REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SAN MIGUEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 190
(C.T.A. CASE NO. 6607)

x--x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus –

SAN MIGUEL CORPORATION,
Respondent.

C.T.A. E.B. NO. 192
(C.T.A. CASE NO. 6607)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
SEP 2 5 2007 *[signature]*

x- -x

D E C I S I O N

UY, J.:

Before Us are consolidated Petitions for Review filed separately by San Miguel Corporation against the Commissioner of Internal Revenue in C.T.A. E.B. No. 190; and by the Commissioner of Internal Revenue against San

Miguel Corporation in C.T.A. E.B. No. 192 on July 5, 2006 and July 10, 2006, respectively, under Republic Act No. 9282, seeking a review of the Decision and Resolution by the First Division of this Court (Court in Division) in CTA Case No. 6607, entitled "San Miguel Corporation vs. Commissioner of Internal Revenue", resolved as follows:

1) Decision promulgated on March 15, 2006 granting herein petitioner SMC's claim for refund in the reduced amount of P88,090,531.56 representing erroneously paid excise taxes for the period March 1, 2001 to December 31, 2002; and

2) Resolution promulgated on June 6, 2006 denying both herein petitioner SMC's "Motion for Partial Reconsideration" and herein petitioner CIR's "Motion for Reconsideration" of the aforesaid Decision.

THE FACTS

The factual antecedents of the case are as follows:

San Miguel Corporation, hereinafter referred to as SMC, is a domestic corporation duly organized and existing under the Philippine laws, with principal office or place of business located at No. 40 San Miguel Avenue, Ortigas Center, Mandaluyong City. It is principally a manufacturer of fermented liquors for sale in the domestic and export markets. One of its products is the beer brand "Red Horse" that comes in 1 liter and 325 ml bottles.

On the other hand, the Commissioner of Internal Revenue, hereinafter referred to as the Commissioner, is the official of the Republic of the Philippines charged with the duty of assessing and collecting national internal revenue taxes, and holds office at the BIR National Office Building, Diliman, Quezon City.

On January 1, 1997, Republic Act No. 8240, otherwise known as the Tax Reform Act of 1997 (RA 8240), took effect whereby a shift from the ad valorem tax system to the specific tax system was made, subjecting beer to specific tax under Section 143 of the National Internal Revenue Code (NIRC) of 1997. To implement the said provision on the twelve percent (12%) increase of excise tax on fermented liquors, among others, by January 1, 2000, the Secretary of Finance, upon recommendation by the Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99 (RR 17-99) dated December 16, 1999, showing the increase on the applicable tax rates on fermented liquor as follows:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO JANUARY 1, 2000	NEW SPECIFIC TAX RATES EFFECTIVE JANUARY 1, 2000
143	FERMENTED LIQUORS		
	(a) Net Retail Price per liter (excluding VAT & Excise) is less than P14.50	P6.15/liter	P6.98/liter
	(b) Net Retail Price per liter (excluding VAT & Excise) is P14.50 up to P22.00	P9.15/liter	P10.25/liter
	(c) Net Retail Price per liter (excluding VAT & Excise) is more than P22.50	P12.15/liter	P13.61/liter

The last paragraph of Section 1 of RR 17-99 also provides:

> "Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."

In compliance with the abovequoted paragraph of the aforesaid revenue regulation, from January 11, 2001 up to December 31, 2002, SMC paid excise tax on its Red Horse beer brand at the specific tax rate of P7.07 per liter, which is equivalent to the specific tax rate it actually paid prior to January 1, 2000, computed as follows:

PERIOD	TOTAL REMOVAL PER GL [Liters]	TAX RATE USED	TAX PAID
2001 [Jan 11-Dec 31, 2001	234,014,850	P7.07	P1,654,484,989.50
2002 [Jan 11-Dec 31, 2002	290,956,272	7.07	2,057,060,843.04
TOTAL	**524,971,122**		**P3,711,545,832.54**

(Exhibits "A" to "X", "AA" and "ZZ")

Thus, on January 10, 2003, SMC filed with the Commissioner a Letter Claim for Refund or Tax Credit amounting to P94,494,801.96 representing erroneously made excess payments on the removal of its Red Horse beer brand from January 11, 2001 to December 31, 2002.

Unable to obtain an immediate relief from the Commissioner, SMC filed before the Court in Division a Petition for Review on February 24, 2003 (docketed as C.T.A. Case No. 6607) seeking for a refund of the amount of P94,494,801.96 allegedly representing erroneously made excess tax payments on the removal of its Red Horse beer brand from January 11, 2001 to December 31, 2002.

On March 15, 2006, the Court in Division rendered its assailed Decision partially granting petitioner SMC's claim therein only in the reduced amount of P88,090,531.56.

A Dissenting Opinion was rendered by Presiding Justice Ernesto D. Acosta in CTA Case No. 6607, wherein he expressed his view upholding the validity of the last paragraph of Section 1 of Revenue Regulations No. 17-99 considering that the same is allegedly in accord with the legislative intent of Republic Act No. 8240 and Section 143 of the NIRC of 1997 which it seeks to implement. He pointed out that it is the duty of this Court, in interpreting the provisions of the said laws "to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose".

In particular, he observed that "nowhere is it stated in the law that after the end of the 3-year period, the rate of the excise tax on fermented liquor will be rolled back. In fact, by adopting the argument of respondent (Commissioner) and declaring the questioned regulation as valid would harmonize and give the law a clearer meaning". Thus, he concluded his opinion that "[f]or the court to rule that the applicable rates would be the new rates of excise tax under paragraphs (a), (b), and (c),[1] which is to increase by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000, would produce an illogical situation where in spite of an increase on the tax rates, it will also bring about a sudden drop in collection".

Subsequently, the Commissioner filed a Motion for Reconsideration of the assailed Decision on April 6, 2006 to which SMC filed its Comment thereto on April 21, 2006. Likewise, SMC filed a Motion for Partial Reconsideration of said Decision on April 12, 2006 to which the Commissioner filed his Opposition thereto on April 27, 2006; while SMC filed a Reply to the said Opposition on May 11, 2006.

[1] Section 143 of the NIRC of 1997.

Both parties' respective motions were denied by the Court in Division in the Resolution dated June 6, 2006, as it found no justifiable reason to overturn its assailed Decision. Consequently, both SMC and the Commissioner filed separate Petitions for Review before the Court *En Banc* docketed as CTA EB No. 190 and CTA EB No. 192, respectively, assailing the Decision dated March 15, 2006 and the Resolution dated June 6, 2006 rendered by the Court in Division in CTA Case No. 6607.

CTA EB No. 190:San Miguel Corporation vs. Commissioner of Internal Revenue

Upon motion filed on June 23, 2006, SMC was granted a non-extendible period of fifteen (15) days or until July 9, 2006 within which to file its Petition for Review. Thereafter, on July 10, 2006, SMC filed its Petition for Review. On August 8, 2006, the Court *En Banc* ordered the Commissioner as respondent in CTA EB No. 190 to file his Comment thereto within ten (10) days from notice. The Commissioner filed his Comment (Re: Petition for Review) on August 17, 2006.

CTA EB No. 192:Commissioner of Internal Revenue vs. San Miguel Corporation

Upon motion filed on June 28, 2006, the Commissioner was granted a non-extendible period of fifteen (15) days or until July 15, 2006 within which to file his Petition for Review. And on July 5, 2006, the Commissioner timely filed his Petition for Review. On July 28, 2006, the Court *En Banc* ordered respondent SMC in CTA EB No. 192 to file its Comment within ten (10) days from notice. However, SMC filed a Motion for Extension of Time to File Comment on August 14, 2006 and was granted by the Court *En Banc* a non-extendible period of ten (10) days or until August 24, 2006 within which to file its Comment. And thereafter, SMC timely filed its Comment (Re: Petition for Review dated June 27, 2006) on August 24, 2006.

Consolidation of Petitions before the Court En Banc

In a Resolution dated September 15, 2006, the Court *En Banc* ordered the consolidation of CTA EB No. 192 with CTA EB No. 190 on the ground that both cases emanated from the same assailed Decision rendered by the Court in Division in CTA Case No. 6607 wherein these petitions involve a common question of law or fact. In the same resolution, these petitions were given due course and the parties were required to submit their respective Consolidated Memorandum within the period of thirty (30) days from notice.

The Commissioner filed his Consolidated Memorandum on October 20, 2006; while SMC filed its Consolidated Memorandum on November 14, 2006. This case was deemed submitted for decision on November 21, 2006.

Hence, this Decision.

ASSIGNMENTS OF ERRORS

SMC's Assigned Error

SMC presents the following grounds in support of its petition for the Court *En Banc*'s consideration:

> SMC respectfully submits that the Court in Division erred in disallowing the amount of P6,404,270.40 representing petitioner SMC's excise tax for the period January 11, 2001 to February 28, 2001, as follows:
>
> 1. The disallowance of the entire claim for the months of January and February 2001 has neither legal nor factual bases;
>
> 2. The principle of *solutio indebiti* or quasi-contract applies; and

3. Petitioner SMC's excise tax returns clearly show an overpayment of taxes.

<u>The Commissioner's Assigned Errors</u>

For his part, petitioner CIR anchors his petition on the following grounds:

1. The Court in Division erred in declaring that the first paragraph of Section 1 of Revenue Regulations no. 17-99 is an invalid regulation; and

2. The Court in Division erred in granting petitioner SMC's claim for refund of excise tax in the amount of P88,090,531.56 for the period March 1, 2001 to December 31, 2002.

THE COURT EN BANC'S RULING

The Court finds no merit in both petitions.

<u>CTA EB No. 190</u>

SMC mainly contends that the disallowance of the entire claim for the months of January and February 2001 in the amount of P6,404,270.40 has not yet prescribed. SMC argues that under the Advance Payment or Deposit Scheme of paying excise taxes, the filing of the prescribed tax returns and supporting attachments may be made even after the week of actual removals pursuant to Section 11.1(2)(b) of Revenue Regulations No. 2-97 (RR 2-97). It submits that while excise taxes on alcohol products are due to be paid by law prior to their actual removal, the due date of tax payment is not always the reckoning point for purposes of prescription. Furthermore, SMC maintains that the principle of *solutio indebiti* or quasi-contact applies in this case as the BIR received something when there was no right to demand it and thus the obligation to return arises.

The Commissioner counter-argues that the Court in Division correctly disagreed with SMC's contention that excise tax payments before February 24, 2001 had not yet prescribed. Annex 1 of Exhibit "AA"[2] is a detailed schedule of the advance excise tax deposits made by petitioner SMC for the period January 1, 2001 to December 31, 2002. However, it cannot be determined from the said schedule the actual excise tax payments made for the months of January and February 2001. Neither an apportionment of the excise tax deposits made by SMC for February 2001 is proper for determining how much of the total claimed excise tax payment of P3,889,761.48 for the month of February pertains to removals prior to February 24, 2001. Further, the Commissioner submits that "the Government relies chiefly on taxes to obtain the means to carry out its operations and it is of utmost importance that the modes adopted to enforce the collection of taxes should be summary and with the least judicial interference".

SMC's contentions cannot be sustained.

The Court *En Banc* upholds the findings of the Court in Division that the total claim for the months of January and February 2001 amounting to P6,404,270.40 is already barred by prescription.

At the outset, the Court in Division found that after a careful scrutiny of the evidence presented, SMC had indeed an overpayment of

[2] Independent CPA Report, CTA Case No. 6607.

P94,494,801.96 for the period January 11, 2001 to December 31, 2002. However, as correctly observed, it is imperative to determine if the entire amount claimed falls within the prescriptive period for the filing of the claim for refund.

The legal basis for the denial of the amount of P6,404,270.40 is anchored on Section 229 of the NIRC of 1997 which provides that the suit or proceeding for the recovery of tax erroneously or illegally collected must not be filed after the expiration of two (2) years from the date of payment of tax. In this connection, Section 130 (A)(2) of the same Code provides that the return should be filed and the excise tax be paid by the manufacturer or producer before removal of domestic products from the place of production. Corollary thereto, the reckoning of the two-year period shall be from the date of payment of the tax and prior to the removal of the subject products from the place of production.

Thus, applying the applicable provisions of law in the present case, the Court in Division correctly found that the prescriptive period of this claim will be counted from February 24, 2001 since the Petition for Review was filed on February 24, 2003. Therefore, all payments made beyond two years prior to the filing of the Petition for Review have already prescribed, and accordingly, cannot be the subject of a claim for refund.

Conclusively, SMC's claims for the overpayment made on January 11 to 31, 2001 and February 1 to 23, 2001 are considered barred by prescription and should be excluded from the computation of the refundable amount due to petitioner SMC. As correctly found by the Court in Division, the amount of

P2,514,508.92 for the month of January, 2001, should be deducted from the entire refundable amount. Additionally, in view of the fact that petitioner SMC failed to adduce evidence to determine the exact amount paid for the period February 1 to 23, 2001, as it only presented a removal report on a monthly basis, the Court cannot make an apportionment thereto. Hence, the total claim for the month of February 2001 shall likewise be considered as time-barred.

With regard to the second issue raised by SMC, We are persuaded with its contention as to the applicability of the general principle of *solutio indebiti* considering that tax refunds are based on the principle of quasi-contract or *solutio indebiti*. Pertinent laws governing the said principle are found in Articles 2142 and 2154 of the New Civil Code, which provide:

> "Art. 2142. Certain lawful, voluntary, and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."
>
> "Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

When money is paid to another under the influence of a mistake of fact, that is to say, on the mistaken supposition of the existence of a specific fact, where it would not have been known that the fact was otherwise, it may be recovered. The ground upon which the right of recovery rests is that money paid through misapprehension of facts belongs in equity and in good conscience to the person who paid it.[3]

The Government comes within the scope of *solutio indebiti* principle as elucidated in ***Commissioner of Internal Revenue vs. Fireman's Fund Insurance Company***,[4] where the Supreme Court held that "[e]nshrined in the basic legal principles is the time-honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the Government is not exempted from the application of this doctrine."

Nevertheless, despite the application of the principle of *solutio indebiti*, this Court cannot sustain the argument that the applicable prescriptive period is six (6) years provided in the New Civil Code. It is well-settled that a special law shall prevail over a general law.[5] The fact that the one is special and other is general creates a presumption that the special is to be considered as remaining an exception to the general – one as a general law of the land and the other as the law of a particular case.[6] Accordingly, the two-year prescriptive period found in Section 229 of the NIRC of 1997 shall prevail over the principle of *solutio indebiti* under the New Civil Code of the Philippines. Generalia specialibus non derogant.[7]

---

[3] 4 Am Jur. 514; Commissioner of Internal Revenue vs.Acesite (Philippines) Hotel Corporation, 516 SCRA 93 (2007).
[4] 148 SCRA 315 (1987).
[5] Commissioner of Internal Revenue vs. Ilagan Electric & Ice Plant Inc., 29 SCRA 634 (1969); Guagua Electric Light Co., Inc. vs. Commissioner of Internal Revenue, 19 SCRA 790 (1967).
[6] Manila Railroad Co. vs. Rafferty, 40 Phil 224 (1919).
[7] PNOC vs. CA, 457 SCRA 32 (2005).

CTA EB No. 192

The Commissioner moves for the reversal of the Court in Division's assailed decision and argues that Section 143 of the NIRC of 1997 should be interpreted so as to be consistent with the legislative purpose for the enactment of RA 8240 which is to increase the collection of excise taxes. However, the Commissioner concedes that the interpretation of Section 143 is not consistent with the provisions of RR 17-99, even assuming *arguendo* that the last paragraph of Section 1 of RR No. 17-99 is declared invalid. This does not necessarily follow that SMC is entitled to a refund because its claim is based on a wrong interpretation of the law.

He further maintains that during the three-year period of the effectivity of RA 8240, the excise tax from any brand of fermented liquor shall not be lower than the tax due on October 1, 1996. In the case of Red Horse beer brand, since the tax due on October 1, 1996 (under the ad valorem tax system) which is P7.07, was higher than the tax imposed in Section 143 (under the specific tax system), which is P6.15, the former should be the applicable tax rate during the three-year period from January 1, 1997 to December 31, 1999. He further explains that by January 1, 2000, the existing tax rate was P7.07 on which the 12% increase should have been based. Nowhere is it stated in the law that after the end of the three-year period, the rate of excise tax on fermented liquor will be rolled back.

Moreover, in arguing that SMC is not entitled to a refund, the Commissioner posits that instead of paying P6.89 (P6.15 plus 12%) on its Red Horse beer brand, SMC should have paid P7.92 (P7.07 plus 12%)

starting January 1, 2000; consequently, it should be assessed with the subject deficiency taxes. Lastly, petitioner CIR maintains that the BIR, as the administrative agency responsible for revenue collection and enforcement, is duty-bound to raise revenues through proper collection of taxes and, as such, it is given a special mandate to issue the necessary regulations in implementing the provisions of the NIRC and its interpretation is entitled to great weight as its expertise on the matter is already recognized.

On the other hand, SMC claims that the assailed decision of the Court in Division has already become final and executory since the Commissioner's motion for reconsideration was a mere scrap of paper as it does not contain a notice of hearing, in blatant disregard of the requirements set forth in Rule 15 of the Revised Rules of Court. Further, the said motion was patently pro forma for being a mere rehash of the arguments already considered by the Court in Division; thus, it deserves no attention from this Court as it is utterly bereft of merit.

A careful and closer look at the arguments set forth by the Commissioner in the instant petition for review would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of his previous arguments raised before the Court in Division which had already been extensively discussed and passed upon by it in its assailed Decision and Resolution.

Be that as it may, with the end view of further clarifying the decision of the Court in Division, We adhere to its findings that RR 17-99 is deemed

auo

invalid and therefore, SMC is entitled to a refund of the overpaid excise taxes which has not yet prescribed.

As correctly pointed out by the Court in Division, the BIR went beyond the legal parameters that defined the boundaries of its authority when it issued RR 17-99. It bears stressing that RR 17-99 is an interpretative rule and as such it is designed to provide guidelines to the law which the administrative agency is in charge of enforcing, RA 8240 in this case.

Thus, when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. However, when the administrative rule goes beyond in merely providing for the means that can facilitate or render least cumbersome the implementation of the law but rather substantially adds to or increases the burden of those governed, it behooves the agency to show the taxpayers that it is within the confines of the law which it seeks to interpret. [8] Administrative agencies may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers.[9]

A careful review of Section 1 of RR 17-99 clearly shows that it is in effect increasing the tax rate fixed by RA 8240. This is in clear derogation of the BIR's authority to issue interpretative rules as the disputed provision apparently exceeded that provided for under the law.

---

[8] Commissioner of Internal Revenue vs. Court of Appeals, 261 SCRA 236 (1996).
[9] Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, CA GR. SP Nos. 80675 and 83165, September 28, 2004.

In the past, this Court has already ruled upon the validity of RR 17-99 in CTA Case Nos. 6365 and 6383,[10] both entitled ***Fortune Tobacco Corporation vs. Commissioner of Internal Revenue***, and as likewise pronounced in CTA Case No. 6612,[11] also with the same title, wherein it found that the aforesaid regulation is inconsistent with RA 8240 which it seeks to interpret. We adopt the discussion elucidated by the Court of Appeals, in affirming the findings of this Court in the aforesaid cases, in the following manner:

> "The disputed provision of Revenue Regulation No. 17-99 has the inevitable effect of increasing the tax rate fixed by Republic Act No. 8240, because it makes as basis the rate imposed at the end of the three-year transition period when the shift from the former ad valorem tax scheme to the specific tax scheme is to be undertaken, to wit:
>
> > 'The new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.'
>
> This is not the situation contemplated by Republic Act No. 8240, now Section 145 of the National Internal Revenue Code:
>
> > 'The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of RA 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996. Provided, however, that in cases where the excise tax rates imposed in paragraphs (1) (2) (3) and (4) hereinabove will result in an increase in the excise tax of more than 70%, for a brand of cigarette, the increase shall take effect in two tranches: 50% of the increase shall be effective in 1997 and 100% of the increase shall be effective in 1998.

[10] Both promulgated on October 21, 2002.
[11] Promulgated on December 4, 2003.

xxx xxx xxx

> **The rates of excise tax on cigars and cigarettes under paragraphs 1, 2, 3 and 4 hereof, shall be increased by 12% on January 1, 2000.'** (emphasis supplied)

It can be gleaned from the above-quoted provisions of Republic Act No. 8240 that the target of the government at the end of the three-year transition period is to effect a 12% tax rate increase using as tax base the figures provided in Section 145, subsection C, paragraphs (1), (2), (3) ad (4) of Republic 8424 otherwise known as the Tax Reform Act of 1997, in lieu of the tax rate being imposed prior to January 1, 2000, which is the rate imposed during the transition period of three years. At most, Section 145 of the Tax Code imports that the excise tax shall not be lower than the tax which is due from each brand on October 1, 1996, but which qualification is not present as to the increase by 12% on January 1, 2000 under paragraphs (1), (2), (3), and (4) of the said section.

xxx xxx xxx

Thus, in foreseeing an increase in the tax rate in consonance with the shift from ad valorem to specific tax, the legislature contemplated two periods: the transition period of three years fixing for the purpose the applicable tax rate; and the rate applicable after its expiration. At the end of the transition period which is 1999, the legislature meant that the rate to be applicable shall be that fixed under the last paragraph, which is the rate provided under paragraphs (1), (2), (3) and (4), increased by twelve per cent (12%) in lieu of the rate fixed during the transition period. This is the only conclusion that may be reached when the said provision is read in harmony with first sentence of the disputed paragraph of Section 145 — that **'the excise tax from any brand of cigarettes within the next three (3) years from the effectivity of RA 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996.'** This, to Our mind, is the intent of the legislature in enacting RA 8240.

At this juncture, We reiterate the oft-repeated rule that administrative regulations must be in harmony with the provisions of the law. In case of discrepancy between the basic law which is Republic Act 8240 and Revenue Regulation 17-99, an implementing rule or regulation, the former prevails.

xxx xxx xxx

> In the case at bar, Revenue Regulation No. 17-99 inserted into Republic Act 8240 a provision which is not there — either in letter or in spirit. It created a clear inconsistency with the provision of Section 145 of the 1997 Tax Reform Act, as the said law did not contemplate the increase in tax rate as understood by the petitioner. Being tantamount to an act of administrative legislation, We agree with the CTA's conclusion that the assailed provision of Revenue Regulation 17-99, ought to be nullified." [12]

From the foregoing discussion, the Court is convinced that the disputed provision of RR 17-99 has fallen short of a valid and authorized administrative issuance.

Taken collectively, in the light of the laws and jurisprudence on the matter, We see no cogent reason to reverse or modify the assailed Decision and Resolution dated March 15, 2006 and June 6, 2006, respectively.

WHEREFORE, premises considered, both petitions are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

---

[12] Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, supra.

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

SAN MIGUEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 190
(C.T.A. Case No. 6607)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SAN MIGUEL CORPORATION
Respondent.

CTA EB No. 192
(C.T.A. Case No. 6607)

Present:

Acosta, ***P.J.***
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, ***JJ.***

Promulgated:
SEP 25 2007 [signature]

x--x

Concurring and Dissenting Opinion

With due respect to my esteemed colleagues, while I agree with the majority's denial of the refund in the amount of P6,404,270.40, this amount having been barred by prescription as provided by Section 229, in relation to Section 130(A)(2) of the National

Internal Revenue Code (NIRC), I would like to dissent to the upholding of the First Division's finding that the Bureau of Internal Revenue (BIR) went beyond the legal parameters that defined the boundaries of its authority when it issued Revenue Regulations No. 17-99, (RR) particularly the last paragraph of Section 1 thereof. In my opinion the Court *En Banc* failed to consider the *raison d'être* of the law in interpreting the provisions of R.A. No. 8240 and Section 145, NIRC literally.

The promulgation of this R.R. is within the prerogative of the administrative agency concerned. The provision in question states:

> "Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000." (*Emphasis supplied*)

According to the En Banc the said Revenue Regulation amounts to an unauthorized *"administrative legislation"* as there is nothing in **Section 143 of the National Internal Revenue Code (NIRC) of 1997**, which it supposedly implements, that authorizes or justifies the BIR to impose by way of regulations that the new specific tax rate for any existing brand of cigars, cigarettes packed machine . . . shall not be lower than the existing tax that is actually being paid prior to January 1, 2000. Thus, it cannot be accorded validity.

I however maintain that the last paragraph of **Section 1 of Revenue Regulations No. 17-99** is in accordance with the legislative intent of **Republic Act No. 8240 and Section 143 of the NIRC**, which is to increase revenues by increasing the rates of excise tax on "sin products".

The Bureau of Internal Revenue (BIR) is the administrative agency responsible for revenue collection and enforcement. It is duty-bound to carry out the congressional policy of regulating specified activities and to raise revenues through proper collection of due taxes. This mandate is specifically provided in **Section 244** in relation to **Section 4 of the National Internal Revenue Code of 1997**:

> "**Section 244. Authority of Secretary of Finance to Promulgate Rules and Regulations.** — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provision of this Code." (*Emphasis supplied*)

> "**Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** — The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

A similar authority is provided in *Section 10 of the said Republic Act 8240*, to wit:

> "The Secretary of Finance shall, upon the recommendation of the Commissioner of the Internal Revenue, promulgate the necessary rules and regulations for effective implementation of this Act."

Thus, the general prohibition on non-delegation of legislative power allows certain exceptions. The BIR exercising *"administrative legislation"* is not illegal *per se*. And it is settled that administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress. This exercise of discretion is permissible provided what is being delegated is not the discretion as to what the law shall be but only the discretion as to its execution.

As I have already explained the reasons behind this are as follows:

> 1. It relieves the legislature of a great burden of work in respect to which it has no special competence, and thus, enables it more largely to direct its attention to matters of general import;
>
> 2. It entrusts the drafting of detailed provisions, which are usually of a highly technical character to the agencies most familiar with the conditions to be met and which have the responsibility for their enforcement; and
>
> 3. It makes possible the prompt modification of a provision as soon as experience demonstrates that it is unsatisfactory. (*Administrative Law — A Text, pages 27–28, Neptali Gonzales*)

Ela

The agency is not bound to merely repeat or reproduce the words of the statute if in the exercise of its discretion the law cannot be executed as what Congress intends it to be. To hold and believe otherwise would reduce the rule-making powers to a purely mechanical act and render it meaningless.

Moreover, this power has been clearly delegated by Congress to the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, as discussed in the Senate during the interpellation of Senator Enrile by Senator Drilon:

> "Senator Drilon: In this particular case, Mr. President, the Congress would, in effect, be delegating to the Department of Finance the power to increase taxes.
>
> "Senator Enrile: In a sense, yes, Mr. President, but there is nothing that will prevent Congress from withdrawing that delegation if it wants to do this. We thought that we have to entrust this function to the tax administrators so that they can plan and they can move on." *(Interpellations-H. No. 7918, Records of the Senate, Vol. II, No. 33)*

The aforementioned delegation of power to the Department of Finance has been confirmed even if the validity of the same will be questioned before the courts. Sen. Drilon brought this up during the interpellation of Sen. Enrile:

> "Senator Drilon: This is what I am concerned of under this system. I cannot imagine that a taxpayer affected by the new rates that will be imposed by the Secretary of Finance in accordance with his authority under this law would not go to court, raise issues on the new rates, and therefore tie up the hands of the government. The old rates will be in effect while this case is pending."
>
> xxx xxx xxx
>
> "Senator Enrile: As I said, the way I see it, since there is no reason why we could not deal with this problem directly in 1998 or before 1999, there is no harm in leaving this provision in this measure to give the Executive Department the means to do it. We can readjust the rate in 1997, if we want it. We can readjust it in 1998. But if we do not want to do it, then we leave it to the department. . . ." *(Interpellations H. No. 7198, Records of the Senate, page 269, Wednesday, October 16, 1996)*

The BIR is given the mandate to issue the necessary regulations in implementing the provisions of the NIRC, Section 145 included.

I have likewise explained that a review of the history of the last paragraph of Section 1 of Revenue Regulations No. 17-99 reveals that it traces its origin to Revenue Regulations No. 1-97 that implemented Republic Act No. 8240. Subsequently, R.A. No 8240 has been incorporated in Section 145 of the 1997 Tax Code. The legislative intent and purpose in enacting R.A. No. 8240 and Section 145 of the 1997 Tax Code may be gleaned from the congressional records. A perusal of the Sponsorship Speech of Senator Juan Ponce Enrile (*Sponsorship Speech of Sen. Enrile, Records of the Senate, Volume II, No. 32, October 15, 1996*) of Senate Bill No. 7198 (which became R.A. No. 8240) and his answers to the interpellations will disclose that said bill was the most important component of the Comprehensive Tax Reform Program (CTRP) through which the government expects to raise as much as P6 Billion in additional revenue to finance its economic development requirements and progress annually.

Among the guiding principles of the bill are to evolve a tax structure which will **generate buoyant and stable revenues and to simplify tax administration in order to minimize losses arising from tax avoidance and tax evasion schemes**. As stated, the legislative intent of the subject statutes is to increase the rates of excise tax on, among others, fermented liquors, in order to collect more revenues in the process.

In the case of **Commissioner of Internal Revenue vs. S. C Johnson and Sons, Inc. et al.**, *G.R. No. 127105, June 25, 1999*, the Supreme Court precisely cautioned against such literal interpretation in this wise:

> The above construction is based principally on syntax or sentence structure but fails to take into account the purpose animating the treaty provisions in point . . . .
>
> xxx xxx xxx

Ên

> In one case the Supreme Court pointed out that the laws are not just mere compositions, but have the ends to be achieved and that the general purpose is a more important aid to the meaning of the law than any rule which grammar may lay down. It is the duty of the courts to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose . . . ." (*Emphasis supplied*)

In the light of the foregoing admonition of the Supreme Court, it is the duty of this court in interpreting the provisions of the said statutes, "to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose". This certainly is more important than looking at rules of grammar to aid it in arriving at proper legal interpretations. And statutes should be literally construed only when the language of the law is clear and unequivocal (**IBAAEV vs. Inciong,** *132 SCRA 603*; **Chartered Bank Employees Association vs. Ople,** *138 SCRA 273*). In this case, the Court *En Banc* failed to consider the *raison d'être* of the law when this court interpreted the provisions of R.A. No. 8240 and Section 145, NIRC literally.

The Highest Tribunal, in the case of **Paras vs. Comelec,** *76 SCAD 40, 264 SCRA 49*, explained that literal construction is not favored, thus:

> "Moreover, Petitioner's too literal interpretation of the law leads to absurdity which we cannot countenance. Thus, in a case, the court made the following admonition:
>
> "We admonish against a too literal reading of the law as this is apt to constrict rather than to fulfill its purpose and defeat the intention of its authors. The intention is usually found not in the letter that killeth but in the spirit that vivifieth . . . ."
>
> "The spirit, rather than the letter, of a law determines its construction; hence, a statute, as in this case, must be read according to its spirit and intent."

The majority opined that the inevitable conclusion would be to impose the new rates of excise tax under paragraphs (1) to (4) which is to increase by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000. However, as emphatically pointed out by the Commissioner this would defeat the very purpose of the law.

When Congress deemed it proper to restructure the taxation of these so-called "sin products," it did so in order to generate more revenues and to deter the consumption of alcohol and cigarettes. Never did Congress contemplate to substantially decrease the tax to be collected for these products. In fact, Congress had the foresight to meet and consider the rising cost of goods and inflation by mandating a 12% increase on the specific tax rates, three years from the effectivity of R.A. 8240 or on January 1, 2000. To rule that the applicable rates would be the new rates of excise tax under paragraphs (1) to (4), which is to increase by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000, would create an absurd situation where despite an increase on the tax rates, it will also entail a sudden drop in collection. It implies that after January 1, 2000, a new tax regime will apply wherein the rates stated in Section 145 (C) (4) shall govern and the other pertinent provision of Section 145 will automatically cease and expire.

Parts of a statute should not be viewed in isolation. A cardinal rule of statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole, and not of an isolated part or a particular provision alone (**Aboitiz Shipping Corporation, et al., vs. City of Cebu, et al.,** *13 SCRA 449*).

In sum, Revenue Regulations No. 17-99 is in accordance with the law. To rule otherwise would go against clear legislative intention.

ERNESTO D. ACOSTA
Presiding Justice