

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

**PHILIP MORRIS PHILIPPINES
MANUFACTURING, INC.,**
Petitioner,

CTA CASE NO. 8791

Members:

- versus -

**DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.**

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

MAY 09 2018 : 8:29 am

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Philip Morris Philippines Manufacturing, Inc. on March 28, 2014 praying that the Court: (i) declare that petitioner is entitled to a tax refund or issuance of a tax credit certificate in the amount of Ten Million Eight Hundred Fifty One Thousand Four Hundred Eleven Pesos (P10,851,411.00), corresponding to the amount of excise taxes advanced by it on exported products during the period beginning 3 April 2008 until 31 December 2008; (ii) order respondent to issue a cash refund or tax credit certificate in favor of petitioner in the amount of Ten Million Eight Hundred Fifty One Thousand Four Hundred Eleven Pesos (P10,851,411.00); and, (iii) declare Revenue Regulations (RR) No. 03-08 null and void for being contrary to Sections 129 and 130 (D) of the National Internal Revenue Code (NIRC) of 1997, as amended, and for being confiscatory and prejudicial to the taxpayer.

THE PARTIES

Petitioner Philip Morris Philippines Manufacturing, Inc., (Philip Morris) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office

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address at 27th Floor, Tower One, The Enterprise Centre, 6766 Ayala Avenue corner Paseo de Roxas, Makati City.¹

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) with office address at BIR Building, Diliman, Quezon City where she may be served with summons and other legal processes.²

THE FACTS

On January 22, 2008, respondent issued RR 03-08 (*Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removals of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Products Replenishment*).³

Petitioner claims that from 3 April 2008 to 31 December 2008, in compliance with Revenue Regulations No. 03-08, it advanced the excise tax on tobacco and cigarette products it exported. As of December 31, 2008, the advanced excise tax which remains unreplenished or unrefunded under RR 03-08 amounts to ₱10,851,411.00.⁴

On February 25, 2014, petitioner filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Excise Audit Division II an administrative claim for refund or issuance of a tax credit certificate in the total amount of ₱10,851,411.00, representing excise tax advanced in 2008 by petitioner on its exported tobacco, pursuant to RR 03-08.⁵

Claiming inaction on its administrative claim, and that the six-year prescriptive period under Article 1145 (2) of the Civil Code is about to expire, petitioner filed the present Petition for Review on

¹ Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues, CTA Docket, p. 290; Par. 2, Pre-Trial Order, CTA Docket, p. 328.

² Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues, CTA Docket, p. 290; Par. 1, Pre-Trial Order, CTA Docket, p. 327.

³ Par. 2, Stipulation of Facts, Joint Stipulation of Facts and Issues, CTA Docket, p. 290; Par. 3, Pre-Trial Order, CTA Docket, p. 328.

⁴ Par. 9, Petition For Review, CTA Docket, p. 16.

⁵ Exhibit P-5, CTA Docket, pp. 668-677.

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March 28, 2014 based on Section 130 (D) of the NIRC of 1997, as amended.⁶

On July 2, 2014, respondent filed his Answer,⁷ with the following Special and Affirmative Defenses: (i) the nullification of RR 03-08 does not fall under the special jurisdiction granted by statute to the Court of Tax Appeals (CTA), thus, the Petition for Review should not be given due course for lack of jurisdiction; (ii) a collateral attack on presumably valid administrative issuance is not allowed; (iii) the administrative claim for refund and the present Petition were filed out of time; and, (iv) claims for refund are construed strictly against the taxpayer and in favor of the government.

On October 3, 2014, petitioner filed its Pre-Trial Brief⁸ while Respondent's Pre-Trial Brief⁹ was posted on October 3, 2014.

The Pre-Trial Conference was held on October 9, 2014.¹⁰ The parties filed their Joint Stipulation of Facts and Issues¹¹ on November 10, 2014, and Supplemental Joint Stipulation of Facts and Issues on December 15, 2014,¹² both of which were approved in the Resolution¹³ dated January 5, 2015. In the same Resolution, the Court terminated the Pre-Trial.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's formally offered exhibits, as contained in its Formal Offer of Evidence for Petitioner¹⁴ and Amended and Supplemental Formal Offer of Evidence for Petitioner,¹⁵ were admitted in the Resolutions dated March 7, 2016¹⁶ and November 7, 2016,¹⁷ except Exhibits P-15.4, P-19.1 to P-19.159, P-20.1 to P-20.20, and P-22.1 to P-22.19. On November 23, 2016, petitioner filed a Manifestation with Proffer of Evidence,¹⁸ tendering the exhibits 

⁶ Par. 18, Petition for Review, CTA Docket, pp. 16 & 18.

⁷ CTA Docket, pp. 94-113.

⁸ CTA Docket, pp. 139-147.

⁹ CTA Docket, pp. 255-259.

¹⁰ Minutes of the hearing, and Resolution issued on October 9, 2014; CTA Docket, pp. 248-249, 252-253.

¹¹ CTA Docket, pp. 290-295.

¹² CTA Docket, p. 316.

¹³ CTA Docket, pp. 324-325.

¹⁴ CTA Docket, pp. 617-629.

¹⁵ CTA Docket, pp. 780-793.

¹⁶ CTA Docket, pp. 724-725.

¹⁷ CTA Docket, pp. 804-810.

¹⁸ CTA Docket, pp. 811-817.

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denied admission by the Court in the November 7, 2016 Resolution. The Court noted petitioner's Manifestation with Proffer of Evidence, and declared the denied exhibits as part of the records of the case in the Resolution dated June 6, 2017.¹⁹

Respondent, on his part, also presented testimonial and documentary evidence. Respondent's formally offered exhibits as contained in his Formal Offer of Evidence on August 10, 2017,²⁰ were admitted by the Court in the November 2, 2017 Resolution.²¹

Considering the filing of the Memorandum for Petitioner²² on December 6, 2017 and respondent's Memorandum²³ on January 4, 2018, the case was submitted for decision on January 9, 2018.²⁴

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner claims that the amounts it advanced or deposited under RR 03-08 should be returned to petitioner pursuant to the principle of *solutio indebiti* and Section 130(D) of the NIRC of 1997, as amended.

Petitioner avows that the CTA has jurisdiction to declare RR 03-08 void. Allegedly, RR 03-08 conflicts with the provisions of the NIRC when it requires the advance or deposit of excise tax on excisable articles for export or consumption outside the Philippines when these articles are not subject to excise tax under the NIRC.

Petitioner also posits that the CTA has jurisdiction to declare RR 03-08 void.

Petitioner further asserts that that two-year prescriptive period under Section 204(C) and 229 of the NIRC of 1997, as amended, is not applicable to this case since Section 130 (D) of the NIRC of 1997, as amended, does not prescribe a time limit for filing a claim for

¹⁹ CTA Docket, pp. 833-835.

²⁰ CTA Docket, pp. 837-841.

²¹ CTA Docket, pp. 857-858.

²² CTA Docket, pp. 859-891.

²³ CTA Docket, pp. 899-917.

²⁴ CTA Docket, p. 920.

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it exported during the period beginning 3 April 2008 to 31 December 2008 has already prescribed.

THE COURT'S RULING

At the outset, the Court shall rule on the issue of prescription.

Petitioner alleges that it filed and paid, in advance, excise taxes on tobacco and cigarette products which were eventually exported during the period beginning 3 April 2008 until 31 December 2008.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the period within which to claim a refund of internal revenue taxes which are erroneously, illegally and wrongfully collected. Sections 204 and 229 of the NIRC of 1997, as amended, state:

"SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however,** That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

x x x

"SECTION 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: *Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.* (Boldfacing supplied)

Petitioner justifies the filing of its administrative and judicial claims for refund of the aforesaid excise taxes beyond the two (2)-year prescriptive period by arguing that Section 130(D) of the NIRC of 1997, as amended, does not prescribe a time limit for filing a claim for refund of excise taxes paid in advance, and that the amounts paid under RR 03-08 are in the nature of advance or deposited taxes and not erroneously paid taxes.

Citing *Commissioner of Internal Revenue vs. Philippine National Bank*²⁷ (PNB), involving a claim for refund of advance income tax payment, petitioner insists that under the principle of *solutio indebiti*, it has a period of six (6) years from the time of payment within which to seek refund of the excise taxes paid in advance.

Petitioner's invocation of *PNB* to justify the non-applicability of the two (2)-year period provided under Sections 204 and 229 of the NIRC of 1997, as amended, is misplaced.

A reading of *PNB* reveals that the subject of the recovery is the **advance income tax payment** of PNB for the bank's 1991 operations which was remitted in response to then President Corazon C. Aquino's call to generate more revenues for national development. In holding that the advance income tax payment made by the Philippine National Bank is not in the nature of erroneously or illegally paid tax, the Supreme Court opined:

"Section 230 of the Tax Code, as couched, particularly its statute of limitations component, is, in context, intended to apply to suits for the recovery of internal revenue taxes or sums erroneously, excessively, illegally or wrongfully collected.

Black defines the term *erroneous or illegal tax* as one levied without statutory authority. In the strict legal viewpoint, therefore, PNB's claim for tax credit did not proceed from, or is a consequence of overpayment of tax erroneously or illegally

²⁷ G.R. No. 161997, October 25, 2005.

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collected. It is beyond cavil that respondent **PNB issued to the BIR the check for P180 Million in the concept of tax payment in advance**, thus eschewing the notion that there was error or illegality in the payment. What in effect transpired when PNB wrote its July 28, 1997 letter was that **respondent sought the application of amounts advanced to the BIR to future annual income tax liabilities**, in view of its inability to carry-over the remaining amount of such advance payment to the four (4) succeeding taxable years, not having incurred income tax liability during that period.

xxx

xxx

xxx

Analyzing the underlying reason behind the advance payment made by respondent PNB in 1991, the CA held that it would be improper to treat the same as erroneous, wrongful or illegal payment of tax within the meaning of Section 230 of the Tax Code. So that even if the respondent's inability to carry-over the remaining amount of its advance payment to taxable years 1992 to 1996 resulted in *excess credit*, it would be inequitable to impose the two (2)-year prescriptive period in Section 230 as to bar PNB's claim for tax credit to utilize the same for future tax liabilities. We quote with approval the CA's disquisition on this point:

Thus, in no sense can the subject amount of advance income tax voluntarily remitted to the BIR by the [respondent], **not as a consequence of prior tax assessment or computation by the taxpayer based on business income**, be treated as similar to those national revenue taxes erroneously, illegally or wrongfully paid as to be automatically covered by the two (2)-year limitation under Sec. 230 for the right to its recovery. **When the P180 million advance income tax payment was tendered by [respondent], no tax had been assessed or due, or actually imposed and collected by the BIR. Neither can such payment be considered as illegal having been made in response to a call of patriotic duty to help the national government . . .** We therefore hold that the tax credit sought by [respondent] is not simply a case of excess payment, but rather for the application of the balance of advance income tax payment for subsequent taxable years *after failure or impossibility to make such application or carry over the preceding four (4)-year period when no tax liability was incurred by petitioner due to losses in its operations*. **It is truly inequitable to strictly impose the two (2)-year prescriptive period as to legally bar any request for such tax credit certificate considering the special circumstances under which the advance income tax payment was made and the unexpected event (four years of business losses) which prevented such application or carry over.** Ironically, both the [petitioner] and CTA would fault the [respondent] for electing to credit or carry over the excess amount of tax payment advanced instead of choosing to refund any such excess amount, holding that *such decision on the part of petitioner caused*



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the two (2)-year period to lapse without the petitioner filing such a request for the issuance of a tax credit certificate. They emphasized that the advance tax payment was made with the understanding that any excess amount will be either carried over to the next taxable year or refunded. It appears then that the request for issuance of a tax credit certificate was arbitrarily interpreted by respondent as a simple claim for refund instead of a request for application of the balance (excess amount) to tax liability for the succeeding taxable years, as was the original intention of [respondent] when it tendered the advance payment in 1991. (Emphasis in the original; words in bracket added)" (Additional boldfacing supplied).

When the Philippine National Bank made the advance income tax payment, it was not pursuant to any law or regulation requiring such advance payment, but simply out of its own volition to heed to the call of then President Aquino. Hence, such voluntary payment was not construed as erroneous, illegal or wrongful so as to apply the two (2)-year prescriptive period provided in Sections 204 and 229 of the NIRC of 1997, as amended.

In contrast, petitioner in the present case paid the excise taxes in accordance with the provisions of the NIRC and its implementing regulations. Petitioner's payment of excise taxes through advance deposit is specifically provided under RR 03-08, which requires among others, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, **to pay the excise tax** on every removal thereof from the place of production even if intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies, *subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment.*

Relatedly, the authority of the Secretary of Finance in issuing aforestated RR 03-08 clearly emanates from 130(A)(4)(b) of the NIRC of 1997, as amended, viz.:

"SECTION 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* —

(A) Persons Liable to File a Return, Filing of Return on Removal and payment of Tax. -

x x x

(2) Time for Filing of Return and Payment of the Tax. — Unless otherwise specifically allowed, the return shall be filed and



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the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: xxx.

xxx

(4) Exceptions. — **The Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations, prescribe:**

(a) The time for filing the return at intervals other than the time prescribed in the preceding paragraphs for a particular class or classes of taxpayers after considering factors such as volume of removals, adequate measures of security and such other relevant information required to be submitted under the pertinent provisions of this Code; and

(b) **The manner and time of payment of excise taxes other than as herein prescribed, under a tax prepayment, advance deposit or similar schemes.** In the case of locally produced or extracted minerals and mineral products or quarry resources where the mine site or place of extraction is not the same as the place of processing or production, the return shall be filed with and the tax paid to the Revenue District Office having jurisdiction over the locality where the same are mined, extracted or quarried: *Provided, however, That for metallic minerals processed abroad, the return shall be filed and the tax due thereon paid to the Revenue District Office having jurisdiction over the locality where the same are mined, extracted or quarried.*” (*Boldfacing supplied*)

Considering the patent disparity of the factual premises that triggered the advance payment of income tax by Philippine National Bank as contrasted to that of petitioner, the applicability of the doctrine laid down in *PNB* cannot be justified.

In truth, it is more appropriate to equate petitioner's advance excise tax payment with the following: (i) *withholding and remittance of income taxes by the income payor*; and, (ii) *payment of quarterly income tax by the income payee*, which are considered as deposits or advances or portions of the annual income tax due. Similar to advance payment of excise taxes, the withholding of income tax and the quarterly payment of income tax are provided under the NIRC of 1997 and its implementing regulations.

In *PNB*, the Supreme Court, citing *Citibank, N.A. vs. Court of Appeals*²⁸ and *Commissioner of Internal Revenue vs. TMX Sales, Inc.*²⁹ distinguished the **advance tax payment** as requested by then

²⁸ G.R. No. 107434, October 10, 1997.

²⁹ G.R. No. 83736, January 15, 1992.

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President Aquino from the concept of **withholding and remittance of income tax and quarterly payment of income tax** in this wise:

“The instant case ought to be distinguished from a situation where, owing to net losses suffered during a taxable year, a corporation was also unable to apply to its income tax liability taxes which the law requires to be withheld and remitted. In the latter instance, such creditable withholding taxes, albeit also legally collected, are in the nature of *erroneously collected taxes* which entitled the corporate taxpayer to a refund under Section 230 of the Tax Code. So it is that in *Citibank, N.A. vs. Court of Appeals*, we held:

The taxes thus withheld and remitted are provisional in nature. We repeat: five percent of the rental income withheld and remitted to the BIR pursuant to Rev. Reg. No. 13-78 is, unlike the withholding of final taxes on passive incomes, a creditable withholding tax; that is, creditable against income tax liability if any, for that taxable year.

In *Commissioner of Internal Revenue vs. TMX Sales, Inc.*, this Court ruled that the **payments of quarterly income taxes (per Section 68, NIRC) should be considered mere installments on the annual tax due. These quarterly tax payments . . . should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year.** The same holds true in the case of the withholding of creditable tax at source. **Withholding taxes are ‘deposits’ which are subject to adjustments at the proper time when the complete tax liability is determined.**

In this case, the payments of the withholding taxes for 1979 and 1980 were creditable to the income tax liability, if any, of petitioner-bank, determined after the filing of the corporate income tax returns on April 15, 1980 and April 15, 1981. As petitioner posted net losses in its 1979 and 1980 returns, it was not liable for any income taxes. Consequently and clearly, the taxes withheld during the course of the taxable year, while collected legally under the aforecited revenue regulation, became untenable and took on the nature of **erroneously collected taxes** at the end of the taxable year.” (*Underscoring and additional boldfacing added*)

Citibank N.A. and *TMX Sales, Inc.*, in turn declare, that the two-year prescriptive period should be applied to claims for refund of excess withholding tax credits and overpaid quarterly income tax, as they



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partake the nature of erroneously collected taxes at the end of the taxable year.

Analogously, the excise taxes paid in advance by petitioner were collected legally on the basis of Section 130(A) of the NIRC of 1997, as amended. When petitioner allegedly exported the goods it locally manufactured, said advance payment became erroneously collected and as such, petitioner is entitled to claim a refund or credit of the excise taxes paid in advance, subject to petitioner's compliance with the condition set forth in Section 130(D) of the NIRC of 1997, which provides:

"SECTION 130. Filing of Return and Payment of Excise Tax on Domestic Products. —

xxx

xxx

xxx

(D) Credit for Excise Tax on Goods Actually Exported. — When goods **locally produced or manufactured are removed and actually exported without returning to the Philippines**, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, **any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment:** *Provided*, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported." *(Boldfacing supplied)*

While the aforequoted provision is silent on the period within which a claim for refund may be filed, the Court finds as applicable Sections 204 and 229 of the NIRC of 1997, as amended, to refund of excise taxes that were paid in advance on locally manufactured products which were eventually exported. These provisions of the NIRC confined, as they are to erroneously collected taxes, necessarily include excise tax.

In *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue*,³⁰ the Supreme Court, applying Section 204 of the NIRC of 1997, as amended, in relation to Section 135 (c), to Chevron Philippines, Inc.'s claim for refund or credit of the excise taxes erroneously paid on the importation of the petroleum products sold to Clark Development Corporation (CDC), ratiocinated:



³⁰ G.R. No. 210836, September 1, 2015.

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"Inasmuch as its liability for the payment of the excise taxes accrued immediately upon importation and prior to the removal of the petroleum products from the customs house, Chevron was bound to pay, and actually paid such taxes. **But the status of the petroleum products as exempt from the excise taxes would be confirmed only upon their sale to CDC in 2007** (or, for that matter, to any of the other entities or agencies listed in Section 135 of the NIRC). **Before then, Chevron did not have any legal basis to claim the tax refund or the tax credit as to the petroleum products.**

Consequently, the payment of the excise taxes by Chevron upon its importation of petroleum products was deemed illegal and erroneous upon the sale of the petroleum products to CDC. Section 204 of the NIRC explicitly allowed Chevron as the statutory taxpayer to claim the refund or the credit of the excise taxes thereby paid, xxx." (*Boldfacing supplied*)

Otherwise stated, in claiming a refund of excise taxes paid in advance for locally manufactured products which were subsequently exported, the two (2)-year period to file the administrative and judicial claims as provided in Sections 204 and 229 of the NIRC of 1997, as amended applies - - the excise taxes paid in advance having become illegally paid or erroneously collected upon exportation of the locally manufactured products.

Respondent's obligation to refund erroneously collected excise taxes is an obligation created by law, specifically Section 130(D) of the NIRC of 1997, as amended. Article 1138, 1144 and 1148 of the New Civil Code of the Philippines state:

"Art. 1139. Actions prescribe by the mere lapse of time fixed by law."

x x x

"Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) xxx;

(2) **Upon an obligation created by law;**"

"Article 1148. The limitations of action mentioned in Articles 1140 to 1142, and 1144 to 1147 are without prejudice to those specified in other parts of this Code, in the Code of Commerce, and in special laws." (*Boldfacing and underscoring supplied*)



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Since the two-year prescriptive period is found in Sections 204 and 229 of the NIRC of 1997, as amended, which is a special law, the same should accordingly prevail over the prescriptive period provided under the New Civil Code of the Philippines.

Petitioner finally contends that the principle of *solutio indebiti* is applicable and consequently, it has a period of six (6) years within which to initiate its claim for refund.

Petitioner's stance is devoid of merit.

The principle of *solutio indebiti* elucidates that 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. In that situation, a creditor-debtor relationship is created under a quasi-contract, whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive the payment becomes obligated to return it. The quasi-contract of *solutio indebiti* is based on the ancient principle that no one shall enrich oneself unjustly at the expense of another.³¹

There is *solutio indebiti* when:

(1) Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and,

(2) Payment is made through mistake, and not through liberality or some other cause.³²

In *Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO)*,³³ the Supreme Court categorically ruled that the principle of *solutio indebiti* does not apply to claims for refund, viz.:

"In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi contract or *solutio indebiti* under Article 1145 of the

³¹ CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 198729-30, January 15, 2014.

³² *Id.*

³³ G.R. No. 181459, June 9, 2014.

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New Civil Code. There is *solutio indebiti* where: **(1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.** Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, 'a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.'" (*Boldfacing supplied*)

Evidently, the elements of *solutio indebiti* are not present in this case: first, the existence of a binding relation between petitioner and respondent is undeniable, the former being obligated to pay petitioner excise taxes on its locally manufactured products; and, second, the advance payment of said excises taxes was not made through mistake as petitioner was required under the NIRC and RR 03-08 to pay the same.

Considering that petitioner's exportation of the locally manufactured products allegedly took place during the period beginning 3 April 2008 until 31 December 2008, petitioner should have filed its administrative and judicial claims within two (2) years therefrom. Yet, petitioner's administrative and judicial claims for refund were filed only on February 25, 2014 and March 28, 2014, respectively, or almost six (6) years from the time the advance payments were considered erroneous. Undeniably, such claims are barred by the two (2)-year prescriptive period under Sections 204 and 229 of the NIRC of 1997, as amended.

In view of petitioner's failure to timely file its administrative and judicial claims for refund, the Court is deprived of jurisdiction to review the merits of petitioner's claim for refund. Accordingly, it has no other recourse but to dismiss the Petition for Review.



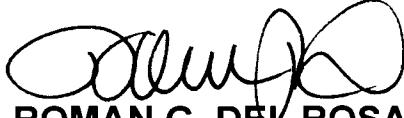
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In view of the foregoing disquisition, the Court shall no longer discuss the other issues raised by the parties.

WHEREFORE, premises considered, the Petition for Review filed by Philip Morris Philippines Manufacturing, Inc. is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice