REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORTUNE TOBACCO CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6383

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 21 2002

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DECISION

This case involves a claim for refund under Section 229 of the National Internal Revenue Code for erroneously and/or illegally collected excise taxes paid by the petitioner for the period covering February 1, 2000 to December 31, 2001 amounting to P644,735,615.00 in compliance with the provisions of the last paragraph of Section 1 of Revenue Regulations No. 17-99.

The facts based on the parties' Joint Stipulation of Facts are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at Fortune Avenue, Parang, Marikina City.

Petitioner is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to RA 4280, to wit:

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Brand	**Tax Rate**
Champion M 100	P1.00
Salem M 100	P1.00
Salem M King	P1.00
Camel F King	P1.00
Camel Lights Box 20's	P1.00
Camel Filters Box 20's	P1.00
Winston F King	P5.00
Winston Lights	P5.00

Immediately prior to January 1, 1997, the above-enumerated cigarette brands were subject to ad valorem tax pursuant to then Section 142 of the Tax Code of 1977, as amended. However, on January 1, 1997, RA No. 8240 took effect whereby a shift from the ad valorem tax system to the specific tax system was made and subjecting the aforesaid cigarette brands to specific tax under Section 142 thereof, now renumbered as Sec. 145 of the Tax Code of 1997, pertinent provisions of which are quoted thus:

> "**Section 145. Cigars and Cigarettes** –
>
> "(A) **Cigars**. – There shall be levied, assessed and collected on cigars a tax of One peso (P1.00) per cigar.
>
> "(B) **Cigarettes Packed by Hand**. – There shall be levied, assessed and collected on cigarettes packed by hand a tax of Forty centavos (P0.40) per pack.
>
> "(C) **Cigarettes Packed by Machine**. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:
>
> "(1) If the net retail price (excluding the excise tax and the value-added tax) is <u>above Ten pesos (P10.00)</u> per pack, the tax shall be Twelve pesos (P12.00) per pack;
>
> "(2) If the net retail price (excluding the excise tax and the value-added tax) <u>exceeds Six pesos and fifty centavos (P6.50)</u> but does not

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exceed Ten pesos (P10.00) per pack, the tax shall be Eight pesos (P8.00) per pack;

"(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (P5.00) but does not exceed Six pesos and fifty centavos (P6.50) per pack, the tax shall be Five pesos (P5.00) per pack;

"(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (P5.00) per pack, the tax shall be One peso (P1.00) per pack;

"Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.

"The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand of 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 excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

"Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

"The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.

"New brands shall be classified according to their current net retail price.

"For the above purpose, **'net retail price'** shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value–added tax. For brands which are marketed only outside Metro Manila, the **'net retail price'** shall mean the price at which the cigarette is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

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"The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D,' shall remain in force until revised by Congress.

" '**Variant of a brand**' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand."

To implement the provisions for a twelve percent (12%) increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, upon recommendation of the respondent Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99 dated December 16, 1999, showing the increase on the applicable tax rates on cigar and cigarettes as follows:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO JAN.1, 2000	NEW SPECIFIC TAX RATE EFFECTIVE JAN.1, 2000
145	(A)	P1.00/cigar	P1.12/cigar
	(B) Cigarettes packed by machine		
	(1) Net Retail Price (excluding VAT & Excise) Exceeds P10.00 per pack	P12.00/pack	P13.44/pack
	(2) Net Retail Price (excluding VAT & Excise) is P6.51 up to P10.00 per pack	P8.00/pack	P8.96/pack
	(3) Net Retail Price (excluding VAT & Excise) is P5.00 to P6.50 per pack	P5.00/pack	P5.60/pack
	(4) Net Retail Price (excluding VAT & Excise) is below P5.00 per pack	P1.00/pack	P1.12/pack

Revenue Regulations No. 17-99 likewise provides in the last paragraph of section 1 "**(t)hat the new specific tax rate for any existing brand of cigars, cigarettes packed**

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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**. (*Emphasis supplied*)

For the period covering February 1, 2000 to December 31, 2001, petitioner paid specific taxes on all its brands manufactured and removed in the total amount of P19,366,783,535.00 (SCHEDULE I and the "Statement of Productions and Removals with Corresponding Specific Tax Payment for the period February 1, 2000 to December 31, 2001," *Annexes "D" to "D-23," Stipulation of Facts, Documents and Issues)*.

On various dates, petitioner filed with the respondent claims for refund or tax credit of its overpaid excise tax for the period from February 2000 to December 2001 in the total amount of P644,735,615.00 (SCHEDULE II and the "Comparative Reports-Amount of Specific Tax Based on Actual Tax Paid vs. Amount of Specific Tax Based on Basic Tax Rate," *Annexes "F" to "F-23," Stipulation of Facts, Documents and Issues*).

On June 21, 2001, petitioner filed with respondent's Legal Service a letter dated June 20, 2001 reiterating its various claims for refund/tax credit of its overpaid excise taxes (*Annex D, Petition for Review*). However, due to lack of response from the respondent, petitioner opted to file the instant Petition for Review with this court on January 30, 2002, in order to comply with the two-year period for filing a claim for refund.

In his Answer filed on February 14, 2002, respondent countered by raising the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

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5. The amount of P680,447,025.00 being claimed by petitioner as alleged overpaid excise tax for the month of January 1, 2000 to December 31, 2001 was not properly documented;

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Sections 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation; and

9. The last paragraph of Section 1 of Revenue Regulations No. 17-99 is a valid implementing regulation which has the force and effect of law."

The parties likewise stipulated the issues to be resolved by this court, namely:

1. Whether or not the last paragraph of Section 1 of Revenue Regulations No. 17-99 is in accordance with the pertinent provisions of Republic Act 8240, now incorporated in Section 145 of the Tax Code of 1997; and

2. Whether or not petitioner is entitled to a refund of P644,735,615.00 as alleged overpaid excise tax for the period from February 2000 to December 2001.

We now rule on the validity of Revenue Regulations No. 17-99. In as much as the main point of contention is the last paragraph of the said revenue regulations and its relation to the other provisions, we quote the same, thus:

> **"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*)

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Petitioner argues that the aforequoted paragraph of Revenue Regulations No. 17-99 has no basis in law and is, therefore, an illegal extension for an indefinite period of time of the three-year transitory provisions of R.A. 8240, now incorporated in Section 145 of the Tax Code of 1997. According to petitioner, the three-year period within which it is to be operative reckoned from January 1, 1997, the date when R.A. 8240 took effect, expired on December 31, 1999 and thereafter, effective January 1, 2000, the correct base of the 12% increase are the rates prescribed under paragraphs (1), (2), (3), and (4) of Section 145 of the Tax Code of 1997.

Petitioner further maintains that the questioned provisions of Revenue Regulations No. 17-99 is an administrative legislation since there is nothing under the provisions of Section 145 which authorizes the BIR to impose by way of regulations "*that the new specific tax rate for any existing brand of cigar, cigarettes packed by machine x x shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.*" Being entirely a creation of the respondent, and having no basis in said Section 145 itself which the questioned provisions of Revenue Regulations No. 17-99 meant to carry into effect, petitioner concluded that the said revenue regulations cannot be accorded validity.

Respondent, however, contends that the BIR, as an administrative agency, is duty bound to carry out the congressional policy of regulating specified activities and that Revenue Regulations No. 17-99 was issued by authority of Section 244 in relation to Section 4 of the 1997 Tax Code which provides:

> "Sec. 244. Authority of Secretary of Finance to Promulgate Rules and Regulations.- The Secretary of Finance, upon recommendation of the

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> Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.
>
> Sec. 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."

According to respondent, administrative legislation is not illegal *per se* and the general prohibition on non-delegation of legislative power admits of certain exceptions. Respondent posits the view 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 and as long as certain guidelines are met and what is being delegated is not the discretion as to what the law shall be but only the discretion as to its execution, then the same is permissible.

At first glance, the said regulation appears to be simply implementing the provisions of Section 142, R.A. 8240, now incorporated in the Tax Code of 1997 as Section 145, the pertinent provisions of which state:

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> "The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996: Provided, however, That in cases were the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

x x x x x x x x x

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

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"The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D,' shall remain in force until revised by Congress."

However, a more thorough analysis of the same proves that the questioned regulation does not merely implement but actually results to an unauthorized "administrative legislation." Clearly, the aforequoted provisions merely mandate that the three-year transition period within which it is to be operative, starting from January 1, 1997, the date when R.A. 8240 took effect, expired on December 31, 1999. During the said three-year period the tax shall not be lower than the tax imposed for each brand on October 1, 1996. Thereafter, effective January 1, 2000, a 12% increase would take effect using as tax base the figures provided in Section 145, subsection C, paragraphs (1), (2), (3) and (4) of R.A. 8424, otherwise known as the Tax Code of 1997.

While we may agree with the respondent 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, the same does not hold true in the present case. The BIR, in issuing Revenue Regulations No. 17-99, went beyond the legal parameters that defined the boundaries of its authority.

In ***Teoxon vs. Members of the Board of Administrators, Philippine Veterans Administration,*** 33 SCRA 585, the Supreme Court defined the parameters of this rule-making power of an administrative agency in this wise:

"**The power of administrative officials to promulgate rules in the implementation of the statute is necessarily limited to what is provided for in the legislative enactment**. It cannot be otherwise as the Constitution limits the authority of the President, in whom all executive power resides, to take care that the laws be faithfully executed. **No lesser administrative executive office or agency then can, contrary to the express language of the Constitution, assert for itself a more extensive**

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> **prerogative. An administrative agency cannot amend an act of Congress**". (*Emphasis supplied*)

And in the case of ***Philippine Bank of Communications vs. Commissioner of Internal Revenue***, 302 SCRA 241, the Highest Tribunal ruled on the nature of revenue memorandum circulars, thus:

> "It bears repeating that Revenue memorandum circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. **Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement**." (*Emphasis supplied*)

Adopting the argument of respondent and declaring the questioned regulation as valid would put to naught the provisions of Section 145 of the Tax Code of 1997, particularly the directive that, "The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof shall be increased by twelve percent (12%) on January 1, 2000." This is in lieu of the tax rate being imposed prior to January 1, 2000. It is worthy to emphasize that with respect to the initial increase of excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240, Section 145 clearly provides that the excise tax shall not be lower than the tax, which is due from each brand on October 1, 1996. Such qualification is wanting as to the increase by 12% on January 1, 2000 in the rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) of the same section. Thus, the inevitable conclusion would be to impose the new rates of excise tax under paragraphs (1) to (4) which is

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increased by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000.

The rule in this jurisdiction is that the intent of the legislature is to be ascertained from the very language of the statute. *Verba legis non est recedendum*, or from the words of the statute there should be no departure. The law, needless to state, is clear and would not need a revenue regulation to clarify certain provisions nor impose a burden not found in the piece of legislation it is supposed to implement. This cannot be done nor authorized to be done by a mere department or agency of the government (***Animos vs. Philippine Veterans Affairs Office, et. al.***, *174 SCRA 214*). Any regulation, such as Revenue Regulations No. 17-99, that stretches this authority amounts to unauthorized legislation.

In view of the foregoing, Revenue Regulations No. 17-99 is deemed invalid.

We proceed to the second issue. The records, including the Stipulation of Facts, Documents and Issues of the parties disclose that the issue on the refundable amount was no longer disputed.

Significant are the stipulations in the Stipulation of Facts, Documents and Issues where the parties admitted the due execution and/or authenticity of the following documents:

1. Copy of Republic Act 8240;
2. Copy of Revenue Regulations No. 17-99 dated December 16, 1999;
3. Copies of the official receipts of excise tax deposit of petitioner for the months covering from February 2000 to December 2001; and
4. Copy of BIR Statement of Production and Removals with corresponding specific tax payments.

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The parties likewise stipulated on the mathematical accuracy of the following documents:

1. Copies of the February 2000 to December 2001 Summaries of advance excise tax deposits; taxes applied (debited); and running balances; and

2. Copies of "Comparative Reports-Amount of Specific Tax Based on Actual Tax Paid vs. Amount of Specific Tax Based on Basic Tax Rate Plus 12%.

The aforementioned official receipts showed that petitioner paid advance excise taxes starting from February 2, 2000 to December 28, 2001 in the aggregate sum of P19,300,000,000.00, detailed as follows:

	Year 2000	*Year 2001*	*Total*
January		P 450,000,000.00	
February	P 675,000,000.00	900,000,000.00	
March	825,000,000.00	900,000,000.00	
April	450,000,000.00	900,000,000.00	
May	825,000,000.00	975,000,000.00	
June	825,000,000.00	1,125,000,000.00	
July	825,000,000.00	1,050,000,000.00	
August	825,000,000.00	2,175,000,000.00	
September	600,000,000.00	300,000,000.00	
October	875,000,000.00	300,000,000.00	
November	825,000,000.00	675,000,000.00	
December	1,200,000,000.00	800,000,000.00	
	P 8,750,000,000.00	P 10,550,000,000.00	P 19,300,000,000.00

In its "Summaries of Advance Excise Tax Deposits; Taxes Applied (Debited); and Running Balances" for the subject period, petitioner had excise tax deposit balance as of February 1, 2000 of P90,604,311.34. Thus, petitioner had accumulated advance excise tax payments as of December 31, 2001 of P19,390,604,311.34 (P90,604,311.34 plus P19,300,000,000.00).

Based on the "Statements of Petitioner's Productions and Removals with Corresponding Specific Tax Payments" for the period February 2000 to December 2001

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prepared by the BIR representative (*Stipulation of Facts, Documents and Issues, Annexes "D" to "D-23"*), petitioner was actually charged specific taxes totaling P19,366,783,535.00 on all brands it manufactured and removed from place of production for the same period, broken down as follows:

	Year 2000	*Year 2001*	*Total*
January		P 860,430,150.00	
February	P 590,329,985.00	846,319,770.00	
March	672,920,410.00	936,552,980.00	
April	705,666,735.00	906,703,180.00	
May	792,583,165.00	1,008,192,935.00	
June	787,477,890.00	1,014,228,690.00	
July	759,024,580.00	1,120,254,850.00	
August	824,951,365.00	1,669,216,715.00	
September	753,702,000.00	770,518,740.00	
October	829,736,245.00	361,073,140.00	
November	818,294,950.00	588,851,515.00	
December	829,029,290.00	920,724,255.00	
	P 8,363,716,615.00	P 11,003,066,920.00	P 19,366,783,535.00

The above specific tax payments of P19,366,783,535.00 were computed based on the provisions of Section 1 of Revenue Regulations No. 17-99 wherein the specific tax rate which was applied on each brand of petitioner's products was the higher rate between the ad valorem tax due as of October 1, 1996 and the specific tax rate under Section 145 increased by 12%. Hence, petitioner paid specific taxes on the following brands, which were higher than the specific tax rates prescribed under paragraphs (3) & (4) of Section 145 increased by 12%:

Brand	Actual Specific Tax Paid Per RR No. 17-99		Basic Specific Tax Rate under Section 145 plus 12%	
	Per Case	Per Pack	Per Case	Per Pack
Champion M 100	P 1,650.00	P 3.30	P 560.00	P 1.12
Salem M 100	3,480.00	6.96	560.00	1.12
Salem M King	2,750.00	5.50	560.00	1.12

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Salem King Size Box 20's	3,480.00	6.96	560.00	1.12
Salem Lts KS Box 20's	3,480.00	6.96	560.00	1.12
Camel F King	2,750.00	5.50	560.00	1.12
Camel Lts. Box 20's	2,750.00	5.50	560.00	1.12
Camel Filters Box 20's	2,750.00	5.50	560.00	1.12
Winston F King	2,925.00	5.85	2,800.00	5.60
Winston Lights	2,925.00	5.85	2,800.00	5.60

The foregoing prove that petitioner had overpaid the specific taxes due on its volume of removals for the aforementioned brands for the period of February 2000 to December 2001 in the total amount of P644,775,615, broken down as follows:

Per Summary Annexed to the Stipulation of Facts	Period Covered	Actual Specific Tax Paid Per RR No. 17-99	Specific Tax Due Based on Basic Rate Under Section 145 Plus 12%	Overpayment
Annex F-1	Feb-00	P 202,677,825.00	P 176,253,280.00	P 26,424,545.00
F-2	Mar-00	191,916,250.00	167,310,080.00	24,606,170.00
F-3	Apr-00	190,146,975.00	165,240,320.00	24,906,655.00
F-4	May-00	194,773,085.00	169,881,600.00	24,891,485.00
F-5	Jun-00	212,840,610.00	187,633,040.00	25,207,570.00
F-6	Jul-00	218,925,300.00	194,362,560.00	24,562,740.00
F-7	Aug-00	217,506,485.00	192,833,200.00	24,673,285.00
F-8	Sep-00	218,411,440.00	192,404,800.00	26,006,640.00
F-9	Oct-00	230,623,605.00	201,874,400.00	28,749,205.00
F-10	Nov-00	232,773,510.00	202,718,880.00	30,054,630.00
F-11	Dec-00	198,987,850.00	174,283,760.00	24,704,090.00
		P 2,309,582,935.00	P 2,024,795,920.00	P 284,787,015.00
F-12	Jan-01	P 274,301,670.00	P 242,100,880.00	P 32,200,790.00
F-13	Feb-01	220,432,970.00	197,234,240.00	23,198,730.00
F-14	Mar-01	270,894,980.00	237,972,000.00	32,922,980.00
F-15	Apr-01	266,945,740.00	237,334,720.00	29,611,020.00
F-16	May-01	297,269,575.00	261,420,880.00	35,848,695.00
F-17	Jun-01	297,992,050.00	264,525,520.00	33,466,530.00
F-18	Jul-01	326,449,250.00	285,036,080.00	41,413,170.00
F-19	Aug-01	444,346,075.00	383,632,480.00	60,713,595.00
F-20	Sep-01	186,677,300.00	174,069,840.00	12,607,460.00
F-21	Oct-01	130,829,700.00	118,573,840.00	12,255,860.00
F-22	Nov-01	187,281,675.00	165,294,080.00	21,987,595.00
F-23	Dec-01	245,278,575.00	221,516,400.00	23,762,175.00
		P 3,148,699,560.00	P 2,788,710,960.00	P 359,988,600.00
		P 5,458,282,495.00	P 4,813,506,880.00	P 644,775,615.00

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Noteworthy is the difference between the actual specific tax overpayment and the amount being claimed by petitioner in its Petition for Review. The actual specific tax overpayment of P644.775,615.00 is greater by P40,000.00 when compared against petitioner's claim per Petition for Review of P644,735,615.00. The difference was due to an error made by petitioner in reflecting its specific tax overpayment for the month of May 2000 as P24,851,485.00 instead of P24,891,485.00 in Annex "F" of the Stipulation of Facts, Documents and Issues. However, this court can only grant the lower amount of P644,735,615.00 that was prayed for by petitioner in the Petition for Review.

WHEREFORE, in view of the foregoing, the court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of P644,735,615.00 representing erroneously paid excise taxes for the period February 1, 2000 to December 31, 2001.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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