REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SAN MIGUEL CORPORATION,
Petitioner,

C.T.A. CASE NO. 6607

Members:

\- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 15 2006

x - x

DECISION

BAUTISTA, L., J.:

This case involves a claim for refund or issuance of a tax credit certificate in the total amount of P94,494,801.96 allegedly representing erroneously paid excise tax of petitioner for its beer brand "Red Horse" covering the period January 11, 2001 to December 31, 2002 in compliance with the provisions of the last paragraph of Section 1 of Revenue Regulations No. 17-99.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office or place of business located at No. 40 San Miguel Avenue, Ortigas

Center, Mandaluyong City.[1] It is principally a manufacturer of fermented liquors for sale in the domestic and export markets. One of its products is the beer brand "Red Horse" that comes in 1 liter and 325 ml bottles.[2]

On January 1, 1997, Republic Act No. 8240 (Tax Reform Act of 1997) took effect whereby a shift from the ad valorem tax system to the specific tax system was made, subjecting beer to specific tax under Section 143 of the Tax Code of 1997, pertinent provisions of which are quoted hereunder, as follows:

> "SEC. 143. *Fermented Liquor*. – There shall be levied, assessed and collected an excise tax on beer, lager, ale, porter and other fermented liquors except tuba, basi, tapuy and similar domestic fermented liquors in accordance with the following schedule:
>
> (a) If the net retail price (excluding the excise tax and value-added tax) per liter of volume capacity is less than Fourteen pesos and fifty centavos (P14.50), the tax shall be Six pesos and fifteen centavos (P6.15) per liter;
>
> (b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fourteen pesos and fifty centavos (P14.50) up to Twenty-two pesos (P22.00), the tax shall be Nine pesos and fifteen centavos (P9.15) per liter;
>
> (c) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Twenty-two pesos (P22.00), the tax shall be Twelve pesos and fifteen centavos (P12.15) per liter.
>
> Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.
>
> Fermented liquor which are brewed and sold at micro-breweries or small establishments such as pubs and restaurants shall be subject to the rate in paragraph (c) hereof.
>
> The excise tax from any brand of fermented liquor within the next three (3) years from the effectivity of Republic Act No. 8240 shall not be lower than the tax which was due from each brand on October 1, 1996.
>
> The rates of excise tax on fermented liquor under paragraphs (a), (b) and (c) hereof shall be increased by twelve percent (12%) on January 1, 2000."[3]

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[1] Joint Stipulation of Facts and Issues, par. 1

[2] *Ibid*, par. 6

[3] *Id*., par. 3

To implement the above-quoted provisions on the twelve percent (12%) increase of excise tax on, among others, fermented liquors by January 1, 2000, the Secretary of Finance, upon recommendation by the Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99 dated December 16, 1999, showing the increase on the applicable tax rates on fermented liquor as follows:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO JANUARY 1, 2000	NEW SPECIFIC TAX RATES EFFECTIVE JANUARY 1, 2000
143	FERMENTED LIQUORS		
	(a) Net Retail Price per liter (excluding VAT & Excise) is less than P14.50	P6.15/liter	P6.98/liter
	(b) Net Retail Price per liter (excluding VAT & Excise) is P14.50 up to P22.00	P9.15/liter	P10.25/liter
	(c) Net Retail Price per liter (excluding VAT & Excise) is more than P22.50	P12.15/liter	P13.61/liter[4]

The last paragraph of Section 1 of Revenue Regulations No. 17-99 also provides:

"Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."[5]

In compliance with the above-quoted paragraph of the aforesaid revenue regulation, from January 11, 2001 up to December 31, 2002, petitioner paid excise tax on its Red Horse beer brand at the specific tax rate of P7.07 per liter, which is equivalent to the specific tax rate it actually paid prior to January 1, 2000, computed as follows:

PERIOD	TOTAL REMOVAL PER GL [Liters]	TAX RATE USED	TAX PAID
2001 [Jan 11-Dec 31, 2001	234,014,850	P7.07	P1,654,484,989.50
2002 [Jan – Dec, 2002	290,956,272	7.07	2,057,060,843.04
TOTAL	524,971,122		P3,711,545,832.54

(Exhibits "A" to "X", "AA" and "ZZ").

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[4] *Id.*, par. 4

Thus, on January 10, 2003, petitioner filed with the respondent a Letter Claim for Refund or Tax Credit amounting to P94,494,801.96 representing erroneously made excess excise tax payments on the removal of its Red Horse beer brand from January 11, 2001 to December 31, 2002.[6]

Due to respondent's inaction on petitioner's protest, the instant petition for review was filed on February 24, 2003.

By way of an Answer filed on April 9, 2003, respondent asserted the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P94,494,801.96 being claimed by petitioner as alleged overpaid excise tax for the period covering January 11, 2001 to December 31, 2002 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation; and
>
> 9. The last paragraph of Section 1 of Revenue Regulations No. 17-99 is a valid implementing regulation which has the force and effect of law."

To support its claim, petitioner adduced numerous documents and presented witnesses to substantiate its proposition. Respondent, on the other hand, submitted the case for decision without presenting any evidence.[7] Thereafter and after the parties have filed their memoranda, the Court considered the case submitted for decision.[8]

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[5] *Id.*, par. 5
[6] Exhibit Z; par. 10, Joint Stipulation of Facts and Issues
[7] Records, page 327
[8] *Ibid.*, page 382

The parties mutually agreed that the issues for this Court's resolution are:

"1. Whether or not the last paragraph of Section 1 of Revenue Regulation No. 17-99 is in accordance with the pertinent provisions of Republic Act No. 8240, now incorporated in Section 143 of the Tax Code of 1997;

2. Whether or not Petitioner has paid the amount of P94,494,801.96 as part of the excise tax paid from periods January 11, 2001 to December 31, 2002; and

3. Whether or not Petitioner is entitled to a refund of P94,494,801.96 as alleged overpaid excise tax for periods January 11, 2001 to December 31, 2002."

This Court is once again called upon to decide the issue of whether or not the last paragraph of Section 1 of Revenue Regulations (RR) No. 17-99 is in accordance with the pertinent provisions of Republic Act No. 8240, now incorporated in Section 143 of the 1997 NIRC, as to the validity of Revenue Regulations No. 17-99.

Petitioner posits that the aforesaid paragraph has no basis in law and is an unauthorized administrative legislation considering that it does not merely implement the provisions of the 1997 NIRC. It further argues that there is nothing under the provisions of Section 143 which authorizes the respondent to impose by way of regulations ***"that the new specific tax rate for any existing brand of*** *cigars, cigarettes packed by machine, distilled spirits, wines and* ***fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000".*** Therefore, petitioner asserts that the said revenue regulations cannot be accorded validity.

Moreover, according to petitioner, the three-year period within which it is to be operative reckoned from January 1, 1997, the date when R.A. No. 8240 took effect, expired on December 31, 1999 and thereafter, effective January 1, 2000, the correct base of the 12% increase are the rates prescribed under paragraphs (a), (b) and (c) of Section 143 of the 1997 NIRC.

Respondent, on the other hand, contends that: (1) Section 143 of the 1997 NIRC should be interpreted so as to be consistent with the legislative purpose for the enactment of R.A. No. 8240 which is to increase the collection of taxes; (2) the law, taken as a whole, provides that the excise tax rate on fermented liquor, which is the higher of the specific tax and the ad valorem tax due on October 1, 1996, shall be increased by 12% on January 1, 2000; (3) a decrease in the rate of tax is in itself an exemption and must be expressly authorized by law and cannot be effected based on a vague provision of law; and (4) the ultimate issue is whether or not petitioner is entitled to refund, not the validity of RR No. 17-99.

Basically, respondent's arguments depend on the premise that the BIR, as an administrative agency, is duty bound to carry out the congressional policy of regulating specified activities and that RR No. 17-99 was issued by authority of Section 244 in relation to Section 4 of the 1997 NIRC. He further claims that even assuming *arguendo* that the last paragraph of Section 1 of RR No. 17-99 is declared invalid, it does not necessarily follow that petitioner is entitled to a refund, because its claim is based on a wrong interpretation of the law.

We find for the petitioner.

The issue on the validity of RR No. 17-99 is not novel. This Court had the occasion to thoroughly discuss the issue on the validity of the aforesaid BIR regulation in the cases of ***Fortune Tobacco Corporation vs. Commissioner of Internal Revenue, (CTA Case Nos. 6365 and 6383),*** both promulgated on October 21, 2002, when We explained that:

> "At first glance, the said regulation appears to be simply implementing the provisions of Section 142, R.A. No. 8240, now incorporated in the Tax Code of 1997 as Section 145, xxx
>
> xxx xxx xxx
>
> However, a more thorough analysis of the same proves that the questioned regulation does not merely implement but actually results to an unauthorized 'administrative legislation.' Clearly, the aforequoted provisions merely mandate that the three-year transition period within which it is to be

operative, starting from January 1, 1997, the date when R.A. 8240 took effect, expired on December 31, 1999. During the said three-year period the tax shall not be lower than the tax imposed for each brand on October 1, 1996. Thereafter, effective January 1, 2000, a 12% increase would take effect using as tax base the figures provided in Section 145, subsection C, paragraphs (1), (2), (3) and (4) of R.A. No. 8424, otherwise known as the Tax Code of 1997.

While we may agree with the respondent that administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress, the same does not hold true in the present case. **The BIR, in issuing Revenue Regulations No. 17-99, went beyond the legal parameters that defined the boundaries of its authority.**

xxx xxx xxx

The rule in this jurisdiction is that the intent of the legislature is to be ascertained from the very language of the statute. *Verba legis non est recedendum*, or from the words of the statute there should be no departure. The law, needless to state, is clear and would not need a revenue regulation to clarify certain provisions nor impose a burden not found in the piece of legislation it is supposed to implement. This cannot be done nor authorized to be done by a mere department or agency of the government (*Animos vs. Philippine Veterans Affairs Office, et. al., 174 SCRA 214*). **Any regulation, such as Revenue Regulations No. 17-99, that stretches this authority amounts to unauthorized legislation.**

In view of the foregoing, Revenue Regulations No. 17-99 is deemed invalid." *(Emphasis supplied)*

Clearly, and as consistently maintained by this Court, rulings issued by the Commissioner of Internal Revenue command respect and weight. However, such rulings are not conclusive upon the courts and will be ignored if found to be erroneous. Therefore, relevant to the present discussion, this Court reiterates its dissertation in its decision on the subject matter in the said *Fortune Tobacco* cases, wherein We declared that:

"In ***Teoxan vs. Members of the Board of Administrators, Philippines Veterans Administration,*** 33 SCRA 585, the Supreme Court defined the parameters of this rule-making power of an administrative agency in this wise:

'**The power of administrative officials to promulgate rules in the implementation of the statute is necessarily limited to what is provided for in the legislative enactments.** It cannot be otherwise as the Constitution limits the authority of the President, in whom all executive power resides, to take care that the laws be

> faithfully executed. **No lesser administrative executive office or agency then can, contrary to the express language of the Constitution, assert for itself a more extensive prerogative. An administrative agency cannot amend an act of Congress.** *(Emphasis supplied)*

And in the case of ***Philippine Bank of Communications vs. Commissioner of Internal Revenue***, 302 SCRA 241, the Highest Tribunal ruled on the nature of revenue memorandum circulars, thus:

> 'It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. **Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent with, the law they seek to apply and implement.'** *(Emphasis supplied)"*

As a matter of fact, the above-quoted decision of this Court was already *affirmed in toto* by the Court of Appeals, when it enunciated that:

"We are therefore more inclined to agree with the interpretation given by the Court of Tax Appeals, to wit:

> 'x x x Adopting the argument of respondent and declaring the questioned regulation as valid would put to naught the provisions of Section 145 of the Tax Code of 1997, particularly the directive that, 'the rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof shall be increased by twelve percent (12%) on January 1, 2000. This is in lieu of the tax rate being imposed prior to January 1, 2000. It is worthy to emphasize that with respect to the initial increase of excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240, Section 145 clearly provides that the excise tax shall not be lower than the tax, which is due from each brand on October 1, 1996. <u>Such qualification is wanting as to the increase by 12% on January 1, 2000 in the rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) of the same section</u>. **Thus, the inevitable conclusion would be to impose the new rates of excise tax under paragraphs (1) to (4) which is to increase by 12%, even it may be lower than the amount of tax being paid prior to January 1, 2000.**'

> Thus, in foreseeing an increase in the tax rate in consonance with the shift from *ad valorem* to specific tax, **the legislature contemplated two periods: the transition period of three years fixing for the purpose the applicable tax rate; and the rate applicable after its expiration**. At the end of the transition period which is 1999, the legislature meant that the rate to be applicable shall be that fixed under the last paragraph, which is the rate provided under paragraphs (1), (2), (3) and (4), increased by twelve per cent (12%) in lieu of the rate fixed during the transition period. This is the only conclusion that may be reached when the said provision is read in harmony with the first sentence of the disputed paragraph of Section 145 – that **'the excise tax from any brand of cigarettes within the next three (3) years from the effectivity of RA 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996.'** This, to Our mind, is the intent of the legislature in enacting RA 8240.
>
> xxx xxx xxx
>
> In the case at bar, **Revenue Regulation No. 17-99 inserted into Republic Act 8240 a provision which is not there – either in letter or in spirit. It created a clear inconsistency with the provision of Section 145 of the 1997 Tax Reform Act, as the said law did not contemplate the increase in tax rate as understood by the petitioner. Being tantamount to an act of administrative legislation, We agree with the CTA's conclusion that the assailed provision of Revenue Regulation 17-99, ought to be nullified."** ***(Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, CA G.R. SP Nos. 80675 and 83165, September 28, 2004)*** *(Underscoring and Emphasis Ours)*

Without a doubt, the provision of R.A. No. 8240 in controversy merely mandates that the three-year transition period within which it is to be operative, starting from January 1, 1997, the date when the law took effect, expired on December 31, 1999. During the said period, the tax shall not be lower than the tax imposed for each brand on October 1, 1996. In other words, the increase adverted to in R.A. No. 8240 should not use the rate imposed at the end of the transition period as tax base. Rather, the provision should be interpreted as to mean that at the end of the transition period, an increase in the excise tax rate should have reached 12% than that imposed under the ad valorem tax scheme.

Applying the foregoing jurisprudence, We rule that the disputed provision of RR No. 17-99 is not consistent with the situation contemplated under the provisions of Section 143 of the 1997 NIRC, relevant portion of which is quoted hereunder for ready reference, to wit:

> "The excise tax from any brand of fermented liquor within the next three (3) years from the effectivity of Republic Act No. 8240 shall not be lower that the tax which was due from each brand on October 1, 1996.
>
> The rates of excise tax on fermented liquor under paragraphs (a), (b) and (c) hereof shall be increased by twelve percent (12%) on January 1, 2000."

It is clear from the above-quoted provision of the 1997 NIRC that the objective of the government at the end of the three-year transition period is to effect a 12% tax rate increase using as tax base the figures provided in paragraphs (a), (b) and (c) of Section 143 of the 1997 NIRC, in lieu of the tax rate being imposed prior to January 1, 2000, which is the rate imposed during the transition period of three years. At most, Section 143 of the 1997 NIRC imports that the excise tax shall not be lower than the tax which is due from each brand on October 1, 1996, but which qualification is not present as to the increase by 12% on January 1, 2000 under paragraphs (a), (b) and (c) of the said section. Therefore, as correctly pointed out by petitioner, it shall be entitled to its claim for refund or issuance of a tax credit certificate for the erroneously paid excise taxes covering the period of January 11, 2001 to December 31, 2002, considering that its payment was based on the provisions of the last paragraph of Section 1 of RR No. 17-99 which was already ruled as an invalid regulation.

However, for petitioner to be entitled to the refund or issuance of tax credit certificate referred to above, it is imperative that competent and sufficient evidence required by our laws and jurisprudence be properly presented. Consequently, the vital issue of whether or not petitioner has clearly, convincingly and substantially established its claim shall now be the focus of this Court's discussion. It is worthy to note though that the aforesaid issue covers the two (2) other remaining issues stipulated by the parties in this case. Hence, We shall discuss the matter jointly for convenience and brevity.

After careful review of the documents forwarded before this Court, We have observed that respondent failed to present any documentary evidence to either contest or rebut the voluminous documents presented by petitioner, namely:

Description	Exhibit
Total Removals Report for the months of January 2001 to December 2002, including the Total Removal Report for each of the plants located in Polo, Mandaue, San Fernando, Davao and Bacolod	"A" to "X", inclusive of Submarkings
Schedule of Total Removals and Tax Paid for periods January 2001 to December 2002	"Y"
Administrative Claim for Refund filed with the BIR on January 10, 2002	"Z"
Independent CPA Report	"AA", inclusive of submarkings
Excise Tax Returns with Bank Official Receipts for the months of January 2001 to June 2002	"BB" to "SS"
Excise Tax Returns with Filing Reference Number and Payment Confirmation Reports (i.e., EFPS confirmation report, bank certification, bank's e-mail confirmation print-out, bank ORs) for the months of July 2002 to December 2002	"TT" to "YY"
Monthly Official Register Book of Mandaue and Davao Plants and Monthly Sworn Statements of Volume of Removals of San Fernando Plant for the Period January 2001 to December 2002	"ZZ"
Daily Removal Reports of San Fernando, Davao and Mandaue Plants for Red Horse Beer in the Total Amount of P22,782,297.30 for the period covering January 1, 2001 to January 10, 2002	"AAA"

A scrutiny of the various excise tax returns filed by petitioner either manually or through the EFPS (Electronic Filing and Payment System) with supporting bank official receipts, EFPS filing reference number and EFPS payment confirmation reports, bank's e-mail confirmation print-out and bank certification (*Exhibits BB to XX*), shows that petitioner paid advance excise taxes from January 3, 2001 to December 27, 2002 in the aggregate sum of P18,534,551,000.00, broken down as follows:

ADVANCE EXCISE TAX DEPOSITS				
Period	2001	Exhibits	2002	Exhibits
January	P 856,500,000.00	BB-1 to BB-43	P 728,000,000.00	NN-1 to NN-46
February	830,000,000.00	CC-1 to CC-40	739,500,000.00	OO-1 to OO-38
March	913,000,000.00	DD-1 to DD-44	814,000,000.00	PP-1 to PP-38
April	647,000,000.00	EE-1 to EE-35	798,500,000.00	QQ-1 to QQ-42
May	695,500,000.00	FF-1 to FF-42	821,000,000.00	RR-1 to RR-44
June	690,500,000.00	GG-1 to GG-40	711,500,000.00	SS-1 to SS-38
July	699,000,000.00	HH-1 to HH-46	679,661,000.00	TT-1 to TT-417
August	640,500,000.00	II-1 to II-50	754,260,000.00	UU-1 to UU-530
September	581,500,000.00	JJ-1 to JJ-40	1,045,040,000.00	VV-1 to VV-522
October	907,500,000.00	KK-1 to KK-46	761,670,000.00	WW-1 to WW-522
November	931,000,000.00	LL-1 to LL-38	859,055,000.00	XX-1 to XX-477
December	765,500,000.00	MM-1 to MM-34	664,865,000.00	YY-1 to YY-398
	P 9,157,500,000.00		P 9,377,051,000.00	
		Grand Total - 2001 and 2002	P18,534,551,000.00	

In its "January 2001 Monthly Movement Report with Allocated Deposit" (*Exhibit A-2*), petitioner had excise tax deposit balance as of January 1, 2001 of P11,655,591.44 bringing its accumulated advance excise tax payments as of December 31, 2002 to P18,546,206,591.44, computed hereunder:

Advance Excise Tax Deposit			
Balance as of January 1, 2001			P 11,655,591.44
Add:	Deposits for the period		
	January 2001 to December 2001	P 9,157,500,000.00	
	January 2002 to December 2002	9,377,051,000.00	18,534,551,000.00
Accumulated Advance Excise Tax Deposits as of December 31, 2002			P18,546,206,591.44

Based on the "Monthly Total Removals Reports" (*Exhibits A to X, inclusive of submarkings*) submitted by petitioner to the BIR, petitioner actually paid excise taxes in the amount of P18,536,943,509.72 on all brands it manufactured and removed from place of production from January 1, 2001 to December 31, 2002, detailed as follows:

EXCISE TAX PAID ON ACTUAL REMOVALS OF ALL BEER PRODUCTS FROM ALL PLANTS				
Month	2001	Exhibit	2002	Exhibit
January	P 856,059,249.49	ZZ-1-a to ZZ-3-b	P 729,305,385.63	ZZ-37-a to ZZ-39-b
February	825,331,911.68	ZZ-4-a to ZZ-6-b	737,864,025.69	ZZ-40-a to ZZ42-b
March	916,340,699.54	ZZ-7-a to ZZ-9-b	811,135,884.62	ZZ-43-a to ZZ-45-b
April	650,227,301.08	ZZ-10-a to ZZ-12-b	801,634,567.18	ZZ-46-a to ZZ-48-b
May	703,534,438.26	ZZ-13-a to ZZ-15-b	822,291,123.12	ZZ-49-a to ZZ-51-b
June	690,528,500.29	ZZ-16-a to ZZ-18-b	716,217,836.48	ZZ-52-a to ZZ-54-b
July	699,085,822.15	ZZ-19-a to ZZ-21-b	676,274,709.85	ZZ-55-a to ZZ-57-b
August	640,268,066.24	ZZ-22-a to ZZ-24-b	751,693,153.17	ZZ-58-a to ZZ-60-b
September	579,401,803.46	ZZ-25-a to ZZ-27-b	873,804,292.45	ZZ-61-a to ZZ-63-b
October	861,062,905.67	ZZ-28-a to ZZ-30-b	756,367,345.81	ZZ-64-a to ZZ-66-b
November	975,070,382.78	ZZ-31-a to ZZ-33-b	866,807,420.69	ZZ-67-a to ZZ-69-b
December	764,970,877.31	ZZ-34-a to ZZ-36-b	831,665,807.08	ZZ-70-a to ZZ-72-b
	P9,161,881,957.95		**P9,375,061,551.77**	
		Grand Total – 2001 and 2002	**P18,536,943,509.72**	

The accumulated balance of petitioner's Advance Excise Tax Deposit for the period January 1, 2001 to December 31, 2002 in the amount of P18,546,206,591.44 was sufficient to cover the total excise tax due on the removal of all beer products from all of petitioner's plants for the same period as shown below:

Total Available Excise Tax Deposit			P 18,546,206,591.44
Less:	Total Excise Tax Due on All Beer Products Removal from All Plants for the period		
	January 2001 to December 2001	P9,161,881,957.95	
	January 2002 to December 2002	9,375,061,551.77	18,536,943,509.72
Unused/Excess Excise Tax Deposit as of December 31, 2002			**P 9,263,081.72**

Therefore, in its December 2002 Monthly Movement Report with Allocated Deposit, petitioner had unused excise tax deposit balance as of December 31, 2002 in the amount of P9,263,081.72 (*Exhibit X-2*).

The above specific excise tax payments of P18,536,943,509.72 were computed based on the provisions of Section 1 of Revenue Regulations No. 17-99 wherein the specific tax rate which was applied on each brand of petitioner's products was the higher rate between the ad valorem tax due as of October 1, 1996 and the specific tax rate under Section 143 increased by 12%.

Included in the total excise tax payments of P18,536,943,509.72 is the amount of P3,734,328,129.84 excise tax paid by petitioner for its Red Horse beer brand removals, as shown below:

ACTUAL EXCISE TAX PAID ON RED HORSE REMOVALS (based on P7.07 per liter per Revenue Regulations No. 17-99)				
Month	2001		2002	
	Volume of Removals (in liters)	Amount	Volume of Removals (in liters)	Amount
January	17,191,884	P 121,546,619.88	19,802,676	P 140,004,919.32
February	21,609,786	152,781,187.02	21,034,308	148,712,557.56
March	25,143,330	177,763,343.10	23,715,186	167,666,365.02
April	15,867,936	112,186,307.52	22,473,996	158,891,151.72
May	15,877,920	112,256,894.40	25,180,482	178,026,007.74
June	16,878,114	119,328,265.98	21,189,708	149,811,235.56
July	19,614,558	138,674,925.06	21,716,802	153,537,790.14
August	17,654,574	124,817,838.18	24,119,202	170,522,758.14
September	15,439,224	109,155,313.68	32,209,938	227,724,261.66
October	22,900,488	161,906,450.16	22,476,894	158,911,640.58
November	27,752,310	196,208,831.70	26,844,810	189,792,806.70
December	21,307,116	150,641,310.12	30,192,270	213,459,348.90
	237,237,240	P1,677,267,286.80	290,956,272	P2,057,060,843.04
			Grand Total – 2001 and 2002	P3,734,328,129.84

However, the net retail price per liter (excluding VAT & Excise) of petitioner's Red Horse beer brand is less than P14.50 (*Annex C-2, National Internal Revenue Code of 1997*). As such, starting January 1, 2000, the Red Horse beer brand should have been subjected to the specific tax rate of P6.89 per liter (P6.15 per liter under Section 143(a) of the NIRC of 1997 plus 12%) instead of P7.07 per liter. Thus, from January 1, 2001 up to December 31, 2002, the excise tax payment on petitioner's Red Horse beer brand should have been only in the amount of P3,639,253,297.68, computed as follows:

SHOULD-BE EXCISE TAX PAYMENT ON RED HORSE REMOVALS (based on P6.89 per liter [basic rate of P6.15/liter under Section 143(a) plus 12%])				
Month	2001		2002	
	Volume of Removals (in liters)	Amount	Volume of Removals (in liters)	Amount

January	17,191,884	P 118,452,080.76	19,802,676	P 136,440,437.64
February	21,609,786	148,891,425.54	21,034,308	144,926,382.12
March	25,143,330	173,237,543.70	23,715,186	163,397,631.54
April	15,867,936	109,330,079.04	22,473,996	154,845,832.44
May	15,877,920	109,398,868.80	25,180,482	173,493,520.98
June	16,878,114	116,290,205.46	21,189,708	145,997,088.12
July	19,614,558	135,144,304.62	21,716,802	149,628,765.78
August	17,654,574	121,640,014.86	24,119,202	166,181,301.78
September	15,439,224	106,376,253.36	32,209,938	221,926,472.82
October	22,900,488	157,784,362.32	22,476,894	154,865,799.66
November	27,752,310	191,213,415.90	26,844,810	184,960,740.90
December	21,307,116	146,806,029.24	30,192,270	208,024,740.30
	237,237,240	P1,634,564,583.60	290,956,272	P2,004,688,714.08
			Grand Total – 2001 and 2002	P3,639,253,297.68

As correctly found by the Court commissioned auditing firm, SGV & Co, petitioner had overpaid the excise taxes due on its volume of removals for the Red Horse beer brand covering the period of January 1, 2001 to December 31, 2002 in the total amount of P95,074,832.16, broken down as follows:

	Volume of Removals (in liters)	Actual Excise Tax Paid based on the excise tax rate of P7.07/liter per RR. No. 17-99	Excise Tax Due based on basic excise tax rate of P6.15/liter under Section 143(a) plus 12%	Overpayment
2001				
January	17,191,884	P 121,546,619.88	P 118,452,080.76	P 3,094,539.12
February	21,609,786	152,781,187.02	148,891,425.54	3,889,761.48
March	25,143,330	177,763,343.10	173,237,543.70	4,525,799.40
April	15,867,936	112,186,307.52	109,330,079.04	2,856,228.48
May	15,877,920	112,256,894.40	109,398,868.80	2,858,025.60
June	16,878,114	119,328,265.98	116,290,205.46	3,038,060.52
July	19,614,558	138,674,925.06	135,144,304.62	3,530,620.44
August	17,654,574	124,817,838.18	121,640,014.86	3,177,823.32
September	15,439,224	109,155,313.68	106,376,253.36	2,779,060.32
October	22,900,488	161,906,450.16	157,784,362.32	4,122,087.84
November	27,752,310	196,208,831.70	191,213,415.90	4,995,415.80
December	21,307,116	150,641,310.12	146,806,029.24	3,835,280.88
	237,237,240	P1,677,267,286.80	P1,634,564,583.60	P42,702,703.20
2002				
January	19,802,676	P 140,004,919.32	P 136,440,437.64	P 3,564,481.68
February	21,034,308	148,712,557.56	144,926,382.12	3,786,175.44
March	23,715,186	167,666,365.02	163,397,631.54	4,268,733.48
April	22,473,996	158,891,151.72	154,845,832.44	4,045,319.28
May	25,180,482	178,026,007.74	173,493,520.98	4,532,486.76
June	21,189,708	149,811,235.56	145,997,088.12	3,814,147.44
July	21,716,802	153,537,790.14	149,628,765.78	3,909,024.36
August	24,119,202	170,522,758.14	166,181,301.78	4,341,456.36

September	32,209,938	227,724,261.66	221,926,472.82	5,797,788.84
October	22,476,894	158,911,640.58	154,865,799.66	4,045,840.92
November	26,844,810	189,792,806.70	184,960,740.90	4,832,065.80
December	30,192,270	213,459,348.90	208,024,740.30	5,434,608.60
	290,956,272	P2,057,060,843.04	P2,004,688,714.08	P52,372,128.96
		P3,734,328,129.84	P3,639,253,297.68	P95,074,832.16

Noteworthy is the difference between the actual excise tax overpayment of P95,074,832.16 and the amount of P94,494,801.96 being claimed by petitioner in its Petition for Review. The discrepancy of P580,030.20 pertains to petitioner's overpaid excise taxes on 3,222,390 liters of Red Horse beer removed for the period January 1 to 10, 2001 which was excluded from the subject claim (*page 10, Exhibit AA*).

While the instant claim of P94,494,801.96 actually represents petitioner's excess excise tax payment for the period January 11, 2001 to December 31, 2002, the amount of P6,404,270.40 is already barred by prescription and cannot be granted.

Section 229 and Section 130(A)(2) of the NIRC of 1997, provide as follows:

> "***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."
>
> "**SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.*** –
> "(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –
>
> xxx xxx xxx
>
> "(2) *Time for Filing of Return and Payment of the Tax.* — Unless otherwise specifically allowed, the return shall be filed and the excise tax paid

<u>by the manufacturer or producer before removal of domestic products from place of production</u>: xxx"

Pursuant to the aforequoted provisions of Section 229 in relation to Section 130(A)(2) of the NIRC of 1997, the reckoning of the two-year prescriptive period for the refund of erroneously paid tax shall be from the *date of payment of the tax*, i.e. prior to removal of the subject products from place of production.

Since the Petition for Review was filed on February 24, 2003, the two-year prescriptive period started to run on February 24, 2001 and any excise tax payment made before February 24, 2001 had already prescribed. Evidently, the claimed excise tax overpayment for the period January 11 to 31, 2001 in the amount of P2,514,508.92 is barred by prescription, computed as follows:

Overpaid excise taxes for January 2001	P 3,094,539.12
Less: overpaid excise taxes for January 1 to 10 excluded by petitioner in its Petition for Review	580,030.20
Claimed overpaid excise taxes for January 11 to 31, 2001	P 2,514,508.92

Further, since the removal reports presented by petitioner were on a monthly and not on a daily basis, this Court cannot ascertain which portion of the entire claim for the month of February 2002 in the amount of P3,889,761.48 corresponds to the payment made by petitioner on February 24, 2001 and falls within the two-year prescriptive period. Accordingly, this Court shall consider the entire claim for the month of February 2002 amounting to P3,889,761.48 as time-barred also. Hence, only the remaining claimed overpaid excise taxes of P88,090,531.56 fall within the two-year prescriptive period, computed below:

Claimed Excise Tax Overpayment		P 94,494,801.96
Less: Prescribed claim		
January 11 to 31, 2001	P 2,514,508.92	
February 2001	3,889,761.48	6,404,270.40
Refundable Excise Tax Overpayment		P 88,090,531.56

IN VIEW OF ALL THE FOREGOING, petitioner's claim is hereby **GRANTED** but in a reduced amount of P88,090,531.56. Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P88,090,531.56 representing erroneously paid excise taxes for the period March 1, 2001 to December 31, 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 6607

Members:

ACOSTA, *Chairman,*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

MAR 15 2006

x---x

Dissenting Opinion

I humbly register my dissent to the conclusion arrived at by my esteemed colleagues that the Bureau of Internal Revenue (BIR) went beyond the legal parameters that defined the boundaries of its authority when it issued Revenue Regulations No. 17-99, particularly the last paragraph of Section 1 thereof, which states that:

> "Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."

Subsequently, this resulted in the grant of petitioner's claim for refund in the total amount of P94,494,801.96, allegedly representing erroneously paid excise tax for its beer brand "Red Horse" covering the period January 11, 2001 to December 31, 2002.

This finding was based on the opinion that the said Revenue Regulation amounts to an unauthorized "administrative legislation" as there is nothing in **Section 143 of the National Internal Revenue Code (NIRC) of 1997**, which it supposedly implements, that authorizes or justifies the BIR to impose by way of regulation that the new specific tax rate for any existing brand of fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000. Hence, it is invalid.

However, as correctly pointed out by the respondent, the last paragraph of **Section 1 of Revenue Regulations No. 17-99** is in accordance with the legislative intent of **Republic Act No. 8240 and Section 143 of the NIRC**, which is to increase revenues by increasing the rates of excise tax on among others, fermented liquors.

It is noteworthy that in this petition for review, there are two crucial issues, namely: (1) the supposed lack of authority of the BIR to issue Revenue Regulations No. 17-99 and (2) the validity of the same.

Anent the issue of BIR mandate to issue implementing regulations, long-settled is the principle that the BIR as an administrative agency responsible for revenue collection and enforcement, is duty-bound to carry out the congressional policy of regulating specified activities and to raise revenues through proper collection of due taxes. This authority is specifically provided in **Section 244** in relation to **Section 4 of the National Internal Revenue Code of 1997**, which states thus:

> "**Section 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. — The Secretary of Finance,** upon recommendation of the Commissioner, **shall promulgate all needful rules and regulations for the effective enforcement of the provision of this Code.** (*Emphasis supplied*)

> "**Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** — The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

A similar authority is categorically provided in **Section 10 of the said Republic Act 8240**, to wit:

> "The Secretary of Finance shall, upon the recommendation of the Commissioner of the Internal Revenue, **promulgate the necessary rules and regulations for effective implementation of this Act**." (*Emphasis supplied*)

Based on the aforequoted provisions, the general prohibition on non-delegation of legislative power allows certain exceptions, among them is the exercise of administrative agencies, such as the BIR, of administrative legislation. Administrative agencies in the exercise of this rule-making power can create rules and regulations to accomplish the declared policies as laid down by Congress. This exercise of discretion is permissible provided that what is being delegated is not the discretion as to what the law shall be but only the discretion as to its execution.

The reasons behind the grant of authority are as follows:

1. It relieves the legislature of a great burden of work in respect to which it has no special competence, and thus, enables it more largely to direct its attention to matters of general import;

2. It entrusts the drafting of detailed provisions, which are usually of a highly technical character to the agencies most familiar with the conditions to be met and which have the responsibility for their enforcement; and

3. It makes possible the prompt modification of a provision as soon as experience demonstrates that it is unsatisfactory. (*Administrative Law — A Text, pages 27–28, Neptali Gonzales*)

These find special application in the case before Us. The promulgation of Revenue Regulations No. 17-99 is within the prerogative of the Revenue Bureau. The BIR is not bound to merely repeat or reproduce the words of the statute if in the exercise of its discretion the law cannot be executed as what Congress intends it to be. To hold and believe otherwise would reduce the rule-making powers to a purely mechanical act and render it worthless.

Furthermore, this power has been contemplated and delegated by Congress to the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, as discussed in the Senate during the interpellation of Senator Enrile by Senator Drilon, to wit:

> "Senator Drilon: In this particular case, Mr. President, the Congress would, in effect, be delegating to the Department of Finance the power to increase taxes.
>
> "Senator Enrile: In a sense, yes, Mr. President, but there is nothing that will prevent Congress from withdrawing that delegation if it wants to do this. We thought that we have to entrust this function to the tax administrators so that they can plan and they can move on." (*Interpellations-H. No. 7918, Records of the Senate, Vol. II, No. 33*)

The aforementioned delegation of power to the Department of Finance has been confirmed even if the validity of the same will be questioned before the courts, thus:

> "Senator Drilon: This is what I am concerned of under this system. I cannot imagine that a taxpayer affected by the new rates that will be imposed by the Secretary of Finance in accordance with his

authority under this law would not go to court, raise issues on the new rates, and therefore tie up the hands of the government. The old rates will be in effect while this case is pending."

xxx xxx xxx

"Senator Enrile: As I said, the way I see it, since there is no reason why we could not deal with this problem directly in 1998 or before 1999, there is no harm in leaving this provision in this measure to give the Executive Department the means to do it. We can readjust the rate in 1997, if we want it. We can readjust it in 1998. But if we do not want to do it, then we leave it to the department. . . ." (*Interpellations H. No. 7198, Records of the Senate, page 269, Wednesday, October 16, 1996*)

Clearly from the foregoing, the BIR is given the power to issue the necessary regulations in implementing the provisions of the NIRC, including Section 143.

Proceeding now to the issue of validity of the questioned regulation, a review of the history of the last paragraph of Section 1 of Revenue Regulations No. 17-99 reveals that it traces its origin to Revenue Regulations No. 1-97 that implemented Republic Act No. 8240. Subsequently, R.A. No 8240 had been incorporated in Section 143 of the 1997 Tax Code.

The legislative intent and purpose in enacting R.A. No. 8240 and Section 143 of the 1997 Tax Code may again be discovered from congressional records. An examination of the Sponsorship Speech of Senator Juan Ponce Enrile (*Sponsorship Speech of Sen. Enrile, Records of the Senate, Volume II, No. 32, October 15, 1996*) of Senate Bill No. 7198 (which became R.A. No. 8240) and his answers to the interpellations reveal that said bill was the most important part of the Comprehensive Tax Reform Program (CTRP) through which the government expects to raise as much as P6 Billion in additional revenue to finance its economic development requirements and progress annually, to wit:

> "The guiding principles of the excise tax reform that we are presenting, Mr. President, are the following: . . .
>
> "First, to evolve a tax structure which will promote fair competition among the players in the industries concerned and generate buoyant and stable revenues for government.
>
> "Second, to ensure that the tax burden is equitably distributed not only amongst the industries affected but equally amongst the various markets that are going to be affected by this excise tax on distilled spirits, fermented liquor, cigars and cigarettes.
>
> xxx xxx xxx
>
> "Third, to simplify the tax administration and compliance with the tax laws that we are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion."

From the foregoing, among the guiding principles of the bill are to evolve a tax structure which will generate buoyant and stable revenues, to simplify tax administration in order to minimize losses arising from tax avoidance and tax evasion methods, and to increase the rates of excise tax on, among others, fermented liquors, in order to collect more revenues in the process.

The Decision of the majority seemed to have overlooked the *raison d'être* of the law when this Court interpreted the provisions of R.A. No. 8240 and Section 143 of the NIRC literally. In the case of **Commissioner of Internal Revenue vs. S. C Johnson and Sons, Inc. et al.**, *G.R. No. 127105, June 25, 1999*, the Supreme Court precisely cautioned against such literal interpretation in this manner:

> The above construction is based principally on syntax or sentence structure but fails to take into account the purpose animating the treaty provisions in point . . . .
>
> xxx xxx xxx

> In one case the Supreme Court pointed out that the laws are not just mere compositions, but have the ends to be achieved and that the general purpose is a more important aid to the meaning of the law than any rule which grammar may lay down. It is the duty of the courts to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose xxx."

In the light of the foregoing admonition of the Supreme Court, it is the duty of this court in interpreting the provisions of the said statutes, "to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose". This certainly is more important than looking at rules of grammar to aid it in arriving at proper legal interpretations. And statutes should be literally construed only when the language of the law is clear and unequivocal (**IBAAEV vs. Inciong**, *132 SCRA 603*; **Chartered Bank Employees Association vs. Ople**, *138 SCRA 273*).

The Highest Tribunal, in the case of **Paras vs. Comelec**, *76 SCAD 40, 264 SCRA 49*, explained that literal construction is not favored, thus:

> "We admonish against a too literal reading of the law as this is apt to constrict rather than to fulfill its purpose and defeat the intention of its authors. The intention is usually found not in the letter that killeth but in the spirit that vivifieth . . . ."
>
> "The spirit, rather than the letter, of a law determines its construction; hence, a statute, as in this case, must be read according to its spirit and intent."

In the Decision before Us, the majority opined that the inevitable conclusion would be to impose the new rates of excise tax under paragraphs (a) to (c) which is to increase by 12%, even if it may be lower than the amount of tax being paid prior to

January 1, 2000. However, as emphatically pointed out by respondent this would defeat the very purpose of the law.

It is provided that from the 3-year period of effectivity of R.A. No. 8240, the excise tax from any brand of fermented liquor shall not be lower than the tax due on October 1, 1996. This means that from January 1, 1997 to December 31, 1999, the excise tax on fermented liquor shall be the higher of the tax imposed in Section 143 (under the specific tax system) and the tax due on October 1, 1996 (under the ad valorem tax system). Accordingly, by January 1, 2000, the existing tax rate was the higher tax rate between that imposed under the specific tax system and that due on October 1, 1996 under the ad valorem tax system. This higher tax rate shall be the basis of the 12% increase come January 1, 2000.

In the case of petitioner's Red Horse beer brand, since the tax due on October 1, 1996 (under the ad valorem tax system), which was P7.07, was higher than the tax imposed in Section 143 (under the specific tax system), which is P6.15, the former was the tax rate during the 3-year period from January 1, 1997 to December 31, 1999. By January 1, 2000, the existing tax rate was P7.07 on which the 12% increase should have been based.

Contrary to petitioner's contention, nowhere is it stated in the law that after the end of the 3-year period, the rate of excise tax on fermented liquor will be rolled back. In fact, by adopting the argument of respondent and declaring the questioned regulation as valid would harmonize and give the law a clearer meaning.

When Congress deemed it proper to restructure the taxation of these so-called "sin products," it did so in order to generate more revenues and to deter the consumption of alcohol and cigarettes. Never did Congress contemplate to substantially decrease the tax to be collected for these products. In fact, it had the foresight to consider the rising cost of goods and inflation by mandating a 12% increase on the specific tax rates, three years from the effectivity of R.A. 8240 or on January 1, 2000.

For the court to rule that the applicable rates would be the new rates of excise tax under paragraphs (a), (b), and (c), which is to increase by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000, would produce an illogical situation where in spite of an increase on the tax rates, it will also bring about a sudden drop in collection. It implies that after January 1, 2000, a new tax regime will apply wherein the rates stated in Section 143 (a), (b), and (c) shall govern and the other pertinent provision of Section 143 will automatically cease and expire. Parts of a statute should not be viewed in isolation. A cardinal rule of statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole, and not of an isolated part or a particular provision alone (**Aboitiz Shipping Corporation, et al., vs. City of Cebu, et al.**, *13 SCRA 449*).

To recapitulate, Revenue Regulations No. 17-99 is in accordance with the law it is meant to implement. To rule otherwise would go against clear legislative intention. Accordingly, I vote to deny the claim for refund in the amount of P94,494,801.96.

ERNESTO D. ACOSTA
Presiding Justice