REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8968

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

NOV 15 2018; 10:24 a.m.

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution of this Court is petitioner's **Motion for Reconsideration (of the Decision dated 3 August 2018)**, filed on August 23, 2018, with respondent's **Opposition (Re: Motion for Reconsideration)**, filed on September 21, 2018.

Petitioner seeks reconsideration of this Court's Decision dated August 3, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In the assailed Decision, the Court held the following:

1. Petitioner's claim for refund or issuance of tax credit certificate is already barred by prescription;

2. The six-year prescriptive period under the principle of *solutio indebiti* is not applicable; and

3. Revenue Regulation (RR) No. 3-08 is valid and is not contrary to Sections 129 and 130(D) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Petitioner moves for reconsideration of the Court's Decision based on the following grounds:

A. RR No. 3-08 is void because the Tax Code does not impose excise tax on petitioner's exported goods.

B. The amounts advanced or deposited by petitioner in relation to exported cigarette products without any legal obligation or binding relation on the part of petitioner to pay excise tax should be returned to petitioner under the principle of *solutio indebiti*.

C. The two-year prescriptive period provided under Section 204(C) and 229 of the Tax Code is not applicable in the case, which involves the right to refund amounts advanced or deposited corresponding to potential excise tax on exported goods based on the principle of *solutio indebiti* and suppletorily, Section 130(D) of the Tax Code.

First, petitioner avers that the instant claim for refund is grounded on the fact that the Tax Code does not impose any excise tax on exported tobacco products and that petitioner is not relying on any tax exemption provided under the Tax Code.

Petitioner submits that the plain reading of Section 129 of the Tax Code would immediately lead to the conclusion that Congress had no intention of imposing excise tax on goods not intended for domestic consumption. Petitioner states that during the deliberations of the Bicameral Conference Committee on Republic Act (RA) No. 10351, amendments to Section 144 of the Tax Code were introduced which require manufacturers to merely post an export bond on

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tobacco products intended for export instead of the advance payment and refund mechanism being implemented by respondent because both Chairpersons from the Senate and House of the Representatives were in agreement that posting a bond was consistent with the legislature's intention not to impose excise tax on tobacco products intended for export. Petitioner argues that had the advance payment and refund mechanism been truly consistent with this legislative intent, the same would have been codified in RA No. 10351. Instead, it was categorically rejected by the Bicameral Conference Committee for being inconsistent with the principle that exported tobacco products are not subject to excise tax.

Moreover, petitioner argues that an administrative regulation which requires a taxpayer to pay in advance taxes that are not imposed by law is invalid, even if the taxpayer is given an opportunity to refund the tax paid in advance.

Based on the foregoing, petitioner claims that the mere fact that RR No. 3-08 required taxpayers to pay excise tax on its exported tobacco products, when the law does not impose such tax, makes said regulations null and void and entitles the petitioner to a refund.

Second, on the Court's finding that the six-year prescriptive period under the principle of *solutio indebiti* is not applicable, petitioner avers that this finding was anchored on its determination that RR No. 3-08 itself constitutes the "binding relation" which obliges petitioner to pay excise taxes on its exported goods. However, petitioner contends that RR No. 3-08 is a mere administrative issuance, whose validity is precisely assailed in the instant petition for allegedly going beyond what is provided in the law.

Petitioner states that since the principle of *solutio indebiti* is a form of quasi-contract, an action may be brought within six years from the date of payment sought to be refunded. Petitioner alleges that respondent should not be allowed to divest it of its proprietary rights over the amount of P152,877,472.10 representing amounts petitioner deposited or advanced merely to account for future excise taxes that would only be due if its tobacco products intended for export were subsequently converted for domestic sale, consumption or other disposition.

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Lastly, petitioner stresses that Section 130(D) of the Tax Code expressly recognizes a taxpayer's right to be credited or refunded any excise tax paid on goods locally produced but actually exported without returning to the Philippines. Petitioner avers that Section 130(D) of the Tax Code does not require that the tax sought to be refunded be erroneously or illegally collected. The said provision only requires that goods must have been actually exported and does not specifically provide a prescriptive period within which a manufacturer may claim a refund of the excise tax on exported goods.

Petitioner submits that the two-year prescriptive period provided under Sections 204(C) and 229 of the Tax Code is not applicable in this case because the amount sought to be recovered is excise tax paid in advance for goods that are actually exported and therefore not subject to excise tax to begin with.

On the other hand, respondent states that petitioner's contention that the two-year prescriptive period under Sections 204(C) and 229 of the Tax Code is not applicable is bereft of merit. Respondent alleges that petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997, as amended, on the prescriptive period for claiming tax refund/credit. Respondent maintains that petitioner's right to claim for refund had already prescribed pursuant to RR No. 3-08.

Moreover, respondent asserts that the principle of *solutio indebiti* is not applicable in this case, citing the Court's ruling in the assailed Decision. Respondent argues that petitioner's contention that RR No. 3-08 is void because it requires the payment of excise tax on articles that are not subject to such tax under the Tax Code is misplaced.

Respondent maintains that the interpretation of the Bureau of Internal Revenue (BIR) of tax laws are entitled to great weight because of its recognized expertise on matters falling within its exclusive administration domain. Respondent further explains that the rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.

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Additionally, respondent avers that the BIR, as the administrative agency responsible for revenue collection and enforcement, is duty bound to raise revenues through proper collection of taxes and, as such, it is given special mandate to issue the necessary regulations in implementing the provisions of the Tax Code.

Respondent claims that assuming *arguendo* that the BIR exercised administrative legislation, the same is not illegal *per se*. Administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies laid down by Congress. Respondent posits that the latest in our jurisprudence indicates that delegation of legislative power has become the rule and its non-delegation the exception.

Lastly, respondent avers that petitioner must not only prove its entitlement to a refund but also its strict compliance with the periods provided by Section 112(C) of the NIRC of 1997, as amended, and that petitioner must be aware that non-observance of the prescriptive periods within which to file administrative and judicial claims would result in the denial of its claim.

Petitioner's motion is bereft of merit.

First, we maintain that RR No. 3-08 is valid and is not in conflict with the provisions of the NIRC of 1997, as amended.

We agree with respondent that administrative agencies, in the exercise of their rule-making power, can formulate rules and regulations in order to achieve the declared policies of Congress.

Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.[1]

[1] *Republic of the Philippines, represented by the Bureau of Food and Drugs (now Food and Drug Administration) vs. Drugmaker's Laboratories, Inc. and Terramedic, Inc.*, G.R. No. 190837, March 5, 2014.

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Administrative bodies are allowed under their power of subordinate legislation to implement the broad policies laid down in a statute by "filling in" the details. All that is required is that the regulation be germane to the objectives and purposes of the law; that the regulation does not contradict but conforms with the standards prescribed by law. Moreover, as a matter of policy, this Court accords great respect to the decisions and/or actions of administrative authorities not only because of the doctrine of separation of powers but also for their presumed knowledgeability and expertise in the enforcement of laws and regulations entrusted to their jurisdiction. The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.[2]

Here, the assailed revenue regulation was issued to implement a refund mechanism available to taxpayers who exported excisable goods pursuant to Section 130(D) of the NIRC of 1997, as amended. The said revenue regulation was promulgated by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, pursuant to the authority granted by Section 244, in relation to Section 245, of the NIRC of 1997, as amended.

The background of RR No. 3-08 states that while the government recognizes the immunity from taxation and other tax privileges enjoyed by certain persons or entities provided under the NIRC and other special laws, as well as those granted under their own respective charters or tax treaties, conventions and other international agreements, it is a declared policy *to regulate the grant of tax relief in order to prevent possible abuses.* As a general rule, all withdrawals of excisable articles from their place of production must be subject to excise tax. The grant of an outright tax exemption is discouraged because it deprives the BIR the opportunity to evaluate thoroughly the factual and legal bases of the tax relief sought. It is for these reasons that remedies after payment of the tax is more favored by the government because this option will give more protection to revenue collections without diminishing the impact of the tax relief to which the taxpayers are entitled.

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[2] *The Public Schools District Supervisors Association (PSDSA), et al. vs. Hon. De Jesus, et al.*, G.R. No. 157286, June 16, 2006.

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RR No. 3-08 cannot be said to be in conflict with the provisions of the NIRC of 1997, as amended. It was only issued in order to regulate the collection and administration of excise tax on certain excisable articles and to effectively implement Sections 129 and 130(D) of the NIRC of 1997, as amended, by prescribing procedures for availing claims for refund/credit and product replenishment.

As previously held, a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed. These revenue regulations or administrative issuances have the force of law and are entitled to great weight.[3]

Second, petitioner contends that the principle of *solutio indebiti* is applicable since RR No. 3-08 does not constitute the "binding relation" which obliges petitioner to pay excise taxes on its exported goods as the said revenue regulation is a mere administrative issuance whose validity is precisely assailed in the instant petition for allegedly going beyond what is provided in the law.

Again, there is *solutio indebiti* when:

(1) Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and

(2) Payment is made through mistake, and not through liberality or some other cause.[4]

At the risk of being repetitive, RR No. 3-08 is valid, as this only regulates the collection and administration of excise tax on certain excisable articles. Thus, petitioner has a binding relation to pay the subject excise tax under RR No. 3-08. Moreover, the advanced payment or deposit made by petitioner was not made through mistake and not through liberality, but in compliance with the said revenue regulation. Considering that the elements of *solutio indebiti* are wanting in this case, then, the same is inapplicable.

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[3] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

[4] *CBK Power Company Limited vs. Commissioner of Internal Revenue*, G.R. Nos. 198729-30, January 15, 2014.

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Lastly, petitioner is not correct in arguing that the two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, as amended, is not applicable in its case, which involves the right to refund amounts advanced or deposited corresponding to potential excise tax on exported goods.

It is worthy to reiterate that the two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, as amended, applies.

In *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*[5], the Supreme Court held that Section 229 of the NIRC of 1997, as amended, governs exclusively all kinds of refund or credit of internal revenue taxes erroneously or illegally imposed or collected pursuant to the NIRC of 1997, as amended.

Also, the case of *Commissioner of Internal Revenue vs. Philippine National Bank (PNB)*[6], relied upon by petitioner, where the Supreme Court, adopting the findings of the Court of Appeals, held that it would be inequitable to impose the two-year prescriptive period to PNB's claim for tax credit considering the special circumstances under which the advance income tax payment was made and the unexpected event (four years of business losses) which prevented such application or carry over, is not applicable since the special circumstances present in that case are not present in this case.

Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfil its mandate of promoting the general welfare and well-being of the people.[7]

In sum, the Court finds that petitioner failed to raise a new or substantial matter, or compelling reason to justify the reversal or modification of the Court's findings in the assailed Decision.

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[5] G.R. No. 148512, June 26, 2006.
[6] G.R. No. 161997, October 25, 2005.
[7] *National Power Corporation vs. City of Cabanatuan,* G.R. No. 149110, April 9, 2003.

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WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 3 August 2018)** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice