REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN MIGUEL BREWERY, INC., Petitioner,	CTA Case No. 9743
	Members:
- versus -	DEL ROSARIO, *PJ, Chairperson* FABON-VICTORINO, *and* MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 10 2020 9:18 am

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RESOLUTION

Fabon-Victorino, J.:

On October 14, 2019, the Court promulgated the assailed Decision, [1] disposing the case in the following fashion:

> **WHEREFORE**, the Petition for Review dated December 27, 2017 filed by petitioner San Miguel Brewery, Inc. is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱27,967,813.47, representing erroneously and excessively collected excise taxes on its removals of SML (in bottles and in cans) and Other Beer Products for the period covering January 1, 2016 to December 31, 2016.
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> **SO ORDERED.**

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1 Docket, pp. 401-432.

In ruling for petitioner, the Court explained that respondent Commissioner of Internal Revenue (CIR) erroneously collected from petitioner excise taxes relating to its removals of SML (in bottles and cans) and other beer products for calendar year (CY) 2016 in the amount of ₱27,967,813.47. The Court however rejected a fragment of a similar claim in the amount of ₱2,623,597.20 pertaining to petitioner's removals of SML *in keg* for its failure to present the prescribed Sworn Statements showing the suggested net retail price (NRP) of the said product as required under Revenue Memorandum Circular (RMC) No. 3-2013 in relation to RMC No. 17-2012.

Both assail the decision of the Court, with petitioner filing a Motion for Partial New Trial[2] dated October 28, 2019, while respondent a Motion for Reconsideration [3] dated November 4, 2019.

<u>Petitioner's Motion for Partial New Trial:</u>

To water down its failure to present the prescribed Sworn Statements indicating the suggested NRP of SML in *keg,* petitioner blames the court-commissioned Independent Certified Public Accountant (ICPA) who allegedly did not require it to submit to the same for her audit. Thus, it was under the honest impression that the Schedule of NRP of SML Products, *sans* the Sworn Statements, would already be sufficient for the purpose of demonstrating the NRP of SML *in kegs.* The limited timeframe to transmit voluminous documents was also a hindrance in submitting to the ICPA the required Sworn Statements for her verification. On the foregoing accounts, its inability to present to the Court Sworn Statements mandated under RMC No. 3-2013 could be deemed excusable negligence justifying the grant of a partial new trial, a remedy available to it under Section 1, Rule 37 of the Rules of Court.

Further, Section 3, Rule 129 of the Rules of Court, procedurally permits the Court to take judicial notice of matters, even on appeal, if the same is determinative of an

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2 Ibid. at pp. 433-439.
3 Id. at pp. 455-470.

issue in a case, hence, the Sworn Statements appended to its Motion for Partial New Trial may be utilized by the Court in determining the propriety of its claim, insists petitioner.

Moreover, the testimony of its witness, Ms. Ronquillo that the NRP of SML in kegs for 2016 was below ₱50.60 and within the Tier 1 Bracket was not refuted by respondent hence, conclusive upon the Court.

On the matter,[4] respondent counters that: 1) to grant petitioner a new trial for it to present the required Sworn Statements is to sanction intolerable negligence; 2) petitioner's submission of voluminous documents under time pressure could not by any measure be deemed excusable negligence; 3) the ICPA should not be faulted for not requiring petitioner to submit such Sworn Statements as her duty was confined to independent and impartial verification of the documents submitted to her by petitioner; and 4) introduction of additional evidence by petitioner after resting of its case will foster disorderly procedure, which should not be countenanced.

Respondent's Motion for Reconsideration:

Respondent posits that questions pertaining to validity or constitutionality of revenue issuances are beyond the Court's jurisdiction for it does not fall under other matters arising from the NIRC, as amended, as laid down in Section 7(1) of Republic Act (RA) No. 1125, as amended. For him, petitioner's principal cause of action is the invalidation of a provision under RMC No. 90-2012, with the subject refund as mere ancillary thereto, thus, within the province of the Regional Trial Court (RTC), and not of this Court. Outright dismissal of the case is allegedly in order.

Further, the facts suggest that the present action is tantamount to a collateral attack against the otherwise presumed valid administrative issuance which is explicitly proscribed as ruled by no less than the Supreme Court.[5]

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4 Respondent's Comment (on Motion for Partial New Trial), id. at pp. 474-477.

5 Respondent cites *Dasmariñas Water District vs. Monterey Foods Corporation*, G.R. No. 175550, September 17, 2008 in support of his position.

To cap his arguments, respondent invokes the tenet that refunds are in the nature of tax exemptions which are construed against the taxpayer-claimant such as petitioner. For its failure to establish the legal and factual bases of its claim, petitioner's claim for refund must be denied in full.

In refutation,[6] petitioner retorts that no less than the Supreme Court *En Banc,* in the case of *Banco de Oro vs. Republic of the Philippines,* unequivocally declared that the CTA has the legal competence to pass upon the validity of a revenue issuance when it is invoke or cited as basis in seeking a tax refund, as obtaining in the present case.

Contrary to respondent's claim, the present action is not a collateral but rather a direct attach to impugn the validity of the excise tax rates prescribed in Section 5 of RR No. 17-2012 and RMC No. 90-2012 which is repugnant to the provisions of Section 143 of the NIRC, as amended by RA No. 10351.

Finally, the principle of strict construction of statutes relative to tax refund invoked by respondent to justify collection of the subject excise taxes does not find application in the present case considering that he erroneously collected excise taxes to SML in cans, bottles, and kegs using the rates offensive of the provisions of Section 143 of the NIRC, as amended by RA No. 10351.

RULING OF THE COURT

<u>Petitioner's Motion for Partial New Trial:</u>

As a general rule,[7] it is during the trial stage of the proceeding that the parties may present their respective

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6 Petitioner's Opposition to Respondent's Motion for Reconsideration dated November 25, 2019, docket pp. 482-496.

7 **Rule 30, Section 5.** *Order of trial.* — Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
(a) The plaintiff shall adduce evidence in support of his complaint;
(b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaints; xxx

evidence to establish their cause of action or defense. By way of exception, Section 1, Rule 37 of the Rules of Court allows the grant of a new trial for the purpose of presenting evidence after a final judgment or order has been rendered predicated upon excusable negligence, thus:

> **Section 1.** *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
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> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.
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To invoke negligence as a ground for a new trial, the provision specifically requires that it must be one which ordinary diligence and prudence could not have guarded against.[8] The surrounding circumstances should be properly alleged and proved.[9]

Note that compliance with procedural rules is the general rule, and abandonment thereof should only be done in the most exceptional circumstances.[10] Save for the most persuasive of reason, strict compliance with the rules is enjoined to facilitate the orderly administration of justice.[11]

Without any pretention, petitioner admitted that it failed to present the required Sworn Statements to establish the suggested NRP of SML in *kegs* during trial stage of the

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8 See Section 1, Rule 37 of the Rules of Court; *Gomez vs. Montalban,* G.R. No. 174414, March 14, 2008.

9 See *Lui Enterprises, Inc. vs. Zuelling Pharma Corporation and the Philippine Bank of Communications,* G.R. No. 193494, March 7, 2014.

10 *Pilapil vs. Heirs of Briones,* G.R. No. 150175, February 5, 2007.

11 *The Government of the Kingdom of Belgium vs. Hon. Court of Appeals,* G.R. No. 164150, April 14, 2008.

proceedings allegedly occasioned by the inability of the ICPA to require their submission for her examination.

With certitude, petitioner is in no position to conveniently put the blame upon the ICPA for lapses it incurred. For one, petitioner as the claimant had, under the rules [12] and jurisprudence, [13] the burden of proving the veracity of its claim for refund by presenting all the evidence in its possession to justify the grant of the relief sought. Obviously, petitioner miserably failed on this regard for it was not able to present and verify the required documents when the ball was in its court.

For another, the ICPA was not legally obligated to demand upon petitioner submission of particular documents for her examination and audit for it was petitioner who determined what documents to be transmitted to the ICPA in support of its claimed entitlement. The ICPA, as an officer of the Court, needed only to examine and verify the transmitted documents and thereafter submit the result thereof to the Court to aid in its determination of the case.

Significantly, petitioner's own witness, its Manager - Tax Services Andrei Josef Y. Kasilag categorically declared[14] being aware that the prescribed Sworn Statements under Section 7 of RR No. 7-2012 contained the NRP of SML per *keg*,[15] which was necessary in the computation of correct excise tax due on SML in *keg*. Surely, as a lawyer, Mr. Kasilag could not feign ignorance of the fact that the required Sworn Statements carried more weight and credence for they were executed under oath unlike the Schedule of NRP of SML products, which petitioner presented. Yet, despite the clear significance of such documents

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[12] Section 1, Rule 131 of the Rules of Court provides: *Burden of proof.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[13] xxx. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer. See *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

[14] Answer to Question No. 5, Judicial Affidavit of Atty. Andrei Josef Y. Kasilag dated October 25, 2019 attached to petitioner's Motion for Partial New Trial, docket, p. 443.

[15] Answer to Question No. 6, ibid.

petitioner failed to timely present them availing proper remedies under the rules and waited until judgment has been rendered only to say that from the start they had these documents in its possession only that the ICPA did not demand their submission for audit.

To the mind of the Court, such inattention and negligence was anything but excusable. To put it another way, a liberal application of the rules of procedure to suit petitioner's purpose would pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[16] For this reason, a denial of petitioner's plea for partial new trial is in order.

***Respondent's Motion for Reconsideration*:**

To be sure, respondent's theory is incorrect. The Court has the required competence and authority to decide tax cases assailing the legality of revenue issuances. In *Banco De Oro, et. al. vs. Republic of the Philippines*,[17] the Supreme Court *En Banc* categorically ruled that the CTA has jurisdiction to hear matters relating to propriety of the BIR's revenue issuances when invoked by the taxpayer in assailing an assessment, or in claiming a refund such as in the present case, *viz.*:

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> *The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.*

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Such doctrinal precept was echoed in the case of *Commissioner of Internal Revenue vs. Court of Tax Appeals*

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16 See *Commissioner of Internal Revenue vs. A. Soriano Corporation,* G.R. No. 113703, January 31, 1997.

17 G.R. No. 198756, August 16, 2016.

and Petron Corporation,[18] where the High Tribunal ruled that its pronouncement in the *Banco De Oro* case is the standing rule on the matter, that the CTA has jurisdiction to determine the validity or constitutionality of a particular tax regulation, ruling, or issuance.

WHEREFORE, petitioner's Motion for Partial New Trial dated October 28, 2019 and respondent's Motion for Reconsideration dated November 4, 2019 are **DENIED**, for lack of merit. The impugned Decision dated October 14, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate justice

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18 G.R. No. 207843 (Resolution on Motion for Reconsideration), February 14, 2018.