REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

SAN MIGUEL BREWERY INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8955

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

Promulgated: SEP 14 2023
11:02 a.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This case was remanded by the Court *En Banc*, for the resolution thereof on the merits, pursuant to its Decision dated September 19, 2018 in CTA EB No. 1772,[1] the dispositive portion of which reads:

> "**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.**"

[1] Docket – Vol. 2, pp. 728 to 745.

ANTECEDENTS

On August 18, 2017, this Court in Division rendered its Decision on the present case,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**, petitioner having availed of the wrong mode of appeal.
>
> **SO ORDERED.**"

Petitioner then filed its *Motion for Reconsideration* on September 6, 2017.[3] Respondent filed its *Opposition Re: Petitioner's Motion for Reconsideration* on October 13, 2017.[4]

The Court, however, denied the said *Motion for Reconsideration* in the Resolution dated January 5, 2018,[5] the dispositive portion of which states as follows:

> "**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated August 18, 2017 is **AFFIRMED** and **UPHELD**.
>
> **SO ORDERED.**"

Undeterred, on February 14, 2018, petitioner filed a *Petition for Review* with this Court *En Banc*, docketed as CTA EB No. 1772. Respondent filed his *Comment* thereto on April 5, 2018. As already intimated, the Court *En Banc* ruled in favor of petitioner in its Decision dated September 19, 2018.

Respondent then filed a *Motion for Reconsideration Re: Decision dated 19 September 2018* on October 10, 2018.[6] On November 28, 2018, petitioner filed its *Opposition To The Respondent's "Motion for Reconsideration" dated October 9, 2018.*[7]

In the Resolution dated January 24, 2019,[8] the Court *En Banc* denied respondent's *Motion for Reconsideration, viz.*:

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[2] Docket – Vol. 2, pp. 652 to 668.
[3] Docket – Vol. 2, pp. 675 to 688.
[4] Docket – Vol. 2, pp. 695 to 707.
[5] Docket – Vol. 2, pp. 712 to 715.
[6] Docket – Vol. 2, pp. 749 to 760.
[7] Docket – Vol. 2, pp. 768 to 776.
[8] Docket – Vol. 2, pp. 783 to 786.

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

SO ORDERED."

Thereafter, the Court *En Banc* issued the Resolution dated February 15, 2021[9] with the following pronouncements, to wit:

> "On July 28, 2020, this Court received a Notice of the Resolution dated January 8, 2020 issued by the Supreme Court, Third Division Re: **G.R. No 244738 (Commissioner of Internal Revenue v. San Miguel Brewery, Inc.)** declaring that the said case is considered closed and terminated, in light of the CIR's Manifestation that he opted not to file a petition for review on *certiorari*.
>
> On December 16, 2020, this Court received an Entry of Judgment Re: **G.R. No. 244738** which states that the Supreme Court Resolution on said case has become final and executory on July 2, 2020 and was recorded in the Book of Entries of Judgments.
>
> In view of the withdrawal of the CIR's appeal before the Supreme Court, the Court *En Banc*'s Decision in the above-captioned case has become final and executory. In accordance with CTA A.M. No. 18-6-2015, the present case is **REMANDED** to the Court in Division for its resolution on the merits.
>
> **SO ORDERED.**"

PROCEEDINGS AFTER THE REMAND OF THE CASE TO THIS COURT IN DIVISION

On March 1, 2021, petitioner filed a *Motion for Leave To File, and For Admission of, the Attached "Supplemental Formal Evidence" dated February 26, 2021.*[10] Respondent filed his *Comment (Re: Petitioner's Motion for Leave to File, and for Admission of, the Attached Supplemental Formal Offer of Evidence dated February 26, 2021* on March 19, 2021.[11]

In the Resolution dated June 22, 2021,[12] the Court: (1) set the case for Commissioner's hearing, (2) recalled petitioner's witness, Ms. Noemi L. Ronquillo, and (3) declared that after the said hearing, petitioner's *Motion for Leave* shall be deemed submitted for resolution.

[9] Docket – Vol. 2, pp. 795 to 797.
[10] Docket – Vol. 2, pp. 798 to 808.
[11] Docket – Vol. 2, pp. 818 to 820.
[12] Docket – Vol. 2, pp. 823 to 826.

At the hearing held on April 6, 2022, Ms. Noemi L. Ronquillo testified on direct and cross examination. In the same hearing, petitioner, upon motion, was given fifteen (15) days within which to file an *Amended Supplemental Formal Offer of Evidence*.[13] Thus, on April 12, 2022, petitioner submitted the same.[14] However, respondent failed to file his comment thereon.[15]

In the Resolution dated July 20, 2022,[16] the Court granted the petitioner's *Motion for Leave*, and admitted all of the latter's offered exhibits.

On August 11, 2022, the *Supplemental Memorandum For Petitioner* was submitted.[17] Respondent, however, failed to filed his supplemental memorandum.[18]

In the Resolution dated September 20, 2022,[19] the present case was deemed submitted anew for decision.

THE ISSUES STIPULATED BY THE PARTIES

The parties stipulated the following issues for this Court's resolution, to wit:

> "4.00.a. Whether this Honorable Court has jurisdiction to nullify a provision, pertaining to the excise tax rate on 'San Mig Light' in bottle, can and kegs, in RMC No. 90-2012.
>
> 4.00.b. Whether petitioner San Miguel Brewery Inc. is entitled to a refund by the Bureau of Internal Revenue of the amount of P83,019,926.21 as having been erroneously, excessively, illegally and/or wrongfully collected from and overpaid by it as excise tax on 'San Mig Light' for the period from January 1, 2013 to December 31, 2013.
>
> 4.00.c. Whether the tax rate of P20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for 'San Mig Light' in bottle and in can is directly contradictory to and inconsistent with, and violative of, the express provisions of Section 143 of the NIRC, as amended by RA 10351 and therefore not valid.

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[13] Minutes of the hearing held on April 6, 2022, Docket – Vol. 2, p. 885.
[14] Docket – Vol. 2, pp. 886 to 894.
[15] Records Verification Report dated June 20, 2022, Docket – Vol. 2, p. 900.
[16] Docket – Vol. 2, pp. 897 to 899.
[17] Docket – Vol. 2, pp. 901 to 906.
[18] *Records Verification Report* dated September 8, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 908.
[19] Docket – Vol. 2, p. 910.

4.00.d. Whether Revenue Memorandum Circular No. 90-2012 was issued without prior notice and hearing to the Petitioner."[20]

Petitioner's arguments:

Petitioner argues that the excise tax of ₱20.57 per liter specified in Revenue Memorandum Circular (RMC) No. 90-2012 for *"San Mig Light"* (SML) is directly contradictory to, inconsistent with, and violative of, the express provisions of Section 143 of the National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 10351, and is therefore not valid; and that the aforesaid tax rate is not valid on the additional ground that RMC No. 90-2012 was issued without hearing and prior notice to petitioner in utter disregard of the due process clause provision of the Constitution and the process is required by the Administrative Code of 1987.

Moreover, petitioner claims that respondent has not presented any evidence to refute or rebut the overwhelming evidence adduced by petitioner; that it is entitled to a refund in the amount of ₱83,019,273.64, as validated by the Independent Certified Public Accountant (ICPA), representing erroneous, illegal, and/or wrongful collection from, and overpayment by, petitioner in excise taxes for the period from January 1, 2013 up to December 31, 2013; and that the arguments raised by respondent in his *Answer* to the *Petition for Review* are baseless and without merit.

Respondent's counter-arguments:

Respondent contends the instant *Petition* is not warranted to be given due course for lack of jurisdiction; that the nullification of the ₱20.57 excise tax rate specified in RMC No. 90-2012 does not fall under the special jurisdiction granted by statute to this Court; that collateral attack on a presumably valid administrative issuance is not allowed; that this Court has no jurisdiction to determine the validity of the ₱20.57 provision of RMC No. 90-2012 due to petitioner's non-exhaustion of administrative remedies; that petitioner is not entitled to a tax refund because there was no erroneous or illegal collection of excise taxes; and that claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

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[20] *Joint Stipulation of Facts, Documents, Issues, and Other Matters*, Docket – Vol. 1, p. 395.

The Court *En Banc* has already resolved the first issue, and its resolution has already become the law of the case. Thus, the said first issue will no longer be addressed herein.

Nonetheless, for an orderly disposition of this case, this Court shall jointly address the aforequoted third and fourth stipulated issues.

RMC No. 90-2012 is void, not only for lack of prior notice and hearing to petitioner, but also because it contravenes the law it seeks to implement.

Whether prior notice and hearing is required would depend on the classification of RMC No. 90-2012, as either a legislative rule or an interpretative rule.

In *The Philippine Stock Exchange, Inc., et al. vs. Secretary of Finance, et al.*,[21] the Supreme Court held as follows:

> "The issue boils down to the characterization of the questioned regulations: specifically whether they are legislative rules or interpretative rules.
>
> The right to due process guaranteed by the Constitution encompasses substantive and procedural due process. Substantive due process pertains to government's denial or restriction on the right to life, liberty, or property; procedural due process pertains to the procedures that the government must follow before it deprives a person of life, liberty, or property. While the right has no exact definition, the standard in determining whether a person was accorded due process is whether the restriction on the person's life, liberty, or property is consistent with fairness, reason, and justice, and free from caprice and arbitrariness. **As applied to procedural due process, the question to be asked is <u>whether the person was given sufficient notice and opportunity to be heard</u>. Then applying the concept of procedural process to the administrative issuances in this case, <u>the inquiry pertains to whether the questioned regulations require prior notice and hearing for their validity</u>.**

[21] G.R. No. 213860, July 5, 2022.

But first, *Republic v. Drugmaker's Laboratories, Inc.*[22] summarizes the different kinds of administrative regulations:

> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.

Legislative rules are a form of subordinate legislation where the agency is acting in a legislative capacity, supplementing the statute, filling in the details, pursuant to a specific delegation of legislative power. They implement a primary legislation by providing the details thereof. They impose additional obligations pursuant to authority from Congress and affect individual rights and obligations. Interpretative rules, on the other hand, are intended to interpret, clarify, or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute.

Then, the general rule is that administrative regulations must comply with the requirements of the Administrative Code of 1987[23] on prior notice, hearing, and publication for validity. Section 9, Chapter 2, Book VII of the Code provides for the requirement of notice and hearing when practicable if not required by law:

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[22] 728 Phil. 480 (2014).

[23] Executive Order No. 292, Entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987'." Enacted: July 25, 1987.

> Section 9. *Public Participation.* – (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.
>
> x x x x

Interpretative rules, however, are an exception from the requirement of public participation, or prior notice and hearing. When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. **But surely, if the interpretative regulation substantially increases the burden of those governed, public participation and publication are a must**, thus:

> Accordingly, an administrative regulation can be construed as simply interpretative or internal in nature, dispensing with the requirement of publication, when its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. **When, however, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord to least to those directly affected a chance to be heard, and thereafter, to be duly informed, before that new issuance is given the force and effect of law.**

In fine, the gauge on determining if a regulation requires prior notice and hearing is its substance or content. **Prior notice and hearing are required if the regulation substantially increases the burden of those governed, notwithstanding its nomenclature—despite the regulation being called or designated as interpretative.**

Thus, if the questioned regulation here in this case are legislative rules or substantially increase the burden of those governed, they should have undergone prior notice and hearing (which, in this case, are undisputedly absent) **for their validity.** If they are interpretative rules, prior notice and hearing are not essential for their validity.

Here, the Court finds that the questioned regulations are not mere interpretative issuances; **they are legislative in nature that change, if not increase, the burden of those governed. Notice and hearing are thus required for their validity.**

> xxx xxx xxx
>
> In fine, the questioned regulations should have undergone notice and hearing prior to their enactment. They imposed new and substantial burdens on those governed. **For failure to conduct notice and hearing prior to issuance and publication, the questioned regulations are therefore void.**" *(Emphases added)*

On the basis of the foregoing jurisprudential pronouncements, RMC No. 90-2012 should be treated as a legislative rule.

RMC No. 90-2012[24] provides as follows:

> "**This Circular is hereby issued in order to provide the initial classifications, effective January 1, 2013, of alcohol and tobacco products according to the tax rates prescribed under Republic Act No. 10351**, 'An Act Restructuring The Excise Tax On Alcohol and Tobacco Products By Amending Sections 141, 142, 143, 144, 145, 8, 131 And 288 of Republic Act No. 8424, Otherwise Known As The National Internal Revenue Code Of 1997, as amended By Republic Act No. 9334, And For Other Purposes', **based on the 2010 price survey of these products by this Bureau.** In case of alcohol and/or tobacco products that were introduced after the 2010 price survey but before the effectivity of the said Act, their respective classification or rate is based on the suggested net retail price declared in latest sworn statement filed by the local manufacturer or importer, as the case may be." *(Emphases and underscoring added)*

Relative to alcohol products, Section 3 of RA No. 10351,[25] which took effect on January 5, 2013,[26] reads, in part, as follows:

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[24] 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 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"

[25] 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.

[26] Republic Act No. 10351 was published in the Manila Bulletin on December 21, 2012. Thus, counting fifteen (15) days from the said date (pursuant to *Tañada, et al. vs. Tuvera, et. al.*, G.R. No. L-63915, December 29, 1986; and Article 2 of the Civil Code of the Philippines, as amended by Executive Order No. 200, series of 1987), the said RA took effect on January 5, 2013.

"SEC. 3. Section 143 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, is hereby further amended to read as follows:

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

'Effective on January 1, 2013

'(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (P50.60) or less, the tax shall be Fifteen pesos (P15.00) per liter; and

'(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (P50.60), the tax shall be Twenty pesos (P20.00) per liter.

xxx xxx xxx

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

xxx xxx xxx

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

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

xxx xxx xxx." *(Emphases and underscoring added)*

/v

It is clear from the foregoing provisions that the mandate to classify all fermented liquors existing at the time of the effectivity of RA No. 10351, **according to the net retail prices and the tax rates provided therein**, is vested on the BIR, which classification should be based on the latest price survey of the fermented liquors conducted by the latter.

In turn, part of Annex "A-1" of RMC No. 90-2012 states the net retail price of SML (per the 2010 BIR Price Survey), and prescribes the applicable excise tax rate per liter for SML, *viz*:

"Annex 'A-1'

LIST OF BRANDS OF LOCALLY MANUFACTURED FERMENTED LIQUORS
As of December 2012

I. List of Brands Based on 2010 BIR Price Survey

BRAND NAME/ Product Description	TYPE OF PACKAGING	CONTENT PER TYPE OF PACKAGING (in milliliter)	NET RETAIL PRICE (Based on 2010 BIR Price Survey) Per Liter	Applicable Excise Tax Rate Per Liter (Effective January 1, 2013)
A. NRP is P50.60 per liter and below				
	xxx	xxx	xxx	
San Mig Light	bottle	330	47.99	**20.57**
	xxx	xxx	xxx	
B. NRP is more than P50.60				
	xxx	xxx	xxx	
San Mig Light	can	330	61.51	**20.57**
	xxx	xxx	xxx"	

(Emphases added)

Notably, in prescribing the applicable excise tax rate per liter for SML—the subject matter of the present refund claim, the BIR acted in a legislative capacity and/or has supplemented RA No. 10351. In fact, as it imposes additional obligations, at least, on the part of petitioner in the form of excise tax on the SML, as will be shown momentarily, RMO No. 90-2012 vis-à-vis Annex "A-1" thereof, should be considered as a legislative rule. Be that as it may, even granting that the said administrative issuance may be considered as an interpretative rule or regulation, the same substantially change or increase the burden of those governed (particularly petitioner).

Correspondingly, RMO No. 90-2012, with its Annexes, should have undergone prior notice and hearing for its validity.

In this case, petitioner's witness, Ms. Noemi L. Ronquillo, testified that petitioner *"did not receive any notice of hearing and was not given the opportunity to be heard or to give its side or position with respect to RMC 90-2012."*[27] This testimony was not disproved or refuted by respondent. As such, it may be concluded that no prior notice and hearing was indeed done by respondent or the BIR. For failure to conduct notice and hearing prior to its issuance, RMC No. 90-2012 is therefore void.

In any event, it must be pointed out that the *"additional obligations"* imposed by RMO No. 90-2012, on the aforequoted Annex "A-1" thereof, particularly on the applicable excise tax rate per liter for SML, are not in accord with the provisions introduced by RA No. 10351.

Based on the above-quoted Section 143 of the NIRC of 1997, as amended by RA No. 10351, effective on January 1, 2013, the excise tax shall be **₱15.00 per liter**, in case the net retail price per liter of volume capacity of the fermented liquor is ₱50.60 or less; and the excise tax shall be **₱20.00 per liter**, in case the net retail price per liter of volume capacity of the fermented liquor is more than ₱50.60. However, Annex "A-1" of RMC No. 90-2012 imposes excise tax on the SML in the fixed amount of **₱20.57**, regardless of whether the net retail price per liter is less or more than the amount of ₱50.60.

It is then clear that RMC No. 90-2012, with Annex "A" thereof, expanded the provision of Section 143 of the NIRC of 1997, as amended by RA No. 10351, insofar as the imposition of excise tax on SML, as a fermented liquor, is concerned. Thus, the same must be struck down, and shall have no force and effect.

Apropos, tax administrators are not allowed to expand or contract the legislative mandate.[28] Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[29] Such being the case, Section 143 of the NIRC of 1997, as amended by as amended by RA No. 10351 must prevail over RMC No. 90-2012, particularly Annex "A" thereof, relative to the imposition of excise tax on SML as a fermented liquor.

Finding the invalidity of RMO No. 90-2012, We shall proceed to determine the propriety of the present refund claim.

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[27] Transcript of Stenographic Notes at the hearing held on January 26, 2016, Docket – Vol. 252.
[28] *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008.
[29] *Id.*

Governing provisions for refund claims.

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
>
> (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 afore-quoted 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, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that 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."[30]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[31]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise taxes paid are "erroneous or illegal".

Petitioner timely filed its administrative and judicial claims.

For excise tax on domestic products in general, the return is filed and the excise tax is paid by the manufacturer or producer ***before*** removal of the products from the place of production. Hence, **the <u>date of payment of excise tax on domestic products</u> depends on the <u>date of actual removal of the taxable domestic products from the place of production</u>.**[32]

Thus, the reckoning of the two (2)-year prescriptive period under the afore-quoted Sections 204(C) and 229 should be from the date of "actual removal" of the taxable domestic products from the place of production; and ***not*** from the date when the pertinent excise tax return was filed and/or when the corresponding excise tax was paid.

In the present case, in 2013, petitioner filed *Excise Tax Returns* and paid excise taxes;[33] and actually removed its beer products from its plants,[34] the earliest date was made on January 2, 2013. Such being the case, petitioner had two (2) years from the said date or until January 2, 2015, at the earliest, within which to file its administrative and judicial claims for refund.

[30] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, G.R. Nos. 180740 and 180910, November 11, 2019.
[31] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[32] *Commissioner of Internal Revenue vs. San Miguel Corporation, et seq.*, supra.
[33] Exhibits "P-5.1" to "P-5.491", "P-6.1" to "P-6.510", "P-7.1" to "P-7.498", "P-8.1" to "P-8.490", "P-9.1" to "P-9.487", and "P-10.1" to "P-10.477"; Polo Plant, San Fernando Plant, Sta. Rosa Plant, Bacolod Plant, Mandaue Plant, and Davao Plant, respectively.
[34] Exhibits "P-11.1" to "P-11.12".

Clearly, petitioner's administrative claim for refund filed on December 9, 2014,[35] and the judicial claim for refund filed before this Court on December 19, 2014,[36] both fell within the two (2)-year prescriptive period.

Correspondingly, petitioner timely filed its administrative and judicial claims.

This Court shall now proceed to rule on whether the claim for refund in the amount of ₱83,019,296.21 represents erroneous or illegal excise taxes paid by petitioner covering the year 2013, thereby resolving the second issue as stipulated by the parties herein for this Court's resolution.

The (reduced) amount of ₱83,018,504.21 represents erroneous excise taxes paid by petitioner covering the year 2013.

Petitioner alleges that during the period from January 1, 2013 up to December 31, 2013, in order that it will be able to make removals of its SML without penalty, it was constrained to pay, as required by the BIR, excise taxes on its removals of SML in bottle, can and kegs, at the tax rate of ₱20.57 per liter, when it should have paid only ₱20.00 and ₱15.00 per liter, for SML in bottle/in can and in kegs, respectively, as provided for in Section 143 of the NIRC of 1997, as amended by RA No. 10351.

This Court agrees with petitioner.

To stress, pursuant to Section 143 of the NIRC of 1997, as last amended by RA No. 10351, the excise tax rates that should have been imposed, for the year 2013, are only ₱20.00 and ₱15.00 per liter, for SML in bottle/in can and in kegs, respectively, instead of ₱20.57 per liter. Hence, it is evident that the difference between the said amounts, *i.e.*, ₱0.57 per liter for SML in bottle/in can and ₱5.57 per liter for SML in kegs, have been erroneously, illegally, excessively and/or wrongfully collected from petitioner by the BIR.

The said differences amounting to ₱0.57 and ₱5.57 per liter yielded a total amount of ₱83,019,296.21,[37] which is the subject of the present claim, broken down as follows:

	SML Removals (in Liters)			**Excise Tax Due and Paid**
2013	**Bottles and Cans**	**Kegs**	**Total Liters**	**@ ₱20.57**

[35] Exhibits "P-1" to "P-1-aa", Docket – Vol. 1, pp. 56 to 86.
[36] *Petition for Review*, Docket – Vol. 1, pp. 14 to 34.
[37] Exhibit "P-4", Annex A_1, Docket – Vol. 1, p. 436.

January	11,510,825.04	94,000.00	11,604,825.04	₱ 238,711,251.13
February	9,557,547.12	54,790.00	9,612,337.12	197,725,774.56
March	10,491,917.04	60,520.00	10,552,437.04	217,063,629.91
April	11,731,880.16	75,570.00	11,807,450.16	242,879,249.79
May	11,661,708.96	72,320.00	11,734,028.96	241,368,975.71
June	10,769,014.08	73,990.00	10,843,004.08	223,040,593.93
July	10,666,671.84	77,740.00	10,744,411.84	221,012,551.55
August	10,317,993.84	83,500.00	10,401,493.84	213,958,728.28
September	10,296,356.40	71,490.00	10,367,846.40	213,266,600.45
October	10,961,604.72	102,050.00	11,063,654.72	227,579,377.59
November	12,321,936.00	75,590.00	12,397,526.00	255,017,109.82
December	15,956,123.04	120,820.00	16,076,943.04	330,702,718.33
Total per Petition	**136,243,578.24**	**962,380.00**	**137,205,958.24**	**₱ 2,822,326,561.05**
SHOULD BE Excise Taxes for January 1, 2013 to December 31, 2013				**Should-be Excise Taxes @ ₱20.00 and ₱15.00**
Excise tax @ ₱20.00 for Bottles and Cans	136,243,578.24		136,243,578.24	2,724,871,564.80
Excise tax @ ₱15.00 for Kegs		962,380.00	962,380.00	14,435,700.04[38]
Sub-total	**136,243,578.24**	**962,380.00**	**137,205,958.24**	**₱ 2,739,307,264.84**
Claim for Over-payment of Excise Taxes, per Petition				**₱ 83,019,296.21**

To support its claim, petitioner adduced in evidence, among others, the following documents, which were all examined and verified by the Court-commissioned ICPA, Ms. Normita L. Villaruz of Villaruz, Villaruz & Co., CPAs, *viz.*:

Brewery Plant	Documents	Exhibits
Polo, Valenzuela; San Fernando, Pampanga; Sta. Rosa, Laguna; Bacolod City, Negros Occidental; Mandaue City, Cebu; and Davao City	Movement Reports with Allocated Deposits	"P-11.1" to "P-11.12"
Polo, Valenzuela	Excise Tax Returns and related documents	"P-5.1" to "P-5.491"
	Official Register Books	"P-12.1" to "P-12.342"
	Excise Taxpayer's Removal Declarations	"P-12.343" to "P-12.4,982"
	Shipping Memorandums	"P-18.1" to "P-18.5,254"
	Issue/Receipt Documents	"P-18.5,255" to "P-18.5,470"
San Fernando, Pampanga	Excise Tax Returns and related documents	"P-6.1" to "P-6.510"
	Excise Taxpayer's Removal Declarations and Daily and Monthly Sworn Statements of the Volume of Removals	"P-13.1" to "P-13.340"
	Shipping Memorandums	"P-19.1" to "P-19.8,961"
	Gate Passes and Claim Memorandums	"P-19.8,962" to "P-19.9,059"
Sta. Rosa, Laguna	Excise Tax Returns and related documents	"P-7.1" to "P-7.498"
	Excise Taxpayer's Removal Declarations and Daily and Monthly Official Register Books	"P-14.1" to "P-14.1,106"

[38] With ₱0.04 rounding-off difference.

	Shipping Memorandums and Stock Transfer Receipts	"P-20.1" to "P-20.1,381"
Bacolod City, Negros Occidental	Excise Tax Returns and related documents	"P-8.1" to "P-8.490"
	Excise Taxpayer's Removal Declarations, Revenue Officer on Premise's Weekly Reports and Official Register Books	"P-15.1" to "P-15.336"
	Shipping Memorandums and Delivery Receipts	"P-21.1" to "P-21.3,827"
Mandaue City, Cebu	Excise Tax Returns and related documents	"P-9.1" to "P-9.487"
	Official Delivery Invoices, and Official Register Books	"P-16.1" to "P-16.336"
	Shipping Memorandums and Delivery Receipts	"P-22.1" to "P-22.2,993"
Davao City	Excise Tax Returns and related documents	"P-10.1" to "P-10.477"
	Official Delivery Invoices, Official Register Books and Reports on Excise Tax Payments and Applications	"P-17.1" to "P-17.315"
	Shipping Memorandums and Gate Passes	"P-23.1" to "P-23.2,059"

As aptly noted by the ICPA in her report dated September 22, 2015, petitioner's total Advance Excise Tax Deposits amounting to ₱20,375,073,900.27, for the period covering January 1, 2013 to December 31, 2013, for all beer products for all of its six (6) plants is broken down as follows:[39]

Brewery Plant	**Annex per ICPA Report**	**Amount**
Polo, Valenzuela	B_1	₱ 3,503,800,000.01
San Fernando, Pampanga	B_2	7,507,351,000.16
Sta. Rosa, Laguna	B_3	1,626,409,900.04
Bacolod City, Negros Occidental	B_4	1,217,204,000.02
Mandaue City, Cebu	B_5	4,606,155,000.02
Davao City	B_6	1,914,154,000.02
Total Advance Excise Tax Deposits		**₱20,375,073,900.27**

On the other hand, petitioner's Movement Report with Allocated Deposit[40] shows that the computed excise taxes due on the removal of **all beer products** from the six (6) plants from January 1, 2013 to December 31, 2013 amounted to ₱20,370,851,692.77, summarized as follows:[41]

Brewery Plant	**Amount**
Polo, Valenzuela	₱ 3,504,491,142.32
San Fernando, Pampanga	7,520,357,475.18
Sta. Rosa, Laguna	1,624,594,019.12
Bacolod City, Negros Occidental	1,216,186,644.99
Mandaue City, Cebu	4,589,090,693.49
Davao City	1,916,131,717.67
Total	**₱20,370,851,692.77**

[39] Exhibit "P-4", Findings and Observations, II.A.1.1.2, Docket – Vol. 1, p. 417.
[40] Exhibits "P-11.1" to "P-11.12".
[41] Exhibit "P-4", Findings and Observations, II.A.2.2.1, Docket – Vol. 1, p. 418.

Furthermore, the ICPA examined petitioner's balance of excise tax advance payments carried from the previous return and the excise tax payments/deposits made in the year 2013, then compared the same with all the removals/applications of the excise taxes for the same year, to wit:[42]

Plant	Beginning Balance of Advance Excise Tax Deposits per Excise Tax Returns, December 31, 2012	Total Payment of Advance Excise Tax Deposits for the period covered January 1, 2013 to December 31, 2013	Less: Total Excise Taxes due on removals of ALL Beer Products per Monthly Movement Report	Outstanding Balance of Advance Excise Tax Deposits, December 31, 2013, as computed	Outstanding Balance of Advance Excise Tax Deposits, December 31, 2013, per Excise Tax Returns	Variance
Polo, Valenzuela	₱ 7,537,136.21	₱ 3,503,800,000.01	₱ 3,504,491,142.32	₱ 6,845,993.90	₱ 6,845,993.87	₱0.03
San Fernando, Pampanga	17,541,943.85	7,507,351,000.16	7,520,357,475.18	4,535,468.83	4,535,468.73	0.10
Sta. Rosa, Laguna	3,120,683.24	1,626,409,900.04	1,624,594,019.12	4,936,564.16	4,936,564.10	0.06
Bacolod City, Negros Occidental	4,052,461.20	1,217,204,000.02	1,216,186,644.99	5,069,816.23	5,069,816.07	0.16
Mandaue City, Cebu	6,986,806.48	4,606,155,000.02	4,589,090,693.49	24,051,113.01	24,051,113.02	(0.01)
Davao City	9,100,946.35	1,914,154,000.02	1,916,131,717.67	7,123,228.70	7,123,228.63	0.07
Total	**48,339,977.33**	**20,375,073,900.27**	**20,370,851,692.77**	**52,562,184.83**	**52,562,184.42**	**0.41**

Based on the foregoing, the total amount of ₱20,375,073,900.27 Advance Excise Tax Deposits for all beer products made by petitioner during the year 2013 when added to the beginning balance of ₱48,339,977.33 Advance Excise Tax Deposits will result to a total amount of ₱20,423,413,877.60. The sum is sufficient to cover the total excise taxes due per Movement Report with Allocated Deposits for all beer products for the year 2013 of ₱20,370,851,692.77, and will result to an excess advance excise tax deposits of ₱52,562,184.83, as of December 31, 2013. Thus, it is established that petitioner had enough excise tax payments/deposits to cover all its removals of beer products during the year 2013.

The beginning balance of deposits carried forward to January 2013 in the amount of ₱48,339,977.33 can be verified through the corresponding *Excise Tax Returns* (ETR) [BIR Forms No. 2200-A][43] duly filed by the petitioner. The payments/deposits made for the year 2013 in the amount of ₱20,375,073,900.27 was properly supported by ETR with Bank Payment Confirmation Forms;[44] Monthly Movement Report with Allocated Deposits, as attached to the Total Removals Report and Monthly Removals Schedules duly flied and stamped "*Received*" by the BIR (Monthly Movement Report);[45] and, Official Register Books (ORB), Excise Taxpayer's Removal Declarations (ETRD) and Sworn

[42] Annex D, Exhibit "P-4", Docket – Vol. 1, p. 462.
[43] Exhibits "P-5.1" to "P-5.491", "P-6.1" to "P-6.510", "P-7.1" to "P-7.498", "P-8.1" to "P-8.490", "P-9.1" to "P-9.487" and "P-10.1" to "P-10.477".
[44] Exhibits "P-5.1" to "P-5.491", "P-6.1" to "P-6.510", "P-7.1" to "P-7.498", "P-8.1" to "P-8.490", "P-9.1" to "P-9.487" and "P-10.1" to "P-10.477".
[45] Exhibits "P-11.1" to "P-11.12".

Statements of the Volume of Removals (SSR),[46] which contain information, such as total volume of removals of petitioner's domestic beer products and the corresponding excise taxes due, as well as the beginning balance of excise tax deposits, total deposits paid and the ending balance thereof.

An examination of the ETR, particularly the attached Schedule 1 — Summary of Removals and Excise Tax Due on Alcohol Products Chargeable against Payments, as summarized in the ICPA Report,[47] reveals that the total actual excise taxes due and paid from the six (6) plants amounting to ₱20,370,851,692.96[48] comprised of: (1) excise taxes due and paid on SML removals amounting to **₱2,822,326,561.12**, and (2) excise taxes due on all other beer products in the total amount of ₱17,548,525,131.84, detailed as follows:[49]

Actual Excise Taxes Paid	**For the period covered January 1, 2013 to December 31, 2013**
On SML products at ₱20.57	₱ 2,822,326,561.12
On Other beer products:	
Tax rate at ₱15.00	*₱ 13,962,300,993.96*
Tax rate at ₱15.49	*3,159,928,655.48*
Tax rate at ₱20.00	*51,041,548.80*
Tax rate at ₱20.57	*375,253,933.60*
	₱ 17,548,525,131.84
Total	**₱20,370,851,692.96**

However, the ICPA's reconciliation of the computed Excise Taxes Due on SML per ETR with that reflected in the petitioner's supporting documents, such as shipping memorandums (SM) and lists of SM per SAP files, official delivery invoices, ETRD, ORB, SSR and revenue officer on premises daily report, shows that there must be a downward adjustment to petitioner's claim in the amount of ₱22.57 representing the net variance on the understatement of excise taxes due on 39.60 liters of SML removals for the subject period, detailed as follows:[50]

[46] Exhibits "P-12.1" to "P-12.342", "P-12.343" to "P-12.4,982", "P-13.1" to "P-13.340", "P-14.1" to "P-14.1,106", "P-15.1" to "P-15.336", "P-16.1" to "P-16.336", and "P-17.1" to "P-17.315".

[47] Exhibit "P-4", Annexes $C_{1.1}$; $C_{1.2}$ to $C_{1.2.1}$; $C_{1.3}$, $C_{1.3.1}$ to $C_{1.3.12}$; $C_{1.4}$, $C_{1.4.1}$ to $C_{1.4.12}$; $C_{1.5}$, $C_{1.5.1}$ to $C_{1.5.12}$; $C_{1.6}$, $C_{1.6.1}$ to $C_{1.6.12}$; $C_{1.7}$, $C_{1.7.1}$ to $C_{1.7.12}$; and $C_{1.8}$, $C_{1.8.1}$ to $C_{1.8.12}$.

[48] ₱0.19 greater than the amount of Excise Taxes Due on removals of ALL Beer Products per monthly Movement Report with Allocated Deposits (Exhibit "P-4", Annex C_1), Docket – Vol. 1, p. 452.

[49] Exhibit "P-4", Table 5.1, Docket – Vol. 1, p. 420.

[50] Exhibit "P-4", Par. III.B. and Annex $G_{3.1}$, Docket – Vol. 1, pp. 433 and 483, respectively; Exhibit "P-4", Par. 23m, Docket – Vol. 2, pp. 523 to 524.

Sta. Rosa Laguna Plant	
October 24, 2013 - Excise taxes due on complimentary SML removals per STR Nos. R4000159 and R4000160 which were inadvertently not included in the excise taxes due per ORB as filed and paid per ETR:	
SML removals in liters:	
Per SM and STR	78,875.28
Per ORB and ETR	78,835.68
Underdeclared SML removals **in liters**	39.60
Excise Taxes Due:	
39.60 liters at ₱20.57	₱814.57
39.60 liters at ₱20.00	792.00
Variance	₱ 22.57

Nevertheless, instead of only the ₱22.57 (39.60 liters at ₱0.57) net variance on the understatement of excise taxes due on SML removals, petitioner's claim for refund shall be reduced by ₱792.00 (39.60 liters at ₱20.00), since the excise taxes due on the SML removals per ORB as filed and paid per ETR were **less than** the excise taxes due on SML removals per SM, and stock transfer receipts, as shown above.

In sum, petitioner has sufficiently proven that it had overpaid the excise taxes due on its removals of SML for the period January 1, 2013 to December 31, 2013 in the amount of ₱83,018,504.21, computed as follows:

Amount of Claimed Excise Tax Overpayment	₱83,019,296.21
Less: Understatement of Excise Tax Due on 39.60 liters at ₱20.00	792.00
Refundable Excise Tax Overpayment	**₱83,018,504.21**

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.

Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱83,018,504.21**, representing overpayment of excise taxes on the "San Mig Light" removals for the period from January 1, 2013 to December 31, 2013.

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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