REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

GINEBRA SAN MIGUEL, INC. *Petitioner,*	**CTA CASE No. 9059**
-versus-	**Members:** CASTAÑEDA, JR., Chairperson, MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** FEB 06 2020 8:40 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for Decision on March 26, 2019[1] is a Petition for Review[2] filed by Ginebra San Miguel, Inc. on May 28, 2015, pursuant to Section 7(a)(1)[3] of Republic Act (RA) No. 1125,[4] as amended, as well as Section 3(a)(1)[5] of Rule 4

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[1] *Dockets,* Vol. II, p. 758.
[2] *Dockets,* Vol. I, pp. 10-38.

[3] Sec. 7. Jurisdiction. - The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

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[4] Act Creating the Court of Tax Appeals.

[5] Sec. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal

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and Section 4(a)[6] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended, seeking the refund or issuance of a tax credit certificate in the amount of Twenty Six Million Two Hundred Forty Three Thousand Two Hundred Seventy Four Pesos (₱26,243,274.00), allegedly representing excise taxes erroneously, excessively, illegally and/or wrongfully assessed on, and collected from Ginebra San Miguel, Inc., by the Bureau of Internal Revenue (BIR) on removals of its distilled spirits or finished products for the period June 1, 2013 to July 31, 2013.

Petitioner Ginebra San Miguel, Inc. (GSMI) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 3rd and 6th floors, San Miguel Properties Centre, St. Francis Street, Mandaluyong City, Metro Manila and may be served with processes in this case through its counsel at 4th Floor, Dynavision Building, 108 Rada Street, Legaspi Village, Makati City, Metro Manila.[7]

Respondent Commissioner of Internal Revenue (CIR) is the head of the BIR, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.

GSMI is a domestic manufacturer of distilled spirits such as gin, rum, vodka and mixed drinks which include the brand "Ginebra San Miguel".[8]

> revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

[6] Sec. 4. Where to appeal; mode of appeal.-

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[7] Par. 2.01, Joint Stipulation of Facts, Issues and Other Matters (JSFIOM), *Dockets,* Vol. I, p. 358
[8] Par. 2.02, *Id.*

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The raw material or main ingredient utilized by GSMI is ethyl alcohol, which is rectified/compounded to produce the aforesaid distilled spirits or its various liquor or alcoholic products.[9]

GSMI sources its alcohol from local registered distillers that process the same from molasses supplied by GSMI under tolling arrangements, from local importers, and/or directly through importation.

In the case of alcohol acquired from local distillers, the distilleries pay the proper excise taxes due thereon in accordance with Section 141 of the National Internal Revenue Code (NIRC) of 1997, as amended, which imposes an excise tax on distilled spirits, upon removal or withdrawal of the said alcohol from the registered distilleries for delivery to the manufacturing plants of GSMI for rectification and compounding.[10]

GSMI's finished products are subject to excise tax under Section 141 of the NIRC.

Section 170 of the NIRC, which partly provides: "*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: xxx" Pursuant to this, removals of finished products produced by GSMI exclusively from its inventory of ethyl alcohol, on which excise taxes had already been paid, are not subject to any excise tax.[11]

However, in accordance with Section 12(c) of Revenue Regulation (R.R.) No. 17-2012, with respect to the inventory of ethyl alcohol in its possession at the end of 2012, GSMI shall not be entitled to tax credit or refund of any excise tax that had been paid on such ethyl alcohol nor shall such excise tax be deducted from any excise tax that shall be paid on the finished products processed and produced exclusively from the ethyl alcohol. Thus, GSMI had to pay

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[9] Par. 2.03, *Id.*
[10] Par. 2.04, *Id.*
[11] Par. 2.05, *Id.*

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excise taxes on both the ethyl alcohol and the finished products.[12]

Petitioner GSMI filed on October 8, 2013 with the BIR a Claim for Refund dated October 7, 2013, in the total amount of ₱26,243,274.00 for the period June 1, 2013 to July 31, 2103.[13]

Claiming inaction, petitioner filed on May 28, 2015 the instant Petition for Review with this Court.

After several prayers for extension to file answer, respondent's Answer[14] was filed on August 28, 2015, interposing several special and affirmative defenses.

First, respondent contends that the Court lacks jurisdiction over the subject matter. Respondent submits that the case of *British American Tobacco vs. Camacho (G.R. No. 163583 dated August 20, 2008)* is applicable in the present case, to wit:

> "The jurisdiction of the Court of Tax Appeals is defined in Republic Act No. 1125, as amended by Republic Act No. 9282. Section 7 thereof states, in pertinent part:
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> xxx xxx xxx
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> While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same."

Second, respondent avers that in the event that this Court elects that it has jurisdiction, the instant petition must

[12] Par. 2.06, *Id.*
[13] Par. 2.07, *Id.*; Exhibit "P-1".
[14] *Dockets*, Vol. I, pp. 127-140.

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still be dismissed in view of the fact that Section 12(c) of R.R. No. 17-2012 is valid and constitutional. Respondent submits that with regard to the issuances of the Department of Finance and respondent, absent any clear and convincing evidence to the contrary it enjoys the presumption of regularity. Also, respondent states that R.R. No. 17-2012 only seeks to implement a valid legislation, Republic Act (R.A.) No. 10351, which was issued by Congress and R.R. No. 17-2012 is merely an interpretative ruling, as it adds nothing new aside from what was already stated in R.A. No. 10351.

Respondent further claims that R.R. No. 17-2012 is not in contravention with Section 170 of the NIRC. Allegedly, what Section 12(c) of R.R. No. 17-2012 requires is that excise taxes paid on ethyl alcohol as raw material shall not be deductible in the total specific tax due on the finished products produced.

Third, respondent maintains that there is no double taxation in the instant case. Allegedly, there is no same thing being taxed twice in the present case, as ethyl alcohol and alcoholic beverages are two different finished products. Also, the excise tax paid on ethyl alcohol is not being paid by petitioner when it purchases the same from manufacturers of ethyl alcohol. It is only these manufacturers that tuck in the cost of tax in the purchase price and this passing on of the excise tax does not make the purchaser the taxpayer concerned.

Lastly, respondent argues that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim. Respondent alleges that petitioner failed to substantiate its present claim and failed to submit all the necessary documents needed for the application of its refund.

Thereafter, a Notice of Pre-Trial Conference was issued by this Court setting the case for Pre-Trial Conference on October 1, 2015. Accordingly, petitioner filed its Pre-Trial

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Brief[15] on September 22, 2015 while the Pre-Trial Brief[16] for the respondent was filed on October 23, 2015.

On November 26, 2015, the parties' filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters.[17] Thereafter, a Pre-Trial Order[18] was issued by this Court on January 18, 2016 thereby the pre-trial conference was deemed terminated.

During trial, petitioner presented as witnesses, a) Mrs. Cynthia M. Baroy,[19] Chief Finance Officer of petitioner, b) Mrs. Rhea F. Rivamonte,[20] Group Finance Head of petitioner, and c) Mr. Jerome Antonio B. Constantino,[21] the Court-commissioned Independent Public Accountant (ICPA), all of whom testified on direct by way of judicial affidavits. After giving their respective testimonies, Petitioner's Formal Offer of Evidence (FOE)[22] was filed on May 17, 2016 with the Court's Resolutions dated July 5, 2016[23] and September 20, 2017.[24]

On August 9, 2018, a Supplemental Formal Offer of Evidence (FOE)[25] was filed by petitioner in relation to the Supplemental ICPA Report filed by the Court-Commissioned ICPA on March 27, 2018.

Petitioner's exhibits are as follows:

Exhibit	Description
P	Original electronic copy of Revenue Regulations (RR) No. 17-2012, which was downloaded from the website of the Bureau of Internal Revenue (BIR)
P-1	Duplicate originals of the Letter/Claim for Refund dated October 7, 2013, signed by Mrs. Cynthia M. Baroy
P-1-a	Signature above the typewritten name Cynthia M. Baroy

[15] *Id.*, pp. 143-151.
[16] *Id.*, pp. 312-315.
[17] *Id.*, pp. 356-361.
[18] *Id.*, pp. 450-454.
[19] *Id.*, pp. 164-181.
[20] *Id.*, pp. 247-257.
[21] *Id.*, pp. 334-340.
[22] *Dockets*, Vol. II, pp. 503-524.
[23] *Id.*, pp. 528-529.
[24] *Id.*, pp. 591-593.
[25] *Id.*, pp. 644-650.

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P-1-b	Application for Tax Credits/Refunds (BIR Form No. 1914)
P-1-b-1	Signature above the typewritten name Cynthia M. Baroy at the bottom of Exh. P-1-b
P-1-c	Annexes A, A-1 and A-2, inclusive, of the Letter/Claim Summary of Excise Tax Paid Due for Refund, for the Period June 01 to July 31, 2013
P-1-d	Annexes B, B-1 to B-24, inclusive, Schedule of Alcohol Purchases, from January 2011 to December 2012
P-1-e	Annex C, Schedule of Alcohol Inventory, for the year ending December 31, 2012
P-1-f	Annexes D, D-1 and D-2, inclusive, Schedule of Alcohol Utilized from 2012 Inventory, from June 01 to July 31, 2013
P-2	Copy of the 'Joint Stipulation of Facts, Documents, Issues and Other Matters' dated July 15, 2015 in CTA Case No. 8935 and CTA Case No. 8954, both entitled "Ginebra San Miguel, Inc. vs. Commissioner of Internal Revenue", which is Annex E of the 'Joint Stipulation of Facts, Documents, Issues and Other Matters' dated November 23, 2015 of the parties in the instant case
P-3	Copy of the Petition for Review in CTA Case No. 8953
P-3-a	Copy of the Petition for Review in CTA Case No. 8954
P-4	Copy of the respondent's Answer in CTA Case No. 8953
P-4-a	Copy of the respondent's Answer in CTA Case No. 8954
P-5	Judicial Affidavit of Mrs. Cynthia M. Baroy dated September 21, 2015
P-5-a	Signature of Mrs. Baroy on page 16 of Exh. P-5
P-6	Judicial Affidavit of Mrs. Rhea F. Rivamonte dated September 21, 2015
P-6-a	Signature of Mrs. Rivamonte on page 9 of Exh. P-6
P-7	Final and Consolidated Report dated March 11, 2016 of Mr. Jerome Antonio B. Constantino, the duly commissioned Independent Certified Public Accountant (ICPA) in this case consisting of fifteen (15) pages and signed by him on page 15 thereof, containing the results of the examination, verification and audit which he conducted
P-7-a	Signature of Mr. Constantino on page 17 of Exh. P-7
P-7-b	The separate binder accompanying the Report, which is Part 2 thereof and which contains the

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	supporting Annexes
P-7-c	Judicial Affidavit of Mr. Jerome Antonio B. Constantino
P-7-c-1	Signature of Mr. Constantino on page 14 of Exh. P-7-c
P-7-1	Supplemental Report dated March 27, 2018 of the Independent Certified Public Accountant (ICPA) commissioned by the Court in this case
P-7-1-a	Signature on page 5 of the Supplemental Report
P-9	Schedule of Alcohol Inventory as of December 31, 2012 with Corresponding Details of Excise Tax Payments
P-10-1 to P-10-13 inclusive	BIR Certificates of Stock Inventory
P-11-1 to P-11-18 inclusive	Supplier's Sales Invoices for Alcohol Purchases
P-12-1 to P-12-1903 inclusive	Excise Tax Removal Declarations (ETRD)
P-13-1 to P-13-3 inclusive, P-13-6 to P-13-8 inclusive	Bills of Lading
P-13-4, P-13-5 P-13-4-a, P-13-5-a	Bills of Lading
P-14-1 to P-14-15 inclusive	Supplier's Official Receipts for Payment of Reimbursement of Excise Tax
P-15-1	Photocopy of Single Administrative Documents (SAD)
P-15-2 to P-15-4	Single Administrative Documents (SAD)

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inclusive	
P-15-5 to P-15-6	Single Administrative Documents
P-16-1 to P-16-3 inclusive	Statements of Settlement of Duties and Taxes
P-16-4 to P-16-5	Statements of Settlement of Duties and Taxes
P-17-1	Photocopy of Import Entry and Internal Revenue Declarations (IEIRD)
P-17-2 to P-17-3 inclusive	Import Entry and Internal Revenue Declarations (IEIRD)
P-17-4 to P-17-6	Bureau of Customs Import Entry and Internal Revenue Declarations
P-18-1 to P-18-11 inclusive	Supplier's Billing Statements for Reimbursement of Excise Tax
P-19-1 to P-19-10 inclusive	BIR Online Tax Payment Confirmations and Excise Tax Returns for Alcohol Products (BIR Form No. 2200-A)
P-19-11 to P-19-16 inclusive	Excise Tax Returns for Alcohol Products with Payment Confirmations (BIR Form No. 2200-A)
P-19-17 to P-19-20 Inclusive P-19-17-a to P-19-20-a	Excise Tax Returns for Alcohol Products with Payment Confirmations (BIR Forms No. 2200-A)
P-20-1-A to P-20-1-G inclusive P-20-2-A to	Official Registry Books (ORB)

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P-20-2-G inclusive P-20-3-A to P-20-3-G inclusive P-20-4-A to P-20-4-G inclusive P-20-5-A to P-20-5-G inclusive P-20-6-A to P-20-6-G inclusive P-20-7-A to P-20-7-G inclusive P-20-8-A to P-20-8-G inclusive P-20-9-A to P-20-9-G inclusive and P-20-10 to P-20-16, inclusive	
P-21-1 to P-21-10 inclusive	Authority to Release Imported Goods
P-22-1 to	Authority to Release Imported Goods

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P-22-5 inclusive	
P-22-1 to P-22-5 inclusive	Official Delivery Invoices (ODI)
P-23-1 to P-23-9 inclusive	BIR Online Tax Payment Confirmations and Excise Tax Returns for Alcohol Products (BIR Form No. 2200-A)
P-24-1 to P-24-2 inclusive	Schedule of Finished Goods and Excise Tax Payments prepared by the petitioner
P-25-1 to P-25-6 inclusive	Checks/Deposit Slips
P-26 and P-26-a	Compact Disks containing the above exhibits saved in PDF format
P-27	Judicial Affidavit dated July 27, 2018 of Mr. Jerome Antonio B. Constantino
P-27-a	Signature of Mr. Constantino on page 6 of his Judicial Affidavit

Accordingly, on November 23, 2018, the Court issued a Resolution,[26] admitting the exhibits in petitioner's Supplemental FOE, except for Exhibits "P-19-19" to "P-19-20" and "P-19-19-a" to "P-19-20-a" for not being found on the records of the case and for failure to present their originals for comparison.

Considering the manifestation of the counsel for respondent that he has no witness to present in this case, the parties were directed to file their respective memorandum.[27]

Petitioner filed its Memorandum on March 13, 2019[28] while respondent filed his Memorandum on March 14, 2019[29]. Thereafter, the case was deemed submitted for decision on March 26, 2019.

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[26] *Id.*, pp. 658-659.
[27] *Id.*, p. 661.
[28] *Id.*, pp. 673-742.
[29] *Id.*, pp. 743-757.

The following are the stipulated issues submitted by the parties:[30]

> Whether petitioner GSMI is entitled to a refund by the Bureau of Internal Revenue of the total amount of ₱26,243,274.00 as having been erroneously, excessively, illegally and/or wrongfully collected from and overpaid by it as excise taxes on its finished products for the period June 1, 2013 to July 31, 2103 notwithstanding that excise taxes had already been paid on the ethyl alcohol from which the said products were exclusively processed and produced.
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> The following are the corollary issues[31]:
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> 1. Whether the further imposition of excise taxes on the finished liquor products of GSMI processed and produced exclusively from its inventory of ethyl alcohol on which excise taxes had already been paid, is contrary to the mandate of Section 170 of the NIRC of 1997.
>
> 2. Whether Section 12(c) of R.R. No. 17-2012 is null and void.

The Petition for Review must be denied.

The jurisdiction of the CTA is defined in R.A. No. 1125,[32] as amended by R.A. No. 9282,[33] which provides in part:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:

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[30] Stipulated Issues, Id.
[31] *Id.*
[32] *Supra,* note 4.
[33] 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 of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

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(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

xxx" (Underlinings supplied.)

The Supreme Court held that with respect to administrative issuances such as revenue orders, revenue memorandum circulars, or rulings, these are issued by the CIR under the power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Also, tax rulings are official positions of the BIR on inquiries of taxpayers who request clarification on certain provisions of the NIRC, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of this Court under Section 7(1) of R.A. No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under R.A. No. 8424.[34]

Further, 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 the 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.[35]

The crux of the controversy in the present case is the petitioner's entitlement to a refund or issuance of a tax

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[34] *Banco de Oro vs. Rizal Commercial Banking Corporation,* G.R. No. 198756, August 16, 2016.
[35] *The City of Manila vs. Hon. Caridad H. Grecia-Cuerdo,* G.R. No. 175723, February 4, 2014.

credit for alleged erroneously paid taxes. Incidental thereto, the validity of Section 12(c) of R.R. No. 17-2012 is assailed.

Thus, applying the above pronouncements, this Court has jurisdiction to determine the validity of an administrative issuance as other matters or issues ancillary to the main action of refund.

Now, petitioner posits that it is clear that under Section 170 of the NIRC, removals of its finished products produced exclusively from its inventory of ethyl alcohol, on which excise taxes had already been paid, are not subject to any additional excise tax.

However, because of R.R. No. 17-2012 and Revenue Memorandum Circular 18-2013 issued by the BIR, during the period from June 1, 2013 to July 31, 2013, petitioner was allegedly required to pay, on its removals of finished products processed and produced exclusively from its tax-paid ethyl alcohol inventory, additional excise taxes at the increased rates imposed by R.A. No. 10351 in the total amount of ₱26,243,274.00.

Petitioner posits that Section 12(c) of R.R. No. 17-2012 is inconsistent with Section 170 of the NIRC.

We agree with petitioner.

Section 12(c) of R.R. No. 17-2012 provides:

> "*SEC. 12. Transitory Provisions* – Upon the effectivity of the Act [R.A. No. 10351], the following transitory provisions shall be strictly observed by all concerned:
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> (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 deducted from the total excise tax due on compounded liquors." (Underlining supplied.)

Elementary is the rule that in case there is a discrepancy between the law and a regulation issued to implement the law, the law prevails because the rule or regulation cannot go beyond the terms and provisions of the law.[36]

The ruling in the case of *Tanduay Distillers, Inc. vs. Commissioner of Internal Revenue*[37] *("Tanduay Case")* is applicable in the present case, to wit:

> "Republic Act (R.A.) No. 10351, enacted by Congress on December 19, 2012, restructured the excise tax on alcohol and tobacco products by amending pertinent sections of the National Internal Revenue Code (NIRC).
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> 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.
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> 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.

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[36] *Commissioner of Internal Revenue vs. Philippine-Aluminum Wheel, Inc.*, G.R. No.216161, August 9, 2017
[37] CTA Case No. 9017 & 9035, February 7, 2019.

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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, R.R. 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.

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In this case, petitioner was imposed excise tax on ethyl alcohol used as raw material in the production of compounded liquor and was then again imposed excise tax upon removal of the compounded liquor from the place of production.

However, it must be noted that the ethyl alcohol taxed in this case, is not a finished product considering that it is used as raw material in the production of compounded liquor.

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In view of the foregoing, there was double taxation in this case.

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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

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exclusively therefrom." (Underlinings supplied, citations omitted.)

Similarly in the present case, the further imposition of excise taxes on the finished liquor products of petitioner produced exclusively from its inventory of ethyl alcohol on which excise taxes had already been paid is contrary to the mandate of Section 170 of the NIRC and constitutes double taxation. Thus, petitioner is entitled to claim the erroneously paid excise tax imposed on the finished goods removed during the period June 1, 2013 to July 31, 2013.

Before going into the details of the claim, the Court shall determine whether petitioner seasonably filed its administrative and judicial claims for the refund.

Pertinent to the resolution of this matter are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide for the procedure governing the refund of erroneously paid taxes, to wit:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may-
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> xxx xxx xxx
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> (C) xxx No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund xxx.
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been

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duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

The foregoing provisions govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC.[38] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax.

In the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.,*[39] the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the CIR.

Thus, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to this Court must be filed within the two-year period from the date of payment of the tax.[40]

In the case of excise taxes, the goods subject to such tax cannot leave the place where it was manufactured without paying the corresponding excise tax. Section 130(A)(2) of the NIRC of 1997, as amended, states:

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[38] *CIR vs. Central Azucarera Don Pedro*, L-28467, February 28, 1973; *CIR vs. Insular Lumber Co.*, L-24221, December 11, 1967.

[39] G.R. No. 216130, August 3, 2016.

[40] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968; *Collector vs. J. N. Sweeney, A. O. Baigrie, and Ramon Burgas*, G.R. No. L-12178, August 21, 1959; *P.J. Kiener Company, Ltd. v. Saturnino David*, G.R. No. L-5163, April 23, 1953.

"SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.-*

(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.-*

xxx xxx xxx

(2) *Time for Filing of Return and Payment of the Tax.-* <u>Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production</u>: xxx (*Underlining supplied.*)

The instant claim covers the period starting June 1, 2013 to July 31, 2013. This means that the petitioner has two years or until June 1, 2015, to file its claim for refund. The administrative claim was filed on October 7, 2013[41] and the judicial claim was filed on May 28, 2015.[42] Clearly, the refund claim was filed within the two-year prescriptive period.

This Court now proceeds 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 June 1, 2013 to July 31, 2013. Here, 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.

Allegedly, petitioner held in its possession as of the end of 2012, an ethyl alcohol inventory totaling 57,426,118.60 proof liters with corresponding excise tax payments amounting to ₱843,015,421.97. This inventory was intended and exclusively used the following year for the production of its own finished liquor products.

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[41] Exhibit "P-1", *Dockets,* Vol. I, p. 258.
[42] Petition for Review, *Dockets,* Vol. I, p.10.

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Petitioner states that the portion of the 2012 ending inventory utilized during June 1, 2013 to July 31, 2013 is 1,115,411 proof liters of ethyl alcohol with corresponding paid excise taxes amounting to ₱16,374,233.00.[43]

To ascertain that the 2012 year-end inventory indicated in the Schedule of alcohol inventory as of December 31, 2012 with corresponding details of excise tax payments[44] is correct and complete, the ICPA compared and traced the Schedule with the Certificate of Stock Inventory[45] and Official Registry Books (ORBs).[46]

The Certificate of Stock Inventory is a document with details of physical count of stock inventory at year end certified by the BIR. It includes information, among others, balance of stocks in liters, last official delivery invoices (ODI), last ETRD issued, unused labels, unused ODIs and unused ETRDs. The Certificate is signed by BIR representative and attested by a Finance staff of petitioner.[47]

Meanwhile, ORBs show the flow of alcohol inventory. It includes information, among others, the beginning inventory balance of alcohol, receipt of alcohol from other distilleries, transfer of alcohol to manufacturing plants, alcohol for compounding, and finished goods produced for packing. The ORBs are signed by a designated BIR official at depots and plants. The ORBs are also filed with the BIR on or before the 8th day of each month.[48]

Since the Certificate of Stock Inventory is the documentation for the actual stock-taking count conducted by the BIR at a specific date at the end of the year 2012, the Court find it best to rely on the results of such BIR count, which accounts for losses that may not have been recorded in the schedule or ORB.

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[43] "P-5", Q&A nos. 21, 28 and 32, Docket, Vol. I, pp. 172-173, 175-176.
[44] Exhibit "P-9", Folder 2, Box 1.
[45] Exhibit "P-10-1" to "P-10-13", Folder 3, Box 1.
[46] Exhibits "P-20-1-A" to "P-20-9-A", and "P-20-10" to "P-20-16", Folders 16 to 29, Box 4.
[47] Exhibit "P-7", Procedures, Findings and Observations, II.1, par 2, p. 3.
[48] Exhibit "P-7", Procedures, Findings and Observations, II.1, par 3, p. 4.

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Moreover, the ICPA observed that there were ethyl alcohol inventories not included in the petitioner's record of inventory as of year ended December 31, 2012 since these were still in transit during petitioner's 2012 year-end inventory count. Hence, said inventories were also not included in the Petition for Review. However, these inventories were reflected in January 2013 ORB, particularly ETRD 387815[49] and ETRD 387816[50] with alcohol proof liters of 1,795,500 and 2,268,000, respectively.[51]

ETRD 387815	1,795,500
ETRD 387816	2,268,000
Total Proof Liters [in-transit from 2012 purchases]	**4,063,500**
Divided by total proof liters of finished goods produced from January to July 2013 per ORB (Annexes 5.1 to 5.3)	36,736,610
Percentage	11.06%
Multiplied by the computed excise tax of total proof liters of finished goods produced based on the result of verification using FIFO method based on movements in ORB	10,057,564.24
Equivalent excise tax amount on finished goods	**1,112,484.58**

The Court notes that in the above computation, the ICPA estimated the portion of raw materials that went into the finished goods produced during June 1, 2103 to July 2013.

Petitioner alleges that the ending inventory as of December 31, 2012 arose from its purchases during the year 2012. It was noted that petitioner has three sources of alcohol:[52]

1) *Purchase by molasses tolling* - petitioner supplies molasses to local distilleries wherein the latter processes the same to produce ethyl alcohol. Excise tax removal declarations are prepared by the distillers indicating the inventory proof liter and excise tax due. Upon payment of the excise tax by the distillers, a BIR official approves and signs the ETRD to authorize

[49] Exhibit "P-12-375".
[50] Exhibit "P-12-658".
[51] Exhibit "P-7", Procedures, Findings and Observations, III, p. 11.
[52] Exhibit "P-7", Procedures, Findings and Observations, II.2.a to 2.c, pp. 6-7.

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removal of inventories at the distiller's plant for delivery to petitioner's alcohol depot and manufacturing plants. Subsequently, petitioner reimburses the local distilleries for the paid excise taxes.

Purchase of alcohol and reimbursement of excise taxes are supported by excise tax returns for alcohol products (BIR Form No. 2200-A) with payment confirmations,[53] supplier's sales invoices for alcohol purchases,[54] supplier's billing statement for reimbursement of excise tax,[55] supplier's official receipt for payment of reimbursement of excise tax,[56] checks/deposit slips,[57] and ETRDs.[58]

2. *Purchase by Local importers* – Petitioner acquires ethyl alcohol from local importers wherein excise taxes are paid by the importers to the Bureau of Customs (BOC) upon release from the ports. Petitioner will then reimburse local importers for the excise tax payments.

Purchase of alcohol and reimbursement of excise taxes were supported by supplier's sales invoice for alcohol purchases,[59] supplier's official receipts for the reimbursement of excise taxes[60] and bill of lading.

3. *Purchase by Importation* – petitioner itself pays the excise taxes upon release of the inventory from the BOC.

Purchase of alcohol and payment of excise taxes are supported by supplier's sales invoice for alcohol purchases, bill of lading, IEIRD and Statement of Settlement of Duties and Taxes (SSDTs).

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[53] Exhibits "P-19-1" to "P-19-18", Folder 15, Box 3.
[54] Exhibits "P-11-1" to "P-11-10", Folder 4, Box 1.
[55] Exhibits "P-18-1" to "P-18-11", Folder 14, Box 3.
[56] Exhibit "P-14-9" to "P-14-12", Folder 10, Box 3.
[57] Exhibits "P-25-1" to "P-25-6", Folder 40, Box 4.
[58] Exhibits "P-12-1" to "P-12-6", "P-12-10" to "P-12-20", "P-12-28" to "P-12-50", "P-12-59 to P-12-94", "P-12-101" to "P-12-111", "P-12-129" to "P-12-263, "P-12-293" to "P-12-300", "P-12-315" to "P-12-334", and "P-12-336" to "P-12-345", Folder 5, Box 2.
[59] Exhibits "P-11-11" to "P-11-14", Folder 4, Box 1.
[60] Exhibit "P-14-9" to "P-14-12", Folder 10, Box 3.

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To ascertain that the 2012 year-end inventory of ethyl alcohol were properly subjected to excise taxes, the ICPA obtained the Schedule of Alcohol Inventory as of December 31, 2012 with corresponding details of excise tax payments. The schedule includes details of raw materials at year-end such as the name of depot, count date, alcohol per gauge liters and alcohol proof liters, amount of excise tax paid, ETRD number and type of purchase. Moreover, the following documents were presented to prove that purchases of raw material ethyl alcohol were subjected to proper excise taxes: excise tax returns for alcohol products (BIR Form No. 2200-A) with payment confirmations,[61] supplier's sales invoices for alcohol purchases,[62] supplier's official receipt for payment of reimbursement of excise tax,[63] supplier's billing statement for reimbursement of excise tax,[64] ETRDs,[65] bill of lading,[66] authority to release goods (ATRIG),[67] statement of settlement of duties and taxes (SSDTs),[68] print outs of SAD,[69] IEIRD,[70] ODI[71] and checks/deposit slips.[72]

In the Judicial Affidavit of Rhea F. Rivamonte, Group Finance Head of Ginebra San Miguel, Inc., she explained how the quantity of the inventory utilized and corresponding excise tax payments were computed, to wit:[73]

> "Q: Do you know how the quantity of the inventory utilized and corresponding excise tax payments were computed?
>
> A: Yes, sir. The quantity of inventory utilized was arrived at by summing up all alcohol removals from the storage tanks to the production facility/area, as reported in the Official Registry Books and evidence by an Excise Tax Removal Declaration form. The corresponding excise tax payments were computed

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[61] Exhibits "P-19-1" to "P-19-18", Folder 15, Box 3.
[62] Exhibits "P-11-1" to "P-11-18", Folder 4, Box 1.
[63] Exhibit "P-14-1" to "P-14-15", Folder 10, Box 3.
[64] Exhibits "P-18-1" to "P-18-11", Folder 14, Box 3.
[65] Exhibit "P-12-1" to "P-12-345", Folder 5, Box 2.
[66] Exhibit "P-13-1" to "P-13-8", Folder 9, Box 3.
[67] Exhibit "P-21-1" to "P-21-6", Folder 30, Box 4.
[68] Exhibits "P-16-1" to "P-16-3" Folder 12, Box 3.
[69] Exhibits "P-15-1" to "P-15-4", Folder 11, Box 3.
[70] Exhibits "P-17-2" to "P-17-3", Folder 13, Box 3.
[71] Exhibits "P-22-1" to "P-22-5", Folder 31, Box 4.
[72] Exhibits "P-25-1" to "P-25-6", Folder 36, Box 4.
[73] Exhibit "P-6", Q&A 16, Docket, Vol. I, pp. 254-255.

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following the formula: Gauge Liter x Proof x Excise Tax Rate."

To trace the movement of the raw materials, specifically, raw materials purchased during 2012 and are not yet covered by the amendments made by R.A. No. 10351, the ICPA obtained an overview of petitioner's process of production, from the purchase of ethyl alcohol up to the removal of finished products.

As discussed, petitioner has several sources of raw alcohol materials. All these purchases are stored at petitioner's depots, namely: (a) Damortis, La Union, (b) Tabangao, Batangas, (c) Calaca, Batangas, (d) Bauan, Batangas, (e) Cotta, Lucena and (f) Ouna, Cebu. The depots will then transfer the alcohol to the compounding plants whenever the latter needs alcohol for processing into finished product. There are four (4) compounding plant locations, namely, (a) Sta. Barbara, Pangasinan, (b) Lucena, Quezon, (c) Cabuyao, Laguna and (d) Mandaue, Cebu. The transfer of alcohol from depot to compounding plant is mainly documented by ETRDs, way bill, interplant issue document and Form 189. In compounding plants, the alcohol will undergo stages of compounding/blending until the liquor is produced ready for packaging as finished product.[74]

The ICPA, hence, summarized the flow of alcohol indicated in the Official Registry Books for the period June 1, 2013 to July 31, 2013 for all its depots (Exhibits "P-20-1-A" to "P-20-1-G", "P-20-2-A" to "P-20-2-G", "P-20-3-A" to "P-20-3-G", "P-20-4-A" to "P-20-4-G", "P-20-5-A" to "P-20-5-G", "P-20-6-A" to "P-20-6-G"), Cabuyao Plant (Exhibit "P-20-7-A" to "P-20-7-G"), Mandaue Plant (Exhibit "P-20-8-A" to "P-20-8-G"), and Sta. Barbara Plant (Exhibit "P-20-9-A" to "P-20-9-G").

The detailed summary of ORBs of depots are presented in Annexes 3.1 to 3.6 of the ICPA Report, while the detailed summary of the ORBs of petitioner's plants are presented under Annexes 4.1 to 4.3 of the same report.

[74] Exhibit "P-7", Final and Consolidated ICPA Report, p. 9.

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The ICPA also vouched the supporting ETRDs[75] and Authority to Release Imported Goods (ATRIG)[76] to support the transfer of alcohol from depot to plant and/or plant to tolling.

Moreover, using the first-in first-out (FIFO) method of accounting, the ICPA summarized the proof liters of alcohol utilized or processed from the 2012 year-end inventory based on the ORB and matched the proof liters with the corresponding proof liters of alcohol produced/transferred for packing. The ICPA also computed for the corresponding excise tax equivalent of finished goods produced/transferred for packing. Based on the ICPA's verification, the 2012 year-end inventory of ethyl alcohol of Sta. Barbara Plant were fully utilized before June 1, 2013. Therefore, ₱4,307,307 worth of excise tax on finished goods due for refund of Sta. Barbara plant cannot be claimed.[77]

After which, the ICPA compared the computed excise tax equivalent of finished goods produced/transferred for packing with Schedule of Finished Goods and Excise Tax payments claimed for refund. The ICPA's procedures resulted to the following: [78]

		Result of Verification Using FIFO Method Based on Movements in ORB and Computed Excise Tax		Per Schedule of Finished Goods and Excise Tax payments claimed for refund by Petitioner		Difference Under (Over) Claimed	
Plant	**Annex Reference**	**Proof Liters**	**Excise Tax**	**Proof Liters**	**Excise Tax**	**Proof Liters**	**Excise Tax**
Cabuyao, Laguna	Annex 6.1	236,118	₱6,434,238.00	160,849	₱4,391,988.72	75,269	₱2,042,249.28
Mandaue, Cebu	Annex 6.2	141,221	3,623,326.24	818,448	21,072,215.16	(677,227)	(17,448,888.92)
Sta. Barbara, Pangasinan	Annex 6	-	-	-	-	-	-
TOTAL		**377,339**	**₱10,057,564.24**	**979,297**	**₱25,464,203.88**	**(601,958)**	**₱(15,406,639.64)**

According to the ICPA, the over-claimed amount of 601,958 proof liters with an equivalent excise tax amount of ₱15,406,639.64 can be reconciled as follows:

[75] Exhibits "P-12-346" to "P-12-1903", Folder 5 to 8, Box 2.
[76] Exhibits "P-21-7" to "P-21-10", Folder 30, Box 4.
[77] Exhibit "P-7", Procedures, Findings and Observations, III, p. 10.
[78] Id.

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Plant	Annex Reference	Finished goods and equivalent excise tax amount not included in the claim but should be part of Petitioner's Claim		Finished goods and equivalent excise tax amount included in the claim but should not be part of Petitioner's Claim		Difference Under (Over) Claimed	
		Proof Liters	Excise Tax	Proof Liters	Excise Tax	Proof Liters	Excise Tax
Cabuyao, Laguna	Annex 6.1	142,012	₱ 3,869,847.27	(66,743)	₱ (1,827,597.99)	75,269	₱ 2,042,249.28
Mandaue, Cebu	Annex 6.2	-	-	(677,227)	(17,448,900.92)	(677,227)	(17,448,900.92)
TOTAL		**142,012**	**3,869,847.27**	**(743,970)**	**(19,276,498.91)**	**(601,958)**	**(15,406,651.64)**

Reproduced hereunder is the ICPA's summary of findings:[79]

	Proof Liters	Excise Tax Amount
Excise tax on finished goods claimed by petitioner	1,115,411	₱ 26,243,274.00
Add: Error in amount of excise tax of 818,448 alcohol proof liters indicated in the Petition for Review excise tax amount of which was already paid	0	3,528,237.16
Sub-total	**1,115,411.00**	**₱ 29,771,511.16**
Less:		
Excise Tax claimed by petitioner of finished goods that were produced from ethyl alcohol **AFTER RA 10351**	743,970	19,276,498.91
Ethyl alcohol and equivalent excise tax amount not included in the December 31, 2012 inventory under the Petition for Review but reflected in the ORB.	41,738	1,112,484.58
Compounded ethyl alcohol inventories and equivalent excise tax amount wherein petitioner has difficulty identifying the related purchase documents.	4,895	130,478.18
Ethyl alcohol and equivalent excise tax amount of finished goods produced during May 2013 but included in the claim per Petition for Review	136,114	4,307,307.00
As adjusted	**188,694**	**₱ 4,944,742**

It can be gleaned from the foregoing that a huge portion of the claim was disallowed by the ICPA since the raw alcohol used in producing a portion of the finished goods produced from June 1, 2013 to July 31, 2013 were purchased during 2013.

[79] Exhibit "P-7", Procedures, Findings and Observations, V, p.14.

This Court wishes to correct, however, that petitioner can only claim to the extent of what it was originally prayed for in its Petition for Review. Therefore, adding ₱3,528,237.16 to the claim may not be allowed.

To verify the foregoing findings, the Court followed the ICPA's summarization of the ORBs,[80] starting with the beginning balance (*i.e.,* the 2012 ending balance of raw alcohol), and then deducted as much proof liters listed under the 'Used in Compounding' column until the said beginning balance is exhausted.

It was observed that the raw alcohol beginning balance (*i.e.,* 2012 year-end ending inventory balance) has already been used up for compounding by the first 2 months of the year 2013. However, after being compounded, the raw alcohol still goes through other processes in order to form the actual finished product that is then transferred to packing.

The Court followed the tracing of the flow of raw alcohol usage in Annexes 5.1 to 5.3 which presented three columns - Alcohol Utilized, Transfer to Tollers, and Finished Goods Produced. From the Beginning Balance under Alcohol Utilized, the proof liters transferred to tolling and the finished goods produced are both deducted to arrive at the running balance.

Upon following the said procedure, the Court discovered that at some point before June 1, 2013, the beginning balance of raw alcohol gets used up, so additional raw alcohol is being added to the balance to be used for further tolling or for production of finished goods. However, the supporting ETRDs for these additional raw alcohols are dated in 2013.

Moreover, after careful consideration, it became questionable to the Court whether the proof liters indicated under the Finished Goods Produced column pertains to the proof liters of raw alcohol contained by the finished

[80] Annex 3.1 to 3.6, 4.1 to 4.3, ICPA Report.

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products, or the actual proof liters of the finished goods removed.

In line with this, this Court reiterates that the erroneous excise tax being claimed is the one imposed on the finished goods, therefore, the goal of the Court is to ascertain the amount of raw ethyl alcohol that went into petitioner's finished products which were erroneously subjected to excise tax on June 1, 2013 to July 31, 2013.

The Court finds that while petitioner was able to present adequate documents supporting the transfer of the raw alcohol from one place to another, supposedly for each process such as compounding and packaging, it failed to support the actual utilization of the raw alcohol into the production.

Petitioner failed to present supporting documents that categorically show the formulation of its finished product to clearly establish how much raw alcohol material is used for each class or type of product, per size or container. Petitioner should be able to show how it computes for the usage of raw alcohol in the process of converting it into finished products. Only then will the Court be able to ascertain the exact portion of tax-paid raw materials that went into each finished good for purposes of this 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.[81] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund.

WHEREFORE, premises considered, the Petition for Review filed by Ginebra San Miguel, Inc. is **DENIED** for insufficiency of evidence.

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[81] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No 127105, June 25, 1999.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice