**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

# SECOND DIVISION

**PMFTC, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 10110**

Members:

**CASTAÑEDA, JR.,** *Chairperson, and*
**BACORRO-VILLENA,** *JJ.*

Promulgated:

NOV 25 2021

3:57 p.m.

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## DECISION

**CASTAÑEDA, JR., *J.:***

### THE CASE

The *Petition for Review* filed on July 11, 2019 prays for the refund and/or issuance of tax credit certificate in the amount of ₱2,747,529,700.00, allegedly representing petitioner's excise tax paid for cigarette packs containing less than twenty (20) sticks, for taxable period beginning on January 1, 2014 until December 31, 2015.[1]

### THE PARTIES

Petitioner PMFTC, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines,[2] and is registered with the Bureau of Internal Revenue (BIR) under Taxpayer

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[1] Summary of the Case, Pre-Trial Order dated November 27, 2019, Docket – Vol. II, p. 481.
[2] Exhibit "P-1", Docket – Vol. III, pp. 867 to 873.

Identification Number (TIN) 007-515-588-000,[3] with address at Plants C & D, Champaca Street, Brgy. Fortune, Marikina City.

It is a member of the Philippine Tobacco Institute, Inc. (PTI).[4]

Respondent is the duly appointed Commissioner of Internal Revenue with office address at BIR Building, Diliman, Quezon City.[5]

## THE FACTS

On December 20, 2012, President Benigno S. Aquino III signed Republic Act (RA) No. 10351[6], otherwise known as the Sin Tax Reform Law. RA No. 10351 restructured the excise tax on alcohol and tobacco products by amending pertinent provisions of RA No. 8424, known as the Tax Reform Act of 1997 or the National Internal Revenue Code (NIRC) of 1997.[7]

Section 5 of RA No. 10351, which amended Section 145(C) of the NIRC of 1997, increased the excise tax rate of cigars and cigarettes and allowed cigarettes packed by machine to be packed in other packaging combinations of not more than 20.[8]

On December 21, 2012, the Secretary of Finance (SOF), upon recommendation of respondent, issued Revenue Regulations (RR) No. 17-2012.[9] Section 11 thereof imposes an excise tax on individual cigarette pouches of 5's and 10's even if they are bundled or packed in packaging combinations not exceeding 20 cigarettes.[10]

Pursuant to Section 11 of RR No. 17-2012, respondent issued Revenue Memorandum Circular (RMC) No. 90-2012 dated December 27, 2012.[11] Annex "D-1" of RMC No. 90-2012 provides for the initial

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[3] Exhibit "P-2", Docket – Vol. III, pp. 887.
[4] Refer to *Secretary of Finance, et al. vs. Philippine Tobacco Institute*, G.R. No. 210251, April 17, 2017.
[5] Par. 1, Summary of Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. II, p. 463.
[6] 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.
[7] Refer to *Secretary of Finance, et al. vs. Philippine Tobacco Institute*, G.R. No. 210251, April 17, 2017.
[8] *Id.*
[9] SUBJECT: 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.
[10] Refer to *Secretary of Finance, et al. vs. Philippine Tobacco Institute*, G.R. No. 210251, April 17, 2017.
[11] SUBJECT: 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

classifications in tabular form, effective January 1, 2013, of locally-manufactured cigarette brands packed by machine according to the tax rates prescribed under RA No. 10351 based on the (1) 2010 BIR price survey of these products, and (2) suggested net retail price declared in the latest sworn statement filed by the local manufacturer or importer.[12]

On January 16, 2013, prior to the payment of excise tax on its cigarette packs of 10's, petitioner wrote the BIR stating that the payment was being made under protest and without prejudice to its right to question the issuances through remedies available under the law.[13]

Petitioner then paid excise taxes on the 20's cigarette packs and 2x10's cigarette packaging combinations from February 20, 2014 until December 17, 2015.[14]

On February 26, 2013, PTI filed a petition for declaratory relief with an application for writ of preliminary injunction with the Regional Trial Court (RTC). PTI sought to have RR No. 17-2012 and RMC No. 90-2012 declared null and void for allegedly violating the Constitution and imposing tax rates not authorized by RA No. 10351. PTI stated that the excise tax rate of either ₱12 or ₱25 under RA No. 10351 should be imposed only on cigarettes packed by machine in packs of 20's or packaging combinations of 20's and should not be imposed on cigarette pouches of 5's and 10's.[15]

In the Decision dated October 7, 2013, the RTC granted the petition for declaratory relief. The dispositive portion of the Decision states:

> "WHEREFORE, premised on the foregoing, the Petition for Declaratory Relief is GRANTED. The assailed portions of Revenue Regulation 17-2012 and Revenue Memorandum Circular 90-2012 are declared NULL AND VOID and OF NO FORCE AND EFFECT. Respondents are to immediately cease and desist from implementing Sec.

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141, 142, 143, 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".

[12] Refer to *Secretary of Finance, et al. vs. Philippine Tobacco Institute*, G.R. No. 210251, April 17, 2017.

[13] Par. 2, Summary of Admitted Facts, JSFI, Docket – Vol. II, p. 463; Exhibit "P-4", Docket – Vol. I, pp. 35 to 36.

[14] Exhibits "P-26-1" to "P-26-262", and "P-27-1" to "P-27-105".

[15] Refer to *Secretary of Finance, et al. vs. Philippine Tobacco Institute*, G.R. No. 210251, April 17, 2017.

> 11 of Revenue Regulation 17-2012 and Revenue Memorandum Circular 90-2012 insofar as the cigarettes packed by machine are concerned.
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> The tax rates imposed by RA No. 10351 should be imposed on the whole packaging combinations of 20's, regardless of whether they are packed by pouches of 2x10's or 4x5's, etc.
>
> SO ORDERED."[16]

Hence, the then SOF Cesar V. Purisima and then Commissioner of Internal Revenue Kim S. Jacinto-Henares, through the Office of the Solicitor General, filed a petition for review on *certiorari* before the Supreme Court, assailing the said RTC Decision dated October 7, 2013.[17] The case was docketed as G.R. No. 210251, entitled *Secretary of Finance Cesar V. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares, Petitioners, versus Philippine Tobacco Institute, Inc., Respondent* ("*Purisima* case"). The High Court then issued a temporary restraining order against PTI and the RTC, the dispositive portion of which states:

> "NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, the respondent, the RTC, Br. 253, Las Piñas City, their representatives, agents or other persons acting on their behalf are hereby RESTRAINED from enforcing the assailed Decision dated 7 October 2013 of the RTC, Br. 253, Las Piñas City in SCA Case No. 13-0003.
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> GIVEN by the HONORABLE SENIOR ASSOCIATE JUSTICE ANTONIO T. CARPIO, Chairperson of the Secon Division of the Supreme Court of the Philippines, on 09 June 2014."[18]

On April 17, 2017, the Supreme Court denied the said petition for review on *certiorari*, and affirmed the RTC Decision dated October

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[16] *Id.*

[17] *Secretary of Finance, et al. vs. Philippine Tobacco Institute*, G.R. No. 210251, April 17, 2017.

[18] Docket – Vol. I, pp. 39 to 40; Refer also to *Secretary of Finance, et al. vs. Philippine Tobacco Institute*, G.R. No. 210251, April 17, 2017.

7, 2013.[19] This judgment of the Supreme Court became final and executory on July 12, 2017.[20]

On June 13, 2019, petitioner filed with the BIR, an *Application for Tax Credits / Refunds* (BIR Form No. 1914),[21] and the letter dated June 11, 2019,[22] requesting for the refund and/or issuance of a tax credit certificate, representing alleged erroneous excise tax payments for calendar years 2014 and 2015, in the aggregate amount of ₱2,747,529,700.00.

Petitioner filed the present *Petition for Review* on July 11, 2019.[23]

Respondent filed his *Answer* on September 24, 2019,[24] interposing certain special and affirmative defenses, to wit: (1) both the administrative and judicial claims for refund were filed out of time; and (2) petitioner is not entitled to the claim for refund or issuance of tax credit for alleged erroneously/excessively paid excise taxes.

Petitioner filed its *Reply (To: Respondent's Answer dated 23 September 2019)* on October 10, 2019.[25]

The pre-trial conference was set and held on October 24, 2019.[26] Prior thereto, petitioner's *Pre-Trial Brief* was filed on October 21, 2019,[27] while *Respondents' Pre-Trial Brief* was submitted on October 22, 2019.[28]

On November 13, 2019, the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI).[29] The Pre-Trial Order was then issued on November 27, 2019,[30] thereby approving and adopting the said JSFI, and deeming the termination of the pre-trial.

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[19] *Id.*
[20] Entry of Judgment for G.R. No. 210251 issued by Atty. Basilia T. Ringol, Deputy Clerk of Court of the Second Division and Chief Judicial Records Officer of the Supreme Court, Docket – Vol. I, p. 55.
[21] Exhibit "P-11", Docket – Vol. I, p. 56.
[22] Exhibit "P-11-1", Docket – Vol. I, pp. 57 to 67.
[23] Docket – Vol. I, pp. 10 to 34.
[24] Docket – Vol. I, pp. 82 to 89.
[25] Docket – Vol. I, pp. 93 to 102.
[26] *Notice of Pre-Trial Conference* dated September 27, 2019, Docket – Vol. I, pp. 91 to 92; Minutes of the hearing held on, and Order dated, October 24, 2019, Vol. II, pp. 447 to 448.
[27] Docket – Vol. I, pp. 428 to 438.
[28] Docket – Vol. I, pp. 441 to 444.
[29] Docket – Vol. II, pp. 463 to 467.
[30] Docket – Vol. II, pp. 481 to 485.

Trial then proceeded.

During trial, petitioner presented its documentary and testimonial evidence. It offered the testimonies of: (1) Mr. Charleston Amurao,[31] petitioner's Head of Tax Cluster; (2) Atty. Carmen Mercedes Herce,[32] Director for External Affairs of petitioner; (3) Mr. Luhung Hsu,[33] Manager Factory Logistics of the Batangas Plant of petitioner; (4) Mr. Aneo C. Panis,[34] Manager Factory Logistics of the Marikina Plant of petitioner; and (5) Atty. Ma. Cecilia C. Katigbak,[35] the Court-commissioner Independent Certified Public Accountant (ICPA).[36]

The ICPA *Report* was submitted on January 14, 2020.[37]

On March 2, 2020, *Formal Offer of Evidence for Petitioner* was filed.[38] Respondents submitted his *Comment* on June 10, 2020.[39] In the Resolution dated June 24, 2020,[40] the Court admitted petitioner's Exhibits, *except* for: (1) Exhibits "P-10" and "P-10-1", for failure to present originals for comparison; and (2) Exhibits "P-29-56", "P-35-186", "P-35-322", "P-35-360", "P-35-438", "P-35-498", and "P-36-605", for not being found in the records of the case. In the same Resolution, the Court ordered respondent to transmit the *BIR Records* of the case.

During the hearing held on July 27, 2020, respondent's counsel manifested that there is no report of investigation, thus, she will no longer present any evidence. On the other hand, petitioner's counsel manifested that she will be filing a motion for reconsideration on the Resolution on its formal offer of evidence.[41]

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[31] Exhibits "P-15" and "P-19", Docket – Vols. I and II, pp. 122 to 145, and 489 to 492, respectively; Minutes of the hearing held on, and Order dated, December 2, 2019, Docket – Vol. II, pp. 496 to 497.
[32] Exhibits "P-16", Docket – Vol. II, pp. 501 to 510; Minutes of the hearing held on, and Order dated, January 29, 2020, Docket – Vol. II, pp. 673 to 674.
[33] Exhibits "P-17", Docket – Vol. II, pp. 679 to 687; Minutes of the hearing held on, and Order dated, February 24, 2020, Docket – Vol. II, pp. 704 and 710-A, respectively.
[34] Exhibits "P-18", Docket – Vol. II, pp. 693 to 701; Minutes of the hearing held on, and Order dated February 24, 2020, Docket – Vol. II, pp. 704 to 710, respectively.
[35] Exhibit "P-20", Docket – Vol. II, pp. 516 to 525; Minutes of the hearing held on, and Order dated, January 29, 2020, Docket – Vol. II, pp. 673 to 674.
[36] *Oath of Commission* dated December 2, 2019, Docket – Vol. II, p. 495; Minutes of the hearing held on, and Order dated, December 2, 2019, Docket – Vol. II, pp. 496 to 497.
[37] Exhibit "P-21".
[38] Docket – Vol. III, pp. 847 to 866.
[39] Docket – Vol. IV, pp. 1464 to 1466.
[40] Docket – Vol. IV, pp. 1476 to 1479.
[41] Minutes of the hearing held on, and Order dated, July 27, 2020, Docket – Vol. IV, pp. 1480 to 1481.

The Court received the *BIR Records* for the instant case on July 29, 2020.[42]

On August 24, 2020, petitioner filed a *Partial Motion for Reconsideration (Re: Resolution dated 24 June 2019)*.[43] Respondent failed to file his comment thereon.[44] In the Resolution dated October 30, 2020,[45] the Court granted the said *Partial Motion for Reconsideration* of petitioner, and resolved to admit Exhibits "P-29-56", "P-35-186", "P-35-322", "P-35-360", "P-35-438", "P-35-498" and "P-36-605".

On December 7, 2020, respondents' *Memorandum* was posted;[46] and on January 8, 2021, the *Memorandum for the Petitioner* was filed.[47]

The instant case was considered submitted for decision on January 15, 2021.[48]

## THE ISSUES

Petitioner and respondent submit for the resolution of this Court the following issues:

> "1. whether or not the Honorable Court has jurisdiction over the present case; and
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> 2. whether or not Petitioner is entitled to a refund or issuance of a tax credit certificate in the total amount of Php2,747,529,700.00, representing overpaid excise tax on cigarette packs of 10's withdrawn from its production plants from 1 January 2014 until 31 December 2015."[49]

***Petitioner's arguments:*** *gr*

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[42] *Compliance* dated July 290, 2020, Docket – Vol. IV, pp. 1482 to 1484.
[43] Docket – Vol. IV, pp. 1488 to 1490.
[44] Records Verification dated October 6, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1403.
[45] Docket – Vol. IV, pp. 1405 to 1406.
[46] Docket – Vol. IV, pp. 1419 to 1427.
[47] Docket – Vol. IV, pp. 1430 to 1461.
[48] Resolution dated January 15, 2021, Docket – Vol. IV, p. 1464.
[49] Stipulation of Issues, JSFI, Docket – Vol. II, pp. 463 to 464.

Petitioner argues that it is settled that the excise tax collected by respondent pursuant to Section 11 of RR No. 17-2012, and Annex "D-1" of RMC No. 90-2012 was excessive and violative of the provisions of the Tax Code; that the Court has jurisdiction over the instant case; and that petitioner was able to fully substantiate the excess excise tax payments in the amount of ₱2,747,529,700.00 made pursuant to RR No. 17-2012, and RMC No. 90-2012, for taxable years 2014 and 2015.

***Respondent's counter-arguments:***

Respondent contends that both the administrative and judicial claims for refund were filed out of time; and that petitioner is not entitled to the claim for refund or issuance of tax credit for alleged erroneously/excessively paid excise taxes.

**THE COURT'S RULING**

The present *Petition for Review* must be dismissed.

***Petitioner's administrative and judicial claims were filed out of time.***

Sections 204(C) and 229 of the NIRC of 1997 read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
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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." *(Emphasis added)*

"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 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." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. **Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional**. The Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[50]

In this case, the payment of the subject excise taxes were made from February 20, 2014 until December 17, 2015.[51] Hence, the two-year prescriptive period under the aforequoted Sections 204(C) and 229, at the earliest, should end on February 20, 2016, and at the

[50] *Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative,* G.R. No. 209776, December 7, 2016.
[51] Exhibits "P-26-1" to "P-26-262", and "P-27-1" to "P-27-105".

latest, should end on December 17, 2017. Considering that petitioner's administrative claim and the present judicial claim were filed only on June 13, 2019,[52] and on July 11, 2019,[53] respectively, petitioner's refund claim are clearly filed out of time. Thus, this Court cannot take cognizance of the same.

***Under the present state of the law, the two (2)-year prescriptive period runs from the date of payment of the tax, regardless of any supervening cause that may arise thereafter.***

Petitioner argues that in this case, the special circumstance which warrants the suspension of the two (2)-year prescriptive period is the *Temporary Restraining Order* (TRO) issued by the Supreme Court in the *Purisima* case. According to petitioner, in deference to the said TRO, it continuously paid under protest the excise taxes allegedly due to the government under the subject revenue issuances, pending the appeal filed by the SOF.

Furthermore, petitioner contends that the two (2)-year prescriptive period must likewise be suspended to avoid unjust enrichment on the part of the government at the expense of the taxpayer; that the said two (2)-year prescriptive period may be suspended for reasons of equity and other special circumstances; that it would be grossly inequitable to apply the strict prescriptive period under Section 229; and that the principles of *solutio indebiti* applies to the government.

This Court does not agree with petitioner.

The second paragraph of the aforequoted Section 229 of the NIRC of 1997 is plain and clear: "***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***". Thus, no supervening cause may interrupt the running of the said two (2)-year prescriptive period. 

[52] Exhibit "P-11", Docket – Vol. I, p. 56; Exhibit "P-11-1", Docket – Vol. I, pp. 57 to 67.
[53] Docket – Vol. I, pp. 10 to 34.

The precursor for the said Section 229 of the NIRC of 1997 is Section 306 of the NIRC of 1939, which provided as follows:

> "SEC. 306. *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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but 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 begun after the expiration of two years from the date of payment of the tax or penalty."

A plain reading thereof would reveal that the phrase "*regardless of any supervening cause that may arise after payment*". is not present. Thus, in *Commissioner of Internal Revenue vs. Central Azucarera Don Pedro*,[54] the Supreme Court said:

> "...The petition for review, however, was filed beyond the two-year prescriptive period fixed in **Section 306 of the Tax Code** and the Court of Tax Appeals dismissed the same upon motion by the Collector. The case was thereafter brought before this Court for review on appeal, and We held that **'the prescriptive period to two (2) years *from payment*, fixed by Section 306 of the Tax Code, cannot apply to the present case,'** on the ground that the advance sales tax in question was not erroneously or illegally collected but that although it was legitimately due when paid the tax payer subsequently became entitled to a partial refund **by reason of a <u>supervening</u> circumstance**, namely, the re-exportation of the imported materials. The ruling was subsequently clarified by this Court in later case, *Commissioner of Internal Revenue vs. Insular Lumber Co.*, Dec. 11, 1967, 21 SCRA 1237. It was there held that **Sections 306** and 309 of the Internal Revenue Code

[54] G.R. No. L-28467, February 28, 1973.

> were intended to govern all kinds of refunds of internal revenue taxes – those taxes imposed and collected pursuant to the National Internal Revenue Code. In other words the prescriptive period of two (2) years therein provided is the one which should govern and not any other prescriptive period, such as that of ten (10) years provided for in Article 1144, paragraph (2), of the Civil Code. But at the same time this Court ruled: **'since in those cases the tax sought to be refunded was collected legally, the running of the two-year prescriptive period provided for in Section 306 should commence, not from the date the tax was paid, but from the happening of the supervening cause which entitled the tax payer to a tax refund. And the claim for refund should be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted within the said two-year period.'** Clarifying the point further, this Court added: **'In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund.** The ruling in Muller & Phipps is accordingly modified.'
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> Considering that in the present case the **supervening cause** from which the right to the tax credit applied for arose was the issuance of the certificate of tax exemption by the Board of Industries on October 5, 1965 and the Central filed its claim for tax credit with the Commissioner of Internal Revenue on the following November 3, or well within the two-year period, it is clear that the said claim had not yet prescribed." *(Emphases and underscoring added)*

Based on the foregoing pronouncements, it appears that, on the basis of then Section 306 of the NIRC of 1939, the Supreme Court recognized that in cases where the tax sought to be refunded was collected legally, the running of the two-year prescriptive period should commence, not from the date the tax was paid, but from the happening of the supervening cause which entitled the taxpayer to a tax refund.

However, it must be emphasized that Section 306 of the old NIRC of 1939 has been amended by Presidential Decree (PD) No. 1158, which was promulgated on June 3, 1977 and which enacted the NIRC of 1977. Section 230 thereof reads as follows:

> "SEC. 230. *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 excessive 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 begun after the expiration of two years from the date of payment of the tax or penalty **regardless of any supervening cause that may arise after payment**: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.
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> *Forfeiture of refund.* – A refund check or warrant issued in accordance with the pertinent provisions of this Code which shall remain unclaimed or uncashed within five (5) years from the date the said warrant or check wa mailed or delivered shall be forfeited in favor of the government and the amount thereof shall revert to the General Fund." *(Emphases added)*

Notably, the provision governing the refund of internal revenue taxes has been modified, particularly the phrase *"regardless of any supervening cause that may arise after payment"*, and thus, the legislative intent on Section 306 of the NIRC of 1939 has been changed.

It is a basic precept in statutory construction that a change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had.[55] Thus, when PD No. 1158 included the phrase *"regardless of any supervening cause that may arise after payment"* under the above-quoted Section 230, it simply means that the legislature intended that despite the presence of a "*supervening cause*", the two (2)-year prescriptive period continues to run. Relative thereto, it must be stated that the first two paragraphs of Section 230 promulgated under PD No. 1158 remained substantially the same when compared with the present Section 229 of the NIRC of 1997. Thus, the legislative intent in the former provision must also be given the same effect in the latter provision. Needless to state, this Court is bound to effectuate the lawmaker's intent, which is the controlling fact in interpreting a statute.[56]

In *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.* ("*San Miguel* case"),[57] the Supreme Court has substantially settled petitioner's contentions regarding the suspension of the two (2)-year prescriptive period under Section 229 of the NIRC of 1997, insofar as the present case is concerned. Interpreting Sections 204(C) and 229 of the NIRC of 1997, the High Court said:

> "The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. **Both claims must be filed within a two (2)-year reglementary period. <u>Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time</u>. It is worthy to stress that <u>as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax 'regardless of any supervening cause that may arise after payment.'</u>**
>
> For excise tax on domestic products in general, the return is filed and the excise tax is paid by the

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[55] *Dreamwork Construction, Inc. vs. Janiola, et al.*, G.R. No. 184861, June 30, 2009.
[56] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 160528, October 9, 2006.
[57] G.R. Nos. 180740 and 180910, November 11, 2019.

manufacturer or producer before removal of the products from the place of production. Hence, the date of payment of excise tax on domestic products depends on the actual removal of the taxable domestic products from the place of production.

SMC filed its administrative claim on January 10, 2003 through a letter to the BIR, and its judicial claim through a Petition for Review filed with the CTA First Division on February 24, 2003. Counting back from February 24, 2003, the CTA First Division determined that the reckoning date for the two (2)-year prescriptive period for this particular judicial claim of SMC was February 24, 2001 and accordingly declared that the claim of SMC for excess excise tax paid prior to said date had already prescribed. This conclusion of the CTA First Division, as affirmed by the CTA *En Banc*, is in full accord with the provisions of the Tax Reform Act of 1997 and so the Court will not disturb the same.

SMC posits, however, that the principle of *solutio indebiti* applies to the Government and that under Article 1145 of the Civil Code, actions upon a quasi-contract must be filed within six (6) years.

At the outset, the Court notes that none of the cases invoked by SMC in its Petition actually involved Section 229 of the Tax Reform Act of 1997 *vis-à-vis* Article 1145 of the Civil Code.

It is true that in *Fortune Tobacco*,[58] the Court held that the principle of *solutio indebiti* applies to the Government in matters of tax refund or credit of erroneously paid taxes and penalties:

> Finally, the Commissioner's contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobacco's claim for refund is premised on

[58] *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, 581 Phil. 146 (2008).

> its erroneous payment of the tax, or better still the government's exaction in the absence of a law.
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> A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.
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> Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.
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> The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case. (Citations omitted)

Notably, the above discussion was limited to the issue of whether a tax refund partakes the nature of a tax exemption which shall be interpreted or applied strictly against the taxpayer. It did not address the issue of the applicable prescriptive period for a claim for tax refund/credit of erroneously paid taxes. Additionally, in *Fortune Tobacco*,[59] the Court explicitly stated that the Tax Code itself had already recognized the principle of *solutio indebiti*, thus:

> Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected. (Citation omitted)

Meanwhile, in *Commissioner of Internal Revenue v. Manila Electric Co.* (*Meralco*),[60] the Court squarely addressed the issue of which prescriptive period shall apply to a claim for tax refund of erroneously paid/remitted tax on interest income, whether the two (2)-year prescriptive period under Section 229 of the Tax Reform Act of 1997 or the six (6)-year prescriptive period for actions based on *solutio indebiti* under Article 1145 of the Civil Code. **The Court therein applied the two (2)-year prescriptive period under the Tax Reform Act of 1997 which is <u>mandatory regardless of any supervening cause that may arise after payment</u> and categorically declared that <u>*solutio indebiti* was inapplicable</u>**, ratiocinating as follows:

> In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi-contract or *solutio indebiti* under Article 1145 of the New Civil Code. **There is *solutio indebiti* where: (1) <u>payment is made when there exists no binding relation between the payor, who has no duty to pay</u>, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.** Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding

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[59] *Id.*

[60] 735 Phil. 547 (2014).

> agent of NORD/LB Singapore Branch, the taxpayer. Hence, **the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.** (Emphasis supplied, citation omitted).

Citing *Meralco*, **the Court again,** in *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue* (*Metrobank*),[61] **rejected the application to tax refund cases of the principle of *solutio indebiti* as well as the six (6)-year prescriptive period for claims based on quasi-contract. It reiterated that both administrative and judicial claims for tax refund or credit should be filed within the two (2)-year prescriptive period fixed under Section 229 of the Tax Reform Act of 1997.**

Although the *Meralco* and *Metrobank* cases involved erroneously paid taxes on interest income, these may still constitute jurisprudential precedents for the present case concerning excise tax, as both types of national revenue taxes are imposed and collected by virtue of the Tax Reform Act of 1997. Given that the excise taxes on the *Red Horse* beer product of SMC is imposed and collected under the Tax Reform Act of 1997, then its claim for refund or credit of said taxes illegally or erroneously collected shall logically be governed by the same law, including the applicable prescriptive period for such claim. There is no need to refer to the Civil Code provisions on quasi-contract. As already pointed out by the Court in *Meralco*, the Tax Reform Act of 1997 is a special law, and it is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.*

**The assertion of SMC – that nothing in Section 229 of the Tax Reform Act of 1997 supports the contention that payments of taxes imposed under an invalid revenue law or regulation falls within its scope – is specious and constitutes a very literal and superficial**

[61] 808 Phil. 575 (2017).

**understanding of said provision.** Necessarily, the declaration by this Court in *Fortune Tobacco* [62] that RR No. 17-99 is invalid and of no effect rendered the collection of taxes thereunder baseless and, thus, illegal. **This gives the taxpayer the right to request the return of such illegally collected taxes under Section 229 of the Tax Reform Act of 1997, provided it does not so within the prescriptive period as prescribed in the same provision.**

SMC's argument that its claim should be excepted from the two (2)-year prescriptive period based on equity considerations is untenable; **the Court cannot resort to equity when there is clear statutory law governing the matter.** Relevant herein are the following pronouncements of the Court in *Republic v. Provincial Government of Palawan*:[63]

> The Court finds the submission untenable. **Our courts are basically courts of law, not courts of equity. Furthermore, for all its conceded merits, equity is available only in the absence of law and not as its replacement.** As explained in the old case of *Tupas v. Court of Appeals*:
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> > **Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law.** We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which [preempt] and prevail over such persuasions. **Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists – and is now still reverently**

[62] *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, 581 Phil. 146 (2008).
[63] G.R. Nos. 170867 and 185941, December 4, 2018, citing *Tupas vs. Court of Appeals*, 271 Phil. 628 (1991).

> **observed – is *'aequetas nunquam contravenit legis.'*** [64] (Citation omitted)
>
> SMC cites *Commissioner of Internal Revenue v. Philippine National Bank* (*PNB*),[65] but the ruling of the Court in said case was based on unique factual considerations, to wit: (a) respondent PNB made advance income tax payment in 1981 in the amount of ₱180,000,000.00 in response to then President Corazon C. Aquino's call to generate more revenues for national development; (b) after applying said advance income tax payment against its tax liabilities at the end of 1991, PNB still had a credit balance of ₱73,298,892.60; (c) PNB carried-over its credit balance to the years 1992 to 1996 but was unable to apply the same as it incurred losses and was in a net loss position for the said four years; and (d) PNB applied for tax credit certificate for the ₱73,298,892.60 only in 1997. It is in consideration of the foregoing special circumstances that the Court, in *PNB*, suspended the application of the two (2)-year prescriptive period for reasons of equity and fairness and still granted the application of PNB for tax credit certificate in 1997. It further ruled therein that in the strict legal viewpoint, the claim for tax credit of PNB did not proceed from, or was a consequence of overpayment of tax erroneously or illegally collected in 1991. **Clearly, the factual background in *PNB* is far different from that in the case at bar and the ruling in the former could not be simply applied or extended to the latter by analogy.**" *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is clear that the administrative and judicial claims for refund or credit of internal revenue taxes must be filed within the two (2)-year prescriptive period, which commences from the payment of the tax; that such period is mandatory and jurisdictional regardless of any supervening cause that may arise after payment; that the principle of *solutio indebiti* does not apply, since the NIRC, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid; that the six (6)-year prescriptive period for claims based on quasi-contract is rejected; that the declaration by the Supreme Court that an RR is invalid and of no effect gives the

[64] That is, "equity never contravenes the law".
[65] 510 Phil. 798 (2005).

taxpayer the right to request the return of illegally collected taxes under Section 229, provided it does so within the prescriptive period as prescribed therein; that equity is available only in the absence of law and not as its replacement; and that in effect, for the doctrine in the *PNB* case[66] to apply, the factual background of the case must not be far different therefrom.

Considering that in this case, the two (2)-year prescriptive period under Section 229 of the NIRC of 1997 had already elapsed before petitioner filed its administrative and judicial claims, and since such prescriptive period continues to run regardless of any supervening cause that may arise after payment, the present *Petition for Review* must already fail.

Furthermore, to the mind of the Court, the said *PNB* case does not find application herein, simply because similar to the *San Miguel* case, the factual background in the former case is far different from that in the case at bar and the ruling in the same *PNB* case could not be simply applied or extended to the latter by analogy.

In any event, to justify the supposed suspension of the two (2)-year prescriptive period, petitioner cites, as a "*special circumstance*", the TRO issued by the Supreme Court. To reiterate, according to petitioner, in deference to the said TRO, it continuously paid under protest the subject excise taxes. Petitioner further posits that in full recognition of the legal process and the futility of filing a claim for refund while the Supreme Court's TRO was in effect, it was legally and practically prevented from filing a claim for refund or credit on its alleged overpaid excise tax.

Put simply, while petitioner recognizes, in effect, that the two (2)-year prescriptive period from the date(s) of payment of the subject excise taxes had lapsed, it is of the view that the same was suspended because of the High Court's TRO.

This Court, however, is not persuaded.

There is no doubt that the suit or proceeding contemplated to be filed within the two (2)-year prescriptive period under Section 229 of the NIRC of 1997 covers any tax, penalty or sum, which has been

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[66] *Commissioner of Internal Revenue v. Philippine National Bank*, 510 Phil. 798 (2005).

paid "*under protest or duress*". Thus, even when petitioner paid the pertinent excise taxes under protest, and notwithstanding the issuance of the said TRO by the Supreme Court, the refund thereof is still within the purview of the said Section 229, and does *not* excuse petitioner from complying with the two (2)-year prescriptive period.

Furthermore, there can be no merit in petitioner's stance that there is futility of filing a claim for refund while the same TRO was in effect, and in the contention to the effect that petitioner was legally and practically prevented from filing a claim for refund or credit on its supposed overpaid excise tax.

The TRO issued by the Supreme Court in the *Purisima* case[67] is *not* directed against petitioner, but only to PTI, the RTC (Branch 253, Las Piñas City), and their representatives. In other words, since petitioner is not one to whom the TRO is directed, the same would have no binding effect on petitioner. Moreover, the fact that petitioner is a member of PTI does not automatically mean that it is one of the latter's representatives. But even granting that petitioner may be deemed as one of the representatives of PTI, the said TRO does enjoin petitioner, at all, and there is no law which proscribes petitioner, from complying with the provisions of Section 229 of the NIRC of 1997, particularly, on the successive filing of its administrative and judicial claims, within the two (2) year prescriptive period thereunder. As a corollary, there is likewise no prohibition directed against respondent and this Court to respectively act on the said claims, in case the same are filed, while the TRO is in effect.

Furthermore, this Court does not subscribe to petitioner's reasoning to the effect that the filing of the refund claim concerning the subject excise taxes would be a futile exercise. While it may be true that considering respondent would have the tendency to adhere to, and uphold, its issuances, he may deny outright petitioner's administrative claim, upon the filing thereof, or not act on the same at all, the law allows petitioner to lodge its appeal, within the time prescribed, on the denial or inaction of respondent, before this Court, which would act on it objectively and judiciously.

With the foregoing disquisitions, nothing prevented petitioner from complying with the mandate of Section 229 of the NIRC of

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[67] Docket – Vol. I, pp. 39 to 40.

1997, whether it be the filing of the administrative and judicial claims and/or in observing the two (2)-year prescriptive period.

As for the other arguments of petitioner to justify its non-observance of the two (2)-year prescriptive period under Section 229 of the NIRC of 1997, *i.e.*, the principle of unjust enrichment (quasi-contract) vis-à-vis *solutio indebiti*, the same are inapplicable, as enunciated in the *San Miguel* case.

Thus, finding that petitioner's refund claims have prescribed, and considering that two (2)-year prescriptive period under Section 229 of the NIRC of 1997 is not only mandatory, but is also jurisdictional, this Court has no recourse but to dismiss the present *Petition for Review*, for its lack of jurisdiction.

**WHEREFORE**, premises considered, the *Petition for Review* is **DISMISSED** for lack of jurisdiction.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

*I CONCUR:*

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

## 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.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
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 case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice