REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SAN MIGUEL BREWERY, INC., Petitioner,	CTA CASE NO. 9223
	Members:
-versus-	FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 11 2019 3:12 p.m.

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DECISION

Fabon-Victorino, J.:

This Petition for Review[1] filed by San Miguel Brewery, Inc. on December 22, 2015, prays for the refund or issuance of tax credit certificate (TCC) in the amount of Sixty Million Four Hundred Seventy Thousand One Hundred Ninety-Nine Pesos and 94/100 (₱60,470,199.94), allegedly representing excise taxes erroneously, excessively, and illegally collected by the Bureau of Internal Revenue (BIR) for the period covering January 1, 2014 to December 31, 2014.

THE FACTS

Petitioner San Miguel Brewery, Inc. is a domestic corporation with principal office located at 40 San Miguel Avenue, Mandaluyong City, Metro Manila. It is engaged in the business of manufacture, sale and distribution of

[1] Docket, pp. 10-34.

fermented and malt-based beverages, and one of its beer products is "San Mig Light" (SML).

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) legally empowered to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 21, 2012, Republic Act (R.A.) No. 10351 took effect upon its publication in a newspaper of general circulation. The law amended, among others, Section 143 of the NIRC of 1997[2], which imposes excise tax on fermented liquors.

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[2] The relevant portions of Section 143 of the NIRC of 1997 state as follows:

SEC. 143. Fermented Liquors. - There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except tuba, basi, tapuy and similar fermented liquors in accordance with the following schedule:

Effective on January 1, 2013

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (₱50.60) or less, the tax shall be Fifteen pesos (₱15.00) per liter; and

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (₱50.60), the tax shall be Twenty pesos (₱20.00) per liter.

Effective on January 1, 2014

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (₱50.60) or less, the tax shall be Seventeen pesos (₱17.00) per liter; and

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (₱50.60), the tax shall be Twenty-one pesos (₱21.00) per liter.

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The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance. However, in case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this Section, the four percent (4%) increase shall apply to their respective applicable tax rates.

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On December 27, 2012, the BIR issued Revenue Memorandum Circular (RMC) No. 90-2012, which provides for the revised tax rates, effective January 1, 2013, of alcohol and tobacco products under RA No. 10351. Based on the said RMC, the applicable tax rate for SML, in bottle or in can, is ₱20.57, instead of ₱20.00 as provided in Section 143 of the NIRC of 1997, as amended.

Thereafter, or during the period from January 1, 2013 to December 31, 2013, the BIR allegedly required, and petitioner was constrained to pay excise taxes on its removal of SML at the tax rate of ₱20.57 per liter for SML in bottle and in can and for SML in kegs, when it should have only paid ₱20.00 and ₱15.00 per liter, respectively, under the express provisions of the second and third paragraphs of Section 143 of NIRC of 1997, as amended. Thus, it erroneously or excessively paid the amount of ₱0.57 per liter for SML in bottle and in can and ₱5.57 per liter for SML in kegs, or in the sum of ₱83,019,296.21.

On December 9, 2014, petitioner filed with the BIR a Claim for Refund in the amount of ₱83,019,296.21, representing its erroneously and excessively paid excise taxes on SML for the period from January 1, 2013 to December 31, 2013.

Commencing January 1, 2014, the excise tax rate on SML in bottle, in can and in kegs, was increased to ₱21.39, or a four-percent (4%) add-on to the previous rate of ₱20.57, based on the provision in the eleventh paragraph of Section 143 of the NIRC of 1997, as amended.[3]

During the period from January 1, 2014 to December 31, 2014, petitioner was again required by the BIR and was

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Any downward reclassification of present categories, for tax purposes, of fermented liquors duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited."

[3] Paragraph 11 of Section 143 of the NIRC of 1997, as amended reads:

The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance. However, in case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this Section, the four percent (4%) increase shall apply to their respective applicable tax rates.

again constrained to pay excise taxes on its removal of SML at the tax rate of ₱21.39 per liter for SML in bottle and in can and for SML in kegs, when it should have only paid ₱21.00 and ₱17.00 per liter, respectively, under the express provisions of the fourth and fifth paragraphs of Section 143 of NIRC of 1997, as amended. Thus, it erroneously or excessively paid the amount of ₱0.39 per liter for SML in bottle and in can and ₱4.39 per liter for SML in kegs, or the total amount of ₱60,470,199.94.

On December 15, 2015, petitioner filed with the BIR a claim for refund in the amount of ₱60,470,199.94, representing excise taxes collected by the BIR on SML for the period covering January 1, 2014 to December 31, 2014.

Alleging inaction on its administrative claim for refund/tax credit, petitioner filed the instant Petition for Review before the Court on December 22, 2015.

In his Answer[4] filed on January 29, 2016, respondent assails the jurisdiction of the Court over the case. According to him, petitioner primarily seeks to nullify a provision of RMC No. 90-2012 and the alleged action for refund of erroneously collected excise taxes is merely consequential thereto. Absent the nullification of RMC No. 90-2012, petitioner's cause of action has no leg to stand on. However, the authority to declare void an administrative issuance rest upon courts of general jurisdiction and not on courts of special jurisdiction such as the Court of Tax Appeals (CTA). Further, collateral attack on presumably valid administrative issuance is not allowed.

Likewise, the instant Petition was prematurely elevated to the Court for failure of petitioner to exhaust available administrative remedies. Further, the nullification of the ₱20.57 excise tax rate specified in RMC No. 90-2012 does not fall under the special jurisdiction granted by statute to the CTA. Decisions rendered by administrative bodies like the BIR in the exercise of their quasi-legislative power is appealable to the Secretary of Finance whose decision may be elevated to the Office of the President before it could reach the Court.

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[4] Docket, pp. 92-111.

Further, even assuming that the Court has jurisdiction over the present case, petitioner is not entitled to a tax refund as there were no erroneously or illegally collected excise taxes. For respondent, there was no reclassification of SML because it has always been classified as a variant of San Miguel Pale Pilsen or more accurately, as a low-calorie derivative thereof. Further, petitioner is already estopped from questioning the classification of SML as a variant of San Miguel Pale Pilsen, on account of its prior representations. Further, the fact that the second part of the definition of the term "variant brand" under the NIRC of 1997 was deleted, does not alter the fact that SML is a variant of San Miguel Beer (SMB).

In conclusion, respondent states that claims for refund are construed strictly against the taxpayer and in favor of the government.

After the pre-trial conference on April 19, 2016[5], the parties filed their Joint Stipulation of Facts, Documents, Issues and Other Matters[6] on May 13, 2016, upon which the Pre-Trial Order dated June 7, 2016[7] was based.

During the trial, petitioner presented Noemi L. Ronquillo and Jerome Antonio B. Constantino, as its witnesses.

Petitioner's Accounting and Financial Services Manager, **Noemi L. Ronquillo** declared[8] that she is responsible for the preparation of petitioner's financial statements, payment processing, inclusive of the computation and payment of all taxes, petitioner's insurance requirements, cash planning and financial systems. She likewise assists petitioner's Chief Finance Officer (CFO), in the submission and filing of documents with the BIR, including claims for refund of taxes illegally, excessively and/or erroneously paid by petitioner to the BIR.

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[5] Docket, p. 219.
[6] Docket, pp. 235-242.
[7] Docket, pp. 245-253.
[8] Exhibits "P-2" and "P-2-a".

Petitioner is a domestic corporation registered with the SEC, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila. It is engaged in the business of manufacture, sale and distribution of fermented and malt-based beverages, including SML, as well as water, water-based and non-alcoholic beverages.

She continued to state that after the enactment of R.A. No. 10351, petitioner, starting January 1, 2013 to December 31, 2013, paid excise tax on SML, in bottle, in can and in kegs, at the rate of ₱20.57 per liter. However, from January 1, 2014 to December 31, 2014, petitioner paid excise tax on SML, in bottle, in can and in kegs, at the increased rate of ₱21.39 per liter. The said 2014 excise tax payments are the subject of the instant case.

The witness also testified that petitioner paid the excise tax of ₱20.57 per liter from January 1, 2013 to December 31, 2013 in view of RMC No. 90-2012[9], issued by respondent CIR on December 27, 2012. RMC No. 90-2012 provides for the revised tax rates, effective January 1, 2013, of locally manufactured fermented liquors, among other alcohol products, implementing R.A. No. 10351, which amended, the provision of Section 143 of the NIRC of 1997, on fermented liquors. It further provides that effective January 1, 2014 until December 31, 2014, the tax rate will be increased to ₱21.39 per liter, or a 4% add-on to the previous rate of ₱20.57.

On the other hand, Section 143 of the NIRC of 1997, as amended by R.A. No. 10351, states that the excise tax on fermented liquors effective January 1, 2013, shall be ₱15.00 per liter if the net retail price per liter is ₱50.60 or less; and ₱20.00 per liter if the net retail price per liter is more than ₱50.60. Under Section 143 of the NIRC of 1997, as amended, the applicable excise tax rate for SML in bottle and in can is ₱20.00 per liter, as it was within the Tier 2 bracket, while for SML in kegs, the applicable tax rate is ₱15.00 per liter since it was within the Tier 1 bracket.

However, despite the lower tax rates provided under Section 143 of the NIRC of 1997, for the period commencing

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[9] Exhibit "P".

January 1, 2013 to December 31, 2013, petitioner was constrained to pay excise tax rate of ₱20.57 per liter for SML in bottle and in can and for SML in kegs, as required by the BIR, in order for it to make removal of its SML products. Such payments of excise taxes were under protest as prior to the amendment of Section 143 of the NIRC of 1997, SML, being a new, medium-priced brand, was subject to excise tax at the rate of ₱15.49 per liter. However, with the amendment of Section 143, the BIR required petitioner to pay the tax rate of ₱20.57 per liter, which is the tax rate per liter for high-priced brands, claiming that SML was a variant of "Pale Pilsen". Petitioner, including its parent company, San Miguel Corporation, had questioned the said imposition by the BIR before the Court and the Supreme Court which are still pending, on the principal ground that the BIR had unlawfully reclassified SML as a variant under the old provisions of Section 143 of the NIRC of 1997.

The witness further declared that on December 9, 2014, petitioner filed with the BIR a Letter/Claim for Refund in the amount of ₱83,019,296.21, for its erroneously, excessively, illegally and/or wrongfully assessed and collected excise taxes pertaining to SML for the period January 1, 2013 to December 31, 2013.

Section 143 of the NIRC of 1997, as amended by R.A. No. 10351, states that effective January 1, 2014, the excise tax on fermented liquors shall be ₱17.00 per liter, if the net retail price per liter is ₱50.60 or less but if the net retail price per liter is more than ₱50.60, the tax shall be ₱21.00 per liter. Under the cited provision, the applicable excise tax rate for SML in bottle and in can is ₱21.00 per liter, as it is within the Tier 2 bracket, while for SML in kegs, the applicable tax rate is ₱17.00 per liter since it is within the Tier 1 bracket.

Just like in 2013, petitioner was constrained to pay, as required by the BIR, excise tax at the rate of ₱21.39 per liter for SML in bottle and in can and for SML in kegs, when it should have paid only ₱21.00 per liter and ₱17.00 per liter, respectively, as provided under Section 143 of the NIRC of 1997, as amended. Thus, during the period January 1, 2014 to December 31, 2014, there was an excess assessment and collection in the amount of ₱0.39 per liter for SML in bottle and in can and ₱4.39 per liter for SML in kegs, aggregately valued at ₱60,470,199.94.

On December 15, 2015, petitioner filed a second Letter/Claim for Refund[10] in the amount of ₱60,470,199.94, for its erroneously, excessively, illegally and/or wrongfully assessed and collected excise taxes for SML for the period from January 1, 2014 to December 31, 2014.

The witness claimed that she was personally involved in the preparation of the supporting Schedules of "Summary of San Mig Light Removals and Tax Payment"[11], "San Mig Light Removals and Tax Payment, San Mig Bottles and Cans"[12] and "San Mig Light Removals and Tax Payment, San Mig Light in Kegs"[13] for the period January to December 2014, attached in the 2015 Letter/Claim for Refund. In the preparation of the said Schedules, she utilized petitioner's Excise Tax Returns, BIR Filing Reference Statements, BIR Electronic Filing and Payment System Confirmation Receipts, BIR Tax Payment Deposit Slips, Bank of the Philippine Islands ExpressLink and Tax Payment Confirmation Receipts and Union Bank of the Philippines Payment Status Forms, among others.

Petitioner also presented the Court-commissioned Independent Certified Public Accountant (ICPA), **Jerome Antonio B. Constantino**, who testified[14] that he audited and evaluated petitioner's documents and record in support of its claim for refund dated December 10, 2015, pertaining to its excess excise taxes paid to the BIR on SML for the period January 1, 2014 to December 31, 2014.

Per his audit and as stated in his ICPA Report filed with the Court on October 7, 2016[15], petitioner is entitled to a tax refund of excise taxes it paid to the BIR on SML for the period January 1, 2014 to December 31, 2014 in the total amount of ₱60,470,199.94

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[10] Exhibits "P-1" to "P-1-aa".
[11] Exhibit "P-1-c".
[12] Exhibits "P-1-d" to "P-1-o".
[13] Exhibits "P-1-p" to "P-1-aa".
[14] Exhibits "P-5" and "P-5-a".
[15] Exhibit "P-3".

Petitioner rested after it formally offered its evidence per Resolutions dated October 20, 2017[16] and January 31, 2018[17].

On the other hand, respondent, through his counsel, manifested that he had no evidence to present.[18]

On April 11, 2018, the case was submitted for decision[19] after the parties filed their respective memoranda.

THE ISSUES

The parties submitted the following main and sub-issues[20] for the Court's resolution:

1) Whether petitioner is entitled to a refund by the BIR of the amount of ₱60,470,199.94 as having been erroneously, excessively, illegally and/or wrongfully collected from and overpaid by it as excise taxes on San Mig Light for the period from January 1, 2014 up to December 31, 2014.

2) Whether the excise tax rate of ₱21.39 per liter imposed by respondent on San Mig Light in bottle, in can, and in kegs during the period from January 1, 2014 to December 31, 2014, is directly contradictory to and inconsistent with, and violative of, the express provisions of Section 143 of the NIRC of 1997, as amended by RA No. 10351, and therefore not valid.

3) Whether RMC No. 90-2012 was issued without prior notice and hearing to petitioner.

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[16] Docket, pp. 396-397.
[17] Docket, pp. 412-413.
[18] Minutes of the Hearing dated February 20, 2018, docket, p. 414.
[19] Docket, p. 488.
[20] Pars. 4.00 to 4.02.b., Joint Stipulation of Facts, Documents, Issues and other Matters, docket, p. 214.

4) Whether or not the Honorable Court ha jurisdiction to act on the instant Petition for Review

Petitioner's arguments

Petitioner avers that the imposition of ₱21.39 excise tax on SML is invalid as it is contradictory to and inconsistent with Section 143 of the NIRC of 1997, as amended by R.A. No. 10351, which provides for only two excise tax rates for the period January 1, 2014 to December 31, 2014, *i.e.,* ₱17.00 for fermented liquors with net retail price of ₱50.60 or less and ₱21.00 for fermented liquors with net retail price of more than ₱50.60. Likewise, the 4% increase applied by respondent is invalid since the increase is expressly made applicable effective January 1, 2018, and not January 1, 2014. Moreover, the downward reclassification prohibition referred to is not present in this case.

Petitioner also argues that RMC No. 90-2012, which imposed the excise tax rate of ₱20.57 for SML in bottle and in can, is not valid since it was issued without prior notice and hearing in violation of its constitutional and statutory right to due process. For these reasons, it is entitled to a refund in the amount of ₱60,470,199.94, representing its erroneous, excessive, illegal and/or wrongfully collected excise taxes on SML for the period from January 1, 2014 to December 31, 2014.

Respondent's arguments

Respondent reiterates its arguments that the authority to declare an administrative issuance as void is conferred by the Constitution upon courts of general jurisdiction, and not on courts of special jurisdiction such as the CTA. Hence, this Court lacks jurisdiction to declare null and void the provision of RMC No. 90-2012 imposing excise tax rate of ₱20.57 on SML. Besides, petitioner failed to exhaust available administrative remedies depriving this Court of jurisdiction to entertain the present petition assailing the validity of the provisions of RMC No. 90-2012. Decisions rendered by administrative bodies like the BIR in the exercise of their quasi-legislative power is appealable to the Secretary of Finance, then to the Office of the President, and eventually to the regular courts.

Further, respondent claims that there was no erroneous payment of excise taxes, neither was there a reclassification of SML as it has always been classified as a variant of an existing brand. According to respondent, San Miguel Pale Pilsen and SML are the same beer considering that both are pale pilsens, and that SML is a variant or derivative of San Miguel Pale Pilsen.

THE RULING OF THE COURT

The Court shall first determine whether the present action has been seasonably filed.

Sections 204(C) and 229 of the NIRC of 1997, as amended, provides for the periods within which to file the administrative and judicial claims for refund of tax erroneously or illegally collected, to wit:

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

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> 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.
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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 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.

Sections 204(C) and 229 of the NIRC of 1997 govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the Tax Code.[21] Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. It must however be stressed that both the claim for refund with the BIR and the subsequent appeal to the CTA must be filed within the two (2)-year period from the date of payment of tax. [22]

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

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[21] *Commissioner of Internal Revenue v. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue v. Insular Lumber Co.*, G.R. No. L-24221, December 11, 1967.

[22] *CBK Power Company Limited v. Commissioner of Internal Revenue,* G.R. Nos. 193383-84, January 14, 2015 *and Commissioner of Internal Revenue v. CBK Power Company Limited*, G.R. Nos. 193407-08, January 14, 2015.

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.* -

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(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**: xxxx *(Emphasis supplied)*

Relative thereto, Section 11 of Revenue Regulations (RR) No. 02-97, provides that:

SEC. 11. *Time, Manner and Place of Payment.* -

11.1 *For Locally produced Alcohol Products.*

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*)

The record shows that petitioner availed of the advance payment or deposit scheme respecting the excise taxes due on its locally manufactured fermented liquor or beer products. Thus, the 2-year period prescribed in Sections 204 and 229 of the NIRC of 1997, as amended, should be reckoned from the date of actual withdrawal/removal of the beer products from place of production, as it was only at that point that the deposits were recognized as payments for excise tax.

For the year 2014, petitioner paid advance excise tax deposits for its beer products from all of its six (6) plant locations, namely, (1) Polo, Valenzuela[23]; (2) Mandaue, Cebu[24]; (3) San Fernando, Pampanga[25]; (4) Davao[26]; (5)

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[23] Exhibits "P-4-1" to "P-4-490".
[24] Exhibits "P-4-492" to "P-4-980".
[25] Exhibits "P-4-982" to "P-4-1476".

Bacolod[27]; and (6) Sta. Rosa, Laguna[28], in the aggregate sum of ₱23,396,576,000.04, as evidenced by the Excise Tax Returns (BIR Form No. 2200-A) duly filed and paid by petitioner through the BIR's Electronic Filing and Payment System (eFPS) on January 2, 2014, at the earliest up to December 29, 2014, at the latest.

As earlier stated, the 2-year prescriptive period shall be counted from the date of actual removal of petitioner's beer products from place of production. Thus, the 2-year prescriptive period shall be reckoned from January 2, 2014, the earliest date when petitioner paid its advance excise tax deposits for its beer products from all its 6 plants through the BIR eFPS, up to December 29, 2014, the latest date when petitioner paid its advance excise tax deposits for its beer products from all its 6 plants also through the BIR eFPS. Counting from said dates, petitioner had 2 years from January 2, 2014 or until January 2, 2016, to file its claim for refund both in the administrative and judicial levels.

Clearly, petitioner's administrative and judicial claims for refund were seasonably filed on December 15, 2015[29], and on December 22, 2015, respectively.

Veering towards the issue of the Courts jurisdiction to hear and determine the case, petitioner claims that the basis for its claim for refund/TCC is the invalidity RMC No. 90-2012 which imposes excise tax rate of ₱21.39, which is allegedly contrary to and inconsistent with Section 143 of the NIRC of 1997, as amended. Citing various cases, petitioner believes that the CTA has the power to rule on the validity of a particular administrative rule or regulation by virtue of its certiorari powers[30]. By constitutional mandate, the CTA is vested with jurisdiction to issue writs of certiorari in cases falling within its exclusive appellate jurisdiction.[31] Further, the jurisdiction to review the rulings of respondent CIR pertains to the CTA, not the RTC.[32] Allegedly, the Court

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[26] Exhibits "P-4-1478" to "P-4-1964".
[27] Exhibits "P-4-1966" to "P-4-2448".
[28] Exhibits "P-4-2450" to "P-4-2936".
[29] Exhibits "P-1" and "P-1-b".
[30] *Phil. American Life and General Insurance Co. v. Sec. of Finance, et.al.* 741 SCRA 578.
[31] *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014.
[32] *Commissioner v. Leal*, G.R. No. 113459, November 18, 2002.

has in the past struck down issuances of the BIR as null and void. Punctuating its position, petitioner claims that the CTA, albeit a specialized court, possesses all the inherent powers of a Court of Justice, as expressly provided under R.A. No. 1125, as amended.

Petitioner as well asserts that contrary to respondent's assertion, exhaustion of administrative remedies is not applicable to the instant case as it falls under the exception because its right to due process was violated[33].

Respondent, on the other hand, insists that the Court lacks jurisdiction to declare void the provision in RMC No. 90-2012 imposing excise tax rate of ₱20.57 since the authority to do so belongs to the courts of general jurisdiction such as the RTC, and not on courts of special jurisdiction such as the CTA.

Even assuming *arguendo* that the petitioner's primary cause of action is a claim for refund of excise taxes paid, and that the nullification of RMC No. 90-2012 is merely consequential, still the case cannot be allowed as the same is a collateral attack on a presumably valid administrative issuance.

Besides, failure on the part of petitioner to exhaust available administrative remedies, *i.e.,* assail the validity of RMC No. 90-2012 before the office of the Secretary of Finance, then to the Office of the President before going to the Court, deprives the Court of the required competence to entertain the petition.

The Court cannot but agree with petitioner.

In the case of *San Miguel Brewery, Inc. v. Commissioner of Internal Revenue*[34] involving the same parties and issues but with different taxable periods, the CTA *En Banc* held that the Court has jurisdiction to determine the validity and/or constitutionality of rules and regulations, and other administrative issuances of the BIR,

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[33] *Buena, Jr. v. Benito*, G.R. No. 181760, October 14, 2014.
[34] CTA EB No. 1772 (CTA Case No. 8955), September 19, 2018.

as pronounced by the Supreme Court *En Banc* in the case of *Banco De Oro, et al. v. Republic, viz*:

> We revert to the earlier rulings in *Rodriguez, Leal,* and *Asia International Auctioneers, Inc.* **The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.**
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> **Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues**:
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> Section 7. Jurisdiction. - The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
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> 2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by

the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

> **In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems.** Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.
>
> Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. **Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.**
>
> Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.' *(Emphasis and underscoring supplied)*

To emphasize the CTA's competence to take cognizance of petitioner's judicial claim for refund and at the same time rule on the issue of validity and/or constitutionality of RMC No. 90-2012, the Court *En Banc* states:

Bearing in mind the foregoing jurisprudential precepts, the Court *En Banc* holds that the CTA has jurisdiction to take cognizance of petitioner's judicial claim for refund and, at the same time, resolve the issue of validity and/or constitutionality of RMC No. 90-2012.

To begin with, the validity and constitutionality of RMC No. 90-2012 were directly pleaded and duly raised as issues in petitioner's judicial claim for refund. As borne by the records, the Petition for Review before the Court in Division had raised the following grounds: (1) the excise tax rate of ₱20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for 'San Might (sic) Light' in bottle and in can is directly contradictory to and inconsistent with, and violative of, the express provisions of Section 143 of the National Internal Revenue Code, as amended by Republic Act No. 10351, and is therefore not valid; and (2) the aforesaid tax rate of ₱20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for 'San Mig Light' in bottle and in can is not valid on the additional ground that RMC No. 90-2012 was issued without prior notice and hearing to the petitioner in utter disregard of the due process provision of the Constitution and the process required by mandatory provisions of the Administrative Code of 1987. In addition, petitioner also expressly prayed, among others, that a judgment be rendered 'declaring the excise tax rate of ₱20.57 per liter for 'San Mig Light' in bottle, can and kegs, specified in RMC No. 90-2012, as not valid'.

Finally, the validity and/or constitutionality of RMC No. 90-2012 is also the *lis mota* of petitioner's judicial claim for refund. Petitioner filed the judicial claim for refund to compel respondent to refund the amount representing the difference between the amount of excise tax computed based on the rates provided under RMC No. 90-2012 and those under Section 143 of the 1997 NIRC, as amended by RA No. 10531. The Petition for Review was filed based on the theory that the aforesaid revenue issuance is invalid and unconstitutional. Petitioner's thesis is

> that an administrative issuance that is contrary to the provisions of law and/or the Constitution has no legal effect. Accordingly, it has no legal obligation to pay taxes in excess of what is legally required. Correspondingly, the amount of taxes already paid pursuant to an invalid and/or unconstitutional revenue issuance should be refunded as mandated by Section 229 of the 1997 NIRC. Verily, the issue of validity and/or constitutionality of RMC No. 90-2012 is inextricably linked to the issue of whether petitioner is entitled to the refund of the amount claimed. It is the declaration of invalidity and/or unconstitutionality of RMC No. 90-2012 which essentially triggers the refund.

In the case at bar, the validity and/or constitutionality of the assailed RMC No. 90-2012 is the *lis mota* of the case, as it is essentially related to the issue of whether petitioner is entitled to the refund of the amount claimed. Applying the ruling in the afore-quoted cases, it is clear that the Court has the authority to rule not only on the propriety of the instant claim for refund but also on the validity and/or constitutionality of RMC No. 90-2012.

There is no question that RMC No. 90-2012, upon which the BIR anchored its imposition of a higher rate of excise tax on petitioner's SML was issued to implement the amendments made by R.A. 10351 to Section 143 of the NIRC of 1997. In other words, it was issued in valid exercise of respondent's right to interpret tax laws, a power explicitly vested in him under Section 4 of the NIRC, as amended.

On the merit of petitioner's claim for refund in the amount of ₱60,470,199.94 representing its alleged erroneously, excessively, illegally and/or wrongfully collected and overpaid excise taxes on SML for the period January 1, 2014 to December 31, 2014, Section 143 of the NIRC of 1997, as amended by R.A. No. 10351, provides for the excise tax rates of fermented liquors, as follows:

> SEC. 143. *Fermented Liquors.* – There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except *tuba, basi, tapuy* and

similar fermented liquors in accordance with the following schedule:

Effective on January 1, 2013

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (₱50.60) or less, the tax shall be Fifteen pesos (₱15.00) per liter; and

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (₱50.60), the tax shall be Twenty pesos (₱20.00) per liter.

Effective on January 1, 2014

(a) **If the net retail price** (excluding the excise tax and the value-added tax) **per liter of volume capacity is Fifty pesos and sixty centavos (₱50.60) or less, the tax shall be Seventeen pesos (₱17.00) per liter**; and

(b) **If the net retail price** (excluding the excise tax and the value-added tax) **per liter of volume capacity is more than Fifty pesos and sixty centavos (₱50.60), the tax shall be Twenty-one pesos (₱21.00) per liter**.

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The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance. However, in case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this

Section, the four percent (4%) increase shall apply to their respective applicable tax rates.

Fermented liquors which are brewed and sold at micro-breweries or small establishments such as pubs and restaurants shall be subject to the rate of Twenty-eight pesos (₱28.00) per liter effective on January 1, 2013: *Provided,* That this rate shall be increase by four percent (4%) every year thereafter effective on January 1, 2014, through revenue regulations issued by the Secretary of Finance.

Fermented liquors introduced in the domestic market after the effectivity of this Act shall be initially tax classified according to their suggested net retail prices.

'Suggested net retail price' shall mean the net retail price at which locally manufactured or imported fermented liquor are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the newly introduced fermented liquor against the net retail price as defined herein and initially determine the correct tax bracket to which a newly introduced fermented liquor, as defined above, shall be classified. After the end of nine (9) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket which a newly introduced fermented liquor shall be classified.

'Net retail price' shall mean the price at which the fermented liquor is sold on retail in at least five (5) major supermarkets in Metro Manila (for brands of fermented liquor marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed outside Metro Manila, the 'net retail price' shall mean the price at which the fermented liquor is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

Major supermarkets, as contemplated under this Act, shall be those with the highest annual gross sales in Metro Manila or the region, as the case may be, as determined by the National Statistics Office, and shall exclude retail outlets or kiosks, convenience or sari-sari stores, and others of a similar nature: *Provided*, That no two (2) supermarkets in the list to be surveyed are affiliated and/or branches of each other: *Provided, finally,* That in case a particular fermented liquor is not sold in major supermarkets, the price survey can be conducted in retail outlets where said fermented liquor is sold in Metro Manila or the region, as the case may be, upon the determination of the Commissioner of Internal Revenue.

The net retail price shall be determined by the Bureau of Internal Revenue (BIR) through a price survey under oath.

The methodology and all pertinent documents used in the conduct of the latest price survey shall be submitted to the Congressional Oversight Committee on the Comprehensive Tax Reform Program created under Republic Act No. 8240.

Understatement of the suggested net retail price by as much as fifteen percent (15%) of the actual net retail price shall render the manufacturer or importer liable for additional excise tax equivalent to the tax due and difference between the understated suggested net retail price and the actual net retail price.

Any downward reclassification of present categories, for tax purposes, of fermented liquors duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited.

The proper tax classification of fermented liquors, whether registered before or after the effectivity of this Act, shall be determined every two (2) years from the date of effectivity of this Act.

All fermented liquors existing in the market at the time of the effectivity of this Act shall be classified according to the net retail prices and the tax rates provided above based on the latest price survey of the fermented liquors conducted by the Bureau of Internal Revenue.

The methodology and all pertinent documents used in the conduct of the latest price survey shall be submitted to the Congressional Oversight Committee on the Comprehensive Tax Reform Program created under Republic Act No. 8240.

Every brewer or importer of fermented liquor shall, within thirty (30) days from the effectivity of this Act, and within the first five (5) days of every month thereafter, submit to the Commissioner a sworn statement of the volume of sales for each particular brand of fermented liquor sold at his establishment for the three-month period immediately preceding.

Any brewer or importer who, in violation of this Section, misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall, upon final findings by the Commissioner that the violation was committed, be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as brewer or importer of fermented liquor.

> Any corporation, association or partnership liable for any of the acts or omissions in violation of this Section shall be fined treble the amount of deficiency taxes, surcharges and interest which may be assessed pursuant to this Section.
>
> Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.
>
> If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation. *(Emphasis supplied)*

On December 21, 2012, or on the same day when R.A. No. 10351 took effect, the BIR promulgated RR No. 17-2012[35], prescribing the guidelines to implement the revised tax rates on alcohol and tobacco products pursuant to the provisions of RA No. 10351.

Subsequently, or on December 27, 2012, the BIR issued RMC No. 90-2012[36], providing the initial classifications, effective January 1, 2013, of alcohol and tobacco products according to the tax rates prescribed under R.A. No. 10351, based on the 2010 price survey of these products conducted by the BIR. In Annex "A-1" of said RMC, SML in bottle was indicated as having a net retail price of ₱47.99, while SML in can, with a net retail price of ₱61.51. Hence, SML in bottle was classified as belonging to those whose net retail price is ₱50.60 per liter and below, while SML in can was classified under those whose net retail price was more than ₱50.60. Nevertheless, the applicable excise tax rate per liter of both SML in bottle and in can was

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[35] 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.

[36] Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "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".

indicated to be ₱20.57. SML in kegs was however not included in the said RMC.

On January 8, 2013, the BIR issued RMC No. 3-2013[37] to clarify certain provisions of RR No. 17-2012 and to further amend and clarify the initial tax classifications of alcohol and tobacco products published under RMC No. 90-2012.

Petitioner stated that it paid the ₱20.57 excise tax rate per liter under protest because the BIR has reclassified SML as a variant under the old provision of Section 143 of the NIRC of 1997, hence, subject to the tax rate of ₱20.57 per liter instead of ₱15.49. However, the old excise tax rate was ₱15.49 per liter for medium-priced beer products, while ₱20.57 was the old excise tax rate for high-priced beer products.[38] In fine, petitioner paid excise taxes on SML at the rate of ₱20.57 per liter from January 1, 2013 to December 31, 2013, by reason of RMC No. 90-2012, and that effective January 1, 2014 until December 31, 2014, the rate of ₱20.57 was increased by the BIR to ₱21.39 per liter, or a 4% add-on to the previous rate of ₱20.57, per the eleventh paragraph of Section 143 of the NIRC of 1997, as amended.[39]

It is therefore safe to presume that the BIR applied the downward reclassification prohibition on SML in RMC No. 90-2012 since the BIR maintained the ₱20.57 excise tax rate for 2013 despite the provision prescribing the excise tax rates of ₱15.00 and ₱20.00 for the same period in RA No. 10351.

As to the classification of SML, it has long been settled that SML is a new brand and not a variant of an existing brand. In the case of *Commissioner of Internal Revenue v. San Miguel Corporation*[40], the Supreme Court ruled that the reclassification by the BIR of SML from "new brand" to "variant of an existing brand" was improper. Consequently, the Supreme Court affirmed the CTA *En Banc*'s ruling to

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[37] Clarifying Certain Provisions of Revenue Regulations No. 17-2012 Implementing the Provisions of Republic Act No. 10351 as well as the Provisions of Revenue Memorandum Circular No. 90-2012 Providing the Initial Tax Classifications of Alcohol and Tobacco Products.
[38] Par. 1.03, JSFI, docket, pp. 236-237.
[39] Exhibit "P-2".
[40] G.R. Nos. 205045 and 205723, January 25, 2017.

refund San Miguel Corporation's erroneously paid taxes at the rates of ₱13.61 (2004) and ₱16.33 (2005) which should have been paid at ₱10.25 (2004) and ₱12.30 (2005). The High Court declared as follows:

> In any event, petitioner's letters and Notices of Discrepancy, which effectively changed San Mig Light's brand's classification from '*new brand*' to '*variant* of existing brand,' necessarily changes San Mig Light's tax bracket. Based on the legislative intent behind the classification freeze provision, petitioner has no power to do this.
>
> A reclassification of a fermented liquor brand introduced between January 1, 1997 and December 31, 2003, such as 'San Mig Light,' must be by act of Congress. There was none in this case.
>
> xxx xxx xxx
>
> 'San Mig Light' and 'Pale Pilsen' do not share a root word. Neither is there an existing brand in the list (Annexes C-1 and C-2 of the Tax Code) called 'San Mig' to conclude that 'Light' is a suffix rendering 'San Mig Light' as its 'variant.' As discussed in the Court of Tax Appeals Decision, 'San Mig Light' should be considered as one brand name.
>
> Respondent's statements describing San Mig Light as a low-calorie variant is not conclusive of its classification as a *variant* for excise tax purposes. Burdens are not to be imposed nor presumed to be imposed beyond the plain and express terms of the law. 'The general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.'
>
> Furthermore, respondent's payment of the higher taxes starting January 30, 2004 after deficiency assessments were made cannot be

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considered as an admission that its San Mig Light is a variant. Section 130(A)(2) of the Tax Code requires payment of excise tax 'before removal of domestic products from place of production.' These payments were made in protest as respondent subsequently filed refund claims.

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Respondent had already acquired a vested right on the tax classification of its San Mig Light as a *new brand*. To allow petitioner to change its position will result in deficiency assessments in substantial amounts against respondent to the latter's prejudice.

The authority of the Bureau of Internal Revenue to overrule, correct, or reverse the mistakes or errors of its agents is conceded. However, this authority must be exercised reasonably, *i.e.*, only when the action or ruling is patently erroneous or patently contrary to law. For the presumption lies in the regularity of performance of official duty, and reasonable care has been exercised by the revenue officer or agent in evaluating the facts before him or her prior to rendering his or her decision or ruling – in this case, prior to the approval of the registration of San Mig Light as a *new brand* for excise tax purposes. A contrary view will create disorder and confusion in the operations of the Bureau of Internal Revenue and open the administrative agency to inconsistencies in the administration and enforcement of tax laws.

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In G.R. No. 205045, the Court of Tax Appeals *En Banc* ruled that 'San Mig Light' is a new brand and not a variant of an existing brand. Accordingly, it ordered the refund of erroneously collected excise taxes on 'San Mig Light' products in the amount of ₱926,169,056.74 for the period of December 1, 2005 to July 31, 2007.

> In G.R. No. 205723, the Court of Tax Appeals *En Banc* found proper the refund of erroneously collected excise taxes on 'San Mig Light' products in the amount of ₱781,514,772.56 for the period of February 2, 2004 to November 30, 2005. It referred to, and agreed with, the findings of the Court-commissioned Independent Certified Public Accountant Normita L. Villaruz on reaching this amount. The Court of Tax Appeals also found, from the records, that respondent timely filed its administrative claim for refund on December 28, 2005, and its judicial claim on January 31, 2006.
>
> This Court accords the highest respect to the factual findings of the Court of Tax Appeals. We recognize its developed expertise on the subject as it is the court dedicated solely to considering tax issues, unless there is a showing of abuse in the exercise of authority. We find no reason to overturn the factual findings of the Court of Tax Appeals on the amounts allowed for refund.

Clearly, the previous classification of SML as a high-priced brand was invalid. Consequently, the imposition of ₱21.39 excise tax rate per liter on SML for the year 2014, based on the excise tax rate of high-priced brands of fermented liquor, was likewise erroneous.

We now proceed to determine whether petitioner was able to substantiate its claim for refund in the amount of ₱60,470,199.94, representing its erroneously paid excise taxes on SML for the period covering January 2 to December 29, 2014.

As of December 31, 2014, the Net Retail Price per liter of volume capacity of SML products per its Schedule of Net Retail Price of SML Products[41] were as follows:

Product	Suggested Retail Price per Liter	VAT	Excise Tax per Liter	Net Retail Price per Liter
SML 330ml Bottle	₱ 84.85	₱ 9.09	₱ 21.39	₱ 54.36
SML 330ml Can	115.15	12.34	21.39	81.42

[41] Exhibit "P-4-p".

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SML Keg 15L	78.47	8.41	21.39	48.67
SML Keg 30L	78.47	8.41	21.39	48.67
SML Keg 50L	₱ 78.56	₱ 8.42	₱ 21.39	₱ 48.75

Petitioner posits that under the fourth and fifth paragraphs of Section 143 of the NIRC of 1997, as amended by RA No. 10351, the applicable tax rate for SML in bottle or in can starting January 1, 2014, was ₱21.00 per liter since the NRP per liter was more than ₱50.60 whereas for SML in kegs, the applicable tax rate was ₱17.00 per liter since the NRP was less than ₱50.60.

Based on the above schedule, petitioner submits that the erroneous, excessive, illegal and/or wrongful assessment and collection of excise taxes arose from respondent's imposition on SML in bottle, in can, and in keg, of excise taxes at the rate of ₱21.39 per liter commencing January 1, 2014, notwithstanding the tax rate imposed in the fourth and fifth paragraphs of Section 143 of the NIRC of 1997, as amended. Thus, from January 2, 2014 to December 29, 2014, petitioner was constrained to pay respondent excise taxes at the rate of ₱21.39 per liter on its removals of SML in bottle, in can, and in keg, hence, it erroneously and excessively paid the amount of ₱0.39 per liter for SML in bottle and in can, and ₱4.39 per liter for SML in keg, or in the sum of ₱60,470,199.94.

On the other hand, R.A. No. 10351 provides that all fermented liquors existing in the market at the time of its effectivity shall be classified according to the net retail prices and the tax rates provided based on the latest price survey of the fermented liquors conducted by the BIR. In relation thereto, Section 12 of RR No. 17-2012, which implemented the said law provides that alcohol and tobacco products shall be initially classified according to the tax rates prescribed by the Act based on the 2010 price survey of these products conducted by the BIR, to wit:

> SEC. 12. *Transitory Provisions*. – Upon the effectivity of the Act, the following transitory provisions shall be strictly observed by all concerned:

✓

> (a) **All alcohol and tobacco products existing in the market at the time of the effectivity of this Act shall be initially classified according to the tax rates prescribed by the Act based on the 2010 price survey of these products conducted by the Bureau of Internal Revenue (BIR), subject to the prohibition against downward reclassification on fermented liquors**: *Provided, however,* That in case of alcohol and or tobacco products that were introduced after the 2010 price survey but before the effectivity of the Act, their respective tax classification or rate shall be based on the suggested net retail price declared in latest sworn statement filed by the local manufacturer or importer, as the case may be. **The Commissioner of Internal Revenue shall issue a Revenue Memorandum Circular containing the tax classifications/rates applicable to all alcohol and tobacco products existing in the market at the time of the effectivity of the Act.** *(Emphasis supplied)*

Consequently, the BIR issued RMC No. 90-2012 which, among others, provided the lists of the different brands of locally manufactured fermented liquors with their corresponding type of packaging, content per type of packaging, net retail price, and applicable excise tax rate per liter. The said list, however, did not include SML in kegs.

Subsequently, the BIR issued RMC No. 3-2013, which clarified that with respect to alcohol products not included in the Annexes of RMC No. 90-2012, their respective initial classification or rate shall be based on the suggested net retail price declared in the latest sworn statement filed by the manufacturer and importer, as the case may be, *viz:*

> This Circular is, likewise, issued in order to further amend and clarify the initial tax classifications of alcohol and tobacco products published under Revenue Memorandum Circular (RMC) No. 90-2012 dated December 27, 2012, as follows:

xxx xxx xxx

> 2. With respect to other alcohol and tobacco products that were not included in any of the Annexes of the said RMC, their respective initial tax classification or rate shall be based on the suggested net retail price declared in the latest sworn statement filed by the manufacturer and importer, as the case maybe.

From the above provision, the initial tax classification of SML in kegs should be based on the suggested net retail price declared in the latest sworn statement filed by petitioner. In Section 7 of RR No. 17-2012, the BIR prescribed the list of information to be shown in the said Sworn Statement, to wit:

> "SEC. 7. *Submission of Sworn Statement.* – Every local manufacturer or importer of alcohol and tobacco products shall a [sic] **duly notarized manufacturer's or importer's sworn statement** for alcohol or tobacco product showing, among others, the following information:
>
> (a) Name, address, TIN and assessment number of the manufacturer or importer;
>
> (b) Complete root name of the brand as well as the complete brand name with modifiers, if any;
>
> (c) Complete specifications of the brand detailing the specific measurements, weights, manner of packaging, etc.;
>
> (d) Name(s) of the region(s) where the brand is/are to be marketed;
>
> (e) Wholesale price per case, gross and net of VAT and excise tax;

(f) Suggested retail price, gross and net of VAT and excise tax, per pack or per bottle, as the case may be;

(g) Detailed production/importation costs and all other expenses incurred or to be incurred until the product is finally sold (*e.g.*, materials, labor, overhead, selling and administrative expenses) per case;

(h) Applicable rate of excise tax per unit of measure or value, as the case may be; and

(i) Corresponding excise and value-added taxes per case." *(Emphasis supplied)*

Perusal of the record however reveals that petitioner failed to submit a sworn statement in the format required by the existing rules and regulations. Petitioner's Schedule of Net Retail Price of SML Products did not qualify as the Sworn Statement as required under the rules, hence, the same could not be utilized as basis of the NRP of SML in kegs. Hence, the Court deems it proper to deny petitioner's claimed excise taxes on SML in kegs, since there is no evidence that its net retail price was ₱46.41/46.47 per liter as claimed by petitioner.

In the report of the Court-commissioned ICPA dated October 7, 2016[42], petitioner's total refund claim of ₱60,470,199.94 is categorized into "bottles and cans" and "kegs" as follows:

Date	"San Mig Light" Removals (in liters)	2014 Payment @₱21.39	Bottles and Cans Should Be @₱21.00	Kegs Should Be @₱17.00	Difference	
					Bottles and Cans	Kegs
January						
Bottles & Cans	11,396,000.88	₱ 243,760,458.82	₱ 239,316,018.48		₱ 4,444,440.34	
Kegs	98,190.00	2,100,284.10		₱ 1,669,230.00		₱ 431,054.10
February						
Bottles & Cans	10,471,079.52	223,976,390.93	219,892,669.92		4,083,721.01	
Kegs	58,120.00	1,243,186.80		988,040.00		255,146.80
March						

[42] Exhibit "P-3".

Bottles & Cans	11,440,297.44	244,707,962.24	240,246,246.24		4,461,716.00	
Kegs	81,670.00	1,746,921.30		1,388,390.00		358,531.30
April						
Bottles & Cans	11,331,563.76	242,382,148.83	237,962,838.96		4,419,309.87	
Kegs	75,990.00	1,625,426.10		1,291,830.00		333,596.10
May						
Bottles & Cans	12,599,832.96	269,510,427.01	264,596,492.16		4,913,934.85	
Kegs	75,580.00	1,616,656.20		1,284,860.00		331,796.20
June						
Bottles & Cans	11,748,147.84	251,292,882.30	246,711,104.64		4,581,777.66	
Kegs	74,840.00	1,600,827.60		1,272,280.00		328,547.60
July						
Bottles & Cans	10,551,016.08	225,686,233.95	221,571,337.68		4,114,896.27	
Kegs	98,030.00	2,096,861.70		1,666,510.00		430,351.70
August						
Bottles & Cans	10,970,459.28	234,658,124.00	230,379,644.88		4,278,479.12	
Kegs	79,580.00	1,702,216.20		1,352,860.00		349,356.20
September						
Bottles & Cans	12,434,550.48	265,975,034.77	261,125,560.08		4,849,474.69	
Kegs	101,630.00	2,173,865.70		1,727,710.00		446,155.70
October						
Bottles & Cans	11,756,250.00	251,466,187.50	246,881,250.00		4,584,937.50	
Kegs	80,850.00	1,729,381.50		1,374,450.00		354,931.50
November						
Bottles & Cans	13,469,227.20	288,106,769.81	282,853,771.20		5,252,998.61	
Kegs	89,530.00	1,915,046.70		1,522,010.00		393,036.70
December						
Bottles & Cans	14,901,258.24	318,737,913.75	312,926,423.04		5,811,490.71	
Kegs	150,460.00	3,218,339.40		2,557,820.00		660,519.40
Total	**144,134,153.68**	**₱3,083,029,547.22**	**₱3,004,463,357.28**	**₱18,095,990.00**	**₱55,797,176.63**	**₱4,673,023.31**

As discussed, the total excise tax claim on SML in kegs in the aggregate amount of ₱4,673,023.31 is disallowed; thus, only the excise tax claim on SML in bottles and cans in the sum of ₱55,797,176.63 may be refunded.

As found by the ICPA, the amount of ₱55,797,176.63 emanated from the ₱23,327,862,888.61 excise taxes due and applied removals of beer products of petitioner's six brewery plants located in (1) Polo, Valenzuela, (2) Mandaue, Cebu, (3) San Fernando, Pampanga, (4) Davao, (5) Bacolod, and (6) Sta. Rosa, Laguna. The amount of ₱23,327,862,888.61 was duly supported by petitioner's Monthly Movement Report with Allocated Deposits and the Monthly Removal Schedules of the six (6) plants, which clearly showed that petitioner's SML products were subjected to excise tax rate of ₱21.39 for the period from January to December 2014, to wit:

Exhibit	Period	Total Excise Tax Paid for All Beer Products	Total "San Mig Light" Removal and Excise Tax Paid			
			Product	Volume (In Liters)	Tax Rate	Excise Tax Paid
P-4-d-1.1 to P-4-d-1.7	January	1,715,002,572.71	SML CAN	827,632.08	21.39	₱ 17,703,050.19
			SML BOTTLE	10,568,368.80	21.39	226,057,408.63
			SML DRAFT 30 LITERS	26,640.00	21.39	569,829.60
			SML DRAFT 50 LITERS	71,550.00	21.39	1,530,454.50
			Subtotal			**245,860,742.92**
P-4-d-2.1 to P-4-d-2.7	February	1,656,861,692.04	SML CAN	416,694.96	21.39	8,913,105.19
			SML BOTTLE	10,054,384.56	21.39	215,063,285.74
			SML DRAFT 30 LITERS	21,420.00	21.39	458,173.80
			SML DRAFT 50 LITERS	36,700.00	21.39	785,013.00
			Subtotal			**225,219,577.73**
P-4-d-3.1 to P-4-d-3.7	March	1,942,688,141.12	SML CAN	684,691.92	21.39	14,645,560.17
			SML BOTTLE	10,755,605.52	21.39	230,062,402.07
			SML DRAFT 30 LITERS	26,220.00	21.39	560,845.80
			SML DRAFT 50 LITERS	55,450.00	21.39	1,186,075.50
			Subtotal			**246,454,883.54**
P-4-d-4.1 to P-4-d-4.7	April	1,915,583,658.47	SML CAN	719,587.44	21.39	15,391,975.34
			SML BOTTLE	10,611,976.32	21.39	226,990,173.48
			SML DRAFT 30 LITERS	26,490.00	21.39	566,621.10
			SML DRAFT 50 LITERS	49,500.00	21.39	1,058,805.00
			Subtotal			**244,007,574.93**
P-4-d-5.1 to P-4-d-5.7	May	2,126,071,070.62	SML CAN	934,045.20	21.39	19,979,226.83
			SML BOTTLE	11,665,787.76	21.39	249,531,200.19
			SML DRAFT 30 LITERS	22,980.00	21.39	491,542.20
			SML DRAFT 50 LITERS	52,600.00	21.39	1,125,114.00
			Subtotal			**271,127,083.21**
P-4-d-6.1 to P-4-d-6.7	June	1,989,207,881.24	SML CAN	763,004.88	21.39	16,320,674.38
			SML BOTTLE	10,985,142.96	21.39	234,972,207.91
			SML DRAFT 30 LITERS	24,240.00	21.39	518,493.60
			SML DRAFT 50 LITERS	50,600.00	21.39	1,082,334.00
			Subtotal			**252,893,709.90**
P-4-d-7.1 to P-4-d-7.7	July	1,768,248,540.97	SML CAN	768,533.04	21.39	16,438,921.73
			SML BOTTLE	9,782,483.04	21.39	209,247,312.23
			SML DRAFT 30 LITERS	32,580.00	21.39	696,886.20
			SML DRAFT 50 LITERS	65,450.00	21.39	1,399,975.50
			Subtotal			**227,783,095.65**
P-4-d-8.1 to P-4-d-8.7	August	1,714,514,051.27	SML CAN	762,513.84	21.39	16,310,171.04
			SML BOTTLE	10,207,945.44	21.39	218,347,952.96
			SML DRAFT 30 LITERS	25,830.00	21.39	552,503.70
			SML DRAFT 50 LITERS	53,750.00	21.39	1,149,712.50
			Subtotal			**236,360,340.20**
P-4-d-9.1 to P-4-d-9.7	September	2,039,851,372.65	SML CAN	788,182.56	21.39	16,859,224.96
			SML BOTTLE	11,646,367.92	21.39	249,115,809.81
			SML DRAFT 30 LITERS	36,930.00	21.39	789,932.70
			SML DRAFT 50 LITERS	64,700.00	21.39	1,383,933.00
			Subtotal			**268,148,900.47**
P-4-d-10.1 to P-4-d-10.7	October	1,888,721,444.04	SML CAN	1,019,517.84	21.39	21,807,486.60
			SML BOTTLE	10,736,732.16	21.39	229,658,700.90
			SML DRAFT 30 LITERS	25,350.00	21.39	542,236.50
			SML DRAFT 50 LITERS	55,500.00	21.39	1,187,145.00
			Subtotal			**253,195,569.00**
P-4-d-11.1 to P-4-d-11.7	November	2,131,894,330.13	SML CAN	1,043,269.92	21.39	22,315,543.59
			SML BOTTLE	12,425,957.28	21.39	265,791,226.22

			SML DRAFT 30 LITERS	23,280.00	21.39	497,959.20
			SML DRAFT 50 LITERS	66,250.00	21.39	1,417,087.50
			Subtotal			**290,021,816.51**
P-4-d-12.1 to P-4-d-12.7	December	2,439,218,144.76	SML CAN	1,314,498.24	21.39	28,117,117.35
			SML BOTTLE	13,586,760.00	21.39	290,620,796.40
			SML DRAFT 30 LITERS	42,810.00	21.39	915,705.90
			SML DRAFT 50 LITERS	107,650.00	21.39	2,302,633.50
			Subtotal			**321,956,253.15**
TOTAL		**₱23,327,862,900.02**				**₱3,083,029,547.22**

(See also "Annex 4" of the ICPA report.)

Furthermore, petitioner submitted the Official Register Book (ORB) and Sworn Statement of the Volume of Removals (SSR) duly signed and attested by BIR Revenue-Officer-On-Premise (ROOP),[43] which were all examined by the ICPA. The ORB and SSR included information, among others, on the total volume of removals of each beer products including SML and the corresponding taxes due as well as the beginning balance of excise tax deposits, total deposits paid and the ending balance of the outstanding excise tax deposits. The ORBs and SSRs were signed by a designated BIR ROOP in the brewery plants and were filed with the BIR on or before the 8th day of each month.[44]

Additionally, petitioner presented the Excise Tax Removal Declarations (ETRDs)[45] and Official Delivery Invoices (ODIs)[46] duly signed and attested to by BIR ROOP, and which were likewise examined by the ICPA. The ICPA noted, however, that a total amount of excise tax of ₱13,095,135.96 (612,208.32 liters at ₱21.39) pertaining to SML removals was without supporting ETRDs at the time of the ICPA's verification. In any event, the said amount was reflected in the Monthly Removals Schedules and ORB duly signed by the BIR ROOP.

Further, petitioner present other related documents supporting the removals of SML for the period covered by the claim such as Shipping Memoranda[47], Issue/Receipt Documents[48], Plant Breakages Report[49], Gate Pass[50],

[43] Exhibits "P-4-e" to "P-4-e-71".
[44] Per Annex 7 of the ICPA Report, SML removals supported by the ORBs and SSRs tallied the amount of ₱3,083,029,547.22.
[45] Exhibits "P-4-f" to "P-4-f-1366".
[46] Exhibits "P-4-g" to "P-4-g-244".
[47] Exhibits "P-4-h" to "P-4-h-25137" and "P-4-I" to "P-4-i-8".
[48] Exhibits "P-4-j" to "P-4-j-243".
[49] Exhibits "P-4-k" to "P-4-k-7".

Delivery Receipts[51], Claim Memoranda[52], and Stock Transfer Receipts[53].

In fine, petitioner was able to establish that it is entitled to a refund or issuance of tax credit certificate corresponding to its erroneously, excessively, and/or illegally collected excise taxes due on the removals of SML in bottles and in cans for the period January 2, 2014 to December 29, 2014, but in the reduced amount of ₱55,797,176.63.

WHEREFORE, the instant Petition for Review filed by petitioner San Miguel Brewery, Inc. on December 22, 2015, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner San Miguel Brewery, Inc. the amount of ₱55,797,176.63, representing erroneously, excessively, and/or illegally collected excise taxes due on its removals of San Mig Light in bottles and in cans for the period covering January 2, 2014 to December 29, 2014.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[50] Exhibits "P-4-l" to "P-4-l-98".
[51] Exhibits "P-4-m" to "P-4-m-831".
[52] Exhibits "P-4-n" to "P-4-n-6".
[53] Exhibits "P-4-o" to "P-4-o-25".

ATTESTATION

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

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice