REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DUTY FREE PHILIPPINES CORPORATION,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE REPRESENTED BY KIM S. JACINTO-HENARES, AND/OR NESTOR S. VALEROSO, OIC-ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE,
Respondents.

CTA CASE NO. 9136

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

DEC 12 2017
1:10 p.m.

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DECISION

CASTAÑEDA, JR., ***J.***:

STATEMENT OF THE CASE

This is a Petition for Review assailing the letter of the Bureau of Internal Revenue (BIR) dated August 5, 2015, denying petitioner's claim for refund and/or demand for reimbursement of value-added tax (VAT) for the period covering July 1 to December 31, 2013, which petitioner paid under protest in the aggregate amount of ₱116,305,136.25.

STATEMENT OF FACTS

Petitioner Duty Free Philippines Corporation is a corporate body attached to the Department of Tourism, created and organized by Republic Act (RA) No. 9593 or the Tourism Act of 2009.[1]

On the other hand, respondent Bureau of Internal Revenue is a government bureau under the supervision and control of the Department of Finance (DOF). It may be served with notices, orders, and other processes at BIR National Office Building, BIR Road, Diliman, Quezon City, Metro Manila.

In 2012, RA No. 10351[2] took effect which, among others, restructured excise taxes on alcohol and tobacco products.[3]

The BIR assessed and collected VAT on petitioner's importation of alcohol and tobacco merchandise for sale,[4] which petitioner paid under protest amounting to ₱116,305,136.25, broken down as follows:

- ₱34,330,146.10 as VAT for its importation of tobacco products from July 1 to December 31, 2013; and
- ₱81,974,990.15 as VAT for its importation of alcohol products.[5]

In a letter dated January 27, 2015 addressed to the BIR Commissioner, petitioner, through its Chief Operating Officer Lorenzo Formoso, requested the reimbursement of the VAT which respondent assessed and collected and which petitioner paid under protest.[6]

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[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), docket, vol. II, p. 863.

[2] An Act Restructuring the Excise Tax on Alcohol and Tobacco Products By Amending Sections 141, 142, 143, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known As The National Internal Revenue Code of 1997, As Amended By Republic Act No. 9334, And For Other Purposes.

[3] Par. 2, Summary of Admitted Facts, JSFI, docket, vol. II, p. 863.

[4] Par. 3, Summary of Admitted Facts, JSFI, docket, vol. II, p. 863.

[5] Par. 4, Summary of Admitted Facts, JSFI, docket, vol. II, pp. 863-864.

[6] Par. 5, Summary of Admitted Facts, JSFI, docket, vol. II, p. 864.

In a letter dated August 5, 2015[7] and received by petitioner on August 6, 2015[8], respondent, through OIC-Assistant Commissioner Nestor Valeroso, denied petitioner's claim ratiocinating that the imposition of VAT on petitioner's importations of alcohol and tobacco merchandise was pursuant to Section 7 of RA No. 10351; which amended Section 131(A) of the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code").

In view of respondent's denial, petitioner filed the instant Petition for Review before this Court on September 4, 2015.

Respondent filed his Answer (To the Petition for Review dated 03 September 2014) on December 2, 2015, interposing the following pertinent special and affirmative defenses:

> 4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
>
> "5. Petitioner argued that pursuant to the provisions of Republic Act (RA) No. 9593, it is exempt from, among others, duties and taxes including excise and VAT, relative to the importation of merchandise for sale. It cited Section 95 of said Republic Act, viz:
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> xxx xxx xxx
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> 6. Petitioner argued further that despite the enactment of Republic Act No. 10351, the same did not expressly repeal petitioner's exemption pursuant to the above quoted provision of R.A. 9593,
>
> 7. Respondent differs. True as it may that such exemption of petitioner is provided under R.A. 9593, however, the same has already been repealed by the enactment of Republic Act (R.A.) No. 10351 or *An Act Restructuring The Excise Tax On Alcohol and Tobacco*

[7] Par. 6, Summary of Admitted Facts, JSFI, docket, vol. II, p. 864.
[8] Par. 7, Summary of Admitted Facts, JSFI, docket, vol. II, p. 864.

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. Section 7 of R.A. No. 10351 explicitly provides:

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8. Based on the above quoted provision of R.A. 10351, it can be inferred that it is the clear intention of the lawmakers to modify, repeal or amend the exemption provided for under R.A. 9593 by providing that notwithstanding the provisions of R.A. 9593, petitioner shall be exempted from all applicable duties only.

9. The exemption now of petitioner is limited to duties and does not encompass that of the Value-Added Tax (VAT).

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10. Petitioner argued that since R.A. 9593 being a special law and R.A. 10351 is a general law, the provisions of R.A. 9593 should prevail even if R.A. 10351 is the more recent law. Thus, the exemption provided for under R.A. 9593 should be upheld. It went further by arguing that respondent incorrectly interpreted the provision of R.A. 10351 when it denied petitioner's claim for tax refund.

11. Petitioner's contention is misplaced. Respondent correctly interpreted the provision of R.A. 10351.

12. The decision of the Honorable Supreme Court in the case of *Republic of the Philippines vs. Hon. Ramon S. Caguioa* can well be used as a guide, viz:

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13. The same may be applied to the instant case. It is clear that the provision of R.A. 9593 has already been expressly repealed by R.A. 10351. Thus, petitioner should not rely on the assumption that the exemption granted under R.A. 9593 is still an existing law.

14. In addition, the power of Congress to enact laws necessarily includes the power to unmake them. This is the elementary principle that Congress can not legislate laws that are irrepealable. The decision of the Honorable Supreme Court in the case of *Duarte vs. Dade* provides explicitly:

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15. Based on the above quoted decisions of the Honorable Supreme Court, petitioner should not interpose that the R.A. 10351 did not repeal the provisions of R.A. 9593 since the same must be an express repeal. Laws can be repealed expressly or impliedly.

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16. Petitioner argued that it is exempt from Value-Added Tax (VAT) relative to its importation pursuant to Section 109 of the Tax Code which provides:

> SEC 109. *Exempt Transactions.* – (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> xxx xxx xxx
>
> K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws.

17. Petitioner continuously relied on the provision of R.A. 9593 which, as extensively discussed earlier, has been already repealed by R.A. 10351. The same was explicit that it is enacted notwithstanding the provisions of a general or special law.

18. On the matter of those exemption allegedly based on international agreements, the burden rests upon petitioner to prove that it is entitled to such exemption.

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19. In the case of *Commissioner of Internal Revenue vs. Solidbank Corporation* made it explicit that taxes are essential to government's very existence, hence, the dictum that 'taxes are the lifeblood of the government'.

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23. The BIR Ruling 038-2002, dated 05 November 2002, cited by petitioner was issued only in the light of the existing laws and jurisprudence and before the enactment of R.A. 10351 in the year 2012. Furthermore, a BIR Ruling is not a law and is more of an opinion given upon a taxpayer's request that may later on be revoked should the facts represented upon application prove to be contrary later on.

24. There must be proof of compliance with the rules on tax recovery under Section 204(c) and Section 229 of the NIRC of 1997. Petitioner must file its administrative and judicial claims for refund or issuance of tax credit certificate within two (2) years from the date of payment of the tax." *jr*

A Notice of Pre-Trial Conference[9] was issued by the Court on December 10, 2015, setting the case for pre-trial conference on February 4, 2016. Accordingly, petitioner's Pre-Trial Brief[10] was filed on January 29, 2016, while Respondent's Pre-Trial Brief[11] was filed on March 10, 2016.

Pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues[12] on May 27, 2016. Thereafter, the Court issued a Pre-Trial Order[13] on June 8, 2016, approving and adopting the joint stipulations filed by the parties and the pre-trial was deemed terminated.

During trial, petitioner presented (1) Ms. Mila Manzano[14], Manager of petitioner's Corporate and Legal Affairs Office, and (2) Mr. Rufino G. Parfan[15], Manager of petitioner's Finance Division until December 31, 2015.

Petitioner filed its Formal Offer of Evidence[16] on September 6, 2016. In the Resolution dated October 24, 2016, the Court admitted all of petitioner's evidence except for Exhibits "P-55", "P-56", "P-57", "P-59", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", and "P-69".

On the other hand, respondent manifested that he has no witness to present.[17]

On December 13, 2016, petitioner filed its Memorandum[18] while on January 6, 2017, respondent filed his Memorandum. [19] On January 12, 2017,[20] the case was submitted for decision. Hence, this Decision.

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[9] Docket, vol. II, pp. 770-771.
[10] Docket, vol. II, pp. 786-795.
[11] Docket, vol. II, pp. 816-820.
[12] Docket, vol. II, pp. 863-867.
[13] Docket, vol. II, pp. 872-878.
[14] Minutes of the Hearing dated July 20, 2016, docket, vol. II, p. 896.
[15] Minutes of the Hearing dated August 22, 2016, docket, vol. II, p. 917.
[16] Docket, vol. II, pp. 919-930.
[17] Minutes of the Hearing dated August 22, 2016, docket, vol. II, p. 917.
[18] Docket, vol. II, pp. 1014-1020.
[19] Docket, vol. II, pp. 1022-1032.
[20] Resolution dated January 12, 2017, docket, vol. II, p. 1034.

STATEMENT OF ISSUES

The issues[21] submitted by the parties for the Court's resolution are:

<u>For petitioner:</u>

Whether respondent gravely erred in denying its claim for refund of VAT paid under protest amounting to ₱116,305,136.25 for the period July 1 to December 31, 2013 for lack of legal basis.

<u>For respondent:</u>

1. Whether petitioner is exempt from payment of VAT for its importation of alcohol and tobacco merchandise for sale for 2013;

2. Whether petitioner has complied with the submission of complete documents in support of its claim for refund in the administrative level; and

3. Whether petitioner is entitled to a refund or tax credit in the total amount of ₱116,305,136.25, allegedly representing payment of VAT for its importation of alcohol and tobacco merchandise for sale for 2013.

DISCUSSION/RULING

The Court shall first determine petitioner's compliance with the procedures governing the filing of claims for refund under Sections 204 and 229 of the Tax Code, which state:

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

[21] Stipulated Issues, JSFI, docket, vol. II, p. 864.

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

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. *(Emphasis supplied)*

Based on the afore-quoted provisions, both the administrative and the judicial claims must be filed within two (2) years from the date of payment of the tax. Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of taxes erroneously or illegally collected and filed with the Court.[22]

Records of this case show that petitioner made its VAT payments on several dates from July 1 to December 27, 2013.[23]

Counting from the dates when petitioner paid its taxes, it had, at the earliest, until July 1, 2015 within which to file its refund administratively and judicially.

Petitioner's administrative claim for refund was filed on January 27, 2015[24], while the instant Petition for Review was filed on September 4, 2015[25].

While the administrative claim for refund was filed within the 2-year prescriptive period, its judicial claim for refund of the VAT payments made prior to September 4, 2013 have already prescribed under Section 229 of the Tax Code. Accordingly, the Court can act only on claims for refund of VAT payments made from September 4 to December 27, 2013.

The Court shall now proceed to ascertain whether petitioner is entitled to a refund.

Petitioner argues that RA No. 10351 did not repeal petitioner's exemption from paying duties and taxes, including excise and VAT, relative to the importation of merchandise for sale under Section 95 of RA No. 9593. Petitioner contends that the repealing clause of RA No. 10351 could not have repealed the exemption from VAT on importation granted under RA No. 9593 because the former mainly refers only to the imposition of excise tax and did not specifically mention VAT.

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[22] *PMFTC, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8691, July 27, 2015.
[23] Exhibits "P-8" to "P-70", docket, vol. II, pp. 931-993.
[24] Exhibit "P-2", BIR Folder 1 of 3, p. 13.
[25] Docket, vol. I, p. 10.

Moreover, petitioner asserts that respondent wrongly interpreted Section 7 of RA No. 10351 in denying petitioner's claim for refund, since the provision did not authorize respondent to impose VAT on alcohol and tobacco products – it merely amended petitioner's exemption from excise tax on alcohol and tobacco products. Petitioner claims that even Revenue Regulations (RR) No. 17-2012, which respondent issued to implement RA No. 10351, did not state that importations of petitioner are subject to VAT.

On the other hand, respondent admits that petitioner is exempted under RA No. 9593, but it states that the same has already been repealed by the enactment of RA No. 10351. Respondent contends that the exemption of petitioner is limited to duties and does not encompass that of VAT. Respondent also avers that tax refund partakes of the nature of exemptions; hence, the burden is upon petitioner to prove that it is entitled to the same.

It is clear that Section 7 of RA No. 10351 intended to amend RA No. 9593 relative to petitioner's exemptions on its importation of alcohol and tobacco products. The issue that confronts the Court is the extent of such amendment – whether it is limited to excise taxes, as argued by petitioner, or includes VAT, as contended by respondent.

It must be noted that Section 131 of the Tax Code pertains to the payment of excise taxes on imported articles. Before any amendment was made thereon, the provision stated:

> SEC. 131. *Payment of Excise Taxes on Imported Articles.* –
>
> (A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation.

The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits and wines into the Philippines, even if destined for tax and duty free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon: *Provided, however*, That this shall not apply to cigars and cigarettes, distilled spirits and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and are not transshipped to any other port in the Philippines: *Provided, further*, **That importations of cigars and cigarettes, distilled spirits and wines by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable taxes, duties, charges, including excise tax due thereon**: *Provided, still further*, That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labelled 'tax and duty-free' and 'not for resale': *Provided, still further*, That if such articles brought into the duly chartered or legislated freeports under Republic Acts No. 7227, 7922 and 7903 are subsequently introduced into the Philippine customs territory, then such articles shall, upon such introduction, be deemed imported into the Philippines and shall be subject to all imposts and excise taxes provided herein and other statutes: *Provided, finally*, That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles, from one freeport to another freeport, shall not be deemed an

> introduction into the Philippine customs territory. xxx *(Emphasis supplied)*

The provision above was subsequently amended by RA No. 9334[26], which was approved on December 21, 2004. The amended provision, with the amendments emphasized, reads:

> SEC. 131. *Payment of Excise Taxes on Imported Articles. –*
>
> (A) *Persons Liable.* – Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customshouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> In the case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempt from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof and shall be liable for the duty and internal revenue tax due on such importation.
>
> The provision of any special or general law to the contrary notwithstanding, the importation of cigars and cigarettes, distilled spirits, **fermented liquors** and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon. This shall apply to cigars and cigarettes, distilled spirits, **fermented liquors** and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and

[26] An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, As Amended.

> Freeport Zone, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, **and such other freeports as may hereafter be established or created by law**: *Provided, further,* That importations of cigars and cigarettes, distilled spirits, **fermented liquors** and wines **made directly** by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable **duties only**: *Provided, still further,* That such articles directly imported by a government-owned and operated duty-free shop, like the Duty-Free Philippines, shall be labeled **'duty-free' and 'not for resale'**: *Provided, finally,* That the removal and transfer of tax and duty-free goods, products, machinery, equipment and other similar articles **other than cigars and cigarettes, distilled spirits, fermented liquors and wines**, from one freeport to another freeport, shall not be deemed an introduction into the Philippine customs territory.
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To prescribe implementing guidelines for RA No. 9334, the BIR issued RR No. 03-06 which provides that importation of alcohol and tobacco products made by the DFP shall be exempt from all applicable duties but shall be subject to excise taxes and VAT. It states:

> SECTION 12. *Importation of an Alcohol or Tobacco Product By Duty-Free Shops, or Into Economic Zones and Freeport Zones.* – **The provision of any special or general law to the contrary notwithstanding, the importation of alcohol or tobacco products, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes thereon.** Likewise, the importation thereof directly into the following chartered or legislated freeports shall be subject to such duties and taxes: *jr*

> (a) Subic Special Economic and Freeport Zone, R.A. No. 7227;
> (b) Cagayan Special Economic Zone and Freeport, R.A. No. 7922;
> (c) Zamboanga City Special Economic Zone, R.A. No. 7903; and
> (d) Such other freeports as may hereafter be established or created by law.
>
> However, **the importation of these excisable products made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP) shall be exempt from all applicable duties but shall be subject to excise and value-added taxes.** *(Emphasis supplied)*

Subsequently, on May 12, 2009, RA No. 9593[27] was promulgated, which reorganized the Duty Free Philippines to become the Duty Free Philippines Corporation attached to the Department of Tourism. RA No. 9593 provided for petitioner's tax exemptions, *viz:*

> SECTION 95. *Duty and Tax Exemptions.* – Consistent with the nature of its operations and primary function to operate as a tax- and duty-free merchandising system, and to enable it to compete in the international tax- and duty-free market, DFPC shall be entitled to exemption from the following:
>
> (a) Duties and taxes, including excise and VAT, relative to the importation of merchandise for sale;
> (b) Local taxes and fees imposed by the LGUs; and
> (c) Corporate income taxation.

[27] An Act Declaring a National Policy for Tourism as an Engine of Investment, Employment, Growth and National Development, and Strengthening the Department of Tourism and its Attached Agencies to Effectively and Efficiently Implement That Policy, and Appropriating Funds Therefor.

The provision above established petitioner's exemption to duties and taxes, including excise and VAT, on its importation of merchandise for sale.

However, RA No. 10351 took effect which again introduced amendments to Section 131. Section 7 provides:

> SECTION 7. Section 131, Subsection A of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, is hereby further amended as follows:
>
> "SEC. 131. *Payment of Excise Taxes on Imported Articles.* –
>
> xxx xxx xxx
>
> The provision of any special or general law to the contrary notwithstanding, **the importation of cigars and cigarettes, distilled spirits, fermented liquors and wines into the Philippines, even if destined for tax and duty-free shops, shall be subject to all applicable taxes, duties, charges, including excise taxes due thereon**. This shall apply to cigars and cigarettes, distilled spirits, fermented liquors and wines brought directly into the duly chartered or legislated freeports of the Subic Special Economic and Freeport Zone, created under Republic Act No. 7227; the Cagayan Special Economic Zone and Freeport, created under Republic Act No. 7922; and the Zamboanga City Special Economic Zone, created under Republic Act No. 7903, and such other freeports as may hereafter be established or created by law: *Provided, further,* **That notwithstanding the provisions of Republic Act Nos. 9400 and 9593, importations of cigars and cigarettes, distilled spirits, fermented liquors and wines made directly by a government-owned and operated duty-free shop, like the Duty-Free Philippines (DFP), shall be exempted from all applicable duties only**:...

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"Articles confiscated shall be destroyed using the most environmentally friendly method available in accordance with the rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioners of Customs and Internal Revenue. xxx *(Emphasis supplied)*

To implement the provisions of RA No. 10351, the BIR issued RR No. 17-2012, which provides, among others, that importation of alcohol or tobacco products, even if destined for tax and duty-free shops shall be subject to excise tax. The pertinent section provides as follows:

SECTION 9. *Excise Tax Treatment of All Importations of Alcohol or Tobacco Products by Duty Free Philippines, Duty-free Shops, or Into Economic Zones and Freeport Zones.* – **The provision of any special or general law to the contrary notwithstanding, the importation of alcohol or tobacco products, even if destined for tax and duty-free shops, Duty Free Philippines or into the chartered or legislated economic and/or freeport zones shall be subject to excise tax** pursuant to the provisions of the Act: *Provided, however*, That upon the effectivity of the Act, the importation of any alcohol or tobacco product bearing suffixes or prefixes to the root name, color and/or design of the label (such as logo, font, picturegram, and the like), manner and/or form of packaging or size of container of the product that is different from that already registered and locally being sold in the domestic market shall be treated as a newly introduced product. Accordingly, the same shall be initially classified according to its suggested net retail price, subject to the validation and revalidation requirements prescribed by these Regulations. *(Emphasis supplied)*

Based on the provision above, respondent itself provided only for the imposition of excise tax on importation of alcohol or tobacco products by petitioner, and did not in any way mention VAT. Indeed, *jr* if respondent supposed that Section 7 of RA No. 10351 withdrew petitioner's exemption from import VAT as well, it could have easily included the same in RR No. 17-2012.

It is settled that administrative regulations and policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great respect.[28]

Hence, the Court finds that only excise taxes are withdrawn from petitioner's tax exemption under RA No. 9593. Accordingly, respondent erroneously collected VAT from petitioner's importation of tobacco and alcohol for taxable year 2013.

As admitted by the parties, petitioner paid under protest the total amount of ₱116,305,136.25, as follows:

- ₱34,330,146.10 as VAT for importation of tobacco products from July 1 to December 31, 2010

- ₱81,974,990.15 as VAT for its importation of alcohol products.[29]

In support of the above claims, petitioner submitted BOC-issued Customs Payment Receipts to prove actual payments of VAT on its importations of tobacco and alcohol from July to December 2013.[30]

However, as discussed above, VAT payments prior to September 4, 2013 can no longer be acted upon by the Court following the prescriptive period under Section 229 of the Tax Code, which amounts to ₱22,942,965.30 broken down as follows:

DATE OF PAYMENT	AMOUNT	EXHIBIT NO.[31]
On tobacco importation for the year 2013		
July 1	₱ 1,980,974.85	P-8
July 10	965,422.00	P-9
July 9	4,078,395.00	P-10
August 13	1,739,249.00	P-11

[28] *Eslao vs. Commission on Audit,* G.R. No. 108310, September 1, 1994.
[29] Summary of Admitted Facts, JSFI, docket, vol. II, pp. 863 to 864.
[30] Exhibits "P-8" to "P-70", docket, vol. II, pp. 931 to 970.
[31] Docket, vol. II, pp. 931 to 934 and 945 to 959.

Subtotal	***₱ 8,764,040.85***	
On alcohol importation for the year 2013		
July 4	₱ 94,953.55	P-22
July 19	774,016.85	P-23
July 24	329,499.44	P-24
July 29	270,075.89	P-25
August 1	1,136,773.26	P-26
August 6	1,464,107.76	P-27
August 6	2,041,366.50	P-28
August 8	381,209.54	P-29
August 8	2,504,370.83	P-30
August 15	1,294,360.10	P-31
August 27	231,985.87	P-32
August 15	87,426.46	P-33
August 27	781,120.13	P-34
August 30	740,221.15	P-35
August 30	2,047,437.12	P-36
Subtotal	***₱ 14,178,924.45***	
GRAND TOTAL	**₱ 22,942,965.30**	

Thus, the Court finds that only the remaining amount of ₱93,362,170.95, pertaining to the portion comprising payments from September 5 to December 27, 2013, shall be granted refund to petitioner, as computed below:

Total allowable VAT payments refund	₱ 116,305.136.25
Less: Prescribed claim	22,942,965.30
VAT payments granted for refund	**₱93,362,170.95**

WHEREFORE, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱93,362,170.95**, representing petitioner's erroneously paid VAT for taxable year 2013.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice