in the assailed 28 June 2019 Resolution, likewise acknowledged that petitioner was also able to prove that ₱3,452,736.00 out of the total claimed excise taxes of ₱37,815,680.00 (on its purchases of raw materials from Asian Alcohol) have been paid to the BIR, through BIR Forms No. 207. However, the Special Second Division also found that petitioner failed to establish the actual payment to Asian Alcohol of the *entire* claimed excise taxes of ₱37,815,680.00, there being no official receipt or any other document presented showing the payment of the total amount billed (including the excise tax) in the invoices issued by Asian Alcohol to petitioner.

In herein petition, petitioner is adamant that, insofar as the rest of its local purchases from Asian Alcohol as well as from Absolut Distillers and Kooll Company for the period of August to December 2012 are concerned, it sufficiently provided the necessary documentary support. Particularly, the purchase documents (APV listings, Sales Invoices, Delivery Receipts, etc.) it presented in court showed that these local purchases from Absolut Distillers[41] and Kooll Company[42] were tax-paid as summarized in Exhibits "P-41-3"[43] and "P-41-4"[44], respectively. Relative thereto, petitioner also avers that said local suppliers confirmed their payments.[45] Moreover, during the trial, respondent had the opportunity to question the ICPA on this confirmation of payment but it did not do so.

Additionally, petitioner insists that the BIR's built-in internal control procedures see to it that resident BIR revenue officers strictly monitor the movement of alcohol products. Since the regularity of their acts can be fairly presumed, there is an assurance that the incoming deliveries of raw alcohol (that would form part of the inventory as of the year-end) are tax-paid. Lastly, the finished

[40] Exhibits "P-41-1.1" to "P-41-1.40".
[41] Exhibits "P-41-3.1" to "P-41-3.87".
[42] Exhibits "P-41-4.1" to "P-41-4.21".
[43] Summary of Alcohol 189% - Absolut (Purchases).
[44] Summary of Alcohol 189% - Kooll Company (Purchases).
[45] Exhibits "P-42.1", "P-42.2" and "P-42.3".

goods/products cannot be removed from the warehouse without first paying the corresponding excise tax thereon.

Notwithstanding petitioner's firm insistence above, We agree with the Special Second Division that, while petitioner's documents proved that it was *charged* and *billed* for its alcohol purchases (including the corresponding excise taxes by its local suppliers), it nevertheless failed to present proof that there was *actual payment* of the excise taxes passed on by its local suppliers and *remittance* thereof by its local suppliers to the BIR.

Without proof of actual payment and the corresponding remittance by its local suppliers to the BIR, the Court cannot ascertain if such alleged payment of excise tax on raw materials indeed went into the coffers of the government as to warrant the refund of the excise tax erroneously or illegally collected on the finished goods removed.

With respect to raw materials imported from January to February 2013, the Special Second Division properly observed that petitioner's APVs, as reflected in "P-43.1" to "P-43.8", do not prove the actual importations of alcohol and payment of the corresponding excise taxes of ₱45,882,340.00.

It must be emphasized that petitioner was able to show that it paid excise taxes on its importation of raw materials during the period of August to December 2012 by presenting APVs, BOC import entry declarations, BOC assessment notices, and bank debit tickets. Similarly, that ₱3,452,736.00 out of the total claimed excise taxes of ₱37,815,680.00 on its purchases of raw materials from Asian Alcohol was duly paid to BIR, through BIR Forms No. 207, as stated earlier. This being the case, the Court is thus at loss on petitioner's debacle in producing alike documents for its other importations and local purchases.

In a case[46] decided by this Court involving a claim for refund on a similar subject matter, only the raw alcohol local purchases evidenced by the: (1) supplier's sales invoice for alcohol purchases;

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[46] *Ginebra San Miguel, Inc. v. Commissioner of Internal Revenue*, CTA Case Nos. 8953 & 8954, 28 July 2020.

(2) supplier's billing statement for the reimbursement of excise tax; (3) supplier's official receipt for the payment of reimbursement of excise tax; (4) excise tax returns (BIR Form No. 2200-A) and its corresponding payment confirmation; and, (5) Excise Tax Removal Declarations (**ETRDs**), were considered to have sufficiently supported such refund claim. In the same case, as for the importation of raw alcohol, the following were likewise deemed sufficient, namely: (1) supplier's sales invoice for alcohol purchases; (2) bill of lading; (3) IEIRD; (4) Single Administrative Document (**SAD**); and, (5) SSDT.

Even assuming for the sake of argument that petitioner was able to prove that it paid excise taxes on its raw materials, sourced from both importations and local purchases, it nonetheless failed to sufficiently establish that the very same raw materials were used to produce the finished goods removed.

(2) PETITIONER FAILED TO SUFFICIENTLY PROVE THAT THE FINISHED GOODS REMOVED WERE PRODUCED FROM THE VERY SAME RAW MATERIALS THAT WERE ALREADY EXCISE TAX-PAID.

In maintaining that the finished goods from which excise taxes were paid under RA 10351 were produced from tax-paid raw materials, petitioner relied on the ICPA's declaration in his report, which reads:

> ...
>
> Please take note that the proof liters of finished goods produced from January to July 2013 correspond to the proof liters quantity in the December 31, 2012 inventory and raw materials purchases of January and February 2013. This proves the correctness of the Company's claim that the finished goods were produced from the tax paid raw materials.[47]
>
> ...

Taking its cue from the afore-cited, petitioner went on to claim that the figures on the volume of tax-paid raw alcohol raw materials

[47] Exhibit "P-36", Division Docket (CTA Case No. 9017), Volume V, p. 2454.

and the volume of finished goods are already presented in proof liters. As such, there is no need for a conversion factor anymore, citing Section 141 of the NIRC of 1997, as amended. Petitioner further explained that, considering that both raw materials and finished goods are already presented in "proof liters", there is already a one-to-one (1) relationship and thus, one (1) proof liter of raw material is the same one (1) proof liter of finished goods, either of the two contains "1/2 of its volume of alcohol of a specific gravity of 0.7939 at 15°C", as defined in the said Section 141 of the NIRC of 1997, as amended.

We are unconvinced.

Section 141 of the NIRC of 1997, as amended, merely provided for the definition of "proof spirits" and "proof liters", as follows:

> ...
>
> **SEC. 141.** *Distilled Spirits.* – On distilled spirits, subject to the provisions of Section 133 of this Code, an excise tax shall be levied, assessed and collected based on the following schedules:
>
> ...
>
> 'Proof spirits' is liquor containing one-half (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (0.7939) at fifteen degrees centigrade (15°C). A 'proof liter' means a liter of proof spirits.
>
> ...

While the said provision defines the terms "proof spirits" and "proof liters", petitioner's allegation that one (1) proof liter of raw material is the same one (1) proof liter of finished goods could not be deduced from the definition above. Therefore, in the absence of any evidence indicating that petitioner used "proof liter of raw material" to make a "proof liter of finished product", the Court could not oblige to side with it.

The fact that petitioner needed to explain the supposed one-to-one (1) relationship such that one (1) proof liter of raw material is the same one (1) proof liter of finished goods only means that the same could not be determined just by reading the aforementioned definitions of "proof spirits" and "proof liters" (as to demand judicial notice from the Court).

Incidentally, although petitioner offered in evidence the Amended ICPA Report[48] to support its claim, this Court has time and again ruled that:

> ...
>
> **The Court is not bound by the findings of the ICPA.** Moreover, the ICPA Report is but a tool or guide to aid the Court in the resolution of the case. The determination of the merits or probative value of such report belongs to the Court. **Thus, Next Mobile cannot insist that the ICPA's findings are sufficient to support its claims. It is essential for Next Mobile to present documents to support its allegations in the Petition for Review because the Court cannot solely rely on the ICPA report.**
>
> The ICPA is commissioned merely to assist the Court in the determination of the merit of taxpayer's protest. **The Court may (or may not) adopt totally or partially the ICPA's report depending on its own appreciation of the documents upon which the ICPA report is based. In other words, the Court will still examine and verify the documents audited or examined by the ICPA. The Court, in its sound discretion, may render judgment without considering the ICPA report. The ICPA report is only persuasive in nature and not conclusive upon the Court.** Section 3, Rule 13 of the Revised Rules of the CTA (RRCTA), relevantly provides, thus:
>
>> SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[49]
>
> ...

[48] Id., Volume V, pp. 2436-2470.

[49] *Commissioner of Internal Revenue v. Next Mobile, Inc. (Formerly Nextel Communications Phils., Inc.)*, CTA EB Nos. 1864 & 1865, 28 February 2020; Emphasis supplied and underscoring in the original text.

As the Special Second Division therefore observed correctly in the assailed Resolution:

> ...
>
> However, such explanation is not supported by any documentary evidence or judicial affidavit of an expert who can fully elucidate to the Court how these raw materials are being processed into finished goods. The Court needs to ascertain that such 52,910,790.65 proof liters were the actual amount of the raw materials that went into production and converted into finished goods. Petitioner's explanations are lacking in concrete basis, and therefore, the Court finds no reason to overturn its original ruling.
>
> ...

Additionally, since there are prescribed portions in petitioner's claim for refund relative to the excise taxes paid on finished goods removed from 01 to 25 March 2013, the Court could not further ascertain which raw materials eventually produced the unprescribed portion of its claim.

It is worthy to note that petitioner premised its claim for refund on Section 170 of the NIRC of 1997, as amended, which reads:

> ...
>
> **SEC. 170.** *Requirements Governing Rectification and Compounding of Liquors.* — Persons engaged in the rectification or compounding of liquors shall, as to the mode of conducting their business and supervision over the same, be subject to all the requirements of law applicable to distilleries: *Provided*, That where a rectifier makes use of spirits upon which the excise tax has been paid, no further tax shall be collected on any rectified spirits **produced exclusively therefrom**: *Provided, further*, That compounders in the manufacture of any intoxicating beverage whatever, shall not be allowed to make use of spirits upon which the excise tax has not been previously paid.[50]
>
> ...

As clearly enunciated above, the exemption from tax on rectified spirits would only come into place if the taxpayer is able to prove that

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[50] Emphasis supplied.

such rectified spirits were **produced exclusively** from the use of spirits upon which the excise tax has already been paid.

With the foregoing disquisitions, the Court could thus not agree, neither is it convinced, that petitioner ably established its entitlement to a refund or to the issuance of a TCC.

In *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*[51], the Supreme Court held:

> ... In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. **It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit...**
>
> ...

For petitioner's failure to offer the documentary and evidentiary requirements that could have substantiated its claims for refund, the Court is left with no choice but to deny the same.

All told, the Court *En Banc* finds no cogent reason to disturb the assailed Decision dated 07 February 2019 and Resolution dated 28 June 2019.

WHEREFORE, with the foregoing, petitioner Tanduay Distillers, Inc.'s Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated 07 February 2019 and Resolution dated 28 June 2019 of the Special Second Division in CTA Case Nos. 9017 and 9035, similarly entitled *Tanduay Distillers, Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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51 G.R. No. 181136, 13 June 2012; Citations omitted and emphasis supplied.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice