REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

GINEBRA SAN MIGUEL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8953 & 8954

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUL 28 2020
3:30 p.m.

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DECISION

RINGPIS-LIBAN, J.:

The Case

These *Petitions for Review* filed by Petitioner Ginebra San Miguel, Inc. ("GSMI") against Respondent Commissioner of Internal Revenue ("CIR"), seek for the refund or issuance of a tax credit certificate ("TCC") in the aggregate amount of Seven Hundred Fifteen Million Two Hundred Fifty-Eight Thousand Seven Hundred Sixty-Eight Pesos (Php715,258,768.00), allegedly representing excise taxes erroneously, excessively, illegally and/or wrongfully assessed on, and collected from Petitioner by the Bureau of Internal Revenue ("BIR") on removals of its distilled spirits or finished products for the period January 01, 2013 to May 31, 2013.[1]

The Parties

[1] Docket (CTA Case No. 8953), Pre-Trial Order dated August 18, 2015, Summary of the Case, pp. 426-427; Respondent's Memorandum, Statement of the Case, p. 1384 vis-à-vis Consolidated Memorandum for Petitioner, Preliminary Statement, pp. 1408-1411.

Petitioner GSMI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 3rd and 6th floors, San Miguel Properties Centre, St. Francis Street, Mandaluyong City, Metro Manila, and may be served with processes in this case through its counsel at 4th Floor, Dynavision Building, 108 Rada Street, Legaspi Village, Makati City, Metro Manila.[2]

Respondent CIR is the head of the BIR, with office address at the Office of the CIR, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila, where he may be served with summons and other processes of this Honorable Court.[3]

The Facts

Antecedents (administrative level)

On September 25, 2013, Petitioner filed with the BIR a *Claim for Refund* (BIR Form No. 1914),[4] and the letter dated September 24, 2013,[5] requesting for refund or issuance of a TCC representing excise taxes erroneously and/or illegally collected from, and paid by Petitioner, in the total amount of Php581,707,875.00, for the period from January 01, 2013 to May 31, 2013.[6]

Thereafter, on November 17, 2014, Petitioner filed with the BIR another *Claim for Refund* (BIR Form No. 1914),[7] and the letter dated October 30, 2014,[8] requesting for refund or issuance of a TCC representing excise taxes erroneously and/or illegally collected from, and paid by Petitioner, in the total amount of Php133,550,893.00, for the period from January 08, 2013 to March 31, 2013.[9]

Proceedings before this court

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[2] *Id.*, Petition for Review, The Parties, par. 3, p. 17; Joint Stipulation of Facts, Documents, Issues, and Other Matters ("JSFDIOM"), par. 2.01, p. 413; Docket (CTA Case No. 8954), Petition for Review, The Parties, par. 3, p. 17.

[3] *Id.*, Petition for Review, The Parties, par. 3.01, p. 17; JSFDIOM, par. 1.01, p. 412; Docket (CTA Case No. 8954), Petition for Review, The Parties, par. 3.01, p. 17.

[4] *Id.*, Exhibit "P-2-b", p. 228.

[5] *Id.*, Exhibit "P-2", pp. 209-266.

[6] *Id.*, JSFDIOM, par. 2.02, p. 414.

[7] *Id.*, Exhibit "P-3-b", p. 284.

[8] *Id.*, Exhibit "P-3", pp. 267-296.

[9] *Id.*, JSFDIOM, par. 2.03, p. 414.

On December 19, 2014, Petitioner filed two (2) *Petitions for Review* before this Court.[10] The first one was docketed as **CTA Case No. 8953** where Petitioner prays that judgment be rendered ordering Respondent to refund, with legal interest, or issue a TCC in its favor, the amount of Php581,707,875.00, allegedly representing erroneous, excessive, illegal and/or wrongful collection from, and overpayment of excise taxes on its finished products during the period from January 01, 2013 up to May 31, 2013.

The second one was docketed as **CTA Case No. 8954**. In the said *Petition*, Petitioner prays that judgment be rendered ordering Respondent to refund, with legal interest, or issue a TCC in its favor, the amount of Php133,550,893.00, allegedly representing erroneous, excessive, illegal and/or wrongful collection from, and overpayment of excise taxes on its finished products during the period from January 08, 2013 to March 31, 2013.

Respondent then filed his *Answer* in CTA Case No. 8953 on January 28, 2015,[11] interposing the following special and affirmative defenses, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
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> 4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 5. The amount of [Php]581,707,875.00 representing alleged erroneous, excessive, illegal and/or wrongful collection and overpayment of alleged excise taxes on its finished products for the period 1 January 2013 up to 31 May 2013 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 Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit.
>
> 8. The BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling

[10] *Id.*, pp. 14-43; Docket (CTA Case No. 8954), pp. 14-42.
[11] *Id.*, pp. 119-125.

within its exclusive administrative domain. It is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law and are entitled to great respect **(Español vs. Philippine Veterans Administration, 137 SCRA 314)**.

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11. The BIR, as the administrative agency responsible for revenue collection and enforcement, is duty-bound to raise revenues through proper collection of taxes and, as such, it is given a special mandate to issue the necessary regulations in implementing the provisions of the Tax Code of 1997. The growth of society has ramified the government's activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems in present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them **(Eastern Shipping Lines, Inc. vs. POEA, et al., 166 SCRA 533)**.

12. Notably, Section 244, in relation to Section 4, of the Tax Code of 1997 states:

> Section 244. Authority of Secretary of Finance to Promulgate Rules and Regulations.--- The Secretary of Finance, upon recommendation of the Commission, shall promulgate all needful rules and regulations for the effective enforcement of the provision of this code.
>
> Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.--- The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

> Correspondingly, Section 10 of the same Code also provides: The Secretary of Finance shall, upon the recommendation of the Commissioner of the Internal Revenue, promulgate the necessary rules and regulations for effective implementation of this Act.

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14. The power to tax is the most effective instrument to raise needed revenues to finace and support the myriad activities of the government for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people **(Mactan Cebu International Airport Authority vs. Marcos, 261 SCRA 667, 690)**. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that claims for refund are required to be done within certain time frames.

15. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5932 promulgated October 30, 1998).**

Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowe unless granted in the most explicit and categorical language **(sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

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

(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*."

On February 27, 2015, Respondent filed *via* registered mail his *Answer* in CTA Case No. 8954,[12] interposing the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

A claim for refund cannot rely on vague inference

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8. Thus, like tax exemptions, tax refunds cannot rest on vague inferences. Where the rule of strict interpretation against the taxpayer is applicable, the claimant must show that he clearly falls under the exempting statute.

9. Republic Act No. 10351 is clear, that an excise tax shall be levied, assessed and collected on distilled spirits and all laws, decrees, ordinances, rules and regulations, executive or administrative orders and such other presidential issuances that are inconsistent therewith are repealed, amended or otherwise modified.

10. Section 170 of the Tax Code is clearly inconsistent thereto. It states:

> **SEC. 170. Requirements Governing Rectification and Compounding of Liquors.** – Persons engaged in the rectification or compounding of liquors shall, as to the mode of conducting their business and supervision over the same, be subject to all the requirements of law applicable to

[12] Docket (CTA Case No. 8954), pp. 96-104.

> distilleries: **Provided, That where a rectifier makes use of spirits upon which the excise tax has been paid, no further tax shall be collected on any rectified spirits produced exclusively therefrom:** Provided further, That compounders in the manufacture of any intoxicating beverage whatever, shall not be allowed to make use of spirits upon which the excise tax has not been previously paid.

11. While Republic Act No. 10351 imposes excise tax on distilled spirits, Setion 170 exempts it from tax.

12. Hence, Section 170 is deemed repealed when Republic Act No. 10351 was enacted.

The BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain.

13. It is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law and are entitled to great respect.

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16. The Bureau, as an administrative agency responsible for revenue collection and enforcement, is duty-bound to raise revenues through proper collection of taxes and, as such, it is given a special mandate to issue the necessary regulations in implementing the provisions of the Tax Code of 1997. The growth of society has ramified the government's activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems in present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may,

however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.

17. Notably, Section 244, in relation to Section 4, of the Tax Code of 1997 states:

> Section 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. - The Secretary of Finance, upon recommendation of the Commission, shall promulgate all needful rules and regulations for the effective enforcement of the provision of this code.
>
> Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

18. Thus, the Bureau, in the issuance of its rules and regulations, only exercised its mandate under the Tax Code.

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Assuming arguendo that petitioner is indeed entitled to refund or credit, petitioner failed to substantiate its claim.

20. Respondent emphasizes that in action for refund, the burden pf 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.

21. As here, the amount of [Php]133,550,893.00 allegedly representing erroneous, excessive, illegal and/or wrongful collection and overpayment of excise taxes on its finished products for the period 8 January 2013 up to 31 March 2013 was not properly documented.

22. Also, petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund.

23. Again, to stress, claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and [as] such, they are looked upon with disfavor."

The Pre-Trial Conference for CTA Case No. 8953 was initially set on March 10, 2015.[13] *Respondent's Pre-Trial Brief* for the said case was filed on February 16, 2015.[14] Subsequently, on February 24, 2015, Petitioner filed a *Motion to Suspend Holding of Pre-Trial Conference and Running of Period for Filing of Judicial Affidavits and Pre-Trial Brief* praying for the deferral of the Pre-Trial Conference, due to its intent to consolidate the said case with CTA Case No. 8954.[15] The same was granted in a Resolution issued on March 05, 2015[16], and the Pre-Trial Conference was reset to June 30, 2015.[17]

Meanwhile, the Pre-Trial Conference for CTA Case No. 8954 was initially set on June 02, 2015.[18] On May 13, 2015, Petitioner filed a *Motion to Consolidate with CTA Case No. 8953* in the said case, praying for the consolidation thereof with CTA Case No. 8953.[19] On May 25, 2015, Petitioner filed a *Motion to Transfer Date of Pre-Trial Conference and Suspend Running of Period for Filing of Judicial Affidavits and Pre-Trial Brief* praying that the pre-trial conference be reset instead to June 30, 2015, the date and time of the pre-trial conference in CTA Case No. 8953.[20]

In an Order dated June 02, 2015, the Court granted the *Motion to Consolidate*, and ordered the consolidation of CTA Case No. 8953 and CTA Case No. 8954. The Pre-Trial Conference for the consolidated cases was also set to June 30, 2015.[21]

Respondent's Consolidated Pre-Trial Brief was filed on June 16, 2015;[22] while *Petitioner's Consolidated Pre-Trial Brief* was filed on June 24, 2015.[23]

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13 Docket (CTA Case No. 8953), Notice of Pre-Trial Conference dated January 30, 2015, p. 126.
14 *Id.*, pp. 127-131.
15 *Id.*, pp. 132-136.
16 *Id.*, pp. 139-140.
17 *Id.*, Notice of Pre-Trial Conference dated May 08, 2015, pp. 141-142.
18 Docket (CTA Case No. 8954), Notice of Pre-Trial Conference dated April 14, 2015, pp. 107-108.
19 *Id.*, pp. 109-115.
20 *Id.*, pp. 122-125.
21 *Id.*, pp. 128-129.
22 Docket (CTA Case No. 8953), pp. 143-146.

The Pre-Trial Conference for the consolidated cases was held on June 30, 2015.[24]

On July 15, 2015, the parties filed their *Joint Stipulation of Facts, Documents, Issues, and Other Matters* ("JSFDIOM").[25] In the Pre-Trial Order dated August 18, 2015, the Court approved the JSFDIOM, and deemed the Pre-Trial terminated.[26]

The trial of the case then proceeded.

During trial, Petitioner presented its documentary and testimonial evidence. It offered the testimonies of the following individuals, namely: (1) Mrs. Cynthia M. Baroy,[27] Chief Finance Officer of Petitioner; (2) Mrs. Rhea F. Rivamonte,[28] Group Finance Head of Petitioner; and (3) Mr. Jerome Antonio B. Constantino, [29] the court-commissioned Independent Certified Public Accountant ("ICPA").[30]

On May 06, 2016, Petitioner filed its *Formal Offer of Evidence.*[31] Thus, in the Resolution dated June 14, 2016,[32] the Court admitted Petitioner's Exhibits, *except* Exhibits "P-13-4" to "P-13-5", "P-15-1", "P-17-1", "P-18-10" to "P-18-15", and "P-19-17" to "P-19-20", for failure to submit their originals for comparison.

Thereafter, Petitioner filed a *Motion for Partial Reconsideration/Manifestation* on July 01, 2016.[33] In the Resolution dated November 08, 2016,[34] the Court

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[23] *Id.*, pp. 147-156.
[24] *Id.*, Minutes of the hearing held on June 30, 2015, and Resolution dated July 08, 2015, pp. 400 and 407-408, respectively.
[25] *Id.*, pp. 412-416.
[26] *Id.*, pp. 426-434.
[27] *Id.*, Exhibit "P-5" (Judicial Affidavit of Cynthia M. Baroy in Lieu of Direct Testimony) and Minutes of the hearing held on September 28, 2015, pp. 173-194 and 442, respectively.
[28] *Id.*, Exhibit "P-4" (Judicial Affidavit of Rhea F. Rivamonte in Lieu of Direct Testimony) and Minutes of the hearing held on September 28, 2015, pp. 207-310 and 442, respectively.
[29] *Id.*, Exhibit "P-6-c" (Judicial Affidavit of Mr. Jerome Antonio B. Constantino in Lieu of Direct Testimony) and Minutes of the hearing held on April 04, 2016, pp. 1120-1139 and 1140, respectively.
[30] *Id.*, Exhibit "P-3-c" [Judicial Affidavit of Mr. Jerome Antonio B. Constantino in Lieu of Direct Testimony (in Support of Petitioner's Motion for Commissioning of Independent Certified Public Accountant)] and Oath of Commission dated January 18, 2016, pp. 505-512, and 537, respectively.
[31] *Id.*, pp. 1152-1176.
[32] *Id.*, pp. 1182-1183.
[33] *Id.*, pp. 1184-1189.
[34] *Id.*, pp. 1219-1221.

partially granted Petitioner's *Motion for Partial Reconsideration/Manifestation*, but still denied the admission of Exhibits "P-15-1", "P-17-1", "P-18-10" to "P-18-15", for failure to submit their originals for comparison.

Once again, Petitioner filed an *Omnibus Motion* on November 17, 2016,[35] seeking reconsideration of the Resolution dated November 08, 2016.[36] In the Resolution dated April 18, 2017,[37] the Court admitted Exhibits "P-18-10", "P-18-12", "P-18-13", "P-18-14", "P-18-15", "P-18-10-a", "P-18-12-a", "P-18-13-a", "P-18-14-a" and "P-18-15-a", but still denied the admission of Exhibits "P-18-11" and "P-18-11-a", for failure to present its certified true copies, as directed by the Court in the Resolution[38] dated February 22, 2017.

Undaunted, Petitioner filed on May 24, 2017 a *Motion for Leave to Present Independent Certified Public Accountant to Testify on Supplemental Report*,[39] which the court granted in the Resolution dated June 29, 2017.[40] The ICPA was recalled on September 25, 2017[41] to testify on his Supplemental ICPA Report.

On October 11, 2017, Petitioner filed its *Supplemental Formal Offer of Evidence.*[42] Thus, in the Resolution dated November 24, 2017,[43] the Court admitted Petitioner's Exhibits "P-6-1", "P-6-1-a", "P-15-5" to "P-15-6", "P-16-4" to "P-16-5", "P-17-4" to "P-17-6", "P-26", "P-27" and "P-27-a".

For his part, Respondent likewise presented his documentary and testimonial evidence. He offered the testimony of Revenue Officer ("RO") Cletofel V. Parungao[44] and RO Analynsia Alarde,[45] by way of their judicial affidavits.

Respondent filed his *Formal Offer of Evidence* on December 17, 2018.[46] Thus, in the Resolution dated March 15, 2019,[47] the Court admitted all the evidence offered by Respondent.

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[35] *Id.*, pp. 1222-1235.
[36] *Id.*, pp. 1222-1235.
[37] *Id.*, pp. 1273-1274.
[38] *Id.*, pp. 1249-1251.
[39] *Id.*, pp. 1292-1296.
[40] *Id.*, pp. 1301-1303.
[41] *Id.*, Exhibit "P-27" (Judicial Affidavit of Mr. Jerome Antonio B. Constantino in Lieu of Direct Testimony) and Minutes of the hearing held on and Order dated September 25, 2017, pp. 1308-1315, and 1316-1318, respectively.
[42] *Id.*, pp. 1322-1329.
[43] *Id.*, pp. 1337-1338.
[44] *Id.*, Exhibit "R-8" [Judicial Affidavit (of Ms. Cletofel V. Parungao)] and Minutes of the hearing held on and Order dated September 04, 2018, pp. 1346-1348 and 1349-1350, respectively.
[45] *Id.*, Exhibit "R-10" [Judicial Affidavit (of Ms. Analynsia Alarder)] and Minutes of the hearing held on and Order dated December 06, 2018, pp. 1356-1359 and 1360-1362, respectively.
[46] *Id.*, pp. 1363-1368.

Subsequently, Respondent filed its *Memorandum* on April 16, 2019;[48] while the *Consolidated Memorandum for Petitioner* was filed on May 09, 2019.[49]

The case was deemed submitted for decision on May 14, 2019.[50]

The Issues

The parties submitted the main issue[51] for this Court's resolution, to wit:

> "Whether Petitioner GSMI is entitled to a refund by the Bureau of Internal Revenue of the total amount of [Php]581,707,875.00 as having been erroneously, excessively, illegally and/or wrongfully collected from and overpaid by it as excise taxes on its finished products for the period from January 1, 2013 up to May 31, 2013, and of the total amount of [Php]133,550,893.00 as having been erroneously, excessively, illegally and/or wrongfully collected from and overpaid by it as excise taxes on its finished products for the period from January 8, 2013 to March 31, 2013, notwithstanding that excise taxes had already been paid on the ethyl alcohol from which the said products were exclusively processed and produced."

The following are the corollary issues[52]:

> "Whether the imposition of excise taxes on the finished liquor products of GSMI processed and produced exclusively from its inventory of ethyl alcohol on which excise taxes had already been paid, is contrary to the mandate of Section 170 of the NIRC of 1997.
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> Whether before the issuance of Revenue Regulations No. 17-2012 and Revenue Memorandum Circular No. 18-2013, GSMI received any notice of hearing or was afforded the opportunity to be heard thereon.

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47 *Id.*, pp. 1382-1383.
48 *Id.*, pp. 1384-1401.
49 *Id.*, pp. 1408-1479.
50 *Id.*, Resolution dated May 14, 2019, p. 1481.
51 *Id.*, JSFDIOM, par. 5, p. 415.
52 *Id.*, JSFDIOM, par. 5.01, p. 415.

> Whether Section 12(c) of Revenue Regulations No. 17-2012 and the Penultimate Paragraph of Revenue Memorandum Circular No. 18-2013 are null and void".

Petitioner's arguments:

Petitioner argues that the further imposition of excise taxes on its finished liquor products, produced exclusively from its inventories of ethyl alcohol on which excise taxes had already been paid, is contrary to the mandate of Section 170 of the NIRC of 1997, as amended, and constitutes double taxation.

Moreover, Petitioner avers that Section 12(c) of Revenue Regulations ("RR") No. 17-2012 and the penultimate paragraph of Revenue Memorandum Circular ("RMC") No. 18-2013 are null and void for (a) being directly contradictory to and inconsistent with Section 170 of the NIRC of 1997, as amended, (b) constituting double taxation, (c) being violative of the provision of the Constitution on substantive due process, equal protection of the laws clause, and the provision that the rule of taxation shall be uniform and equitable, and (d) having been issued without prior notice and hearing in utter disregard of the due process provision of the Constitution and without complying with the process required by mandatory provisions of the Administrative Code of 1987.

More importantly, Petitioner claims that it is entitled to a refund in the toal amount of Php715,258,768.00, as adjusted and validated by the ICPA, representing erroneous, excessive, illegal and/or wrongful collection from and overpayment by Peititoner of excise taxes on its finished products for the period from January 01, 2013 up to May 31, 2013.

Petitioner also asserts that the evidence presented by Respondent fails to refute or rebut the overwhelming evidence it adduced during trial.

Lastly, according to Petitioner, the arguments raised by Respondent in his Anwers to the Petitions for Review are baseless and without merit.

Respondent's counter-arguments:

Respondent counter-argues that this Court has no jurisdiction over the instant case. The validity and constitutionality of RR No. 17-2012 is not within the purview of the clause "other matters arising" under the NIRC of 1997, as amended. Moreover, Respondent maintains that Petitioner is not entitled to the refund sought.

Discussion/Ruling

The imposition of excise taxes on the finished liquor products produced from tax-paid ethyl alcohol is contrary to the mandate of Section 170 of the NIRC of 1997, as amended

Petitioner posits that it is clear that under Section 170 of the NIRC, as amended, removals of its finished products produced exclusively from its inventory of ethyl alcohol, on which excise taxes had already been paid, are not subject to any additional excise tax.

However, because of RR No. 17-2012 and RMC 18-2013 issued by the BIR, Petitioner was required to pay, on its removals of finished products processed and produced exclusively from its tax paid ethyl alcohol inventory, additional excise taxes at the increased rates imposed by Republic Act ("RA") No. 10351.

Petitioner posits that Section 12(c) of RR No. 17-2012 is inconsistent with Section 170 of the NIRC.

We agree with Petitioner.

Section 12(c) of RR No. 17-2012[53] provides:

> "SEC. 12. TRANSITORY PROVISIONS. – Upon the effectivity of the Act, the following transitory provisions shall be strictly observed by all concerned:
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> xxx xxx xxx

[53] Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations, December 21, 2012.

> (c) The specific tax that was paid on the physical inventory of ethyl alcohol held in possession by manufacturers of compounded liquors as of the effectivity of the Act subsequently used as raw materials in the production of compounded liquors shall not be entitled to tax credit/refund or **shall not be deducted** from the total excise tax due on compounded liquors." (*Emphasis supplied*)

Elementary is the rule that in case there is a discrepancy between the law and a regulation issued to implement the law, the law prevails because the rule or regulation cannot go beyond the terms and provisions of the law.

Under RA No. 10351[54], the clear legislative intent is that raw materials (such as ethyl alcohol) are not subject to tax since the excise tax on distilled spirits should be on the final product.

However, Section 12(c) of its implementing regulation, RR No. 17-2012 and RMC No. 18-2013 disallowed the tax crediting of the excise taxes paid under the old law on the raw materials (*i.e.,* ethyl alcohol inventory at the time of the effectivity of the new excise tax law), against excise taxes due on the compounded liquor. This in effect subjected Petitioner to paying excise tax twice first on the raw materials and second on the finished products produced. Thus, this part of the transitory provision of RR No. 17-2012 and RMC No. 18-2013 should be struck down for lack of legal basis.

Timeliness of the filing of the claims

The Court finds it proper to determine first whether Petitioner's claims for refund were timely filed.

Pertinent to the resolution of this matter are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide for the procedure governing the refund of erroneously paid taxes, to wit:

> "**SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may-

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[54] 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, July 23, 2012.

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(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 stamped 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 xxx.

SEC. 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.

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 therefore, 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."

The foregoing provisions govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC of 1997, as amended.[55] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax.

[55] CIR v. Central Azucarera Don Pedro, L-28467, February 28, 1973; CIR v. Insular Lumber Co., L-24221, December 11, 1967.

In the case of *Commissioner of Internal Revenue v. Goodyear Philippines, Inc.*,[56] the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the CIR.

Thus, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[57]

In the case of excise taxes, the goods subject to such tax cannot leave the place where it was manufactured without paying the corresponding excise tax. Section 130(A)(2) of the NIRC of 1997, as amended, states:

> "SEC. 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.-*
>
> *xxx xxx xxx*
>
> (2) *Time for Filing of Return and Payment of the Tax.-* **Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**"(*Emphasis supplied*)

Relative thereto, Section 11 of RR No. 02-97, provides that:

> "SECTION 11. *Time, Manner and Place of Payment.* —
>
> 11.1 *For Locally produced Alcohol Products.*

[56] G.R. No. 216130, August 3, 2016.

[57] Commissioner of Internal Revenue v. Victorias Milling Co., Inc. and The Court of Tax Appeals, G.R. No. L-24108, January 03, 1968; Collector v. J. N. Sweeney, A. O. Baigrie, and Ramon Burgas, G.R. No. L-12178, August 21, 1959; P.J. Kiener Company, Ltd. v. Saturnino David, G.R. No. L-5163, April 23, 1953.

1) *FILING OF RETURN* — Any person liable to pay specific tax on locally produced alcohol products shall before removal of such products, file in triplicate a consolidated return (BIR Form 2200) and supporting attachments (BIR Form 2201 and 2207) setting forth the registered brand names and brand codes, the total production during the return period, the quantity to be removed and the excise tax due.

2) *PAYMENT OF SPECIFIC TAX*

a) When to Pay — Unless otherwise especially allowed, excise tax due locally manufactured or produced alcohol products shall be paid by the manufacturer before removal from the place production, or by the person who is found in possession of untaxed domestically produced alcohol products.

b) ***Advance Payment or Deposit* — Every person liable to pay specific tax who is authorized to avail of the advance payment scheme may be allowed to effect removals of exciseable articles from his place of production without prior filing of the prescribed excise tax return and supporting attachments provided he has sufficient balance of deposits with the BIR to cover full payment of the excise tax due on said removals. The prescribed excise tax return and all attachments may be filed with a duly accredited bank or duly authorized collection agents not later than the first working day of the calendar week immediately after the week of actual removals. Payment of excise tax deposits shall be made by filing in triplicate a Payment Form (BIR Form No. 0605)**" (*Emphasis supplied*)

In the instant case, Petitioner availed of the advance payment or deposit scheme with regard to the excise taxes due on its locally produced compounded liquor. Thus, the two (2) year period prescribed in Sections 204 and 229 of the NIRC of 1997, as amended, is to be reckoned from the date of actual withdrawal/removal of the compounded liquor from its place of production, because it is only at this point when the deposits are recognized as payments for excise tax, broken down into ad valorem and specific tax components.

The Court-commissioned Independent Certified Public Accountant ("ICPA") stated that Petitioner's practice is to deposit an amount higher than the actual amount of excise tax due, with the balance being carried over to the next return period.[58]

Thus, the excise taxes due on its compounded liquor products from Petitioner's seven (7) plant locations for the period January 01 to May 31, 2013 in the amount of Php715,258,843.38, subject of the instant Petitions, were paid by way of advance excise tax deposits, broken down as follows:[59]

Plant	Annex Reference	Properly Supported by BIR Form 2200-A and Online Tax Payment Confirmations	
		Proof Liters	Excise Tax
Cabuyao Laguna	Annex 8.1	6,389,449	Php 176,579,362.44
Mandaue, Cebu	Annex 8.2	2,734,409	70,845,408.96
Sta. Barbara, Pangasinan	Annex 8.3	7,479,613	214,725,506.94
Calamba HBO, Makiling	Annex 8.4	4,988,671	146,793,814.56
Polo, Valenzuela	Annex 8.5	9,482	284,454.72
Cauayan, Isabela	Annex 8.6	2,722,798	77,818,091.04
Ligao, Albay	Annex 8.7	1,000,683	28,212,204.72
GRAND TOTAL		**25,375,105**	**Php 715,258,843.38**

After ascertaining that there were enough excise tax deposits to cover the excise tax due from the removal of finished goods during the period of claim, the Court determined the earliest date of finished goods removal and based the prescription of Petitioner's claim therefrom. Thus, the relevant dates are follows:

	Earliest Date of Payment (per ETRDs – Time of FG Removal)*	Last Day to file Claim	Administrative Filing Date	Judicial Filing Date
CTA Case No. 8953 (Php581,707,875.00)	January 2, 2013[60]	January 2, 2015	September 25, 2014[61]	December 19, 2014
CTA Case No. 8954 (Php133,550,893.00)	February 1, 2013[62]	February 4, 2015	November 17, 2014[63]	December 19, 2014

*Based on Annex 8 of the ICPA Report

[58] Exhibit "P-6", page 15.
[59] Exhibit "P-6", p. 14.
[60] Exhibit "P-12-1265".
[61] BIR Form No. 1914, Exhibit "P-2-b".
[62] Exhibit "P-1426".
[63] BIR Form No. 1914, Exhibit "P-2-b".

Clearly, therefore, the instant claims were filed seasonably well within the two-year prescriptive period.

Petitioner is not entitled to the excise tax refund amounting to Php715,258,768.00, due to its failure to show the quantity of finished goods that were produced using tax-paid raw materials

This Court now proceeds with the determination of the proper refundable amount on the basis that Petitioner has lawful claim over the erroneous imposition of excise taxes on the removal of its finished goods for the period January 01, 2013 to May 31, 2013. Here, it is imperative for Petitioner to convince the Court that the amount per instant claim is composed entirely of finished goods produced from tax-paid raw materials.

Tax-paid Raw Alcohol Ending Inventory of 2012

Petitioner allegedly held in its possession as of the end of 2012, an ethyl alcohol inventory totaling 57,426,118.60 proof liters with excise tax payments amounting to Php843,015,421.97. This inventory was intended and exclusively used the following year for the production of its finished liquor products.

Based on the ICPA's report, Petitioner's Schedule of Alcohol Inventory as of December 31, 2012[64] was traced to the Certificate of Stock Inventory[65] and Official registry books filed and stamped received by the BIR.[66]

The **Certificate of Stock Inventory (CSI)** is a document with details of physical count of stock inventory as of December 31, 2012 (year-end) certified by the BIR. It includes information, among others, balance of stocks in liters, last official delivery invoices ("ODI"), last Excise Tax Removal Declaration Form ("ETRD") issued, unused labels, unused ODIs and unused ETRDs. The said Certificate is signed by BIR representatives and attested to by a Finance staff of the petitioner.[67]

64 Exhibit "P-9", Folder No. 2, Box No. 1.
65 Exhibits "P-10-1" to "P-10-13", Folder No. 3, Box No. 1.
66 Exhibits "P-20-1-A" to "P-20-16-A", Folder Nos. 16 to 29, Box No. 4.
67 Exhibit "P-6", p. 4.

On the other hand, the **Official Registry Books (ORB)** shows the flow of alcohol inventory. It includes information, among others, the beginning inventory balance of alcohol, receipt of alcohol from other distilleries, transfer of alcohol to manufacturing plants, alcohol for compounding, and finished goods produced for packing. The ORBs are signed by a designated BIR official at depots and plants. The ORBs are also filed with the BIR on or before 8th day of each month.[68]

Findings of the ICPA as to the correctness of the ending inventory of raw alcohol as of December 31, 2012 are as follows:[69]

Location	**Schedule of Alcohol Inventory as of December 31, 2012 (A)**		**ORB as of January 1, 2013 (B)**	**Certificate of Stock Inventory as of December 31, 2012 (C)**	**Difference Schedule and ORB (A-B)**	**Difference ORB and Certificate (B-C)**	**Note**
	Proof Liters	**Equivalent Tax Payment**	**Proof Liters**	**Proof Liters**	**Proof Liters**	**Proof Liters**	
Raw Alcohol							
Damortis, La Union	1,956,339.00	Php28,719,056.52	1,956,339	1,956,339	–	–	
Sta. Barbara, Pangasinan	2,198,259.36	Php32,270,447.40	2,283,672	2,273,103	(85,412.64)	10,569.00	a
EPSBPI-Cauayan	85,894.98	1,260,938.32	162,342	162,341	(76,447.02)	1.00	b
SNFI Exhibit "P-6", p. 4. -Polo Brewery	613.42	9,004.93	613	613.42	0.42	(0.42)	c
Cabuyao Plant	1,474,797.50	21,650,027.30	1,470,244	1,474,798	4,553.50	(4,553.50)	d
HBO, Makiling	264,600.00	3,884,328.00	245,125	264,600	19,475.00	(19,475.00)	e
BBTI-Bauan	8,091,872.64	118,788,690.35	8,124,705	8,103,820	(32,832.36)	20,885.00	f
SBTI-Calaca	13,432,067.00	197,182,743.52	13,536,569	13,432,067	(104,502.00)	104,502.01	g

[68] Exhibit "P-6", p. 4.
[69] Exhibit "P-6", pp. 5 to 6.

Location	Schedule of Alcohol Inventory as of December 31, 2012 (A)		ORB as of January 1, 2013 (B)	Certificate of Stock Inventory as of December 31, 2012 (C)	Difference Schedule and ORB (A-B)	Difference ORB and Certificate (B-C)	Note
	Proof Liters	Equivalent Tax Payment	Proof Liters	Proof Liters	Proof Liters	Proof Liters	
Lucena Plant	2,703,031.50	39,680,502.42	2,273,765	2,703,032	429,266.50	429,267.00	h
Cotta Depot	5,149,803.00	75,599,108.04	5,149,803	5,149,803	–	–	
EPSBPI-Ligao	232,470.00	3,412,659.60	232,470	232,470	–	–	
Tabangao Depot	3,615,570.00	53,076,567.60	3,615,570	3,615,570	–	–	
Mandaue Plant	737,339.49	10,824,143.71	1,148,970	1,148,970	(411,630.51)	–	i
Ouano Depot	1,785,728.70	26,214,497.31	1,784,631	1,785,728.70	1,097.70	(1,097.70)	j
DBI	14,952,735.00	219,506,149.80	14,952,735	14,952,735	–	–	
Sub-total	**56,681,121.59**	**Php832,078,864.94**					
Compounded Liquor							
Sta. Barbara, Pangasinan	198,320.00	2,911,337.60	198,320	198,320	–	–	
EPSBPI-Cauayan	28,161.14	413,405.59	19,575	19,575	8,586.14	(0.22)	k
SNFI-Polo Brewery	0.53	7.75	–	0.53	0.53	(0.53)	l
Cabuyao Plant	187,060.00	2,746,040.80	187,060	187,060	–	–	
HBO, Makiling	60,880.00	893,718.40	25,827	60,880	35,053.00	(35,053.00)	m
Lucena Plant	79,504.00	1,167,118.72	79,504	79,504	–	–	
EPSBPI-Ligao	167,237.84	2,455,051.49	168,463	167,237.84	(1,225.16)	1,225.16	n
Mandaue Plant	23,833.50	349,875.78	23,966	23,966	(132.50)	–	
Sub-total	**744,997.01**	**10,936,556.13**					
GRAND TOTAL	**57,426,118.60**	**Php843,015,421.07**					

Notes on the differences:

a. As represented by the Petitioner, during the stock taking, alcohol with proof liters of 10,569 was not counted as this was still in the ISO tank and not yet loaded in the plant's tank. However, this is already reflected in the official registry books beginning of 2013.
b. The proof liters and gauge liters per schedule were erroneously interchanged. The proof liters of 85,894.98 should be the gauge liters.
c. The difference is due to rounding off.
d. The difference is due to evaporation loss which is only 0.30% of the total proof liters.
e. The difference is due to evaporation loss which is only 7.40% of the total proof liters.
f. The difference is due to evaporation loss which is only 0.26% of the total proof liters.
g. No reconciliation has been provided by the Petitioner.
h. No reconciliation has been provided by the Petitioner.
i. As represented by the Petitioner, no actual count was made during stock taking since the aged alcohol were stored in numerous oak barrels and blue drums which made it difficult to conduct 100% count in a day.
j. Reading differences.
k. The proof liters and gauge liters per schedule was erroneously interchanged. The proof liters of 28,161 should be the gauge liters.
l. The difference is due to rounding off.
m. No reconciliation has been provided by the petitioner.
n. Reading differences.

The ICPA also noted that all ORBs were filed and stamped received by the BIR except for Exhibit "P-20-13-A". Upon perusal, the Court observed that this represents ORB of Ligao, Albay Plant for the period January 2013 to May 2013.

With regard to the excise tax payments relating to the year-end raw alcohol inventory, Petitioner has three (3) sources: As to alcohol acquired from local registered distillers and from local importers, the excise tax payments were made through reimbursements by Petitioner to said local distillers and importers; for alcohol acquired through direct importation, Petitioner paid appropriate excise taxes on the alcohol upon its release from the Bureau of Customs.

To ascertain that the 2012 year-end inventory of ethyl alcohol were properly subjected to excise taxes amounting to Php843,015,421.07, the ICPA examined the following documents, including the supplemental supports provided by Petitioner:

- Excise Tax Returns for Alcohol Products (BIR Forms No. 2200-A) with payment confirmations;[70]
- Supplier's sales invoices for alcohol purchases;[71]
- Supplier's official receipts for payment of reimbursement of excise tax;[72]
- Supplier's billing statements for reimbursement of excise taxes;[73]
- ETRDs or BIR Forms No. 2299;[74]
- Bills of lading;[75]
- Authority to Release Imported Goods (ATRIG);[76]
- Statement of settlement of duties and taxes, SSDTs;[77]
- Print-outs of SAD;[78]
- Print-outs of IEIRD;[79]
- ODI;[80]
- Checks/deposit slips;[81]
- Additional IEIRDs;[82]
- Additional SSDTs;[83] and
- Additional SADs;[84]

The ICPA's examination of Petitioner's supporting documents to ascertain that corresponding excise taxes were paid on the ending inventory of ethyl alcohol as of December 31, 2012, resulted to the following:[85]

UPDATED FINDINGS BASED ON THE RESULTS OF VERIFICATION OF ADDITIONAL DOCUMENTS PROVIDED (ANNEX 11)

Findings	Proof Liters	Excise Tax
Raw Alcohol ***1. Complete documentation***		

[70] Exhibits "P-19-1" to "P-19-22", Folder No. 15, Box No. 3.
[71] Exhibits "P-11-1" to "P-11-18", Folder No. 4, Box No. 1.
[72] Exhibits "P-14-1" to "P-14-13", Folder No. 10, Box No. 3.
[73] Exhibits "P-18-1" to "P-18-11", Folder No. 14, Box No. 3.
[74] Exhibits "P-12-1" to "P-12-345", Folder No. 5, Box No. 2.
[75] Exhibits "P-13-1" to "P-13-8", Folder No. 9, Box No. 3.
[76] Exhibits "P-21-1" to "P-21-6", Folder No. 30, Box No. 4.
[77] Exhibits "P-16-1" to "P-16-3", Folder No. 12, Box No. 3.
[78] Exhibits "P-15-1" to "P-15-4", Folder No. 11, Box No. 3.
[79] Exhibits "P-17-1" to "P-17-3", Folder No. 13, Box No. 3.
[80] Exhibits "P-22-1" to "P-22-5", Folder No. 31, Box No. 4.
[81] Exhibits "P-25-1" to "P-25-6", Folder No. 40, Box No. 4.
[82] Exhibits "P-17-4" to "P-17-6".
[83] Exhibits "P-16-4 to P-16-5".
[84] Exhibits "P-15-5" to "P-15-6".
[85] Exhibit "P-6.a", pp. 3 to 4.

Supported by supplier's sales invoice for alcohol purchases, supplier's billing statement for the reimbursement of excise tax, supplier's official receipt for the payment of reimbursement of excise tax, excise tax returns (BIR Form No. 2200-A) and its corresponding payment confirmation and Excise Tax Removal Declaration (ETRD).	14,528,569.87	Php-213,279,405.64
Supported by supplier's sales invoice for alcohol purchases, bill of lading, IEIRD, SAD and SSDT.	19,243,346.99	282,492,333.81
Sub-total	**33,771,916.86**	**Php495,771,739.45**
2. Partially supported Supported by supplier's sales invoice for alcohol purchases, supplier's official receipts for payment of reimbursement of excise tax and bill of lading **but with missing IEIRD, SAD and SSDT.**	7,861,125.77	Php115,401,326.23
Supported by supplier's sales invoice for alcohol purchases, bill of lading **but with missing IEIRD, SAD and SSDT.**	7,070,303.31	103,792,052.60
Supported by supplier's billing statements for reimbursement of excise taxes and supplier's official receipt for payment of reimbursement of excise tax but with **missing excise tax returns for alcohol products (BIR Form No. 2200-A) and payment confirmation.**	124,327.74	Php1,825,131.17
Sub-total	**15,055,756.81**	**221,018,510.00**
Supported by Excise Tax Removal Declaration (ETRDs)*	**7,853,447.92**	**115,288,615.39**
<u>Compounded Alcohol</u> 5.***Supporting documents not available for verification*****	**744,997.01**	**10,936,556.14**
GRAND TOTAL	**57,426,118.60**	**Php843,015,420.98**

*Represents 2012 year end inventories supported by ETRDs. ETRDs (BIR Form 2299) are BIR documents issued by the BIR and prepared by the suppliers prior to release of alcohol and transfer to the Petitioner's depot or plant. ETRDs are signed by a BIR Revenue Officer on Premise and a duly authorized representative of the Petitioner.

**Compounded alcohols are alcohols that have undergone the process of compounding or refining. The documents to support the excise tax payments are difficult to identify as to which particular purchases the compounded alcohols originated. However, these alcohols were reflected in the January ORBs.

The Court finds that Petitioner's properly supported quantity of raw alcohol ending inventory is only 41,625,364.78 proof liters with corresponding excise tax payments of Php611,060,354.84, computed as follows:

Raw Alcohol With	Proof Liters	Excise Tax
1. Complete documentation	33,771,916.86	Php 495,771,739.45
2. Supported by ETRDs only	7,853,447.92	115,288,615.39
Valid raw alcohol inventories as of December 31, 2012	**41,625,364.78**	**Php 611,060,354.84**

Additional Purchases of Raw Alcohol in 2013

In addition to the ending inventory as of December 31, 2012, Petitioner purchased alcohol raw materials from local distilleries on January 25, 2013 to February 15, 2013. The purchases totaled 6,564,537 proof liters with corresponding excise tax payments of Php150,984,351.00.

Based on the ICPA's report, the alcohol purchases during January 25, 2013 to February 15, 2013 totaling 6,654,537 proof liters with excise tax payments amounting to Php150,984,351.00 were properly supported by original print-outs of excise tax returns for alcohol products (BIR Forms No. 2200-A) with payment confirmations[86], original ETRDs,[87], scanned copy of supplier's billing statement for reimbursement of excise taxes[88], and original supplier's official receipts for payment of reimbursement of excise taxes[89].

The result of the ICPA's verification is shown in Annex 3 of his report[90], a portion of which is reproduced hereunder:

BIR FORM 2200-A					
EXHIBIT REFERENCE	PAYMENT DATE	PAYMENT REFERENCE (FRN)	PAYMENT TRANSACTION NO.	EFPS CONFIRMATION NO.	EXCISE TAX
P-19-17	25-Jan-2013	061300006842849	134864694	BIR-012513-021700000	5,359,851.00
P-19-18	25-Jan-2013	061300006842786	134864617	BIR-012513-021100000	41,296,500.00
P-19-19	8-Feb-2013	061300006903973	134905434	BIR-020813-0325	52,164,000.00
P-19-20	15-Feb-2013	061300006948616	134943407	BIR-021513-06400000	52,164,000.00

[86] Exhibits "P-19-17" to "P-19-20", Folder No. 15, Box No. 3.
[87] Exhibits "P-12-462", "P-12-504", "P-12-723" and "P-12-793", Folder Nos. 6 and 7, Box No. 2.
[88] Exhibits "P-18-12" to "P-18-15", Folder No. 13, Box No. 3.
[89] Exhibits "P-14-14" to "P-14-19" and "P-14-22" to "P-14-23", Folder No. 9, Box No. 3.
[90] Exhibit "P-6".

TOTAL					Php150,984,351.00

Upon checking the relevant supporting documents, the Court finds that there was proper documentation proving that Petitioner had additional purchases of raw materials in 2013, as above tabulated, for which excise tax amounting to Php150,984,351.00 was paid.

In fine, Petitioner's properly supported tax-paid raw materials only totalled 48,279,901.78 proof liters with corresponding excise taxes payments amounting to Php762,044,705.84, computed as follows:

	Proof Liters	Excise Tax
Properly supported ending inventory as of December 31, 2012	41,625,364.78	Php 611,060,354.84
Properly supported Additional tax-paid raw alcohol purchases in 2013 before RA 10351	6,564,537	150,984,351.00
Total	**48,279,901.78**	**Php 762,044,705.84**

Utilization of Tax-paid Raw Alcohol to produce Finished Goods

The ICPA ascertained that the 2012 ending inventories of alcohol and alcohol purchases during January 08 to February 15, 2013 were the same alcohol utilized to produce the finished goods with excise tax payments of Php581,707,875 and Php133,550,893 respectively, which are the subject matters of the Petitioner's claim.

The ICPA performed a plant visit of Petitioner's depot in Tabangao, Batangas and compounding plant in Cabuyao, Laguna to get an overview of the Petitioner's production process, from purchase of ethyl alcohol up to removal of finished products. As discussed, Petitioner has three sources of alcohol, particularly, (a) from molasses supplied by the Petitioner under tolling arrangements with local registered distilleries, (b) from local importers, and/or (c) directly through importation. All purchases were stored at the Petitioner's depot. There are six depot locations, namely, (a) Damortis, La Union, (b) Tabangao, Batangas, (c) Calaca, Batangas, (d) Bauan, Batangas, (e) Cotta, Lucena and (f) Ouano, Cebu.

The depots will then transfer the alcohol to the compounding plants whenever the latter needs alcohol for processing into finished product. There are four compounding plants location, namely, (a) Sta. Barbara, Pangasinan, (b) Lucena, Quezon (c) Cabuyao, Laguna and (d) Mandaue, Cebu. The transfer of alcohol from depot to compounding plant is mainly documented by ETRDs, way bill, interplant issue document and Form 189. In the compounding plants, the alcohol will undergo stages of compounding/blending until liquor is produced ready for packaging as finished product.

It was noted that there were alcohols that were transferred from compounding plants to tolling plants. These were processed further to produce another kind of beverage or liquor. There are four tolling plants, namely, (a) Ligao, Albay, (b) Hearty Beverage Options, Calamba, (c) Supa Nova, Polo Valenzuela and (d) Cauayan, Isabela. The transfer of compounded alcohol from compounding plants to tolling plants is mainly documented by ETRDs, way bill and interplant issue document.

To verify the flow of the raw alcohol from inventory to production of finished goods, the ICPA obtained and summarized the details found in the ORBs that were filed and received by the BIR[91] for the periods January 01, 2013 to May 31, 2013 for all depots, compounding plants and tolling plants.

The ICPA also vouched the supporting ETRDs[92] and ATRIGs[93] to support the transfer of alcohol from depot to plant and/or plant to tolling and presented detailed summaries of the ORBs of depots[94] and compounding plants and tolling plants[95].

Using the First-in First-out ("FIFO") method of accounting, the ICPA summarized and matched the proof liters of alcohol utilized or processed from the **<u>2012 year-end inventory plus the January 08, 2013 to February 15, 2013 alcohol purchases based on the ORBs with the proof liters of alcohol produced/transferred for packing.</u>**

The ICPA also computed the corresponding excise tax equivalent of finished goods produced/transferred for packing[96]

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[91] Exhibits "P-20-1-A" to "P-20-1-E", "P-20-2-A" to "P-20-2-E", "P-20-3-A" to "P-20-3-E", "P-20-4-A" to "P-20-4-E", "P-20-5-A" to "P-20-5-E", "P-20-6-A" to "P-20-6-E", "P-20-7-A" to "P-20-7-E", "P-20-8-A" to "P-20-8-E", "P-20-9-A" to "P-20-9-E", "P-20-10-A" to "P-20-10-E", "P-20-11-A" to "P-20-11-E", "P-20-12-A" to "P-20-12-E", "P-20-13-A" to "P-20-13-E", "P-20-14-A" to "P-20-14-E", Folder Nos. 16 to 29, Box No. 4.

[92] Exhibits "P-12-346" to "P-12-1612", Folder Nos. 5 to 8, Box No. 2.

[93] Exhibits P-21-7 to P-21-10, Folder No. 30, Box No. 4.

[94] Exhibit "P-6", Annexes 4.1 to 4.6.

[95] Exhibit "P-6", Annexes 5.1 to 5.8.

[96] Exhibit "P-6", Annex 6.

Upon considering and scrutinizing the ICPA report and the accompanying Annexes, the Court's understanding of the process is summarized as follows:

Petitioner utilizes raw alcohol from the beginning inventory of each plant and will receive additional raw alcohol from the depots as needed. It was noted that the alcohol being transferred from depot to plant are the same raw alcohol ending inventory as of December 31, 2012. The raw alcohol will then be issued for compounding, then the compounded alcohol shall be transferred either for tolling or for packing. Those processed under tolling will eventually be transferred for packing, and alcohol transferred to packing is considered finished goods.

The Court checked whether the total amount of goods transferred to packing are actually same as the finished goods that are subject of the present claim by comparing Annexes 5 and 6, and found the following:

Transferred to Packing				**Finished Goods Produced**				
Annex	**Location**	**Proof Liters**		**Annex**	**Location**	**Proof Liters**		**Difference**
5.1	Cabuyao Plant	11,219,527		6.1	Cabuyao Plant	11,219,527		0
5.2	Mandaue, Cebu	2,734,408		6.2	Mandaue, Cebu	2,734,408		0
5.3	Sta. Barbara, Pangasinan	11,305,411		6.3	Sta. Barbara, Pangasinan	11,305,411		0
5.4	Calamba, Laguna	6,133,328		6.4	Calamba, Laguna	6,133,328		0
5.5	Polo Brewery, Valenzuela	58,177		6.5	Polo Brewery, Valenzuela	28,636		29,541
5.6	Cauayan, Isabela	4,473,106		6.6	Cauayan, Isabela	4,370,043		103,063
5.7	Ligao, Albay	2,086,779		6.7	Ligao, Albay	2,085,917		862
5.8	Lucena City	*						
TOTAL		**38,010,736**		**TOTAL**		**37,877,270**		**133,466**

*It appears that it did not produce finished goods since its only column is for alcohol received from depot and transferred to other plants for re-distillation

It is to be noted that the above differences were not explained by Petitioner.

To further examine the utilization of raw alcohol into the production of finished goods, the Court traced the proof liters of "Alcohol Received" found in Annex 5 of the ICPA Report representing the raw alcohol that each plant received from one or several depots, to the "Alcohol Utilized" found in Annex 6. This was done to ascertain that the raw alcohol from the 2012 ending inventory of depots that were subsequently transferred to plants for compounding, tolling and packing in 2013 are the same raw alcohol that went into the finished goods produced during the period of claim (i.e., January 01, 2013 to May 31, 2013). We prepared the following table containing the differences found, as follows:

Alcohol Received from Plant				Alcohol Utilized					Reconciliation	
Annex	**Location**	**Proof Liters**		**Annex**	**Location**	**Proof Liters**		**Difference**	**Beginning Inventory of Raw and Compounded Alcohol Within the Plant**	**Actual Production Difference**
5.1	Cabuyao Plant	11,864,136		6.1	Cabuyao Plant	13,521,440		(1,657,304)	1,657,304	-
5.2	Mandaue, Cebu	2,364,744		6.2	Mandaue, Cebu	3,537,680		(1,172,936)	1,172,936	-
5.3	Sta. Barbara, Pangasinan	11,819,766		6.3	Sta. Barbara, Pangasinan	14,301,758		(2,481,992)	2,481,992	-
5.4	Calamba, Laguna	6,091,250		6.4	Calamba, Laguna	6,362,202		(270,952)	270,952	-
5.5	Polo Brewery, Valenzuela	*		6.5	Polo Brewery, Valenzuela	28,168		(28,168)		
5.6	Cauayan, Isabela	4,467,960		6.6	Cauayan, Isabela	4,637,077		(169,117)	169,117	-
5.7	Ligao, Albay	1,842,750		6.7	Ligao, Albay	2,242,458.00		(399,708)	399,708	-
5.8	Lucena City	**								
TOTAL		**38,450,606**		**TOTAL**		**44,630,783**		**(6,180,177)**		

*This plant did not receive raw alcohol but already compounded alcohol.
** No longer included since Lucena Plant does not produce FG.

It is important to understand that the only point in the production where the Court can determine a 1:1 ratio of raw alcohol inventory to raw alcohol utilized is during issuance to compounding. After compounding, We believe that the proof liters being referred to in the subsequent processes such as transferred to tolling and transferred to packing are already the proof liters of the processed product, and no longer just the raw alcohol.

Therefore, the Court cannot determine exactly the ratio of raw alcohol to finished goods. Instead, it can only find how much raw alcohol was used and how much finished goods were produced during the period of claim, January 01, 2013 to May 31, 2013.

Petitioner has the responsibility to show the utilization of the raw material alcohol into the production of finished goods by way of showing how many units of raw alcohol is required to produce one unit of finished goods. In this manner, the Court will be able to independently compute the extent by which the total amount of tax-paid raw materials, as far as they are validly supported, can produce a certain volume of finished goods during the period of claim. This way, the Court can determine the finished goods that were specifically produced by raw materials recorded as of December 31, 2012 and purchased during January 08, 2013 to February 15, 2013, using also the FIFO method.

It is not enough to prove the fact of utilization of the said tax-paid raw materials by way of the procedures undertaken by the ICPA. It is noted that the ICPA segregated the portion of finished goods produced in the period of January 01, 2013 to May 31, 2013 by allegedly using FIFO.

However, while the ICPA's procedures produced comprehensive results, they were not convincing to the Court for the following reasons:

1. Neither Petitioner nor the ICPA showed how exactly the segregation of finished goods between those produced by raw alcohol purchased before and after the effectivity R.A. No. 10351 was arrived at;

2. The ICPA mentioned using the FIFO method; however, looking at Annexes 6 where the said segregation was presented, the Court does not see how the First-In, First-Out method was employed. Even though the finished goods were arranged according to the date of their removal from the warehouse, there appeared to be finished goods removed as early as January 2013 that were produced using raw alcohol purchased after R.A. No. 10351.

For example, we replicate hereunder a portion of Annex 6 pertaining to finished goods removed from Sta. Barbara Plant that was classified as having been produced using raw alcohol purchased after R.A. 10351 with a single asterisk (*) which We then traced to Annexes 4.2 and 5.3:

						ALCOHOL UTILIZED				
ANNEX	EXHIBIT	DATE	ORIGIN	ANNEX	EXHIBIT	ETRD DATE	ERTD NO.	GL	PROOF	PL
5.3	P-20-9-A	1/21/2013	Damortis, La Union	4.2	P-12-704	1/21/13	432366	22,000	1.89	41,580

FINISHED GOODS PRODUCED	FINISHED GOODS PRODUCED FROM 2012 YEAR-END INVENTORY AND JANUARY 8, 2013 TO	FINISHED GOODS PRODUCED FROM 2013 ALCOHOL PURCHAS	

EXH	DATE	EXH	ETRD DATE	ETRD NO.	PRODUCT DESCRIPTION	NO. OF CASES	GL	PL	FEBRUARY 15, 2013 ALCOHOL PURCHASES (PL)	ES AFTER RA 10351** (PL)	TOTAL PL
P-20-9-B	2/5/2013	P-12-1304	2/5/2013	432905	GSM Round	22,725	190,893	152,714	105,214	47,500	152,714

It can be gleaned from the above that on January 21, 2013 Sta. Barbara, Pangasinan Plant received 41,580 proof liters of alcohol from Damortis, La Union Depot as evidenced by ETRD No. 423266, which the plant utilized to produce a portion of 152,714 proof liters of GSM Round, removed on February 05, 2013 as evidenced by ETRD No. 432905.

After this tracing, the ICPA concluded that the 152,714 proof liters of finished goods is divided into 105,214 proof liters of finished goods produced from purchases before RA 20351, while 47,500 proof liters of FG were produced from purchases of alcohol after RA 10351.

However, the said segregation cannot be ascertained by the Court given only the above information. Moreover, this example occurred on many instances; hence, casting doubt on how much of the claim actually pertains to the finished goods produced by tax-paid raw materials.

3. The disallowed unsupported raw alcohol ending inventory amounting to 15,055,756.81[97] proof liters, as previously discussed, cannot be traced to the finished goods produced therefrom.

In sum, the Court finds that Petitioner failed to prove the factual aspect of its claim for refund.

Well-settled is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[98] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for insufficiency of evidence.

[97] Those found to be partially supported by the ICPA, Exhibit "P-6.a", pp. 3 to 4.
[98] Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc., G.R. No 127105, June 25, 1999.

SO ORDERED.

Ma. Belen S. L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice