REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN MIGUEL BREWERY, INC.,
Petitioner,

CTA EB No. 1772
(CTA Case No. 8955)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 24 2019 4:00 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution of the Court *En Banc* is respondent Commissioner of Internal Revenue (CIR)'s *Motion for Reconsideration (Re: Decision dated 19 September 2018)*[1] filed on October 10, 2018. Respondent's *Motion* seeks reconsideration of the Decision of the Court *En Banc* promulgated on September 19, 2018,[2] (the "Assailed Decision") reversing and setting aside the judgment of the Third Division of this Court ("Court in Division") in CTA Case No. 8955. The dispositive portion of the Assailed Decision reads:

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[1] Court *En Banc*'s Docket, pp. 195-206.
[2] *Id.*, pp. 174-191.

"**WHEREFORE**, the present Petition for Review is **GRANTED**. Accordingly, the assailed Decision dated August 18, 2017 and Resolution dated January 5, 2018 rendered by the Court in Division in CTA Case No. 8955 are **REVERSED** and **SET ASIDE.**

Let this case be **REMANDED** to the Court in Division for the resolution of the case on the merits, in conformity with this Decision.

SO ORDERED."

In praying for the reconsideration of the Assailed Decision, respondent CIR avers that: (1) the Court in Division correctly ruled that it has no jurisdiction over the instant case;[3] (2) nullification of the P20.57 per liter excise tax rate specified in Revenue Memorandum Circular (RMC) No. 90-2012 does not fall under the special jurisdiction granted by the statute to the Court of Tax Appeals (CTA);[4] (3) collateral attack on presumably valid administrative issuance is not allowed;[5] and (4) the CTA has no jurisdiction to determine the validity of the P20.57 provision of RMC No. 90-2012 due to petitioner's non-exhaustion of administrative remedies.[6]

On the other hand, petitioner San Miguel Brewery, Inc., in its *Opposition to the Respondent's Motion for Reconsideration dated October 9, 2018*[7] filed on November 28, 2018, points out that respondent's *Motion* merely reiterates the arguments that he raised in his Comment dated April 5, 2018 on petitioner's Petition for Review.[8] According to petitioner, the *Motion* is almost a verbatim reproduction of respondent's Comment and the same does not point out specifically the conclusions of the Decision dated September 19, 2018 which he believes to be contrary to law.[9] Accordingly, respondent's Motion is *pro forma* and as such, should be disregarded.[10] Petitioner also maintains that the present case is not a collateral but a direct attack on RMC No. 90-2012 particularly the validity of the excise tax rate of P20.57 as specified therein.[11]

The Court *En Banc* resolves to deny respondent CIR's *Motion* for lack of merit.

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[3] *Id.*, pp. 196-197.
[4] *Id.*, pp. 197-201.
[5] *Id.*, p. 202.
[6] *Id.*, pp. 203-204.
[7] *Id.*, pp. 215-216.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*, pp. 218-221.

A closer evaluation of the case records and the arguments raised by respondent in its *Motion* reveals that the arguments relied upon are, indeed, mere rehash of the matters which had been thoroughly discussed and passed upon by the Court *En Banc* in the assailed Decision. Respondent utterly failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Court *En Banc*'s findings.

The Court *En Banc* stands by its ruling that the CTA has jurisdiction over decisions or inaction of the CIR in cases involving claims for refund of internal revenue taxes. The Court *En Banc* likewise maintains its position that the CTA has exclusive jurisdiction to determine the validity or constitutionality of rules and regulations, and other administrative issuances of the CIR. This is the prevailing rule on this matter as established by the Supreme Court in *Banco De Oro, et. al. v. Republic*[12] and subsequent cases, the latest of which is *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation.*[13]

As the Court *En Banc* had mentioned in the Assailed Decision, the Supreme Court had explicitly pronounced in *Banco de Oro* that the CTA has 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 like in the present case, in claiming a refund.[14] In taking cognizance of such matters, the CTA merely exercises the jurisdiction expressly conferred to it by law.

The Court *En Banc* also mentioned in the Assailed Decision that in the case of *Planters Products, Inc. v. Fertiphil Corporation*,[15] the Supreme Court clarified that judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice. What is important is that the constitutional issue must be properly raised and presented in the case, and its resolution is necessary to the determination of the case. In other words, the issue of constitutionality must be the very *lis mota* of the case. Guided by the requirements for taking cognizance of issue of constitutionality as laid down in *Planters Products*, the Court *En Banc* found 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. The validity and constitutionality of RMC No. 90-2012 were directly pleaded and duly raised as issues in petitioner's judicial claim for refund. Moreover, the validity and/or constitutionality of RMC No. 90-2012 is also the *lis mota* of petitioner's judicial claim for refund.

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[12] G.R. No. 198756, August 16, 2016, 800 SCRA 392 ("*Banco De Oro*").
[13] G.R. No. 207843 (Resolution), February 14, 2018.
[14] *Supra*, Note 12.
[15] G.R. No. 166006, March 14, 2008, 548 SCRA 485, 506 ("*Planters Products*").

WHEREFORE, respondent's *Motion for Reconsideration (Re: Decision dated 19 September 2018)* is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice