REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NESTLE PHILIPPINES, INC., Petitioner,	**CTA EB NO. 2711** (CTA Case No. 9943)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 13 2025

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Reconsideration [re: Decision dated 11 July 2024]"[1] (**MR**) filed on 31 July 2024, with petitioner Nestle Philippines, Inc.'s (**petitioner**'s/**Nestle**'s) "Comment (to Respondent's [MR] dated 31 July 2024)"[2] (**Comment**) filed on 21 August 2024.[3]

[1] *Rollo*, pp. 230-239; Received by the Court on 05 August 2024.
[2] Id., pp. 245-312, with annexes.
[3] Received by the Court on 29 August 2024

In the present MR, respondent seeks the reversal of the Court *En Banc*'s Decision in the above-captioned case dated 11 July 2024[4] (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the present Petition for Review filed by petitioner Nestle Philippines, Inc. on 25 November 2022 is hereby **GRANTED**. Accordingly, the Third Division's Decision dated 31 May 2022 and Resolution dated 18 October 2022, respectively, in CTA Case No. 9943 entitled *Nestle Philippines, Inc. v. Commissioner of Internal Revenue*, are **REVERSED** and **SET ASIDE**.
>
> Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue a tax credit certificate in favor of petitioner Nestle Philippines, Inc. in the total amount of ₱253,926,718.50, representing the erroneously paid excise tax on sweetened beverages covering the April 2018 removals of MILO® products from its Lipa plant and the plants of its co-manufacturers.
>
> **SO ORDERED.**
>
> ...

In support of the instant MR, respondent mainly insists that petitioner's MILO® products are classified as a 'sweetened beverage' subject to excise tax on sweetened beverages, termed as Sweetened Beverage Tax (**SBT**), under Section 150-B(A)(1), in relation to Section 150-B(B)(1)[5], of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

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[4] Id., pp. 153-213.

[5] SEC. **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

...

(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:

(a) Sweetened juice drinks;
(b) Sweetened tea;
(c) All carbonated beverages;
(d) Flavored water;
(e) Energy and sports drinks;

Respondent notes that in another case involving the same parties and the same issue at hand (*i.e.*, CTA Case No. 10276), the Court's Third Division ruled that petitioner's MILO® products fall within the definition of 'sweetened beverage' subject to SBT, *viz*:

> ...
>
> The following are the FDA Certificates of Product Registration of MILO products, which were issued before and during the period subject of the instant claim for refund, specifically from May 01 to December 31, 2018, to wit:
>
> ...
>
> A perusal of the above certifications, specifically the portion showing the Complete List of Ingredients, would show that **the above MILO Products of petitioner are under the category of sweetened beverages because such are non-alcoholic beverages that is in powdered form**, which are pre-packed and sealed in accordance with the FDA standards. **Moreover, MILO products contain caloric sweetener such as sugar, which is widely known as a substance that is sweet.**
>
> Therefore, undoubtedly, MILO products fall within the taxing provision under Section 150-B(A)(1) in relation to (B)(1) of the NIRC of 1997, as amended by RA No. 10963.[6]
>
> ...

Contrary to the Court *En Banc*'s finding, respondent asserts that petitioner's MILO® products cannot be classified as 'milk products' exempt from SBT. Respondent then reiterates the Third Division's ruling in the Decision dated 31 May 2022[7] that MILO® products cannot be classified as 'flavored fluid milk drinks' under Section 150-B(C)(1)[8] of the NIRC of 1997, as amended by Republic Act (**R.A.**) No. 10963, because they contain cocoa-sugar mixtures, which are excluded from this classification under Codex Stan 192-1995.[9] Despite being marketed as a

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(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. (Emphasis supplied)

6 Citation omitted and emphasis in the original text.

7 Division Docket, Volume VII, pp. 3215-3256, with exhibits. Penned by Associate Justice Erlinda P. Uy, (Ret.), with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

8 SEC. 150-B. *Sweetened Beverages.* —
(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)** <u>**as adopted by the FDA**</u>, are <u>**excluded**</u> from the scope of this Act:
(1) <u>**All milk products**</u>, **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[.] (Emphasis and underscoring supplied)

9 CODEX GENERAL STANDARD FOR FOOD ADDITIVES.

'choco malt powdered milk drink', the presence of cocoa-sugar mixtures disqualifies them from the exemption.

Additionally, based on the definition of 'composite milk products' under Codex Stan 206-1999[10], respondent stresses that milk must constitute the dominant ingredient by quantity in the final product. Petitioner's witnesses have testified that the sugar content of MILO® products exceeds the actual milk content. This testimony is further supported by evidence showing that MILO® products are primarily composed of sugar and/or sweeteners. Based on these facts, respondent concludes that MILO® products do not qualify as milk products.

According to respondent, the classification of MILO® products as a 'sweetened beverage' is supported by the fact that in neighboring Southeast Asian countries, such as Thailand, MILO® products are subject to SBT. Hence, reformulated versions thereof with reduced sugar content or even sugar-free options were introduced in those markets.

Respondent further emphasizes that the imposition of SBT was enacted with the primary objective of reducing the consumption of drinks sweetened with sugar due to their adverse effects on health. Classifying petitioner's MILO® products as milk products, despite the evident fact that they contain more sugar and other sweeteners than milk, would undermine the very purpose of the law.

Lastly, assuming for the sake of argument but without conceding that petitioner's MILO® products may be classified as 'milk products' exempt from SBT, respondent contends that granting the subject refund claim would result in a double refund. This assertion is based on the testimony of petitioner's Business Unit Manager, Wilfrido De Ocampo, Jr. (**De Ocampo, Jr.**), who stated that the SBT paid on the affected MILO® products was already factored into the cost of goods sold to the market. Petitioner increased the price of these products solely due to the imposition of SBT.

In its Comment, petitioner contends that the instant MR should be denied, as it fails to present any cogent or substantial grounds that would justify a reversal or modification of the assailed Decision.

[10] CODEX GENERAL STANDARD FOR THE USE OF DAIRY TERMS.

With respect to the Third Division's aforementioned ruling in CTA Case No. 10276, petitioner declares that, apart from the fact that the ruling has not yet attained finality, the instant MR fails to present any argument sufficient to overturn the Court *En Banc*'s finding that MILO® products are 'milk products' under the Codex Alimentarius Food Category System, as outlined in Codex Stan 192-1995.[11]

Petitioner highlights that the Court *En Banc* has already thoroughly addressed respondent's arguments and directly tackled the Third Division's ruling in the assailed Decision, which reversed said ruling. Specifically, the Court affirmed the classification of petitioner's MILO® products under Food Category 01.1.4, "flavored fluid milk drinks", based on the Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev. 2017) as adopted by the Food and Drug Administration (**FDA**).

The Court *En Banc* determined that MILO® products meet the criteria for the SBT exemption applicable to milk products. *First*, they fall within the "flavored fluid milk drinks" milk product category as expressly included in Codex Stan 192-1995 (Rev. 2017), as classified by the FDA. *Second*, they are not excluded from this category, as the exemption for "mixes for cocoa (cocoa-sugar mixtures)" applies only to products containing cocoa powder and sugar, while "chocolate malt drinks" like MILO® products are explicitly included in Food Category 01.1.4 (*i.e.*, 'flavored fluid milk drinks').

As earlier noted, respondent argues that MILO® products cannot be classified as 'milk products' excluded from the coverage of SBT because their sugar content allegedly exceeds their milk content. Petitioner refutes this claim as false and misleading. To support its position, petitioner cites the testimony of its Production Manager at the Nestle Lipa Factory, Joselito L. Dalde (**Dalde**), who categorically stated that milk is the primary ingredient in MILO® products. This assertion is corroborated by the FDA-approved labels of MILO® products, which list ingredients in descending order of proportion. As "milk powders" appear before "sugar" on these labels, it is evident that the milk content exceeds the sugar content. Petitioner further clarifies that the top ingredient, Activ-Go®, is a proprietary blend comprising malted barley, starch, minerals, and vitamins, and contains no sugar. Consequently,

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11 Supra at note 9.

respondent's claim that the sugar content in MILO® products exceeds the milk content is without basis.

Petitioner then cited the relevant portion of Dalde's testimony, clarifying that MILO® products consist of approximately 24% milk, 21% malted barley, 18% sugar, and 9% cocoa powder by weight. He affirmed during the hearing that MILO® products should be classified as milk products, not sweetened beverages subject to SBT, emphasizing that milk is the primary ingredient and the sugar content, including malted barley's naturally occurring sugar, does not exceed the milk content.

Regarding the term "sugars" listed under "Nutrition Information" on the labels of its MILO® products, petitioner asserts that it encompasses not only added sugars but also naturally occurring sugars found in milk and malted barley, such as lactose and maltose. Petitioner emphasizes that the definition of "sweetened beverage" under Section 150-B(B)(1) of the NIRC of 1997, as amended, and Revenue Regulations (**RR**) No. 20-2018[12] (the "**SBT Regulations**"), specifically refers to sweeteners added by manufacturers, such as sucrose or table sugar. Given that lactose and maltose are naturally present in milk and malt, these sugars do not fall within the category of added sugars targeted by the government's imposition of SBT on 'sweetened beverages' under Section 150-B of the NIRC of 1997, as amended, and the SBT Regulations.

Petitioner reiterates its argument that the presence of sugar in a milk product does not automatically subject it to SBT. Unlike fruit and vegetable juices, which must not contain any added sugar to qualify for exclusion from SBT, milk products are not subject to such a restrictive condition. Accordingly, petitioner asserts that since its MILO® products have been determined and classified by the FDA as a 'milk product,' they should be excluded from the SBT coverage, irrespective of their sugar content. Thus, for SBT purposes, only added sugar is taxable, while naturally occurring sugars from milk should not be considered, as milk consumption is encouraged.

Regarding respondent's argument that MILO® products are subject to SBT in Thailand, petitioner notes that this claim was raised for the first time in the instant MR without providing any basis or

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[12] 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."

evidence to support it. Entertaining such an argument at this late stage would severely violate petitioner's right to due process. In any case, petitioner contends that whether MILO® products are subject to SBT in Thailand is entirely irrelevant, as Thailand's laws have no force or effect in this jurisdiction. Furthermore, it is possible that Thailand's classification of beverages for excise tax purposes does not rely on Codex Stan 192-1995.

Next, regarding respondent's claim that excluding petitioner's MILO® products from the coverage of SBT would undermine the purpose of Section 150-B of the NIRC of 1997, as amended, petitioner counters that this assertion is contrary to legislative intent. Petitioner explains that the exclusion of "all milk products" from SBT was specifically designed to encourage Filipino consumers, particularly children, to consume milk products, including petitioner's MILO® products.

Petitioner also mentions that during the hearing of the Senate Committee on Ways and Means held on 15 June 2017, MILO® products were, in fact, discussed as a milk product, particularly a "flavored milk drink". Moreover, at the same hearing, the milk products being compared to Coca-Cola included Bear Brand, Yakult and MILO® products.

Lastly, as regards respondent's allegation that petitioner has supposedly recouped the amount it seeks to refund and to grant the present claim for refund would result in a double refund, petitioner submits that respondent is again mistaken. Citing the rulings in *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*[13] (**Silkair**) and *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*[14] (**Pilipinas Shell**), petitioner asserts that even assuming *arguendo* that the increase in price of the MILO® products represents the SBT passed on to consumers, petitioner, as the statutory taxpayer remains entitled to claim the refund of SBT illegally collected by respondent and should likewise benefit from the exclusion of MILO® products from the coverage of SBT.

[13] G.R. Nos. 171383 & 172379, 14 November 2008.
[14] G.R. No. 211303, 15 June 2021.

According to petitioner, respondent's argument that petitioner is disqualified from claiming a refund of the erroneously collected SBT due to increased product prices lacks any legal or jurisprudential basis. Petitioner further asserts that a refund would not lead to unjust enrichment, as the illegal imposition of SBT caused significant sales losses, as testified by its Business Unit Manager, De Ocampo, Jr.

Petitioner further notes that, unlike value-added tax (**VAT**), which is billed separately to customers, SBT is paid by petitioner before the time of sale and forms part of the product's cost, similar to raw materials and factory overhead. Petitioner clarifies that while the prices of MILO® products increased, this was due to overall production cost increases, with SBT being only one component, and that petitioner actually absorbed these costs rather than passing them directly to consumers.

We resolve.

After a careful review of the arguments presented in the instant MR and the points raised in petitioner's Comment, We find no cogent reason to disturb the Court *En Banc*'s assailed Decision.

First, respondent's contention that petitioner's MILO® products do not qualify as 'milk products' exempt from SBT lacks merit. The Court *En Banc* has already addressed this issue, affirming that MILO® products fall under the Food Category 01.1.4 "flavored fluid milk drinks" based on Codex Stan 192-1995, as adopted by the FDA.

As explained in the assailed Decision, to qualify as a 'milk product' exempt from SBT under Section 150-B of the NIRC of 1997, as amended, a product must meet the criteria outlined in Codex Stan 192-1995 (Rev. 2017) as adopted by the FDA pursuant to the SBT Regulations. The FDA's classification, while not definitive for taxation, is instructive and presumed regular unless proven otherwise. For petitioner's MILO® products to be classified as milk products under Food Category 01.1.4 "flavored fluid milk drinks", they must (1) be determined by the FDA to fall under this milk product category, whether by express inclusion or based on an analysis of the ingredients and the production process, and (2) not be excluded from this category.

In this case, the FDA's classification of petitioner's MILO® products as "flavored fluid milk drinks" under Food Category 01.1.4, based on the approval of their product names, is presumed valid and regular, as it was performed in the course of the FDA's official duties.[15] In the absence of contrary evidence, this presumption stands, providing sufficient basis to conclude that MILO® products meet the ***first criterion*** that they are determined by the FDA to fall under the "flavored fluid milk drinks" milk product category by express inclusion in Codex Stan 192-1995 (Rev. 2017).

Moreover, petitioner's MILO® products cannot be classified as "mixes for cocoa (cocoa-sugar mixtures)" under Food Category 05.1.1, as this category is limited to products containing only cocoa powder and sugar. Additionally, "finished cocoa beverages and chocolate milk" are explicitly included in Food Category 01.1.4 ("flavored fluid milk drinks"), confirming that MILO® products meet the ***second criterion*** of not being excluded from this milk product category.

Second, respondent's contention that the sugar content disqualifies MILO® products from the SBT exemption for milk products under Section 150-B(C)(1) of the NIRC of 1997, as amended, is likewise unpersuasive.

Petitioner has provided credible evidence, including FDA-approved labels and testimony from its Production Manager, Dalde, showing that milk is the main ingredient in MILO® products in terms of weight. Dalde clarified that MILO® products contain 24% milk, 21% malted barley, 18% sugar, and 9% cocoa powder by weight. He emphasized that MILO® products should be classified as 'milk products', as milk remains the primary ingredient, and the sugar content, including naturally occurring sugars, does not exceed the milk content. He also explained that malted barley and other ingredients in MILO® products contain naturally occurring sugars, such as maltose in malted barley and lactose in milk, which are distinct from added sugars like table sugar.[16]

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15 Section 3(m), Rule 131, Rules of Court, as amended.
Sec. 3. *Disputable Presumptions.* — The following presumptions are satisfactory if contradicted, but may be contradicted and overcome by other evidence:
...
(m) That official duty has been regularly performed[.]

16 TSN dated 07 October 2020, pp. 9-13.

Indeed, based on the FDA-approved labels of petitioner's MILO® products[17], "Milk powders (Skimmed milk, Whey)" is listed ahead of "Sugar" in the ingredients list. This indicates that, in terms of proportion, the milk content is higher than the sugar content, as required under Part VI(A)(3)(c)[18] of Department of Health (**DOH**) Administrative Order (**AO**) No. 2014-0030 or the "Revised Rules and Regulations Governing the Labeling of Prepackaged Food Products". This regulation provides that the complete list of ingredients shall be declared in descending order of proportion. Thus, respondent's claim that the sugar content exceeds the milk content in petitioner's MILO® products is without merit.

On the other hand, naturally occurring sugars, such as lactose in milk and maltose in malted barley, are fundamentally different from added sugars. These naturally occurring sugars do not fall under the category of "caloric and/or non-caloric sweeteners added by manufacturers" (expressly mentioned in the definition of 'sweetened beverages'), which the government seeks to regulate through the imposition of SBT, as they are part of the food's natural composition. In contrast, added sugars are introduced during processing to enhance sweetness.

As regards the fact that petitioner's MILO® products also contain added sugar at 18% by weight, We concur with petitioner's assertion that the presence of added sugar in a 'milk product' does not automatically subject it to SBT. A plain reading of Section 150-B(C) of the NIRC of 1997, as amended, and Section 6 of the SBT Regulations makes it clear that 'milk products' are not required to have zero added sugar or caloric sweetener to qualify for exclusion from SBT (unlike natural fruit juices and natural vegetable juices), as follows:

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17 Exhibits "P-104-A" to "P-109-B", Division Docket, Volume VI, pp. 2841-2852.

18 VI. Specific Rules and Regulations
A. Mandatory Label Information
The labels of all prepackaged food shall bear the following minimum mandatory information:
...
3. *Complete List of Ingredients*
a. Except for single ingredient food a complete list of ingredients shall be declared on the label.
b. The list of ingredients shall be headed or preceded by an appropriate title which consists of or includes the term 'ingredient.'
c. **The complete list of ingredients shall be declared in descending order of proportion on either the principal display panel or information panel.** (Emphasis supplied)

...

SEC. 150-B. *Sweetened Beverages.* —

...

(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**;

(2) One Hundred Percent (100%) **Natural Fruit Juices** — Original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice **that do not have added sugar or caloric sweetener**;

(3) One Hundred Percent (100%) **Natural Vegetable Juices** — Original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice **that do not have added sugar or caloric sweetener**;

(4) Meal Replacement and Medically Indicated Beverages — Any liquid or powder drink/product for oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or as a source of necessary nutrition used due to a medical condition and an oral electrolyte solution for infants and children formulated to prevent dehydration due to illness; and

(5) Ground coffee, instant soluble coffee, and pre-packaged powdered coffee products.

...

SEC. 6. *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 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 powder (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 milks (Codex Stan 281-1971)
7. Sweetened condensed milks (Codex Stan 282-1971)

Dairy products are not synonymous with milk products. Only milk products are covered by the exemption.

b. Soymilk and flavored soymilk shall refer to products, the main ingredients of which are the soybean and/or soy derivative(s) (*e.g.*, soybean flour, soybean concentrates, soybean isolates or defatted soya) and water which are produced without fermentation process. (Codex Stan. CXS 322R-2015)

c. One Hundred Percent (100%) Natural Fruit Juices — Original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice that do not have added sugar or caloric sweetener. **If there is sugar or sweetener added at any amount, the product shall be considered excisable depending on the kind of sweetener added and its corresponding rate specified under the Act**;

d. One Hundred Percent (100%) **Natural Vegetable Juices** — Original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice **that do not have added sugar or caloric sweetener. If there is sugar or sweetener added at any amount, the product shall be considered excisable depending on the kind of sweetener added and its corresponding rate specified under the Act**;

e. Meal Replacement and Medically Indicated Beverages — Any liquid or powder drink/product for oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or as a source of necessary nutrition used due to a medical condition and an oral electrolyte solution for infants and children formulated to prevent dehydration due to illness; and

f. Ground coffee, instant soluble coffee, and pre-packaged powdered coffee products.

The proper classification of beverages shall be subject to the determination by the FDA.[19]

...

As can be gleaned from the foregoing discussions, the presence of naturally occurring sugars, as well as the presence of added sugar in lesser proportion relative to milk, cannot be used as a valid basis to dispute the FDA's classification of petitioner's MILO® products as 'milk products' excluded from the coverage of SBT. This classification enjoys the presumption of regularity and validity, which stands unless rebutted through a preponderance of evidence.

Third, respondent's reliance on Thailand's taxation practices to support the classification of MILO® products as 'sweetened beverages' also lacks merit. The laws and regulatory standards governing Philippine taxation are distinct and territorial in application. Respondent's argument fails both procedurally and substantively, as it lacks evidentiary support and contradicts established jurisprudence.

Notably, respondent's argument that MILO® products are subject to SBT in Thailand is procedurally defective. Raising this claim for the first time in the instant MR, without presenting any evidentiary support, constitutes a violation of petitioner's right to due process. Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.[20]

Moreover, the reliance on foreign taxation practices, such as Thailand's imposition of SBT on MILO® products, is irrelevant and immaterial to this case. While the Supreme Court has occasionally referred to foreign cases and legislation in resolving tax issues, the general rule is that these are not binding in our jurisdiction and serve

[19] Emphasis supplied.
[20] *Chinatrust (Phils.) Commercial Bank v. Philip Turner*, G.R. No. 191458, 03 July 2017, citing *Florante Vitug v. Evangeline A. Abuda*, G.R. No. 201264, 11 January 2016.

only as persuasive authority.[21] Foreign laws and regulations are considered only in exceptional circumstances, such as when the Philippine legal provision under scrutiny is substantively, if not entirely, adopted from foreign legislation.[22] Absent a clear demonstration by the party invoking the foreign law or jurisprudence that such a connection exists, its application in Philippine jurisdiction cannot be justified.[23]

Lastly, respondent's assertion that granting a refund in this case would result in double refund is unfounded. Petitioner, as the statutory taxpayer, is entitled to recover erroneously collected SBT, consistent with established jurisprudence and principles of fair taxation.

It is well-settled that a statutory taxpayer retains the right to claim a refund of taxes erroneously or illegally collected, regardless of whether the tax burden was passed on to consumers. In *Silkair*, the Supreme Court held that "[a]n excise tax is an indirect tax where the tax burden can be shifted to the consumer but the tax liability remains with the manufacturer or producer" and "[i]n the refund of indirect taxes, the statutory taxpayer is the proper party who can claim the refund".[24] Clearly, the right to claim a refund belongs to the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another.

Similarly, in *Pilipinas Shell*, the Supreme Court ruled that "when it comes to indirect taxes, the statutory taxpayer remains to be the manufacturer or importer of the articles. Despite being able to pass the burden of the tax to the buyer as an inherent component of the total price of the article, the onus to actually pay the excise tax and to remit the returns incidental thereto remains with the statutory taxpayer, who must correspondingly benefit from any tax exemption".[25] Certainly, even if taxes are factored into product pricing, the statutory taxpayer is not precluded from seeking a refund of taxes erroneously imposed.

Petitioner has sufficiently explained that while MILO® product prices increased, the adjustment was due to overall production cost increases, of which SBT was only one component. Indeed, unlike VAT,

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21 See *Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue*, G.R. No. 226680, 30 August 2022.
22 Id.
23 Id.
24 Supra at note 13.
25 Supra at note 14.

which is billed separately to customers and directly passed on, SBT forms part of the production cost incurred by petitioner prior to sale. Thus, any price adjustments reflect general cost recovery rather than specific recoupment of SBT.

WHEREFORE, premises considered, respondent's "Motion for Reconsideration [re: Decision dated 11 July 2024]" filed on 31 July 2024 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(I reiterate my dissent. I adopt the ratio decidendi of the assailed Decision of the Court in Division.)
ROMAN G. DEL ROSARIO
Presiding Justice

w/ due respect, I reiterate my Dissenting Opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

w/ due respect, I join JMRDR's reiteration of DO
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(I join J. MBRL's reiteration of her Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice