REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NESTLE PHILIPPINES, INC., Petitioner,	**CTA EB NO. 2896** (CTA Case No. 10276)
	Present:
- versus -	**RINGPIS-LIBAN,** *P.J.*, **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 30 2026 3:10

x - x

DECISION

FERRER-FLORES, J.:

Before this Court is a **Petition for Review** filed on April 11, 2024 by **Nestlé Philippines, Inc.** (**Nestle/petitioner**) against the **Commissioner of Internal Revenue** (**CIR/respondent**) seeking the review and reversal of the Decision dated October 6, 2023 (assailed Decision)[1] and the Resolution dated March 4, 2024 (assailed Resolution),[2] both rendered by the Special Third Division of this Court (**Court in Division**), which denied Nestle's claim for refund of erroneously paid sweetened beverages tax (SBT) in the amount of **₱1,266,599,459.91**.

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1 Penned by then Associate Justice Ma. Belen M. Ringpis-Liban (now Presiding Justice) with the concurrence of Associate Justice Maria Rowena Modesto-San Pedro; *Rollo* – Vol. I, pp. 137 to 159.

2 *Rollo* – Vol. I, pp. 162 to 166.

The dispositive portions of the assailed Decision and Resolution read as follows:

Assailed Decision

> **WHEREFORE**, in light of the foregoing disquisitions, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

Assailed Resolution

> **WHEREFORE**, premises considered, petitioner's Motion for Reconsideration (of the Decision promulgated on 6 October 2023) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES

Petitioner Nestlé is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Barrio Niugan, Cabuyao, Laguna.[3]

Respondent is the duly appointed CIR with office at the Bureau of Internal Revenue (BIR) Building, Diliman, Quezon City.[4]

THE ANTECEDENT FACTS

As found by the Court in Division, the facts are as follows:[5]

> Petitioner is engaged in the manufacture of food and beverages, including MILO — a powdered chocolate malt flavored milk drink which is marketed by petitioner in the following packs, to wit:
>
> (a) Nestle MILO Hot Mix Choco Malt Powdered Milk Drink (Institutional Pack) which is registered with the Food and Drug Administration ("FDA") under Certificate of Product Registration ("CPR") No. FR-4000003074211;

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[3] Assailed Decision, *Rollo* – Vol. I, pp. 137 to 138.
[4] *Id.*
[5] *The Facts,* assailed Decision, *Rollo* – Vol. I, pp. 138 to 139; citations omitted.

(b) Nestle MILO Cold Mix Choco Malt Powdered Milk Drink (Institutional Pack) which is registered with the FDA under CPR No. FR-4000003086801;

(c) Nestle MILO Choco Malt Powdered Milk Drink/Powdered Choco Malt Milk Drink which is registered with the FDA under the following CPR Nos.: FR-4000002772505 (22g), FR-4000002780597 (88g), and FR-400000278060I (220g, 300g, 600g, 1 Kg);

(d) Nestle MILO Choco Malt Powdered Milk Drink/Powdered Choco Malt Milk Drink which is registered with the FDA under CPR Nos. FR-4000002780614 (22g) and FR-4000002780627 (600g, 1Kg) for products packed by Antonina Industrial Corporation; FR-4000002780643 (22g) for products packed by Cofipac Corporation; FR-4000002780656 (22g) for products packed by Portion Fillers; FR-4000002780669 (22g) for products packed by R.M. Foods, Inc.;

(e) Nestle MILO Nutri-Up Choco Malt Powdered Milk Drink/Powdered Choco Malt Milk Drink for Adults Which is registered with the FDA under CPR Nos. FR-4000002652050 (24g) and FR-4000002759331 (390g); and

(f) Nestle MILO Nutri-Up Choco Malt Powdered Milk Drink/Powdered Choco Malt Milk Drink for Adults which is registered with the FDA under CPR No. FR-4000002759399 (24g) for products packed by Antonina Industrial Corporation.

On January 01, 2018, Republic Act ("RA") No. 10963, or the Tax Reform for Acceleration and Inclusion Act (TRAIN Law), took effect, and added Section 150-B to the National Internal Revenue Code ("NIRC") of 1997, which imposed for the first time an excise tax on sweetened beverages (*i.e.*, the SBT).

Thereafter, Revenue Regulations ("RR") No. 20-2018 was issued, implementing the imposition of excise tax on sweetened beverages, pursuant to Section 47 of RA No. 10963.

On April 7, 2020, pursuant to Section 204 (C) of the NIRC of 1997, as amended, petitioner filed a written claim for refund of alleged erroneously paid SBT with respondent (Attention to the respondent's Large Taxpayers Service), through the letter dated April 6, 2020, and a duly accomplished *Application for Tax Credits/Refund* (BIR Form 1914), in the amount of Php1,266,599,459.91, for the period from May 1 to December 31, 2018.

THE PROCEEDINGS BEFORE THE COURT IN DIVISION

As detailed in the assailed Decision, the proceedings before the Court in Division are as follows:[6]

> Petitioner filed the present *Petition for Review* on April 22, 2020.
>
> On July 3, 2020, respondent filed his *Motion for Extension of Time to File Answer*, which was granted in the Resolution dated July 22, 2020. In the same Resolution, the Court ordered respondent to certify and elevate the *BIR Records* of this case.
>
> Subsequently, on July 24, 2020, respondent filed a *Second Motion for Extension of Time to File Answer*, which was again granted by the Court in the Resolution dated August 26, 2020.
>
> On September 02, 2020, respondent transmitted the BIR Records of the case, consisting of one (1) folder, consecutively numbered as pages 1 to 159.
>
> Thereafter, on September 04, 2020, respondent filed his *Manifestation with Motion to Admit Attached Answer*, which was granted in the Resolution dated October 05, 2020. In the *Answer* attached therein, respondent interposed the following special and affirmative defenses, to wit:
>
> 1) A plain reading of Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995) shows that MILO products cannot be considered under 'flavoured fluid milk drink' as argued by petitioner. All MILO products that are the subject of this case involve chocolate drink in powder form, not in liquid form. Therefore, the said products cannot fall under 01.1.4 of Codex Stan 192-1995; and
>
> 2) If petitioner's MILO products would be given an exemption on the excise tax on sweetened beverages tax, the purpose for which the law was imposed would be defeated.
>
> The Pre-Trial Conference was set and held for on March 18, 2021. Prior thereto, *Petitioners' Pre-Trial Brief* was filed on August 15, 2021, while, *Respondent's Pre-Trial Brief* was submitted on March 16, 2021.
>
> On May 24, 2021, the *Report* of the Independent Certified Public Accountant ("ICPA") was submitted; and the parties filed their *Joint Stipulation of Facts and Issues*, which was admitted and approved by the Court per its Resolution dated June 03, 2021, thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 21, 2021 was then issued by the Court.
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> Trial then ensued.

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[6] *Facts*, assailed Decision, *Rollo*, pp. 139 to 142; citations omitted.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Maria Josephine Gonzales, Head of Regulatory and Scientific Affairs Department of petitioner; (2) Atty. Armi A. Perlas, Head of petitioner's Tax Department; (3) Ms. Veronica Carmen V. Cruz, [petitioner's Business Executive Officer for MILO products; (4) Mr. Joselito Dalde, petitioner's Project Consultant; (5) Dr. Kenneth Y. Hatigan-Go, former Director General of the Food and Drugs Administration (FDA); and (6) Ms. Katherine O. Constantino, the Court-commissioned ICPA.

The *Formal Offer of Evidence for Petitioner* was filed on June 09, 2022; and respondent's *Comment (Re: Petitioner's Formal Offer of Evidence)* was filed on June 14, 2022. In the Resolutions dated July 22, 2022 and September 12, 2022, the Court admitted all of petitioner's offered exhibits. Given respondent's manifestation that he will no longer present any evidence in this case, the Court gave the parties thirty (30) days within which to file their respective memorandum.

On September 12, 2022, respondent posted its *Memorandum*, and on October 17, 2022, petitioner filed its *Memorandum*.

Thus, in the Resolution dated October 25, 2022, the present case was deemed submitted for decision.

On December 13, 2022, the Court in Division rendered the assailed Decision[7] denying Nestle's *Petition for Review*. In the assailed Decision, the Court found that Nestle failed to prove that there was an illegal or erroneous collection of SBT at the time of the removal of the MILO products. The Court in Division held that Nestle's MILO products fall within the taxing provision under Section 150-B(A)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (R.A.) No. 10963,[8] or the Tax Reform for Acceleration and Inclusion Act (TRAIN Law), and are not excluded from the imposition of SBT pursuant to Section 150-B(C)(1) of the same Code.

Aggrieved, petitioner filed its *Motion for Reconsideration (of the Decision promulgated on 6 October 2023)*[9] on October 26, 2023, to which respondent did not file any comment despite notice.[10]

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[7] Division Docket – Vol. 7, pp. 3401 to 3423.

[8] An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237. 249. 254. 264. 269. and 288: Creating New Sections 51-A. 148-A, 150-A, 150-B, 237-A. 264-A, 264-B, and 265-A; And Repealing Sections 35, 62, and 89; All Under Republic Act 8424, Otherwise Known As The National Internal Revenue Code Of 1997, As Amended, And For Other Purposes.

[9] Division Docket – Vol. 7, pp. 3426 to 3449.

[10] *Records Verification Report* dated January 22, 2024, Division Docket – Vol. 7, p. 3455.

On March 4, 2024, the Court in Division promulgated the assailed Resolution, denying petitioner's *Motion for Reconsideration* for lack of merit.[11]

Hence, the instant *Petition for Review*.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On August 16, 2023, petitioner filed its *Entry of Appearance with Motion for Extension of Time To File Petition for Review [Re: Decision dated 06 October 2023 and Resolution dated 05 March 2024]*, seeking an additional 15 days from March 26, 2024, or until April 10, 2024, to file a Petition for Review.[12] The Court *En Banc* granted the motion on March 27, 2024.[13]

On April 11, 2024,[14] petitioner filed the instant *Petition for Review*.[15]

In the Minute Resolution dated May 10, 2024, the Court ordered respondent to file his comment on the present *Petition for Review*.[16]

Respondent filed his *Comment (Petition for Review)*[17] on May 28, 2024.

On July 31, 2024, the case was submitted for decision.[18]

THE ISSUES

In the instant *Petition for Review*, in assailing the Decision, petitioner raises the following substantive and procedural issues:

I. Whether petitioner's MILO products are "milk products" or "sweetened beverages" subject to excise tax under Section 150-B of the NIRC of 1997, as amended;

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[11] *Rollo* – Vol. I, pp. 162 to 166.
[12] *Rollo* – Vol. I, pp. 1 to 4.
[13] Minute Resolution dated March 27, 2024; *Rollo*, p. 18-A.
[14] April 10, 2024 fell on a Sunday.
[15] *Rollo* – Vol. I, pp. 19 to 119.
[16] *Rollo* – Vol. II, p. 949.
[17] *Rollo* – Vol. II, pp. 951 to 960.
[18] Minute Resolution dated July 31, 2024, *Rollo* – Vol. II, p. 962.

II. Whether petitioner is entitled to a refund of the SBT it paid in the amount of ₱1,266,599,459.91; and,

III. Whether the results from the independent analysis of the composition of the MILO products as required under Revenue Memorandum Circular (RMC) No. 112-2023 could be considered by the Court.

THE ARGUMENTS

Petitioner argues that the Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995) was already adopted by the Food and Drug Administration (FDA) and was in force during the imposition of SBT under Section 150-B of the NIRC of 1997, as amended by the TRAIN Law, on the MILO products. Petitioner further avers that the FDA has adopted the Codex Stan 192-1995 as early as 2006, and its subsequent versions have automatically been incorporated into Philippine standards. According to petitioner, the clear language of Section 150-B of the NIRC of 1997, as amended, states that the FDA has adopted the Codex Stan 192-1995 and to rule otherwise would amount to judicial legislation, which is prohibited. Petitioner maintains that a review of the deliberations of Congress reveals that the effectivity of Section 150-B of the NIRC, as amended, and its exclusions is not hinged on any condition. In any event, supposing the FDA only adopted Codex Stan 192-1995 in 2019, during May 1, 2018 to December 31, 2018, the definition of "sweetened beverages" under Section 150-B(B)(1) of the NIRC of 1997, as amended, was thus incomplete. Accordingly, SBT should not have been imposed on petitioner's MILO products, regardless of whether it is milk or not, as the said provision was not enforceable at that time.

Petitioner points out that, as revealed by its ingredients and its compositional analysis, the MILO products are classified as "milk" and, thus, are not covered by the definition of "sweetened beverages" under Section 150-B(B)(1) of the NIRC of 1997, as amended.

Petitioner also claims that the MILO products are not "non-alcoholic beverages" as defined under Codex Stan 192-1995; thus, the same are not covered by the definition of "sweetened beverages" under Section 150-B(B)(1) of the NIRC of 1997, as amended.

Furthermore, petitioner insists that the MILO products were allegedly confirmed by the FDA as choco malt drinks and are purportedly considered as fluid milk drinks under Codex Stan 192-1995. Thus, they are expressly excluded from the imposition of SBT under Section 150-B of the NIRC of 1997, as amended.

Petitioner adds that the MILO products are not mixes for cocoa or coco-sugar mixtures under food category 05.1.1 "Cocoa Mixes (Powders) and Cocoa Mass Cake" considering milk is the dominant ingredient.

According to petitioner, when it comes to excise taxes, non-taxability is the rule while taxability is the exception. Having sufficiently proven non-coverage of the MILO products under Section 150-B of the NIRC of 1997, as amended, the Court should grant the instant *Petition for Review*, and order the refund of the amounts paid.

With regard to the procedural issue of the reception of additional evidence, petitioner posits that, at any stage of the proceedings, the Court is empowered by the law to receive additional evidence not available during the trial, thus, warranting reception of the newly-discovered evidence in the instant case.

On the other hand, respondent counters that petitioner's MILO products are subject to SBT. Respondent avers that a plain reading of the Codex Stan 192-1995 shows that MILO products cannot be considered under "flavoured fluid milk drink" which only refers to products in fluid form, not in powder form. Respondent also claims that petitioner can neither seek SBT exemption on the basis that its product is considered under "Milk powder and cream powder" as Codex 207-1999 only covers plain milk powders, cream powders, or combination of the two and not flavored ones.

Respondent disagrees that, to qualify as milk, the essentiality of milk is the standard and not the dominance in quantity.

According to respondent, if petitioner's MILO products would be given SBT exemption, the purpose of the law would be defeated.

Finally, respondent posits that, where a statute is clear and free from ambiguity, the Court should not inquire into the legislative debates, views and deliberations. Respondent, thus, concludes that the Courts cannot go beyond the enrolled bill and look into the committee hearings to find basis for classifying MILO products as an example of a milk product.

THE RULING OF THE COURT *EN BANC*

The *Petition for Review* is meritorious.

The instant Petition for Review was timely filed; thus, the Court En Banc has jurisdiction over the case.

Section 11 of Republic Act (R.A.) No. 1125,[19] as amended by R.A. No. 9282,[20] provides that "[a] party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*".

Section 3(b) of Rule 8 of the Revised Rules of the CTA (RRCTA), which implements the above Section, provides:

> Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. *(Emphasis supplied)*

Based on the foregoing, petitioner had 15 days from receipt of the assailed Resolution within which to file its Petition for Review.

Records show that the assailed Resolution of the Court in Division was received by petitioner on March 11, 2024;[21] thus, petitioner had 15 days therefrom, or until **March 26, 2024**, to file its Petition for Review.

On March 25, 2024, petitioner filed its *Entry of Appearance with Motion for Extension of Time To File Petition for Review [Re: Decision dated*

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[19] An Act Creating the Court of Tax Appeals (June 16, 1954).

[20] 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 (March 30, 2004).

[21] Notice of Resolution dated March 5, 2024; Division Docket – Vol. 7, p. 3457.

06 October 2023 and Resolution dated 05 March 2024][22] seeking an additional period of 15 days from March 26, 2024, or until **April 10, 2024**, which was granted by this Court on March 27, 2024.[23] Since the last day of the extended deadline fell on a holiday,[24] petitioner had until **April 11, 2024**, the next working day, to file its Petition for Review.

Clearly, the instant *Petition for Review*[25] was timely filed on **April 11, 2024.**

The Court shall now proceed to the issues in the present petition.

Adoption of the Codex Stan 192-1995

At the outset, the Court finds it relevant to address the issue on whether the Codex Stan 192-1995 has been adopted by the FDA during the subject taxable period (i.e., May 1 to December 31, 2018), as it would necessarily affect the very definition of the "sweetened beverages", its classification, and the taxability thereof.

In the assailed Resolution, the Court in Division held that there was no proof that, at the time of removal of MILO products from petitioner's plants from May 1 to December 31, 2018, the FDA has already adopted the Codex Stan 192-1995, Rev. 2017. The Court pointed out that it was only on August 1, 2019 that the food category system and descriptor of the General Standard for Food Additives (Codex Stan 192-1995, Rev. 2018) was adopted pursuant to Department of Health (DOH) Circular No. 2019-0319 issued by then Secretary of Health Francisco T. Duque, III.

On the other hand, in the present *Petition*, petitioner insists that the FDA had adopted the Codex Stan 192-1995 as early as 2006 and its subsequent versions have automatically been incorporated into Philippine Standards. As such, the Codex Stan 192-1995 had already been adopted by the FDA during the relevant taxable period and thus, the definitions in it were already enforceable when the subject MILO products were manufactured and released from their place of production.

We find for the petitioner.

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22 *Rollo* – Vol. I, pp. 1 to 4.
23 Minute Resolution dated March 27, 2024; *Rollo*, p. 18-A.
24 Declared a regular holiday throughout the country in observance of *Eid'l Fitr* (Feast of Ramadhan) as per Presidential Proclamation No. 514 dated April 4, 2024.
25 *Rollo*, pp. 10 to 15.

Section 150-B of the NIRC of 1997, as amended, referred to the Codex Stan 192-1995 in this manner:

> Section 150-B. *Sweetened Beverages.* —
>
> (A) *Rate and Base of Tax.* — Effective January 1, 2018.
>
> xxx xxx xxx
>
> (B) Definition of Terms. — As used in this Act:
>
> (1) Sweetened beverages (SBs) refer to non-alcoholic beverages of any constitution (liquid, powder, or concentrates) that are pre-packaged and sealed in accordance with the Food and Drug Administration (FDA) standards, that contain caloric and/or non-caloric sweeteners added by the manufacturers, and shall include, but not be limited to the following, **as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest) as adopted by the FDA**:
>
> xxx xxx xxx
>
> (C) *Exclusions.* — The following products, as described in the food category system from **Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest) as adopted by the FDA, are excluded from the scope of this Act**: xxx *(Emphasis supplied)*

It can be gleaned in the above that the taxation and exclusion provision for SBT purposes consider the category system and the descriptors in the Codex Stan 192-1995. Thus, to determine whether a product is within the taxation or exclusion provision for SBT purposes, the Codex Stan 192-1995, as adopted by the FDA, is necessary.

In relation thereto, Revenue Regulations (RR) No. 20-2018,[26] which implements the SBT provisions of the NIRC of 1997, as amended, refers to the Codex Stan 192-1995 as well as earlier standards, viz.:

> SECTION 2. Definition of Terms. — xxx
>
> xxx xxx xxx
>
> b. SWEETENED BEVERAGES (SBs) — refer to non-alcoholic beverages of any constitution (liquid, powder, or concentrates) that are pre-packaged and sealed in accordance with the Food and Drug Administration (FDA) standards, that contain caloric and/or non-caloric sweeteners added by the manufacturers, and shall include, but not be limited to the following,

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[26] Prescribing the Implementing Rules and Guidelines on the Imposition of Excise Tax on Sweetened Beverages Pursuant to Section 47 of Republic Act No. 10963, Otherwise Known as the "Tax Reform For Acceleration And Inclusion (TRAIN) Law", August 24, 2018.

> as described in the **Food Category System from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev 2017 or the latest)** as adopted by the FDA:
>
> xxx xxx xxx
>
> SEC. 6. EXCLUSIONS — The following products, as described in the food category from **Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev 2017 or the latest) as adopted by the FDA**, are not subject to the excise tax imposed under Section 150-B of the NIRC, as amended, to wit:
>
> a. All milk products, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk, flavored milk, and fermented milk.
>
> Milk product refers to products obtained by any processing of milk, which may contain food additives, and other ingredients functionally necessary for the processing **(Codex General Standard for the Use of Dairy Terms (Codex Stan 206-1999).**
>
> **In accordance with the Codex Alimentarius, the following Codex Standards for various milk products are adopted:**
>
> 1. Milk powders and cream powders (Codex Stan 207-1999)
> 2. Fermented milks (Codex Stan 243-2003)
> 3. Blend of evaporated skimmed milk and vegetable fat (Codex Stan 250-2006)
> 4. Blend of skimmed milk and vegetable fat in powdered form (Codex Stan 251-2006)
> 5. Blend of sweetened condensed skimmed milk and vegetable fat (Codex Stan 252-2006)
> 6. Evaporated milk (Codex Stan 281-1971)
> 7. Sweetened condensed milks (Codex Stan 282-1971) *(Emphasis and underscoring supplied)*

Notably, Section 19 of RR No. 20-2018 provides that the regulations are effective **beginning January 1, 2018**, the effectivity of the TRAIN Law.[27] As such, the Codex Stan is likewise deemed adopted concurrently with the effectivity of the TRAIN Law. To construe otherwise, or to reckon the adoption of the Codex Stan 192-1995 from the date the issuance of DOH Circular No. 2019-0319 on August 1, 2019, will render the taxation and exclusion provisions inoperative prior thereto as there will be no standards or basis to determine the classification or category of the products.

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[27] SECTION 19. *Effectivity.* — These Regulations are effective beginning January 1, 2018, the effectivity of the TRAIN Law.

Further, as pointed out by the petitioner, even prior to the amendments introduced by the TRAIN Law, the Codex Stan 192-1995 has long been adopted by the FDA. For instance, in 2006, the Bureau of Food and Drugs (BFAD)[28] issued the BFAD Circular No. 2006-016 to update the list of food additives. In defining the "Acceptable Daily Intake" with reference to Codex Stan 192-1995, to wit:

> 1. Acceptable Daily Intake (ADI) refers to an estimate by the JECFA of the amount of a food additive, expressed on a body weight basis (reference man-60kg), that can be ingested daily over a lifetime without appreciable health risk. **(Codex STAN 192-1995 (Rev.6. 2005)**, (WHO Environmental Health Criteria No. 70, 1987)

In addition, the same Circular also provides that "[a]ny food additive and functional classes adopted by the Codex Alimentarius Commission (CAC) shall be automatically included as an addendum to the Appendix for Food Additives". This shows that the FDA, then the BFAD, intended to continuously adopt any subsequent revisions of the Codex Stan. As such, at the time the TRAIN Law became effective, the FDA has undoubtedly already adopted the Codex Stan 192-1995 and, subsequently, adopted the 2018 version thereof through DOH Circular No. 2019-00319.

Evidently, the Codex Stan 192-1995, having been adopted already, is applicable for purposes of determining the classification of the MILO products.

That having been settled, We now proceed to determine whether the MILO products are taxable or exempt from SBT.

MILO products, being milk products, are excluded from the coverage of SBT; hence, the SBT thereon was erroneously paid.

Petitioner argues that its MILO products, being flavored milk products, are not subject to SBT. On the other hand, respondent insists that petitioner's MILO products are not flavored milk products which are excluded from the coverage of SBT.

[28] The BFAD was renamed the FDA pursuant to R.A. No. 9711 (2009), otherwise known as the "Food and Drug Administration (FDA) Act of 2009".

The Court finds for the petitioner.

Section 47 of the TRAIN Law introduced Section 150-B in the NIRC of 1997, as amended, pertaining to the coverage of excise tax on sweetened beverages or SBT which reads:

> Section 150-B. *Sweetened Beverages.* —
>
> (A) *Rate and Base of Tax.* — Effective January 1, 2018.
>
> (1) A tax of six pesos (₱6.00) per liter of volume capacity shall be levied, assessed, and collected on **sweetened beverages using purely caloric sweeteners, and purely non-caloric sweeteners**, or a mix of caloric and non-caloric sweeteners: *Provided*, That this tax rate shall not apply to sweetened beverages using high fructose corn syrup: *Provided, further*, That sweetened beverages using purely coconut sap sugar and purely steviol glycosides shall be exempt from this tax; and
>
> xxx xxx xxx

As quoted earlier, sweetened beverages refer to **non-alcoholic beverages** of any constitution (liquid, **powder**, or concentrates) that are pre-packaged and sealed in accordance with the FDA standards, that contain caloric and/or non-caloric sweeteners added by the manufacturers, and shall include, **but not be limited to** the following, **as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest) as adopted by the FDA**:

(a) Sweetened juice drinks;
(b) Sweetened tea;
(c) All carbonated beverages;
(d) Flavored water;
(e) Energy and sports drinks;
(f) Other powdered drinks not classified as milk, juice, tea, and coffee;
(g) Cereal and grain beverages; and,
(h) Other non-alcoholic beverages that contain added sugar.

In sum, SBT of ₱6.00 per liter of volume capacity shall be levied, assessed, and collected on sweetened beverages using purely caloric sweeteners, and purely non-caloric sweeteners, or a mix of caloric and non-caloric sweeteners.

On the other hand, Section 150-B(C)(1) of the NIRC of 1997, as amended, provides for the exclusions from the coverage of SBT, to wit:

> (C) *Exclusions.* — The following products, as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017 or the latest) **as adopted by the FDA, are excluded from the scope of this Act**:
>
> (1) **All milk products**, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk and **flavored milk**, fermented milk, soymilk, and flavored soymilk; xxx *(Emphasis supplied)*

Pertinently, Section 6 of RR No. 20-2018, which implements the above SBT provision, reads as follows:

> SEC. 6. EXCLUSIONS — The following products, as described in the food category from **Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev 2017 or the latest) as adopted by the FDA**, are not subject to the excise tax imposed under Section 150-B of the NIRC, as amended, to wit:
>
> a. **All milk products**, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk, **flavored milk**, and fermented milk.
>
> Milk product refers to products obtained by any processing of milk, which may contain food additives, and other ingredients functionally necessary for the processing (Codex General Standard for the Use of Dairy Terms (Codex Stan 206-1999).
>
> xxx xxx xxx
>
> The **proper classification of beverages** shall be subject to the determination by the **FDA**. *(Emphasis supplied)*

Clearly, all milk products, including flavoured milk, among others, are excluded from the coverage of SBT. The law expressly provides that the excluded products are as described in the category system from Codex Stan 192-1995, Rev. 2017 or the latest, as adopted by the FDA. Furthermore, RR No. 20-2018, also provided that the proper classification of beverages shall be <u>subject to the determination by the FDA</u>.

For the Court to determine whether petitioner's MILO products are flavoured milk products excluded from the coverage of SBT, the said products must first be duly classified by FDA as such.

Petitioner contends that its MILO products are not subject to SBT because, under Section 150-B of the NIRC of 1997, as amended, the definition of sweetened beverages expressly removed powdered drinks classified as milk from its definition. Petitioner claims that the MILO products are considered as dairy products under Food Category 01.0 *"Dairy products and analogues"* and under Subcategory 01.1 *"Fluid Milk and Milk Products"*. According to petitioner, its MILO products are included in the phrase "all milk products" and excluded from the imposition of excise tax on sweetened beverages or SBT, pursuant to Section 150-B(C)(1) of the NIRC of 1997, as amended by the TRAIN Law.

We find for the petitioner.

To be covered by the exclusion under Section 150-B(C)(1), the law expressly referred to the products described in the **food category from the Codex Stan 192-1995, Rev. 2017 or the latest, as adopted by the FDA**.

An examination of the Certificates of Product Registration (CPRs) issued by the FDA pertaining to petitioner's MILO products reveals that the said products were categorized by the FDA as "**Dairy-based** drinks, flavored and/or fermented" with approved product name containing the term "**milk**". Below is the summary of the pertinent details of the CPRs issued before and during the period subject of the instant claim for refund, specifically, from May 1, 2018 to December 31, 2018:[29]

Exhibit No.	FDA Registration No.	Date of Issuance	Product Name	Exhibit No.	Food Categorization
"P-16"	FR-4000003074211	May 21, 2018	**CHOCO MALT POWDERED MILK DRINK** (INSTITUTIONAL PACK)	"P-16-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-17"	FR-4000003086801	July 25, 2018	**CHOCO MALT POWDERED MILK DRINK** (INSTITUTIONAL PACK)	"P-17-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-18"	FR-4000002772505	August 31, 2018	**POWDERED MALT AND MILK DRINK** 22G	"P-18-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-19"	FR-4000002780597	August 7, 2018	**POWDERED CHOCO MALT MILK DRINK** 88G	"P-19-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-20"	FR-4000002780601	May 22, 2018	**CHOCO MALT POWDERED MILK DRINK** 220G, 300G, 600G, 1KG	"P-20-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-21"	FR-4000002780614	August 7, 2018	**POWDERED CHOCO MALT MILK DRINK** 22G	"P-21-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-22"	FR-4000002780627	August 8, 2018	**POWDERED CHOCO MALT MILK DRINK**	"P-22-1"	HRA1b. Dairy-based drinks, flavored and/or fermented

[29] Refer to Exhibits "P-19" to "P-31", Docket – Vol. I, pp. 355 to 398.

Exhibit No.	FDA Registration No.	Date of Issuance	Product Name	Exhibit No.	Food Categorization
"P-23"	FR-4000002780643	August 8, 2018	**POWDERED CHOCO MALT MILK DRINK**	"P-23-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-24"	FR-4000002780656	April 17, 2018	**CHOCO MALT POWDERED MILK DRINK** 22G	"P-24-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-25"	FR-4000002780669	May 22, 2018	**CHOCO MALT POWDERED MILK DRINK** 22G	"P-25-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-26"	FR-4000002652050	April 21, 2018	**CHOCO MALT POWDERED MILK DRINK** FOR ADULTS 24G	"P-26-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-27"	FR-4000002759331	August 7, 2018	**POWDERED CHOCO MALT MILK DRINK** FOR ADULTS	"P-27-1"	HRA1b. Dairy-based drinks, flavored and/or fermented
"P-28"	FR-4000002759399	June 12, 2018	**CHOCO MALT POWDERED MILK DRINK** FOR ADULTS 24G	"P-28-1"	HRA1b. Dairy-based drinks, flavored and/or fermented

Based on the foregoing, it can be inferred from the CPRs that the FDA has determined the categorization of petitioner's MILO products as milk products considering the approved inclusion of the term "milk" in its product name and the categorization of the products as "dairy-based drinks".

The General Standard for Food Additives (Codex Stan 192-1995, Rev. 2018)[30] Codex Alimentarius International Food Standards, as adopted by the FDA, Annex B, Parts I and II, provides for the following food category system:

FOOD CATEGORY SYSTEM

PART I: Food Category System

01.0 **Dairy products** and analogues, excluding products of food category 02.0
01.1 Fluid Milk and Milk Products
01.1.1 Fluid Milk (plain)
01.1.2 Other Fluid Milk (plain)
01.1.3 Fluid Buttermilk
01.1.4 **Flavoured Fluid Milk Drinks**

xxx xxx xxx

PART II: Food Category Descriptors

01.0 Dairy products and analogues, excluding products of food category 02.0:

Includes all types **of dairy products that are derived from the milk of any milking animal** (e.g. cow, sheep, goat, buffalo). In this category, with the exception of food category 1.1.4, a "plain" product is one that is not flavoured, nor contains fruit, vegetables or other non-dairy ingredients, nor

[30] Exhibit "P-14", Division Docket, pp. 2569 to 2577.

> is mixed with other non-dairy ingredients, unless permitted by relevant standards. Analogues are products in which milk fat has been partially or wholly replaced by vegetable fats or oils.
>
> xxx xxx xxx
>
> 01.1.4 **Flavoured fluid milk drinks**
>
> Includes **all mixes and ready-to-drink fermented or not fermented milk-based drinks with flavourings** and/or food ingredients that intentionally impart flavor, **excluding mixes for cocoa (cocoa-sugar mixtures, category 05.1.1). Examples, include but are not limited to, chocolate milk, chocolate malt drinks**, strawberry-flavoured yoghurt drink, lactic acid bacteria drinks, whey-based drinks, and lassi (liquid obtained by whipping curd from the lactic acid fermentation of milk, and mixing with sugar or intense sweetener). *(Emphasis and underscoring supplied)*

Based on the foregoing, dairy products pertain to those products derived from the milk of any milking animal (e.g. cow, sheep, goat, buffalo). On the other hand, flavoured fluid milk drinks, a dairy product, pertain to **all mixes** and ready-to-drink fermented or not fermented **milk-based drink with flavourings** and/or food ingredients that intentionally impart flavor; however, mixes for cocoa (cocoa-sugar mixtures, category 05.1.1) are excluded.

In relation to the FDA-approved CPRs, petitioner presented its witness, Dr. Kenneth Y. Hartigan-Go, a former Director-General of the FDA, whose duties include the authority to approve CPRs for drugs and food products.[31] Dr. Hartigan-Go testified on the significance of the "Product Name" indicated in the CPRs of the MILO products, *viz.*:

> Q9: What is the significance of the "Product Name" indicated in the CPRs for the MILO products?
>
> A9: This means that Nestle Philippines, Inc. applied for the product names *"choco malt powdered **milk** drink"* and *"powdered choco malt **milk** drink"* for the MILO Products and that the FDA approved these product names.
>
> **The approval of the application for registration for the MILO Products and the issuance of the corresponding CPRs mean that the MILO Product complies with all FDA regulations, including the rules governing the labelling of food products.** This means that these **product names reflect the true nature of the MILO Products**. Otherwise, the product names for the MILO Products applied for would have been disapproved.

[31] Q&A Nos. 9 to 11 of the *Judicial Affidavit of Dr. Kenneth Y, Hartigan-Go,* Exhibit "P-63", Division Docket – Vol. 1, pp. 149 to 150.

> Q10: As far as you are aware of, what is the **current governing regulatory issuance on the labelling of food products**?
>
> A10: It's still **DOH Administrative Order No. 2014-0030** ("AO 2014-0030"). It was during my time as Director General of the FDA that AO 2014-0030 was signed and issued by the DOH Secretary in 2014.
>
> Q11: Why did you say that the product names in the CPRs reflect the true nature of the MILO Products and that otherwise, the product names would not have been approved?
>
> A11: You can see that in the first paragraph of each CPR, it states that the registration of the product was approved pursuant to the applicable laws, rules, and regulations.
>
> AO 2014-0030 is one of these rules and regulations. AO 2014-2020 contains the General and Specific Rules and Regulations for labelling.
>
> Under its "'General Rules and Regulations", AO 2014-0030 states that "prepackaged food shall not be described or presented in any label or labeling in a manner that is false, misleading or deceptive or is likely to create erroneous impression regarding its character in any respect".
>
> Under its "Specific Rules and Regulations", AO 2014-0030 states that "**the product name shall be specific and not generic and shall indicate the true nature of the food."**
>
> **So the fact that the approved "Product Name" indicated in the CPRs for the MILO Products is either "choco malt powdered milk drink" and "powdered choco malt milk drink means that after careful evaluation, the FDA deems that these product names reflect the true nature of the MILO Products**. *(Emphasis supplied)*

From Dr. Hartigan-Go's testimony, it is clear that the approval/ registration of a product name entails the compliance with the prevailing rule on labelling of food products (i.e., DOH Administrative Order No. 2014-0030) — that the name should represent the true nature of the product and is not false, misleading or deceptive or is likely to create erroneous impression regarding its character. As such, the approval of the product name, which included the term "milk", necessarily means that the FDA determined such name to represent the true nature of the MILO product as a milk drink. It is also noteworthy that Dr. Hartigan-Go's testimony remained uncontroverted.[32] There was likewise no showing that the FDA failed to strictly adhere to the applicable Codex Stan in approving the use of the term "milk" in the subject MILO products. Considering as well that the act of the FDA in issuing the

[32] Respondent did not conduct cross examination on said witness.

CPRs is done in the exercise of their official duty, the same enjoys the presumption of regularity in the absence of evidence to the contrary.[33]

This is further bolstered by the testimony of Mr. Joselito L. Dalde, petitioner's then Applications Group Head for Beverages, who was responsible for product development from conception to final product. His duties include, among others, recipe development of different products, such as the MILO product line; thus, he is knowledgeable of the composition of the MILO products subject of the case.[34] In his testimony, Mr. Dalde broke down the ingredients of the MILO products and their respective weights in relation to the total weight of all ingredients to demonstrate that **milk is the main ingredient** of the said products. We quote:

> Q22: The illustration you presented shows various ingredients of MILO Products. What are the proportions of the ingredients of the MILO Products?
>
> A22: In terms of weight, **the proportions of the key ingredients of MILO Products are**:
> 1. **Milk, in the form of skimmed milk powder and whey powder - around 24%**
> 2. Malted barley - about 21%; and
> 3. Cocoa powder - about 10%.
>
> For MILO Nutri-Up Choco Malt Powdered Milk Drink/ Powdered Choco Malt Milk Drink For Adults, more milk is added to the MILO Powder so milk makes up more than 33% in terms of weight for this MILO product.
>
> Q23: What did you mean when you said, "in terms of weight"?
>
> A24: When I said, "in terms of weight", I was referring to the weight of a particular ingredient in relation to the total weight of all the ingredients used for a MILO product.
> So if milk is about 24% in terms of weight of a MILO product, it means that for every 100 grams of such MILO product, milk makes up 24 grams.
>
> Q24: **In terms of weight, what is the top ingredient of the MILO Products?**
>
> A24: **Milk**
>
> Q24: In terms of weight, what is the proportion of the added sugar?

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[33] Section 3(m) of Rule 131 of the Revised Rules of Court:
Section 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
xxx
(m) That official duty has been regularly performed; xxx

[34] Q&A Nos. 22 to 25 of the *Judicial Affidavit of Joselito L. Dalde,* Exhibit "P-62", Division Docket – Vol. 2, p. 953.

> A25: For MILO Chocomalt Powdered Milk Drink, the **added sucrose or table sugar is about eighteen percent (18%) in terms of weight.** For MILO Nutri-Up Choco Malt Powdered Milk Drink/Powdered Choco Malt Milk Drink For Adults, **it is about seventeen percent (17%).** xxx *(Emphasis supplied)*

In fine, the Court finds that petitioner was able to establish that its MILO products are flavoured milk drinks as properly determined by the FDA.

With regard to the exclusion of "mixes for cocoa (cocoa-sugar mixtures" from the "flavoured fluid milk drinks" description, the Codex Stan 192-1995 cites *Food Category 05.1.1* which provides:

> 05.1.1 Cocoa mixes (powders) and cocoa mass/cake:
>
> Includes a variety of products that are used in the manufacture of other chocolate products or in the preparation of cocoa-based beverages. Most cocoa products have their origin in the cocoa nib, which is obtained from cocoa beans that have been cleaned and freed from the shells. Cocoa mass is obtained from the mechanical disintegration of the nib. Depending on the desired finished chocolate product, the cocoa nib or mass may be treated by an alkalinization process that mellows the flavour. Cocoa dust is the fraction of the cocoa bean produced as a product during winnowing and degerming. Cocoa powder is produced by reducing the fat content of cocoa mass or liquor by pressing (including expeller pressing) and molding into a cocoa press cake. The cocoa press cake is disintegrated and ground to cocoa powder. Cocoa liquor is a homogeneous flowing paste produced from the cocoa nib, which has been roasted, dried, disintegrated and milled. **Cocoa-sugar mixtures contain only cocoa powder and sugar.** Chocolate powder for beverages is made from cocoa liquor or cocoa powder and sugar to which flavouring (e.g. vanillin) may be added.45,46 Examples include: drinking chocolate powder; breakfast cocoa; cocoa dust (fines), nibs, mass, press cake; chocolate liquor; cocoa mixes (powders for preparing the hot beverage); cocoa-sugar mixture; and dry mixes for sugar-cocoa confectionery. **Finished cocoa beverages and chocolate milk are included in category 01.1.4**, and most finished chocolate products are included in category 05.1.4. *(Emphasis supplied)*

Evidently, MILO products, which contain milk, among others, in addition to cocoa and sugar, cannot be considered as cocoa-sugar mixtures excluded from the flavoured fluid milk drink category. In fact, *Food Category 05.1.1* expressly provides that finished cocoa beverages and chocolate milk, like the subject MILO products, fall under *Food Category 01.1.4* or flavoured fluid milk drinks.

Respondent nonetheless claims that the provisions under the Codex Stan 192-1995 refer to milk products in **fluid** form and not in **powder** form.

On the other hand, petitioner counters that the term "all mixes" covers powdered form of flavoured milk.

Respondent's argument must fail.

To recall, *Food Category 01.1.4* of the Codex Stan 192-1995, entitled "Flavoured fluid milk", was described to include "**all mixes** and ready-to-drink fermented or not fermented **milk-based drinks with flavourings** xxx" but excludes "**mixes for cocoa** (cocoa-sugar mixtures, category **05.1.1**)".

In relation thereto, the Codex Stan 192-1995 does not provide for a definition of the term "mixes". However, a closer look at the excluded category of mixes for cocoa under *Food Category 05.1.1* would reveal that the same pertains to "Cocoa mixes (**powders**) and cocoa mass/cake". Thus, the fact that there had to be an exclusion of a specific powdered mixture meant that, without such exclusion, cocoa-sugar mixtures in powder form would have been covered by the term "all mixes". As such, it can be reasonably inferred therefrom that the term "all mixes" necessarily includes flavoured milk in powder form.

In view of the foregoing disquisitions, this Court finds that petitioner's MILO products are milk products excluded from the coverage of SBT. Hence, the excise taxes paid on the subject products are indeed erroneously collected by the government.

The Court shall now determine whether or not petitioner's claim is properly supported by documentary evidence. The Court-commissioned Independent Certified Public Accountant (ICPA) examined the voluminous documents submitted by petitioner. As will be detailed below, the Court found that petitioner is entitled to the refund of SBT paid on its removals of MILO products from its plant for the period covering May 1, 2018 to December 31, 2018.

Petitioner was able to substantiate the erroneous payment of SBT in the amount of ₱1,266,499,459.91.

Petitioner made advance excise tax payments/deposits for its MILO Products for the period May to December 2018

Petitioner's Head of Tax Department, Atty. Arni A. Perlas, stated that the SBT is paid in advance through a deposit. The deposit is then liquidated and applied on the SBT due upon the actual removal of the MILO products from the various manufacturing facilities.[35]

The Court notes that, while the total excise tax paid per total liters removed exceeds the total amount of deposits made, there remains a balance of excise tax deposit/advance payment. As such, a portion of the excise tax paid in the amount of ₱31,449,459.91 must have come from the beginning balance of petitioner's advance excise tax deposits:

Manufacturing Site	Deposits/Advance Payments	Total Tax Paid	Difference-from Beg. Balance
Lipa Plant	₱ 470,500,000.00	₱ 481,786,273.80	₱ 11,286,273.80
Toll Manufacturers/ Co-Manufacturers	764,650,000.00	784,813,186.11	20,163,186.11
Total	**₱ 1,235,150,000.00**	**₱ 1,266,599,459.91**	**₱ 31,449,459.91**

Based on the ICPA's verification of the payment forms (BIR Form No. 0605) with corresponding eFPS Payment Details[36] and Excise Taxpayer's Removal Declarations (ETRDs) (BIR Form No. 2299)[37] for the month of April 2018, as of the end of the month, petitioner had the following balances of advance excise tax payments to be carried forward to May 2018:[38]

Particulars	Advance Excise Tax Payments	
a) MILO Products		
Lipa Plant	₱ 20,341,227.32	
Toll Manufacturers	39,053,301.37	**₱ 59,394,528.69**
b) Sweetened Tea		₱ 36,030,107.33
c) Sweetened Juice Drinks		₱ 43,544,184.48

[35] Q&A 21, Exhibit "P-59", Docket – Vol. 2, pp. 858 to 859.
[36] Exhibits "P-56-64" to "P-56-72" and "P-56-1-64" to "P-56-1-72", USB (Exhibit "P-47-b").
[37] Exhibits "P-50-5325" to "P-50-5508" and "P-50-1-5325" to "P-50-1-5508", USB (Exhibit "P-47-b").
[38] Tables 5, 9, and 10, Exhibit "P-47", Docket – Vol. 2, pp. 651 to 658. See also III(6) Findings and Observations, Exhibit "P-47", Docket – Vol. 2, p. 699.

Further, the ICPA reports that, for the period May 1, 2018 to December 31, 2018, petitioner made additional advance excise tax payments (current excise tax payments) for its MILO products in the aggregate amount of **₱1,238,300,000.00**:[39]

FINDINGS	ANNEX REFERENCE	LOCATION	EXCISE TAX DEPOSIT/ ADVANCE PAYMENT
Advance Excise Tax Deposits Made for MILO Products with ATC "XB080" for the period May 1, 2018 to December 31, 2018	**Annex 1.1**	LIPA FACTORY	₱ 471,400,000.00
	Annex 1.2	TOLL MANUFACTURERS	766,900,000.00
TOTAL CURRENT EXCISE TAX PAYMENTS			**₱ 1,238,300,000.00**

The foregoing advance excise tax payments for petitioner's MILO products are supported by payment forms (BIR Form No. 0605) with corresponding eFPS Payment Details dated at the earliest on May 4, 2018 and at the latest on December 13, 2018.[40] The Court notes that, per *Petition for Review*, the amount of advance excise tax payments indicated is ₱1,235,150,000.00, which is lower than the above current excise tax payments by ₱3,150,000.00.

Nevertheless, the Court finds the foregoing to be in order. Petitioner had total available advance excise tax payments for MILO products in the amount of ₱1,297,694,528.69 (Beginning balance of ₱59,394,528.69 plus additional advance excise tax payments of ₱1,238,300,000.00) for the period of May to December 2018, which is enough to cover the claimed excise tax paid for the same period in the amount of ₱1,266,599,459.91.

Petitioner applied its advance excise tax payments to the excise tax due upon removal of its MILO products from the manufacturing facilities

Petitioner's removal of MILO products from the manufacturing facilities is evidenced by ETRDs, which is supported by other documents such as the Summary List Control or Liquidation of Deposits and Application Report. These were documents transmitted to the BIR via email at the end of each day.[41]

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[39] Annex 1, Exhibit "P-47", USB (Exhibit "P-47-b").

[40] Exhibits "P-2", "P-56-1" to "P-56-63", and "P-56-1-1 to "P-56-1-63"; see also Annexes 1.1 and 1.2 for the summaries, USB (Exhibit "P-47-b").

[41] Q&A 24 to 27, Exhibit "P-59", Docket – Vol. 2, pp. 860 to 861.

Per Official Record Books (ORBs) of petitioner's manufacturing facilities for the period May to December 2018,[42] the ICPA found that petitioner removed a total of 211,099,958.57 liters of its MILO products:[43]

Properly Supported by ORB Duly Stamped "Received" by the BIR					
Location	**Annex Reference**	**Month**	**Quantity in Liters**	**Excise Tax Rate per Liter**	**Excise Tax Amount**
LIPA PLANT	**Annex 7-1**	MAY	(15,981,807.75)	6.00	(95,890,846.50)
		JUNE	(6,115,814.55)	6.00	(36,694,887.30)
		JULY	(10,561,746.00)	6.00	(63,370,476.00)
		AUGUST	(9,710,078.25)	6.00	(58,260,469.50)
		SEPTEMBER	(15,380,786.40)	6.00	(92,284,718.40)
		OCTOBER	(9,401,002.80)	6.00	(56,406,016.80)
		NOVEMBER	(8,413,689.15)	6.00	(50,482,134.90)
		DECEMBER	(4,732,787.40)	6.00	(28,396,724.40)
			(80,297,712.30)		**(481,786,273.80)**
ANTONINA INDUSTRIAL CORPORATION	**Annex 7-2**	MAY	(9,402,926.80)	6.00	(56,417,560.80)
		JUNE	(2,044,489.50)	6.00	(12,266,937.00)
		JULY	(3,321,361.52)	6.00	(19,928,169.12)
		AUGUST	(8,970,299.35)	6.00	(53,821,796.07)
		SEPTEMBER	(5,565,499.20)	6.00	(33,392,995.20)
		OCTOBER	(8,182,714.20)	6.00	(49,096,285.20)
		NOVEMBER	(5,998,222.00)	6.00	(35,989,332.00)
		DECEMBER	(225,288.00)	6.00	(1,351,728.00)
			(43,710,800.57)		**(262,264,803.39)**
COFIPAC CORPORATION	**Annex 7-3**	MAY	(10,113,314.40)	6.00	(60,679,886.40)
		JUNE	(4,529,712.60)	6.00	(27,178,275.60)
		JULY	(3,496,046.40)	6.00	(20,976,278.40)
		AUGUST	(7,077,067.20)	6.00	(42,462,403.20)
		SEPTEMBER	(7,209,896.40)	6.00	(43,259,378.40)
		OCTOBER	(5,362,478.10)	6.00	(32,174,868.60)
		NOVEMBER	(6,197,158.80)	6.00	(37,182,952.80)
		DECEMBER	(3,071,854.80)	6.00	(18,431,128.80)
			(47,057,528.70)		**(282,345,172.20)**
PORTION FILLERS, INC.	**Annex 7-4**	MAY	(8,589,294.00)	6.00	(51,535,764.00)
		JUNE	(2,873,631.60)	6.00	(17,241,789.60)
		JULY	(5,730,404.40)	6.00	(34,382,426.40)
		AUGUST	(3,128,252.40)	6.00	(18,769,514.40)
		SEPTEMBER	(5,727,078.00)	6.00	(34,362,468.00)
		OCTOBER	(7,684,059.60)	6.00	(46,104,357.60)
		NOVEMBER	(4,385,404.80)	6.00	(26,312,428.80)
		DECEMBER	(1,915,792.20)	6.00	(11,494,753.20)
			(40,033,917.00)		**(240,203,502.00)**
GRAND TOTAL			**(211,099,958.57)**		**(1,266,599,751.39)**

On the other hand, examination of the ETRDs filed by petitioner for the period from May to December 2018[44] shows that a total of 211,099,909.98 liters of MILO products was removed:[45]

[42] Exhibit "P-49", USB (Exhibit "P-47-b").
[43] Table 24, Exhibit "P-47", Docket – Vol. 2, pp. 745 to 746.
[44] Exhibits "P-50-1" to "P-50-1138" and "P-50-5320" to "P-50-5321", USB (Exhibit "P-47-b").
[45] Table 27, Exhibit "P-47", Docket – Vol. 2, pp. 749 to 750.

Properly supported by Original ETRD (to be presented as Exhibits P-50-1 to P-50-1138 and P-50-5320 to P-50-5321)					
Annex Reference	**Location**	**Month**	**Total Liters Removed**	**Tax Rate per Liter**	**Excise Tax Due**
I. Milo® Products removal properly supported by Original ETRD with signature of revenue officer on premise (ROOP) and reflected in the ORB					
Annex 5-1	**LIPA PLANT**	OCTOBER	(353,700.00)	6.00	(2,122,200.00)
	Subtotal		**(353,700.00)**		**(2,122,200.00)**
Annex 5-2	**ANTONINA INDUSTRIAL CORPORATION**	MAY	(9,402,926.80)	6.00	(56,417,560.80)
		JUNE	(2,044,489.50)	6.00	(12,266,937.00)
		JULY	(3,321,312.95)	6.00	(19,927,877.71)*
		AUGUST	(8,970,299.33)	6.00	(53,821,796.00)*
		SEPTEMBER	(5,565,499.20)	6.00	(33,392,995.20)
		OCTOBER	(8,182,714.20)	6.00	(49,096,285.20)
		NOVEMBER	(5,998,222.00)	6.00	(35,989,332.00)
		DECEMBER	(225,288.00)	6.00	(1,351,728.00)
	Subtotal		**(43,710,751.98)**		**(262,264,511.91)***
Annex 5-3	**COFIPAC CORPORATION**	MAY	(10,113,314.40)	6.00	(60,679,886.40)
		JUNE	(4,431,432.60)	6.00	(26,588,595.60)
		JULY	(3,594,326.40)	6.00	(21,565,958.40)
		AUGUST	(6,993,907.20)	6.00	(41,963,443.20)
		SEPTEMBER	(7,293,056.40)	6.00	(43,758,338.40)
		OCTOBER	(5,362,478.10)	6.00	(32,174,868.60)
		NOVEMBER	(5,989,258.80)	6.00	(35,935,552.80)
		DECEMBER	(3,071,854.80)	6.00	(18,431,128.80)
	Subtotal		**(46,849,628.70)**		**(281,097,772.20)**
Annex 5-4	**PORTION FILLERS INC.**	MAY	(8,589,294.00)	6.00	(51,535,764.00)
		JUNE	(2,873,631.60)	6.00	(17,241,789.60)
		JULY	(5,730,404.40)	6.00	(34,382,426.40)
		AUGUST	(3,128,252.40)	6.00	(18,769,514.40)
		SEPTEMBER	(5,518,270.80)	6.00	(33,109,624.80)
		OCTOBER	(7,684,059.60)	6.00	(46,104,357.60)
		NOVEMBER	(4,385,404.80)	6.00	(26,312,428.80)
		DECEMBER	(1,915,792.20)	6.00	(11,494,753.20)
	Subtotal		**(39,825,109.80)**		**(238,950,658.80)**
Subtotal			**(130,739,190.48)**		**(784,435,142.91)***
II. Milo® Products removal supported by Original ETRD without ROOP signature but reflected in the ORB					
Annex 5-5	**LIPA PLANT**	MAY	(15,981,807.75)	6.00	(95,890,846.50)
		JUNE	(6,115,814.55)	6.00	(36,694,887.30)
		JULY	(10,561,746.00)	6.00	(63,370,476.00)
		AUGUST	(9,710,078.25)	6.00	(58,260,469.50)
		SEPTEMBER	(15,380,786.40)	6.00	(92,284,718.40)
		OCTOBER	(9,047,302.80)	6.00	(54,283,816.80)
		NOVEMBER	(8,413,689.15)	6.00	(50,482,134.90)
		DECEMBER	(4,732,787.40)	6.00	(28,396,724.40)
	Subtotal		**(79,944,012.30)**		**(479,664,073.80)**
Annex 5-6	**COFIPAC CORPORATION**	NOVEMBER	(207,900.00)	6.00	(1,247,400.00)
	Subtotal		**(207,900.00)**		**(1,247,400.00)**
Annex 5-7	**PORTION FILLERS INC.**	SEPTEMBER	(208,807.20)	6.00	(1,252,843.20)
	Subtotal		**(208,807.20)**		**(1,252,843.20)**
Subtotal			**(80,360,719.50)**		**(482,164,317.00)**
GRAND TOTAL			**(211,099,909.98)**		**(1,266,599,459.91)***

* *Rounding difference*

The ICPA noted that several original ETRDs were filed without the signature of the ROOP pertaining to 80,360,719.50 liters of MILO products, removed, but the information contained therein were verified to have been reflected in the ORBs, which were duly filed by petitioner with the BIR.[46]

The difference of 48.59 (211,099,958.57 less 211,099,909.98) liters between the total removals per ORBs and ETRDs is attributed by the ICPA to the misalignment of conversion rate used, and the same is not supported by ETRD.[47] The conversion rate refers to the rate used to convert the "quantity in case" of MILO products into "quantity in liters". Petitioner has a table of conversion per category type/description of MILO products as reflected in the Liquidation of Deposits and Application.[48]

A comparison between the (a) total removals per ETRDs and the (b) total MILO products removed per claim for refund shows a discrepancy of 101,259.20 liters:

Manufacturing Facilities	(in liters)		
	Per claim for refund	**Per ETRDs**	**Difference**
Lipa Plant	80,358,192.30	80,297,712.30	60,480.00
Toll Manufacturers	130,842,976.88	130,802,197.68	40,779.20
Total	**211,201,169.18**	**211,099,909.98**	**101,259.20**

Note that the ETRDs reflect the actual excise tax due based on the quantity removed declared therein. The foregoing difference should then be disallowed as the amount to be refunded should be based on the actual quantity removed and excise taxes due/applied as declared in the ETRDs.

The ICPA accounted for the difference as errors in computation, thus:[49]

Particulars	(in liters)			
	Per Claim for Refund	**Per ETRDs**	**Difference**	
Lipa Plant - Removals for October 2018; claim is overstated	12,416,037.00	12,355,557.00	60,480.00	
Toll Manufacturers - Removals for June 2018; claim is understated	9,688,140.90	9,750,737.70	(62,596.80)	(2,116.80)
- Removals of *Nestle Alegria Choco Npro* included twice in the claim:				
May 2018			34,496.00	
September 2018			34,496.00	
October 2018			34,384.00	103,376.00
Total				**101,259.20**

46 Exhibit "P-47", Docket – Vol. 2, p. 748.
47 Table 29, Exhibit "P-47", Docket – Vol. 2, p. 750.
48 Table 25, Exhibit "P-47", Docket – Vol. 2, p. 746.
49 IV(1) Findings and Observations, Exhibit "P-47", Docket – Vol. 2, pp. 742 to 743.

Based on the foregoing, the total liters removed per claim for refund has a net understatement of 2,116.80 liters while the difference in the volume of *Nestlé Alegria Choco Npro* removals of 103,376 liters allegedly "will not impact the claim as [the same] is not included in the Petition for Review".[50]

Upon verification by the Court, petitioner's claim shows a total of 211,201,169.18 liters of MILO products removed, broken down as follows:[51]

Manufacturing Site	Total Liters Removed	Total Tax Paid
Lipa Plant	80,358,192.30	₱ 481,786,273.80
Toll Manufacturers/ Co-Manufacturers	130,842,976.88	784,813,186.11
Total	**211,201,169.18**	**₱ 1,266,599,459.91**

Pursuant to Section 150-B(1) of the NIRC of 1997, as amended, the subject SBT is computed at ₱6.00 per liter. Based on the foregoing volume removed, the total tax paid/claimed should be ₱1,267,207,015.08:

Manufacturing Site	Total Liters Removed	Excise Tax Rate	Should be Total Tax Paid	Tax paid per Claim	Difference
Lipa Plant	80,358,192.30	₱6.00	₱ 482,149,153.80	₱ 481,786,273.80	₱ 362,880.00
Toll Manufacturers/ Co-Manufacturers	130,842,976.88	₱6.00	785,057,861.28	784,813,186.11	244,675.17
Total	**211,201,169.18**		**₱ 1,267,207,015.08**	**₱ 1,266,599,459.91**	**₱607,555.17**

Petitioner, however, only claimed the amount ₱1,266,599,459.91, clearly showing that the basis for its claim for refund is the volume removed per ETRDs (i.e., 211,099,909.98 liters), which excludes the volume of *Nestlé Alegria Choco Npro* removals.

In sum, the refundable excise taxes paid by petitioner for the removal of its MILO products amount to ₱1,266,599,459.91, computed as follows:

Manufacturing Site	Liters Removed	Excise Tax Rate	Excise Tax Due/Paid
Lipa Plant	80,297,712.30	₱6.00	₱ 481,786,273.80
Toll Manufacturers	130,802,197.68	₱6.00	784,813,186.11*
Total	**211,099,909.98**		**₱ 1,266,599,459.91**

* *Rounding difference*

[50] IV(1) Findings and Observations, Exhibit "P-47", Docket – Vol. 2, p. 743.
[51] Paragraph 17, *Petition for Review*, Docket – Vol. 1, p. 15.

Based on the foregoing disquisitions, petitioner has proven by sufficient documentary evidence that it is entitled to the refund of erroneously paid SBT in the amount of ₱1,266,599,459.91, which it paid on its removal of MILO products for the period from May to December 2018.

WHEREFORE, premises considered, the **Petition for Review** filed on April 11, 2024 is **GRANTED**. Accordingly, the Decision dated October 6, 2023 and the Resolution dated March 4, 2024 in CTA Case No. 10276 entitled *Nestle Philippines, Inc. vs. Commissioner of Internal Revenue*, are **REVERSED** and **SET ASIDE**.

Respondent Commissioner of Internal Revenue is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Nestle Philippines, Inc. in the total amount of **₱1,266,599,459.91**, representing the erroneously paid excise taxes on sweetened beverages covering the removals of MILO products from May 1, 2018 to December 31, 2018.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

I vote to affirm the assailed Decision

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice