Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8968
For: Refund

Members:

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

Promulgated:

AUG 03 2018 : 9:05 am

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on January 12, 2015 by Philip Morris Philippines Manufacturing, Inc. against the Commissioner of Internal Revenue, pursuant to Section 7(a)(2)[1] of Republic Act (RA) No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals", as amended, as well as Section 3(a)(2)[2] of Rule 4 and Section

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[1] SEC. 7. *Jurisdiction.* - The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

[2] 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:
xxx
(2) Inaction by 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, where the National Internal Revenue Code or other applicable law provides a specific period for action: xxx;

4(a)[3] of Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended.

Petitioner seeks the refund or issuance of tax credit certificate in the total amount of ₱152,877,472.10 corresponding to the excise tax allegedly advanced or deposited by it on tobacco and cigarette products it exported for the period covering January 12, 2009 to December 31, 2009.[4]

Petitioner Philip Morris Philippines Manufacturing, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Its office address is at 27th Floor, Tower One, The Enterprise Centre, 6766 Ayala Avenue corner Paseo de Roxas, Makati City.[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On January 22, 2008, respondent issued Revenue Regulations (RR) No. 3-08[6] in order to regulate the collection and administration of excise tax on certain excisable articles.[7]

RR No. 3-08 revoked or withdrew BIR permits previously granted to all bondage storage facilities and instead required tobacco exporters

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[3] 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 and 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.
[4] Pre-Trial Order, Docket, vol. I, p. 292.
[5] Par. 1, Stipulated Facts, Pre-Trial Order, Docket, vol. I, pp. 299-300.
[6] Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment.
[7] Par. 2, Admitted Facts, Pre-Trial Order, Docket, vol. I, p. 293.

to pay excise tax on the removal of "excisable articles" even if the same are intended for export, subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment.[8]

In compliance with RR No. 3-08 and to highlight the nature of the payments as being advances or deposits rather than tax payments, petitioner paid the advance excise tax by using the general payment form (BIR Form No. 0605) and not the regular excise tax form (BIR Form No. 2200T).[9]

From January 12, 2009 to December 31, 2009, petitioner in compliance with RR No. 3-08, advanced excise tax on tobacco and cigarette products it exported. As of December 31, 2009, advanced excise tax which remains unreplenished or unrefunded under RR No. 3-08 amounts to ₱152,877,472.10.[10]

On December 11, 2014, petitioner filed with the BIR Large Taxpayers Excise Audit Division II an administrative claim for refund or issuance of tax credit certificate in the amount of ₱152,877,472.10, allegedly representing excise tax advanced or deposited by petitioner on tobacco and cigarette products it exported for the period covering January 12, 2009 to December 31, 2009; which has not been replenished or refunded under RR No. 3-08 including Product Replenishment Certificates (PRCs) with outstanding balances and Product Replenishment Debit Memo (PRDM) for replenishment.[11]

On January 12, 2015, petitioner filed the instant Petition for Review[12] before this Court.

Respondent filed his Answer[13] on February 20, 2015, interposing the following special and administrative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

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[8] Par. 3, Admitted Facts, Pre-Trial Order, Docket, vol. I, p. 293.
[9] Par. 8, Petition for Review, Docket, vol. I, p. 8.
[10] Par. 9, Petition for Review, Docket, vol. I, p. 8.
[11] Par. 10, Petition for Review, Docket, vol. I, p. 8.
[12] Docket, vol. I, pp. 6-26.
[13] Docket, vol. I, pp. 83-92.

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5. The amount of ₱152,877,472.10 representing the amount of excise tax allegedly advanced by petitioner on its exported products for the period 12 January 2009 to 31 December 2009 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit xxx."

Respondent likewise averred that petitioner's right to claim for refund had already prescribed; that RR No. 3-08 is valid; and that petitioner has the burden of proof to establish the factual basis of his claim for tax credit or refund.

The pre-trial conference was set on May 7, 2015.[14] Thus, respondent filed his Pre-Trial Brief[15] on March 18, 2015; while petitioner filed its Pre-Trial Brief[16] on April 30, 2015.

The parties filed their Joint Stipulation of Facts and Issues[17] on May 27, 2015. Subsequently, the Court issued a Pre-Trial Order[18] on July 24, 2015 and terminated the pre-trial.

During trial, petitioner presented Ms. Catherine de Asa, its Senior Tax Manager, and Mr. Jerome Antonio Constantino, the Court-commissioned Independent Certified Public Accountant (CPA), as its witnesses.

On January 4, 2016, petitioner filed its Formal Offer of Evidence for Petitioner[19] consisting of Exhibits "P-1" to "P-25", inclusive of

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[14] Docket, vol. I, p. 93.
[15] Docket, vol. I, pp. 94-100.
[16] Docket, vol. I, pp. 102-117.
[17] Docket, vol. I, pp. 233-246.
[18] Docket, vol. I, pp. 292-304.
[19] Docket, vol. I, pp. 698-709.

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submarkings. In the Resolution[20] dated March 16, 2016, the Court denied a number of exhibits offered by petitioner for failure to present the originals for comparison.

On April 4, 2016, petitioner filed a Manifestation and Omnibus Motion [(i) For Reconsideration of the Resolution dated 16 March 2016); (ii) to Admit Supplemental Affidavit of Mr. Jerome Antonio B. Constantino; and (iii) for Leave to File Amended and Supplemental Formal Offer of Evidence]. On November 29, 2016, the Court issued a Resolution[21] partially granting petitioner's omnibus motion, but still upheld the denial of admission of Exhibits "P-15.2" and "P-18.1" to "P-18.486" for failure to present the originals for comparison.

On December 20, 2016, petitioner filed a Manifestation with Proffer of Evidence[22], with respondent's Opposition, as regards Exhibits "P-18.1" to "P-18.486"; which was duly noted by the Court and made part of the records of the case.

The documentary exhibits offered by the petitioner and admitted by the Court are as follows:

Exhibit:	Description:
P-1	Services Agreement between PMPMI and PMFTC Inc. dated 16 October 2010 ("Services Agreement")
P-2	Amended Articles of Incorporation of PMPMI
P-3	Bureau of Internal Revenue ("BIR") Certificate of Registration No. OCN 8RC0000048661
P-4	BIR Permit to Use/Print System Generated Accounting Records No. 0606-LTADII-CAS-00048
P-5	Letter dated 11 December 2014 from Isla Lipana & Co. (Pricewaterhouse Coopers) addressed to Ms. Socorro G. Avila (Chief, BIR Large Taxpayers Field Operations Division [Large Taxpayers Office – Excise Tax Division]) regarding Taxable Year 2009: PMPMI Claim for Issuance of Tax Credit Certificate/Refund of Advance Excise Tax under Section 130(D), 1997 Tax Code
P-5-A	BIR Large Taxpayers Excise Audit II stamp receipt dated 11 December 2014
P-6	Affidavit in Lieu of Direct Examination of Ms. Catherine S. De Asa

[20] Docket, vol. II, pp. 822-824.
[21] Docket, vol. II, pp. 884-891.
[22] Docket, vol. II, pp. 892-895.

P-6-A	Signature of Ms. Catherine S. De Asa
P-7	Affidavit in Lieu of Direct Examination of Mr. Jerome Antonio B. Constantino
P-7-A	Signature of Mr. Jerome Antonio B. Constantino
P-8	Affidavit in Lieu of Direct Examination of Mr. Jerome Antonio B. Constantino
P-8-A	Signature of Mr. Jerome Antonio B. Constantino
P-9	ICPA Report dated 3 August 2015
P-9-A	Signature of Mr. Jerome Antonio B. Constantino
P-9.A	Supplemental ICPA Report dated 24 November 2015
P-9.A-A	Signature of Mr. Jerome Antonio B. Constantino
P-10	Petition for Review
P-11	RR-03-08
P-12	List of Excise Tax Transactions referred to as Annex "C"
P-13.1 to P-13.97	Various Product Replenishment Debit Memos (PRDM) issued by the BIR
P-13.98	Copies of PRDMs provided by the Respondent based on the originals in its custody
P-14.1 to P-14.6	Various Product Replenishment Certificates (PRC) issued by the BIR
P-14.4a, P-14.7 to P-14.13	Copies of PRCs provided by the Respondent from the originals in its custody
P-15.1	Subsequently issued PRDM with reference to PRCs not Available for Examination
P-16.1 to P-16.133	Permits to Export Excisable Articles
P-17.1 to P-17.604	Photocopies of Commercial Invoices
P-19.1 to P-19.76	SAP Clearing Documents
P-20.1 to P-20.6	Bank Certifications
P-21	Motion for Production of Original Copies
P-22	BIR Comment on the Motion for Production of Original Copies
P-23	Notice of Resolution dated 28 July 2015
P-24	BIR Comment on Manifestation and Motion for Production
P-25	Revised Annex XII of the ICPA Report dated 3 August 2015
P-26	Supplemental Affidavit in Lieu of Direct Examination on Mr. Jerome Antonio B. Constantino
P-26-A	Signature of Mr. Jerome Antonio B. Constantino

On April 20, 2017, respondent presented Revenue Officer Flor Jasmin R. Soriano as witness.

Subsequently, respondent filed his Formal Offer of Evidence on April 25, 2017, consisting of Exhibits "R-1", "R-2", "R-3", "R-4", and "R-4-a". The Court admitted all of respondent's evidence in the Resolution dated July 19, 2017.

Respondent's documentary evidence are the following:

Exhibit:	Description:
R-1	Letter of Authority No. LOA-124-2015-00000001(eLA201200004319) dated 13 January 2015
R-2	Memorandum Report dated 22 June 2015
R-3	Letter dated 22 June 2015 addressed to petitioner
R-4	Judicial Affidavit of Flor Jasmin R. Soriano executed from 29 April 2016
R-4-a	Name and signature of RO Flor Jasmin R. Soriano

The Court declared the case submitted for decision on October 2, 2017, considering the filing of petitioner's Memorandum on August 18, 2017 and of respondent's Memorandum on September 25, 2017.

The parties submitted the following issues[23] for this Court's resolution:

> "1. Whether Petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of **₱152,877,472.10** corresponding to the excise tax advanced or deposited by Petitioner on tobacco and cigarette products it exported for the period of 12 January 2009 to 31 December 2009 which has not been replenished or refunded under RR 03-08, including Product Replenishment Certificates (PRCs) with outstanding balances and Product Replenishment Debit Memo (PRDM) for replenishment.
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> 2. Whether the amounts corresponding to the excise tax advanced or deposited by Petitioner under RR 03-08 should be returned to Petitioner in accordance with Section

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[23] Stipulation of Issues, JSFI, Docket, vol. I, p. 242.

130(D) of the Tax Code and/or the principle of *solutio indebiti*.

3. Whether the provisions of RR 03-08 should be declared null and void for being contrary to Sections 129 and 130(D) of the Tax Code.

4. Whether Petitioner's right to claim for refund of the excise tax advanced or deposited by Petitioner on tobacco and cigarette products it exported for the period of 12 January 2009 to 31 December 2009 which has not been replenished or refunded under RR 03-08, including Product Replenishment Certificates (PRCs) with outstanding balances and Product Replenishment Debit Memo (PRDM) for replenishment, has already prescribed.

5. Whether this Honorable Court has jurisdiction to act on the instant Petition for Review."

Petitioner's Arguments

Petitioner claims that the amounts advanced or deposited under RR No. 3-08 should be returned or refunded pursuant to the principle of *solutio indebiti* and Section 130(D) of the NIRC of 1997, as amended. Petitioner contends that under Section 129 of the NIRC of 1997, as amended, products manufactured or produced in the Philippines for domestic sales and consumption are subject to excise tax. Consequently, articles for export and consumption outside the Philippines are not subject to excise tax. Supposedly, petitioner advanced or deposited excise tax pursuant to RR No. 3-08 on such locally manufactured products; and that respondent recognized that such products were earmarked for exportation and were actually exported by petitioner; and petitioner received corresponding foreign exchange payment for such exported products.[24]

Petitioner avers that the mere fact that it was able to obtain PRC and PRDM from the BIR would prove that petitioner was able to submit documentary evidence to the BIR that its products were actually exported. In this regard, since the exported articles are not subject

[24] Par. 40, Petitioner's Memorandum.

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to excise tax, allegedly, the BIR effectively approved petitioner's claim for refund when it issued PRCs.

Petitioner points out that its claim for refund is based on Section 130(D) of the NIRC of 1997, wherein it was able to comply with the requirements for claiming refund or tax credit and respondent is duty-bound to return such payment under the principle of *solutio indebiti*.

Petitioner also asserts that RR No. 3-08 is void as it conflicts with the provisions of the Tax Code. It effectively amended Sections 129 and 130(D) of the said law. It also requires the payment of excise tax on articles for export or consumption outside the Philippines when these articles are not subject to excise tax.

Moreover, petitioner insists that product replenishment under RR No. 3-08 is in clear conflict with Section 130(D) of the NIRC of 1997, as amended, which only requires submission of the proof of actual exportation and the corresponding foreign exchange payment as conditions for granting refund, without imposing any additional conditions or time limit.

Petitioner likewise submits that the Court has jurisdiction to declare RR No. 3-08 invalid because it involves a claim for refund which is within its jurisdiction.

Lastly, petitioner contends that the two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, as amended, is not applicable in this case as it purportedly seeks the recovery of excise tax advanced or deposited to the government and not erroneously or illegally collected tax and Section 130(D) of the NIRC of 1997, as amended, does not provide a deadline for filing a claim for refund.

Respondent's Arguments

Respondent counter-argues that the claim for refund was filed beyond the two-year reglementary period. 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 refund or tax credit. Respondent asserts that petitioner's claim for refund of its alleged advance payments of excise tax for the period January 12,

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2009 to December 31, 2009 has already prescribed pursuant to the above-mentioned provision of the Tax Code.

Further, respondent submits that RR No. 3-08 has basis in fact and in law. Respondent claims that the BIR's interpretation of laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain. Respondent maintains 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 as laid down by Congress. Respondent states that the latest in our jurisprudence indicates that delegation of legislative power has become the rule and its non-delegation the exception.

Moreover, respondent argues that considering petitioner's primary cause of action is the nullification of duly issued administrative issuance, this Court has no jurisdiction over the same. According to respondent, assuming petitioner's primary cause of action is to seek refund and that the requested nullification is merely consequential, the same should not still be allowed as it is a well-established legal precept that a collateral attack on a presumably valid administrative issuance is not permitted.

The Court shall determine first whether it has jurisdiction over the present case.

The jurisdiction of the CTA is defined in Republic Act (RA) No. 1125[25], as amended by RA No. 9282[26], the significant provision of which states:

> "SEC. 7. *Jurisdiction*. – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[25] An Act Creating the Court of Tax Appeals.

[26] 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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(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;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;"

Based on the foregoing, aside from "cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto," this Court has jurisdiction even over "other matters" arising under the NIRC or other laws administered by the BIR.

Likewise, in the recently promulgated decision in the case of *Philip Morris Philippines, Manufacturing, Inc. vs. Commissioner of Internal Revenue*[27], involving the same parties and substantially the same issues, the Court of Tax Appeals exercised jurisdiction over the said case. The pertinent parts of the decision provide:

"In the present case, it is evident that petitioner's primary cause of action is to seek the return/refund of its alleged advanced payment of excise tax on its exported tobacco products under RR 03-08. Petitioner's contention that RR 03-08 is invalid as it goes beyond the scope of Section 129 of the NIRC, as amended, thus, the two-year prescriptive period under

[27] CTA Case No. 9228, April 3, 2018.

Sections 204(C) and 229 of the same law is not applicable were clearly made to controvert the issue on prescription.

If petitioner's primary cause of action is to assail the validity or constitutionality of the subject revenue regulation, it should have initially filed the same with the regular courts, but, instead, petitioner filed the instant claim for refund/issuance of TCC.

In the case of *The City of Manila vs. Hon. Caridad H. Grecia-Cuerdo*, the Supreme Court held that while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates. Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Based on the foregoing jurisprudence, this Court holds that it has jurisdiction over the present petition."

Having established the CTA's jurisdiction over the case, the Court shall now proceed to resolve the other stipulated issues.

Petitioner's claim for refund is already barred by prescription

Petitioner's claim for refund or issuance of tax credit certificate is already barred by prescription pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, which are quoted hereunder for ready reference:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **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." *(Emphasis supplied)*

"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 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 therefor, 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." *(Emphasis supplied)*

Relative thereto, Section 6(A)(b) of RR No. 3-08 provides that at the option of the manufacturer, he may also file a claim for tax credit/refund with the appropriate office in the BIR, subject to the prescriptive period requirements of the NIRC of 1997, as amended, to wit:

> "(b) In case the excise tax that has been actually paid in the previous exportation or sale/delivery to tax-exempt entities/agencies or international carriers is LESS than the excise tax that is otherwise due on the articles applied for product replenishment, the difference shall be paid by the manufacturer before removal thereof from the place of production. On the other hand, in case the same is MORE than the excise tax that is otherwise due on articles applied for product replenishment, the difference thereof may be utilized for any future application for product replenishment. In lieu thereof, and at the option of the manufacturer, he may also file a claim for tax credit/refund with the appropriate office in the BIR, **subject to the prescriptive period requirements of the Tax Code**." *(Emphasis supplied)*

In the present case, petitioner advanced or deposited the excise taxes from January 12, 2009 to December 31, 2009[28] and also exported its products within the same period. Counting two years from the said period, petitioner only had until January 12, 2011 to December 31, 2011 to file both its administrative and judicial claims for refund of said taxes. However, based on records, petitioner filed its administrative claim for refund or issuance of tax credit certificate only on December 11, 2014[29], while the judicial claim was subsequently filed on January 12, 2015. Evidently, both claims were filed way beyond the two-year prescriptive period.

Petitioner is not correct in arguing that the two-year prescriptive period for filing a refund claim under Sections 204(C) and 229 of the NIRC of 1997, as amended, should not apply to its case, since it seeks the recovery of excise tax advanced or deposited to the government and not erroneously or illegally collected tax.

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[28] Par. 9, Petition for Review, Docket vol. I, p. 8.
[29] Exhibit "P-5", Docket, vol. I, pp. 752-800.

The two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997 (formerly Sections 309[30] and 306[31] of the Tax Code), applies.

In the case of *Commissioner of Internal Revenue vs. Insular Lumber Company and Court of Tax Appeals*[32], the Supreme Court reiterated that:

> "Sections 306 and 309 of the National Internal Revenue Code **were intended to govern all kinds of refunds of internal revenue taxes** – those taxes imposed and collected pursuant to the National Internal Revenue Code. Thus, this Court stated that 'this provision', referring to Section 306, **'which is mandatory, is not subject to qualification, and, hence, it applies regardless of the conditions under which payment has been made'**. And to hold that the instant claim for refund of a specific tax, an internal revenue tax imposed in Section 142 of the National Internal Revenue Code, is beyond the scope of Sections 306 and 309 is to thwart the aforesaid intention and spirit underlying said provisions." *(Emphasis supplied)*

Clearly, petitioner's claim for refund or issuance of tax credit certificate has already prescribed.

The principle of solutio indebiti is not applicable

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[30] Sec. 309. *Authority of Collector to make compromises and to refund taxes.* — The Collector of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund taxes erroneously or illegally received, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive.
He shall refund the value of internal revenue stamps when the same are returned in good condition by the purchaser, and may, in his discretion, redeem or exchange unused stamps that have been rendered unfit for use, and may refund their value upon proof of destruction.
The authority of the Collector of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty.

[31] Sec. 306. *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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; 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 begun after the expiration of two years from the date of payment of the tax or penalty.

[32] G.R. No. L-24221, December 11, 1967.

Petitioner avers that respondent has no right to simply forfeit the excise tax advanced or deposited under RR No. 3-08. Allegedly, the principle of *solutio indebiti* obliges respondent to return the amounts advanced or deposited by petitioner.

Petitioner's reliance on the *solutio indebiti* principle is misplaced.

Under Article 2154 of the Civil Code, if something is received when there is no right to demand it, and it is unduly delivered through mistake, the obligation to return it arises. In the case of *Bank of the Philippine Islands vs. Elizabeth G. Sarmiento*[33], the Supreme Court held that there is *solutio indebiti* where: (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) the payment is made through mistake, and not through liberality or some other cause.

The principle of *solutio indebiti* is a form of quasi-contract. Being a quasi-contract, an action may be brought within six (6) years from the date of payment sought to be returned.[34]

In the case of *Commissioner of Internal Revenue vs. Manila Electric Company*[35], the Supreme Court rejected the application of *solutio indebiti* to tax refund cases in the following manner:

> "In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: (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) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of

[33] G.R. No. 146021, March 10, 2006.
[34] Art. 1145, Civil Code of the Philippines.
[35] G.R. No. 181459, June 9, 2014.

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> *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid."

Similarly, petitioner has a binding relation to pay the subject excise tax under RR No. 3-08. The advance payment or deposit was not made through mistake but was made by petitioner *in compliance* with the said revenue regulations. Hence, the six-year prescriptive period under the principle of *solutio indebiti* is not applicable.

Even though the Tax Code recognizes a taxpayer's right to claim the refund of excess or erroneous payments from the government, a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.[36]

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

Petitioner questions the validity of RR No. 3-08 because it purportedly contradicts Sections 129 and 130(D) of the NIRC of 1997, as amended, since it requires manufacturers to advance the payment of excise tax as if it were subject to excise tax. Instead of outright exemption from excise tax, manufacturers are required to file either (1) a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the Tax Code, or (2) a product replenishment under RR No. 3-08.

The relevant Tax Code provisions are hereunder quoted for easy reference:

> "SEC. 129. *Goods Subject to Excise Taxes.* – **Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported.** The excise tax

[36] *Metropolitan Bank and Trust Co. vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.

imposed herein shall be in addition to the value-added tax imposed under Title IV.

For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit or measurement shall be referred to as '*specific tax*' and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as '*ad valorem tax*'." *(Emphasis supplied)*

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

xxx xxx xxx

(D) *Credit for Excise Tax on Goods Actually Exported.* – When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, **any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment**: *Provided*, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported." *(Emphasis supplied)*

On the other hand, the pertinent provision of RR No. 3-08 provides:

"SECTION 2. *Imposition of Excise Tax on Removal of Excisable Articles for Export or Sale/Delivery to International Carriers and Other Tax-Exempt Entities/Agencies.* – Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, **all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation** or sale/delivery to international carriers or to tax-exempt entities/agencies: *Provided*, That in case the said articles are likewise being sold in the domestic market, the applicable

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excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.

In the absence of a similar article that is being sold in the domestic market, the applicable excise tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable." *(Emphasis supplied)*

The above revenue regulation was issued to implement a refund mechanism available to taxpayers who exports excisable goods pursuant to Section 130(D) of the NIRC of 1997, as amended. As stated in the Background of RR No. 3-08, 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 Bureau of Internal Revenue 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.

Pursuant to RR No. 3-08, the remedies of the taxpayer may either be in the form of:

1. a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the NIRC of 1997, as amended; or

2. a product replenishment.

The mechanics and procedure to avail of the second option is detailed in Section 6 of RR No. 3-08, summarized as follows:

1. The taxpayer shall pay the excise tax on locally manufactured excisable goods intended for export through BIR Form No. 0605;

2. The taxpayer will then proceed with processing the actual exportation of said goods;

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3. After the export has been completed, the taxpayer will file an application for Product Replenishment Certificate (PRC) within ninety (90) days from the date of export together with the complete documentation requirements provided under RR No. 3-08;

4. The BIR shall approve the PRC application upon satisfaction of the documents submitted by the taxpayer; and

5. Utilize/apply the approved PRCs on subsequent excise tax liabilities of locally manufactured goods intended for export by filing a Product Replenishment Debit Memo (PRDM).

    a. If the excise tax credit reflected in the PRC is **less** than the excise tax due on the subsequent exportation, the taxpayer shall pay the deficiency through BIR Form No. 0605 prior to the removal of the goods within the Philippines.

    b. If the excise tax credit reflected in the PRC is **more** than the excise tax due on the subsequent exportation, the unutilized portion of the PRC may be used on other subsequent exportations.

The duly approved PRC serves as proof of excise tax credits which can be utilized by the taxpayer on subsequent excise tax due on locally manufactured excisable goods intended for export; while the duly approved PRDM serves as proof of the utilization of the PRCs, which in effect serves as an authority to export said goods without the requisite of payment of corresponding excise tax.[37] Unutilized PRCs shall be available as excise tax credits for five (5) years from the date of issuance.[38]

[37] *Philip Morris Philippines, Manufacturing, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9228, April 3, 2018.
[38] Section 6(F), RR No. 3-08.

Similar to the earlier finding of the Court in *Philip Morris Philippines, Manufacturing, Inc. vs. Commissioner of Internal Revenue*[39], RR No. 3-08 does not contradict Section 130(D) of the NIRC of 1997, as amended, since Section 130(D) likewise provides that a credit or refund of excise taxes paid shall be granted upon submission of proof of the following:

1. Payment of excise tax on excisable goods intended for export;
2. Actual exportation of goods; and
3. Receipt of corresponding foreign exchange payment.

As laid down in Section 6(A)(e) of RR No. 3-08, the PRCs shall be issued by the BIR only upon submission of proofs of actual shipment.

The required "documentary proofs" are enumerated in Section 6(B)(1) of RR No. 3-08, to wit:

> "SECTION 6. *Claim for Product Replenishment.* – xxx
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> xxx xxx xxx
>
> B. APPLICATION FOR PRODUCT REPLENISHMENT
>
> The manufacturer shall file a written application for Product Replenishment Certificate (Form No. _____) (Annex 'A') with the Chief, Field Operations Division (LTFOD), Large Taxpayers Service in the National Office of the Bureau of Internal Revenue (BIR), together with the following copies of documents:
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> (1) For Direct Export Transactions:
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> a. 'Export Permit' of product applied for replenishment
> b. Proof of payment of the excise tax due on the product
> c. Purchase order

[39] Supra.

d. Commercial invoice and delivery receipt duly acknowledged by the purchaser or his authorized representative
e. Packing list
f. Bill of Lading
g. Withdrawal Certificate, Official Delivery Invoice or any BIR-prescribed forms to document removal of excisable articles from the place of production
h. Inward remittance of the export proceeds in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP). In case the said remittance covers several exportations, the same shall be accompanied by a summary of the details thereof indicating the commercial invoice numbers, bills of lading numbers and the amounts of sales.
i. 'Certificate of Loading' issued by the Bureau of Customs (BOC)
j. Certified true copy of the container scanner's report and *film negative* issued by the BOC
k. Batch liquidation statements indicating receipts and removals
l. Other documents as may be required, if warranted"

The Court finds that there is no conflict between the law (Sections 129 and 130(D) of the NIRC of 1997, as amended) and the revenue regulation (RR No. 3-08) issued to implement it. Revenue Regulations are issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the Tax Code and related statutes. And RR No. 3-08 was issued in order to regulate the collection and administration of excise tax on certain excisable articles.[40]

As declared by the Supreme Court in *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[41], a revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed. Revenue regulations or

[40] Par. 2, Admitted Facts, Pre-Trial Order, Docket, vol. I, p. 293.
[41] G.R. No. 159490, February 18, 2008.

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administrative issuances have the force of law and are entitled to great weight.

Lastly, it is noteworthy that while RR No. 3-08 imposes excise taxes on the removal of articles from place of production that are intended for export, the same revenue regulation also provides for remedies after payment of the tax subject to procedural due process laid therein. Taxpayers are not left without recourse. Remedies were provided under the regulations. However, petitioner failed to comply with the required procedure when it belatedly filed the claim for refund or issuance of tax credit certificate.

The government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence. For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption.[42]

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

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[42] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,* G.R. No. 163835, July 7, 2010.

C E R T I F I C A T I O N

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
Chairperson, 1st Division