REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SAN MIGUEL BREWERY, INC., *Petitioner,*	**CTA CASE NO. 8955**
- *versus* -	Members: ***BAUTISTA,*** *Chairperson* ***FABON-VICTORINO,*** *and* ***RINGPIS-LIBAN, JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** AUG 18 2017 4:10 p.m.

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DECISION

BAUTISTA, J:

The Case

Before the Court is a Petition for Review[1] filed by petitioner San Miguel Brewery, Inc. on December 19, 2014 for *CTA Case No. 8955* pursuant to *Section 7(a)(2)*[2] *of Republic Act ("RA") No. 1125*[3], as

[1] *Records, CTA Case No. 8955, Vol. 1, Petition for Review ("PFR")*, pp. 14-88, with annexes.
[2] Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.

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

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[3] An Act Creating the Court of Tax Appeals, as Amended.

amended by *RA No. 9282*[4] and *RA No. 9503*[5], which seeks for the Court to render judgment:

1. declaring the excise tax rate of Php20.57 *per* liter for San Mig Light in bottle, can, and kegs, specified in *Revenue Memorandum Circular ("RMC") No. 90-2012*, as not valid;[6]

2. declaring that petitioner is entitled to a refund of the amount of Php83,019,296.21 representing erroneous, excessive, illegal, and/or wrongful collection, and overpayment to the Bureau of Internal Revenue ("BIR"), of excise taxes on San Mig Light during the period from January 1, 2013 up to December 31, 2013;[7] and

3. ordering respondent to refund the amount of Php83,019,296.21 to petitioner, with legal interest, or to issue to petitioner a Tax Credit Certificate ("TCC") for said amount.[8]

The Parties[9]

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila. It is engaged in the business of manufacture, sale, and distribution of fermented and malt-based beverages. One of the beer products being manufactured by petitioner is San Mig Light.

Respondent Commissioner of Internal Revenue ("CIR") is the head of the Bureau of Internal Revenue ("BIR"), with office address at the Office of the CIR, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.

The Facts

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[4] 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.
[5] An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.
[6] *Records, Vol. 1, PFR, Prayer*, p. 31.
[7] *Id.*
[8] *Id.* at 32.
[9] *Id., Joint Stipulation of Facts, Documents, Issues, and Other Matters ("JSFI")*, pp. 393-394.

On December 19, 2012, *RA No. 10351*[10] was approved and took effect upon its publication in a newspaper of general circulation. This law amended, among others, *Section 143 of the 1997 National Internal Revenue Code, as amended* ("*1997 NIRC*"), which imposes an excise tax at the following rates on fermented liquors effective January 1, 2013: *(1)* if the net retail price [excluding excise tax and value-added tax ("VAT")] *per* liter of volume capacity is Php50.60 or less, the tax shall be Php15.00 *per* liter; and *(2)* if the net retail price (excluding excise tax and VAT) *per* liter of volume capacity is more than Php50.60, the tax shall be Php20.00 *per* liter. It likewise provides that "[a]ll fermented liquors existing in the market at the time of the effectivity of this Act shall be classified according to the net retail prices and the tax rates provided above based on the latest price survey of the fermented liquors conducted by the [BIR]."

On December 27, 2012, respondent issued *RMC No. 90-2012*[11], which provides that, effective January 1, 2013, the applicable tax rate for San Mig Light, in bottle (net retail price of Php47.99 *per* liter, hence, less than Php50.60)[12] and in can (net retail price of Php61.51, hence more than Php50.60)[13] are both at Php20.57 *per* liter.

In order to remove its products from the breweries, petitioner paid the excise taxes due from January 1, 2013 to December 31, 2013.[14]

On December 9, 2014, petitioner filed its administrative claim for refund[15] in the amount of Php83,019,296.21, together with BIR Form No. 1914[16], Summary List[17], and Monthly Removals and Tax Payments for 2013[18].

Alleging inaction[19] on the part of respondent, petitioner filed the instant Petition for Review[20] on December 19, 2014.

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[10] An Act Restructuring The Excise Tax On Alcohol And Tobacco Products By Amending Sections 141, 142, 143, 144, 145, 8, 131 And 288 Of Republic Act No. 8424. Otherwise Known As The National Internal Revenue Code Of 1997, As Amended By Republic Act No. 9334, And For Other Purposes
[11] *Records, Vol. 1, Exhibit "P," RMC No. 90-2012*, pp. 35-55.
[12] *Id.* at 36.
[13] *Id.* at 37.
[14] See Annex A.
[15] *Records, Vol. 1, Exhibit "P-1," Administrative Claim for Refund*, pp. 56-60.
[16] *Id., Exhibit "P-1-b," BIR Form No. 1914 (Application for Tax Credits/Refunds)*, p. 61.
[17] *Id., Exhibit "P-1-c," Summary List*, p. 62.
[18] *Id., Exhibits "P-1-d" to "P-1-aa," Monthly Removals and Tax Payments*, pp. 63-86.
[19] *Id., Vol. 2, JSFI*, p. 394.
[20] *Id., Vol. 1, PFR*, pp. 14-88, with annexes.

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On January 9, 2015 the Court issued Summons[21] addressed to respondent.

On January 27, 2015, respondent filed a Motion for Extension of Time Within Which to File Answer[22], which was granted by the Court in its Resolution[23] dated January 30, 2015. Thereafter, respondent filed another Urgent Motion for Extension of Time to File Answer[24] and the same was granted[25] on March 11, 2015.

On March 9, 2015, respondent filed his Answer[26] by registered mail, which was received by the Court on March 20, 2015. In his Answer, he raised the following Special and Affirmative Defenses, in sum: *(1)* the Petition for Review is not warranted to be given due course for lack of jurisdiction; *(1a)* the nullification of the Php20.57 excise tax rate specified in *RMC No. 20-2012* does not fall under the special jurisdiction granted by the statute to the Court of Tax Appeals ("CTA"); *(1b)* a collateral attack on a presumably valid administrative issuance is not allowed; *(1c)* the CTA has no jurisdiction to determine the validity of the Php20.57 provision of *RMC No. 20-2012* due to petitioner's non-exhaustion of administrative remedies; *(2)* petitioner is not entitled to a tax refund since there was no erroneous or illegal collection of excise taxes; and *(3)* claims for refund are construed strictly against the taxpayer and in favor of the Government.

On May 6, 2015, Petitioner's Pre-Trial Brief[27] and Respondent's Pre-Trial Brief[28] were filed.

On July 24, 2015, petitioner filed a Motion for Commissioning of Independent Certified Public Accountant[29] ("ICPA"), whose Judicial Affidavit[30] and Personal Profile[31] were submitted[32] on August 3, 2015.

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[21] *Records, Vol. 1, Summons,* p. 89.
[22] *Id., Motion for Extension of Time Within Which to File Answer,* pp. 90-94.
[23] *Id., Resolution,* p. 97.
[24] *Id., Urgent Motion for Extension of Time to File Answer,* pp. 98-102.
[25] *Id., Resolution,* p. 127.
[26] *Id., Answer,* pp. 130-150.
[27] *Records, Vol. 1, Petitioner's Pre-Trial Brief,* pp. 221-227.
[28] *Id., Respondent's Pre-Trial Brief,* pp. 233-237.
[29] *Id., Motion for Commissioning of Independent Certified Public Accountant,* pp. 313-317.
[30] *Id., Exhibit "P-Commissioning," Judicial Affidavit of Ms. Normita L. Villaruz In Lieu of Direct Testimony (In Support of Petitioner's Motion for Commissioning of [ICPA]),* pp. 323-331.
[31] *Id., Personal Profile,* pp. 332-373.
[32] *Id., Submission,* p. 322.

During the Pre-Trial Conference[33] on August 11, 2015, the Court granted the parties fifteen (15) days or until August 26, 2015 to submit their Joint Stipulation of Facts and Issues; the Court also granted the Motion for Commissioning of ICPA. Ms. Normita L. Villaruz ("ICPA Villaruz") thereafter took her oath[34] and was obliged to submit her ICPA Report within forty-five (45) days or until September 25, 2015.

After being granted[35] an extension, the parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters[36] ("JSFI") on September 4, 2015.

On September 24, 2015, the ICPA Report[37] of ICPA Villaruz was submitted. Thereafter, the Court issued a Pre-Trial Order[38] on September 28, 2015.

During the course of the trial, petitioner presented as witnesses the following: *(1)* ICPA Villaruz[39]; and *(2)* Ms. Noemi L. Ronquillo[40] ("Ms. Ronquillo"), Manager of the Accounting and Financial Services Division of petitioner.

Witness **ICPA Villaruz** testified by way of judicial affidavit[41] that she was commissioned as an ICPA in the instant case to conduct an examination, verification, and audit of the voluminous documents of petitioner's claim for refund. She stated that she completed the work assigned to her within the original period granted by the Court and that on September 24, 2015, she submitted the ICPA Report[42] dated September 22, 2014, consisting twenty-three (23) pages together with its attached Annexes "A" to "J" sub-markings inclusive, and its

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[33] *Records, Vol. 1, Minutes of Hearing dated August 11, 2015,* p. 374; *Records, Vol. 1, August 24, 2015 Confirming Resolution,* pp. 381-382.
[34] *Records, Vol. 1, Oath of Commission (For a CPA Firm),* p. 379.
[35] *Records, Vol. 1, Motion for Extension of Time to Submit Joint Stipulation of Facts, Documents, Issues and Other Matters,* pp. 383-385; *Records, Vol. 1, Resolution,* p. 400.
[36] *Records, Vol. 1, JSFI,* pp. 393-398.
[37] *Id., Exhibit "P-4," ICPA Report,* pp. 406-490.
[38] *Id., Pre-trial Order ("PTO"),* pp. 492-497.
[39] *Records, Vol. 2, Exhibit "P-3," Judicial Affidavit of Ms. Normita L. Villaruz In Lieu of Direct Testimony,* pp. 505-530; *Records, Vol. 2, Minutes of Hearing dated October 13, 2015,* p. 531; *Transcript of Stenographic Notes ("TSN") Folder, October 13, 2015,* pp. 1-10.
[40] *Records, Vol. 1, Exhibit "P-2," Judicial Affidavit of Ms. Noemi L. Ronquillo in Lieu of Direct Testimony,* pp. 249-260; *Records, Vol. 2, Minutes of Hearing dated January 26, 2016,* p. 535; *TSN Folder, January 26, 2016,* pp. 1-10.
[41] *Records, Vol. 1, Exhibit "P-3," Judicial Affidavit of Ms. Normita L. Villaruz in Lieu of Direct Testimony,* pp. 505-530.
[42] *Id., Exhibit "P-4", ICPA Report,* pp. 406-490.

supporting Sub-Annexes in two (2) separate binders containing the results of the examination, verification, and audit conducted by her; and that she has seen the originals of the supporting documents before they were submitted to the Court. ICPA Villaruz stated that included in her examination were the following documents:

1. Excise Tax Returns or BIR Form No. 2200-A filed by petitioner daily for advance payment of excise tax deposits for each plant, these forms were also filed daily by petitioner's Head Office for declaration of excise taxes due on daily beer removals for each plant;

2. BIR Filing Reference Statement, which serves as proof that the Excise Tax Return has been filed under the BIR's Electronic Filing and Payment System ("EFPS") containing the following information: taxpayer's name, TIN, RDO, Type of BIR Form filed, Amounts Payable/(Over Remittance), accounting type, tax period, filing date, and tax type;

3. Payment confirmation forms from the following banks: *(a)* Bank of the Philippine Islands ("BPI") ExpressLink and Tax Payment Details Form; *(b)* Union Bank of the Philippines Payment Confirmation Form and UBP Payment Status Form; *(c)* China Banking Corporation (Bancnet-Chinabank) Payment Confirmation Forms, which confirms that BPI has successfully received payment instruction from the BIR EFPS through the BPI ExpressLink website (collectively referred to as "Accredited Agent Banks");

4. Documents generated by petitioner, *i.e.* Shipping Memorandum, Delivery Receipt, Issue/Receipt Document, Stock Transfer Receipt;

5. Official Delivery Invoice, a BIR registered Form No. 245, which is prepared daily to summarize all the removals *per* shipping memorandum for the day, which are duly signed by the Internal Revenue Officer and petitioner's Plant Manager;

6. Excise Taxpayer's Removal Declaration ("ETRD") or BIR Form No. 2299;

7. Gate Pass Form and Claim Memorandum;

8. Revenue Officers on Premises' ("ROOP") Daily Monitoring Report;

9. Report on Excise Tax Payments and Applications;

10. Daily and Monthly Official Register Book ("ORB"), Daily and Monthly Sworn Statement of the Volume of Removals ("SSR");

11. Movement Report with Allocated Deposits;

12. Removals Schedule; and

13. Total Removals Report

ICPA Villaruz stated that upon verification, the advance excise tax deposits for the six (6) brewery plants from January 1, 2013 to December 31, 2013 were the total advance payments for excise taxes due on total removals of all beer products of petitioner from each of the six (6) brewery plants; that the advance excise tax deposits were reflected in the Excise Tax Returns filed by petitioner with the BIR through the BIR EFPS; that the advance excise tax deposits are reflected in the Excise Tax Returns filed by petitioner with the BIR through the BIR EFPS; that the advance payments were received by the accredited agent banks and were confirmed received by the BIR; that the excise taxes due on the removals of all beer products were deducted from the payment of advance excise tax deposits; and that the total amount of Advance Excise Tax Deposits *per* Excise Tax Returns for all beer products made by petitioner for January 1, 2013 to December 31, 2013 sufficiently covered, and in fact, exceeded, the total amount of excise taxes due, filed, and paid on total actual removals of all beer products from the six (6) plants.

ICPA Villaruz concluded that the amount of Php83,019,296.21 being claimed for refund as overpayment of excise taxes due on petitioner's removals for the period January 1, 2013 to December 31, 2013 was properly supported by the relevant documents. However, when the net adjustment mentioned in the ICPA Report is considered, the overpayment of excise taxes by petitioner (as adjusted), is Php83,019,273.64 instead of Php83,019,296.21[43].

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[43] *Records, Vol. 1, Exhibit "P-4," ICPA Report*, p. 433.

Witness **Ms. Ronquillo** testified that petitioner was constrained to pay excise taxes at the rate of Php20.57 under protest to enable it to make removals of its San Mig Light products; and that the rate was based on *RMC No. 90-2012,* which was issued by respondent on December 27, 2012 and effective on January 1, 2013. She avers that petitioner did not receive any notice of hearing nor was it given an opportunity to be heard with respect to *RMC No. 90-2012.* Ms. Ronquillo stated that before *Section 143 of the 1997 NIRC* was amended by *RA No. 10351,* San Mig Light was subject to an excise tax rate of Php15.49 *per* liter, however, BIR required it to pay Php20.57 *per* liter, the tax rate for high-priced brands, contending that San Mig Light was a variant of Pale Pilsen; and that petitioner has already questioned this in several cases now pending before the CTA and the Supreme Court on the ground that the BIR unlawfully reclassified San Mig Light as a variant under the old provisions of *Section 143 of the 1997 NIRC.* Ms. Ronquillo further explained that under the amendment, excise taxes should have been at the rate of Php20.00 for San Mig Light in bottle and in can, and Php15.00 *per* liter for San Mig Light in kegs; that during the period January 1, 2013 up to December 31, 2013, there was an excess assessment and collection in the amount of Php0.57 *per* liter for San Mig Light in bottle and in can, and Php5.57 *per* liter for San Mig Light in kegs, totaling to Php83,019,296.21.

During the hearing on January 26, 2016, petitioner was granted fifteen (15) days or until February 10, 2016 to file its Formal Offer of Evidence ("FOE"); while respondent was granted a period of ten (10) days from receipt of the FOE to file his comment or opposition thereto.[44]

On February 10, 2016, petitioner filed a Motion for Extension of Time to File FOE[45]. This was granted[46] by the Court on February 16, 2016. It then filed an Urgent Motion for Further Extension of Time to File FOE[47] on February 23, 2016; which was granted[48] by the Court on March 8, 2016. Finally, on February 26, 2016, petitioner filed its FOE[49], offering *Exhibits* "P," "P-1," "P-1-a," "P-1-b," "P-1-b-1," "P-1-c" to "P-1-aa," "P-2," "P-2-a," "P-3," "P-3-a," "P-4," "P-4-a" to "P-4-c," "P-5.1"

[44] *Records, Vol. 2, Minutes of Hearing dated January 26, 2016,* p. 535; *Records, Vol. 2, February 2, 2016 Confirming Resolution,* p. 537.
[45] *Records, Vol. 2, Motion for Extension of Time to File FOE,* pp. 538-540.
[46] *Id., Resolution,* p. 543.
[47] *Id., Urgent Motion for Further Extension of Time to File FOE,* pp. 544-546.
[48] *Id., Resolution,* pp. 570-571.
[49] *Id., FOE,* pp. 547-565.

to "P-5.491," "P-6.1" to "P-6.510," "P-7.1" to "P-7.498," "P-8.1" to "P-8.490," "P-9.1" to "P-9.487," "P-10.1" to "P-10.477," "P-11.1" to "P-11.12," "P-12.1" to "P-12.4,982," "P-13.1" to "P-13.340," "P-14.1" to "P-14.1,106," "P-15.1" to "P-15.336," "P-16.1" to "P-16.336," "P-17.1" to "P-17.315," "P-18.1" to "P-18.5,470," "P-19.1" to P-19.9,059," "P-20.1" to "P-20.1,381," "P-21.1" to "P-21.3,827," "P-22.1," to "P-22.2,993," and "P-23.1" to "P-23.2,059." In response, respondent filed his Comment (Re: Petitioner's FOE)[50], raising no objection to the admission of the exhibits.

On April 6, 2016, the Court promulgated a Resolution[51] admitting all of petitioner's evidence, except for *Exhibits* "P-23.546" and "P-23.1,966" for failure to submit the same to the Court.

On July 15, 2016, respondent filed a Manifestation[52] stating that to save the time of the parties and of the Court, and considering that the issues advanced by the parties are legal issues, he finds it unnecessary to present his witness; instead, he requested for a period of thirty (30) days within which to file his memorandum.

During the hearing on July 18, 2016, the Court granted the parties thirty (30) days or until August 17, 2016 to submit their respective memoranda.[53]

On August 16, 2016, a Motion for Extension of Time to File Memorandum for Petitioner[54] was filed. This was granted[55] by the Court on August 26, 2016. Meanwhile, respondent filed a Manifestation[56] on August 18, 2016, stating that he is adopting the arguments he raised in his Answer as his Memorandum; which was noted[57] by the Court on September 2, 2016.

On August 31, 2016, a Motion for Further Extension of Time to File Memorandum for Petitioner[58] was filed; which was granted by the Court on September 14, 2016. On September 6, 2016, petitioner

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[50] *Records, Vol. 2, Comment (Re: Petitioner's FOE),* pp. 572-575.
[51] *Id., Resolution,* pp. 584-585.
[52] *Id., Manifestation,* pp. 586-588.
[53] *Records,* Vol. 2, *Minutes of Hearing dated July 18, 2016,* p. 589; *Records, Vol. 2, Confirming Order,* p. 590.
[54] *Records, Vol. 2, Motion for Extension of Time to File Memorandum for Petitioner,* pp. 592-594.
[55] *Id., Resolution,* p. 599.
[56] *Id., Manifestation,* pp. 595-597.
[57] *Id., Resolution,* p. 604.
[58] *Id., Motion for Further Extension of Time to File Memorandum for Petitioner,* pp. 600-602.

submitted its Memorandum for Petitioner[59]; and its Motion to Admit Memorandum for Petitioner Dated September 5, 2016[60] was filed on September 14, 2016.

On September 21, 2016, the Court admitted petitioner's Memorandum and resolved to submit the case for decision;[61] hence, this Decision.

The Issues[62]

WHETHER THE COURT HAS JURISDICTION OVER THE INSTANT PETITION;

WHETHER PETITIONER IS ENTITLED TO A REFUND IN THE AMOUNT OF PHP83,019,296.21 ALLEGEDLY REPRESENTING ERRONEOUSLY, EXCESSIVELY, ILLEGALLY AND/OR WRONGFULLY COLLECTED EXCISE TAXES ON SAN MIG LIGHT FOR THE PERIOD JANUARY 1, 2013 UNTIL DECEMBER 31, 2013;

WHETHER THE TAX RATE OF PHP20.57 *PER* LITER SPECIFIED IN *RMC NO. 90-2012* FOR SAN MIG LIGHT IN BOTTLE AND IN CAN, IS CONTRARY TO THE EXPRESS PROVISION OF *SECTION 143 OF THE 1997 NIRC, AS AMENDED BY RA No. 10351,* AND THEREFORE, INVALID; AND

WHETHER *RMC NO. 90-2012* WAS ISSUED WITHOUT THE REQUISITE PRIOR NOTICE AND HEARING.

Petitioner's Arguments[63]

Petitioner alleges that the excise tax rate of Php20.57 *per* liter specified in *RMC No. 90-2012* for San Mig Light is directly

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[59] *Records, Vol 2, Memorandum for Petitioner,* pp. 605-639.
[60] *Id., Motion to Admit [Memorandum] Dated September 5, 2016,* pp.643-646.
[61] *Id.,* pp. 648-649.
[62] *Id., PTO,* p. 494.
[63] *Id., Memorandum for Petitioner,* pp. 617-638.

contradictory to, inconsistent with, and violative of the express provisions of *Section 143 of the 1997 NIRC*, as amended by *RA No. 10351*. It maintains that the rate of Php20.57 *per* liter is actually what it was previously paying under protest, which it has challenged before the CTA and the Supreme Court on the principal basis that the BIR has unlawfully reclassified San Mig Light as a "variant" under the old provisions of *Section 143 of the 1997 NIRC*. According to petitioner, based on the new *Section 143 of the 1997 NIRC*, the excise tax rates should only be Php20.00 *per* liter for San Mig Light in bottle and in can, and Php15.00 *per* liter for San Mig Light in kegs.

Petitioner argues that a mere administrative regulation, such as *RMC No. 90-2012*, is subordinate to a statutory provision, such as *Section 143 of the 1997 NIRC*; that whenever there is a conflict between the two, the statutory provision should prevail; and that pursuant to *Article 7 of the Civil Code of the Philippines*, administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution. Petitioner claims that *RMC No. 90-2012* is not valid for having been issued without prior hearing and prior notice to petitioner, in utter disregard of the due process provision of the *1987 Philippine Constitution* and the process required by mandatory provisions of the *1987 Administrative Code*[64]; that *RMC No. 90-2012* was issued on December 27, 2012 and was made effective on January 1, 2013 or barely five (5) days thereafter; and that a hearing should have been conducted by the BIR with prior notice and opportunity for petitioner to air its position on *RMC No. 90-2012*, which is clearly a violation of petitioner's constitutional right to due process.

Petitioner cites *Paragraph (1) of Section 9, Chapter 2, Book VII of the 1987 Administrative Code*, which mandates an agency to, "as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule;" while paragraph (2) thereof provides that "in the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon."

Petitioner insists that it took the right course of action when it filed a claim for refund under *Section 229 of the 1997 NIRC*; that it did not challenge *RMC No. 90-2012* before paying the excise tax rate

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[64] *Executive Order No. 292.*

prescribed therein because *RMC No. 90-2012* was made effective five (5) days after its issuance, hence, it just opted to pay the excise taxes at the rate specified in the *RMC No. 90-2012* pursuant to *Section 103(A)(2) of the 1997 NIRC* which mandates that the excise tax shall be paid by the manufacturer before removal of domestic products from the place of production; and that by paying the excise taxes at the rate of Php20.57, as required by the *RMC No. 90-2012*, it was able to show good faith and to avoid the accrual of surcharges, interests, and penalties.

Petitioner contends that that the evidence it presented remains uncontradicted; therefore, it is conclusive. It insists that it is entitled to a refund in the amount of Php83,019,273.64, as validated by the ICPA, representing erroneous, excessive, illegal and/or wrongful collection from and overpayment by petitioner in excise taxes from the period January 1, 2013 up to December 31, 2013. According to petitioner, the arguments raised by respondent in his Answer are baseless and without merit; that assessments should not be based on mere presumptions; that it was wrong for respondent to say that it was primarily seeking the nullification of a provision from *RMC No. 90-2012;* that the Court has jurisdiction over the instant Petition for Review because declaring the excise tax rate of Php20.57 *per* liter for San Mig Light is only one of the reliefs prayed for by petitioner; that the Court has jurisdiction over the subject matter of the instant petition, which is a claim for refund; that since the Court has jurisdiction over the instant case, it must necessarily have the power and authority to pass upon any and all questions or incidents that are involved or that arise in the course of the proceedings, including the issue on the validity of the excise tax rate of Php20.57 under *RMC No. 90-2012* as this is related to the claim for refund.

Petitioner cites *Buena, Jr. v. Benito*[65] and contends that the rule on exhaustion of administrative remedies is not applicable in the following instances, among others: *(1)* when there is a violation of due process; *(2)* when the issue involved is purely a legal question; and *(3)* when the administrative action is patently illegal. Petitioner likewise insists that the rule of *strictissimi juris* is not applicable in this case since the claim for refund is not a claim for tax exemption, nor is it an ordinary and simple claim for refund, but one that arose from the illegal and unlawful imposition and collection of the excise tax rate of Php20.57 by the BIR on San Mig Light that is expressly contradictory to and violative of *Section 143 of the 1997 NIRC*, as amended by *RA No.*

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[65] G.R. No. 181760, October 14, 2014, 738 SCRA 278.

10341 and of petitioner's constitutional and statutory right to due process.

Respondent's Counter-Arguments[66]

Respondent alleges that petitioner is not entitled to a refund or a TCC in the amount of Php83,019,296.21 representing alleged erroneous, excessive, illegal and/or wrongful collection from, and overpayment of excise taxes during the period January 1, 2013 up to December 31, 2013, for taxes collected are presumed to be in accordance with laws and regulations.

The CIR avers that the Court has no jurisdiction over the instant Petition for Review since petitioner is primarily seeking the nullification of a provision of *RMC No. 90-2012,* and that the alleged cause of action for refund is merely consequential to the primary purpose of the Petition for Review. According to respondent, the CTA, being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction; that *RMC No. 90-2012* was issued in accordance with respondent's rule making power or quasi-legislative power; and that the authority to declare an administrative issuance as void is part of the general power conferred by the Constitution on courts of general jurisdiction. Respondent argues that a collateral attack on a presumably valid administrative issuance is not allowed; that a law is deemed valid unless declared null and void by a competent court; and that assuming petitioner is directly asking the Court for a refund or a TCC of excise taxes alleged to have been advanced or deposited, its supposed entitlement is entirely dependent on the collateral attack or invalidation of a presumably valid administrative issuance. Respondent argues further that the Court has no jurisdiction to determine the validity of the Php20.57 provision of *RMC No. 90-2012* due to petitioner's non-exhaustion of administrative remedies; and that decisions rendered by administrative bodies, like the BIR, in the exercise of its quasi-legislative power is appealable to the Secretary of Finance then to the Office of the President, and eventually, to the regular courts.

Respondent maintains that petitioner is not entitled to a tax refund, there being no erroneous or illegal collection of excise taxes. Respondent asserts that there was no re-classification of San Mig Light as it has always been classified as a variant of an existing brand; that

[66] *Records, Vol. 1, Answer,* pp. 131-148.

petitioner should be considered estopped from questioning the classification of San Mig Light as a variant of San Miguel Pale Pilsen on account of its prior representations; that the removal of the second part of the definition of the term "variant brand" under *paragraph 9 of the 1997 NIRC* does not alter the fact that San Mig Light is a variant of San Miguel Beer; and that the inclusion of the word "light" in the name San Mig Light should be considered as a modifier suffixed to the root name that is contemplated by the definition of a variant under *Section 143 of the 1997 NIRC.*

Lastly, respondent asseverates that claims for refund are construed strictly against the taxpayer and in favor of the government; and that petitioner has the burden of proof to establish that they are entitled to the tax refund or TCC.

The Ruling of the Court

Respondent argues that a collateral attack on a presumably valid administrative issuance is not allowed; and that a law is deemed valid unless declared null and void by a competent court, which in this case are the courts of general jurisdiction.

Respondent's arguments has merit.

A collateral attack on a presumably valid law is prohibited.[67] As held by the Supreme Court in several cases, the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules; and unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[68]

In the case at bar, the Court cannot determine petitioner's entitlement to a tax refund or tax credit without going into the validity of *RMC No. 90-2012*. While RMCs are issuances that publish pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other

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[67] *Dasmarias Water District v. Monterey Foods Corporation*, G.R. No. 175550, September 17, 2008, 565 SCRA 624.

[68] *Dasmarias Water District v. Monterey Foods Corporation*, G.R. No. 175550, September 17, 2008, citing *Tan v. Bausch & Lomb, Inc.*, G.R. No. 148420, December 15, 2005, 478 SCRA 115, citing *Olsen and Co. v. Aldanese*, G.R. No. L-18740, April 28, 1922, 43 Phil. 259; *San Miguel Brewery v. Magno*, G.R. No. L-21879, September 29, 1967, 21 SCRA 292.

agencies/offices, it must be determined what kind of administrative issuance *RMC No. 90-2012* falls under to determine whether it can be attacked collaterally, to wit: *(1)* a legislative rule, or *(2)* an interpretative rule. A legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof; while an interpretative rule is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.[69] 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 prescribed.[70] However, when the administrative rule substantially adds to or increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law. In which case, the agency involved legislated under its quasi-legislative authority.[71]

In the case at bar, *RA No. 10351* imposes an excise tax at Php15.00 *per* liter if the net retail price [excluding excise tax and value-added tax ("VAT")] *per* liter of volume capacity is Php50.60 or less; and Php20.00 *per* liter if the net retail price (excluding excise tax and VAT) *per* liter of volume capacity is more than Php50.60. Therefore, under *RA No. 10351*, San Mig Light (in bottle), which has a net retail price of Php47.99 *per* liter, should be subject to an excise tax of Php15.00 *per* liter; and San Mig Light (in can), which has a net retail price of Php61.51, should be subject to an excise tax of Php20.00 *per* liter. However, *RMC No. 90-2012* subjected both to Php20.57 *per* liter. In order to remove its products from the breweries, petitioner paid the excise taxes due under *RMC No. 90-2012* and filed its administrative claim for refund or TCC on December 9, 2014. Thereafter, it filed the instant Petition for Review on December 19, 2014.

Based on the foregoing, *RMC No. 90-2012*, through which legislated, is an administrative rule with the force of law. Hence, it cannot be attacked collaterally. While the CTA has the power to rule on the validity of a particular administrative rule or regulation by virtue of its *certiorari* powers,[72] petitioner should have directly attacked *RMC No. 90-2012 via* a Petition for *Certiorari* at the earliest opportunity,

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[69] *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Fortune Tobacco Corporation*, G.R. No. 119761, August 29, 1996, 261 SCRA 236.
[70] *Id.*
[71] *Id.*
[72] *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue*, G.R. No. 210987, November 24, 2014, 741 SCRA 578.

rather than through a collateral attack *via* judicial claim for refund, which indirectly but surely questions the validity of *RMC No. 90-2012.*

As already discussed above, collateral attacks on a presumably valid law is not allowed. Thus, unless and until *RMC No. 90-2012* has been declared invalid and unconstitutional through the proper proceeding, the same is binding; and there is no basis for petitioner's claim for refund or TCC. With regard to the other issues, the Court finds the same academic in view of the Court's lack of jurisdiction.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED,** petitioner having availed of the wrong mode of appeal.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S L

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

SAN MIGUEL BREWERY, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CTA Case No. 8955

Members:
BAUTISTA, ***Chairperson***
FABON-VICTORINO,
and
RINGPIS-LIBAN, *JJ.*

Promulgated:

AUG 1 8 2017
4:10 p.m.

x---x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With all due respect to the ponencia of my esteemed colleague, the Honorable Associate Justice Lovell R. Bautista, I register my dissent from the majority decision denying the Petition for Review for having availed of the wrong mode of appeal.

While I agree that RMC No. 90-2012 cannot be attacked collaterally and ought to have been questions at the Regional Trial Court level, I am of the opinion that the CTA still has jurisdiction over the claim for refund and that this Court should have exercised the same.

As a court of special or limited jurisdiction, the CTA can only take cognizance of matters that are evidently within its jurisdiction.[1] The jurisdiction of the CTA is conferred by Republic Act No. 1125, as amended by Republic Act No. 9282, which provides in part:

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[1] *Cathay Pacific Airways, Ltd. vs. Commissioner of Internal Revenue*, CTA EB No. 717, April 17, 2012.

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

From the foregoing provisions, the CTA has the power to determine whether or not petitioner is entitled to the refund of the aggregate amount of ₱83,019,296.21 representing the excise taxes on San Mig Light during the period from January 1, 2013 to December 31, 2013.

Further, in the case of *The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue*[2], the Supreme Court enunciated that the CTA has jurisdiction to rule on the validity of a particular administrative rule or regulation as long as it is within its appellate jurisdiction. The pertinent portion of the decision reads:

> "Evidently, *City of Manila* can be considered as a departure from Ursal in that in spite of there being no express grant in law, the CTA is deemed granted with powers of certiorari by implication. Moreover, *City of Manila* diametrically opposes British American Tobacco to the effect that **it is now within the power of the CTA**, through its power of certiorari, **to rule on the validity of a particular administrative rule or regulation so**

[2] G.R. No. 210987, November 24, 2014.

long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based." *(Emphasis supplied)*

Moreover, in the case of *Banco De Oro, et al. vs. Republic of the Philippines, et al.*[3], the Highest Tribunal held that:

"**We agree with respondents that the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals**. The questioned BIR Ruling Nos. 370-2011 and DA 378-2011 were issued in connection with the implementation of the 1997 National Internal Revenue Code on the taxability of the interest income from zero-coupon bonds issued by the government.

Under Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282, such rulings of the Commissioner of Internal Revenue are appealable to that court, thus:

SEC. 7. *Jurisdiction.* – The CTA shall exercise:

a. *Exclusive appellate jurisdiction to review by appeal* as herein provided:

1. *Decisions of the Commissioner of Internal Revenue in* cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other *matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;*

. . .

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue*, the Commissioner of Customs, the Secretary of Finance, the Secretary of

[3] G.R. No. 198756, January 13, 2015.

> Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts *may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling* or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> ...
>
> SEC. 18. *Appeal to the Court of Tax Appeals En Banc. – No civil proceeding involving matters arising under the National Internal Revenue Code*, the Tariff and Customs Code or the Local Government Code *shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.*

In *Commissioner of Internal Revenue v. Leal*, citing *Rodriguez v. Blaquera*, this court emphasized the jurisdiction of the Court of Tax Appeals over rulings of the Bureau Internal Revenue, thus:

> While the Court of Appeals correctly took cognizance of the petition for *certiorari*, however, *let it be stressed that* ***the jurisdiction to review the rulings of the Commissioner of Internal Revenue pertains to the Court of Tax Appeals, not the RTC.***
>
> *The questioned RMO No. 15-91 and RMC No. 43-91 are actually rulings or opinions of the Commissioner implementing the Tax Code on the taxability of pawnshops ...” (Emphases supplied)*

Considering that what is being assailed is a ruling of respondent CIR embodied in RMC 90-2012, this Court is vested with jurisdiction to rule on the validity thereof. Nonetheless, even without the issue of validity of the said RMC, this Court clearly has jurisdiction to decide on or to determine the propriety of the present refund claim.

Based on the foregoing, I vote that the Court take jurisdiction over the Petition for Review and decide on petitioner's claim for refund or issuance of TCC.

Ma. Belen S. L.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice