REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BRITISH AMERICAN TOBACCO (PHILIPPINES), LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9998

Present:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated: SEP 12 2023
4:30 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner British American Tobacco (Philippines), Limited (**petitioner/BATL**) on 21 December 2018. It seeks a tax refund of the aggregate amount of ₱305,823,304.00, representing the excise taxes that it paid for the period of 29 December 2016 to 18 May 2017 on internal revenue stamps requisitioned through the Bureau of Internal Revenue's (**BIR's**) Internal Revenue Stamp Integrated System (**IRSIS**), the return of spoiled stamps and bad orders consisting of short deliveries, as well as the unapplied balance of its advance deposit in the IRSIS.

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[1] Division Docket, Volume I, pp. 10-19.

PARTIES OF THE CASE

Petitioner is a corporation organized and existing under the laws of the United Kingdom with a License to Transact Business in the Philippines through a branch office located at 11th Floor Kingston Tower, Acacia Avenue, Madrigal Business Park, Alabang, Muntinlupa under Company Registration No. A199812004 issued by the Securities and Exchange Commission (**SEC**).

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) who holds office at the BIR National Office Building located at Agham Road, Diliman, Quezon City where he may be served with summons and other legal processes.

FACTS OF THE CASE

Petitioner is engaged in the importation of tobacco products. As part of its compliance with Revenue Regulations (**RR**) No. 7-2014[2], petitioner pays in advance the corresponding excise tax on internal revenue stamps ordered through IRSIS for subsequent placement on cigarette packs to be imported.

On 13 December 2017, petitioner's head office had passed a resolution for the cessation of all operations and closure of its branch office in the Philippines as of 31 December 2017.[3] As a result, petitioner's remaining deposits with the IRSIS and the value of all unused and spoiled stamps, and bad orders (credited back to the IRSIS) remained unutilized.[4]

As of 31 December, the remaining balance of petitioner's advance deposits for 2017 amounted to ₱154,865,436.00[5], resulting from the following schedule of advance payments, to wit:

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2 Prescribing the Affixture of Internal Revenue Stamps on Imported and Locally Manufactured Cigarettes and the Use of the Internal Revenue Stamp Integrated System (IRSIS) for the Ordering, Distribution and Monitoring Thereof.

3 Exhibit "P-6", Division Docket, Volume II, pp. 798-802.

4 Id., Volume I, p. 11.

5 Exhibits "P-14" to "P-14-1", id., Volume III, pp. 1021-1044.

Date of Payment	Filing Ref. No.	Amount Paid
29 December 2016	81600017982541	₱227,700,000.00
29 December 2016	81600017983011	231,900,000.00
06 January 2017	81700018079997	165,000.00
08 February 2017	81700018648605	12,537,165.00
12 May 2017	81600020028034	148,500,000.00
18 May 2017	81600020082524	99,000,000.00

According to petitioner, the BIR gave due course to its several requests for credit back of spoiled stamps and bad orders. The details thereof, as of 19 December 2018[6], are as follows:

Credit Back Date	IRSIS Ref. No.	Reason	Amount
23 February 2018	2017010000019-00A02-0001	Factory Defect; Short Delivery	₱1,460, 250.00
23 February 2018	2017010000018-00A01-0001	Factory Defect; Short Delivery	217,800.00
23 February 2018	2017010000016-00974-0001	Factory Defect; Short Delivery	504,900.00
23 February 2018	2017010000015-00973-0001	Factory Defect; Short Delivery	1,415,700.00
16 March 2018	SS-010-032018-0002	Spoiled Stamps	1,020,857.00
16 March 2018	SS-010-032018-0001	Spoiled Stamps	972,322.00
20 July 2018	SS-010-072018-0001	Spoiled Stamps	1,828,640.00
12 September 2018	SS-010-092018-0002	Spoiled Stamps	56,306,250.00
12 September 2018	SS-010-032018-0001	Spoiled Stamps	59,296,050.00
12 September 2018	SS-010-122018-0004	Spoiled Stamps	3,988,134.00
19 December 2018	SS-010-122018-0003	Spoiled Stamps	2,704,443.00
19 December 2018	SS-010-122018-0002	Spoiled Stamps	22,811,324.00
19 December 2018	SS-010-122018-0001	Spoiled Stamps	4,927,529.00
Total			**₱157,454,199.00**

The remaining balance of petitioner's advance deposits of ₱154,865,436.00 and the credit back for short deliveries, and spoiled stamps of ₱157,454,199.00 totalled to ₱312,319.635.00, out of which amount petitioner has filed claims for the refund of ₱305,823,304.00.[7]

On 22 June 2018, petitioner filed an administrative claim for excise tax refund with the BIR Excise Large Taxpayers Audit Division II (**ELTAD II**) for IRSIS credits, representing the unused stamps and unutilized balance.[8] On 20 December 2018, petitioner filed another

[6] Exhibit "P-20", id., p. 1219.
[7] Id., Volume I, p. 13.
[8] Exhibit "P-8-2", id., Volume II, p. 945.

administrative claim for refund or credit back of the value of spoiled stamps and bad orders.[9]

On 21 December 2018, petitioner filed its judicial claim for refund before the Court *via* the present petition.[10] On 22 March 2018, respondent filed his or her Answer thereto.[11] Thereafter, as the issues have been joined, the Court issued a Notice of Pre-Trial Conference on 28 March 2019[12] setting the pre-trial conference on 11 April 2019.

Later, pursuant to the Court's order, both petitioner and respondent filed their Pre-Trial Briefs on 08 April 2019[13] and 10 April 2019, respectively.[14]

On 26 April 2019, the parties filed their Joint Stipulation of Facts and Issues[15] (**JSFI**). Subsequently, on 10 May 2019, the Court issued a Pre-Trial Order[16] terminating the pre-trial in the present case.

In the trial that ensued, petitioner presented the testimonies of Joan D. Ventanilla (**Ventanilla**), Bethany L. Cruz (**Cruz**), Allen H. Valino (**Valino**) and Glenn Ian Villanueva (**Villanueva**), the court-appointed Independent Certified Public Accountant (**ICPA**), who all testified through their judicial-affidavits.

On the witness stand, Ventanilla essentially testified to petitioner's corporate existence and decision to cease its operations in the Philippines.[17] Her testimony was offered to prove petitioner's authority to conduct business within the Philippines, its subsequent cessation of operations, and its right to the refund of the taxes claimed.

Cruz took the witness stand next and attested to petitioner's filing of Excise Tax Returns and the BIR's crediting back of the value of spoiled stamps to the IRSIS.[18] Her testimony was offered to prove the advance

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9 Exhibit "P-9", id., pp. 946-949.
10 Supra at note 1.
11 Division Docket, Volume I, pp. 84-91.
12 Id., pp. 92-93.
13 Pre-Trial Brief for Petitioner, id., pp. 516-527.
14 Respondent's Pre-Trial Brief, id., pp. 528-530.
15 Id., pp. 545-554.
16 Id., Volume III, pp. 556-562.
17 Exhibit "P-27", Judicial Affidavit of Joan D. Ventanilla, id., pp. 387-391.
18 Exhibit "P-28-2", Judicial Affidavit of Bethany L. Cruz, id., Volume II, pp. 626-630.

payment of petitioner's excise taxes to the BIR and the unutilized balance of deposit remaining with the IRSIS.

Thereafter, Valino testified to petitioner's use of the IRSIS and its process in refunding the cost for spoiled stamps.[19] His testimony was offered to prove petitioner's enrolment in the IRSIS and the processes and documentation involved in ordering stamps.

Lastly, Villanueva testified to his examination of petitioner's documents and his findings as reflected in the ICPA Report.[20] As officer of the Court, his testimony was offered for the purpose of verifying petitioner's documents and his findings in relation thereto.

After Cruz was recalled to the witness stand to supplement her testimony[21], the Court also ordered petitioner to file its Formal Offer of Evidence (**FOE**) and for respondent to file his or her comment thereon within five (5) days from receipt thereof.[22] Accordingly, petitioner filed its FOE[23] on 05 August 2019, with respondent's Comment[24] filed on 09 August 2019.

In a Resolution dated 10 September 2019[25], the Court admitted all of petitioner's exhibits *except* Exhibits "P-5"[26] and "P-39" to "P-49".[27] Exhibit "P-5" was, however, admitted subsequently in a Resolution dated 27 January 2020.[28]

During a hearing on 26 February 2020[29], respondent's counsel manifested that he or she has yet to receive a report of investigation for the present case. Ultimately, respondent opted to not present evidence. As a result, the parties were given thirty (30) days within which to submit their respective memoranda.[30]

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19 Exhibit "P-29", Judicial Affidavit of Allen H. Valino, id., Volume I, pp. 136-145.
20 Exhibit "P-30", Judicial Affidavit of Glenn Ian D. Villanueva, id., Volume II, pp. 616-618.
21 Exhibit "P-28-4", Supplemental Judicial Affidavit of Bethany L. Cruz, id., pp. 700-703.
22 See Order dated 22 July 2019, id., p. 709.
23 Id., pp. 717-737.
24 Id., Volume III, pp. 1328-1330.
25 Id., pp. 1333-1334
26 Bureau of Customs Certificate of Accreditation as Importer dated November 3, 2015.
27 Not Submitted.
28 Division Docket, Volume III, pp. 1349-1351.
29 See Minutes of the Hearing dated 26 February 2020, id., p. 1353.
30 See Order dated 26 February 2020, id., p. 1354.

Respondent filed his or her Memorandum on 16 June 2020[31], while petitioner filed its Memorandum on 30 June 2020.[32] The present petition was then submitted for decision through the Court's Resolution dated 07 July 2020.[33]

On 28 June 2021, the Court rendered a Decision in herein case. The dispositive portion of the said Decision reads as follows:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed by petitioner British American Tobacco (Philippines), Limited on 21 December 2018 is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**
>
> ...

Petitioner filed an "Omnibus Motion: 1. For Reconsideration and, 2. For New Trial"[34] on 16 July 2021, wherein it moved for the Court to take a second look at the nature and character of its claim for refund of unused excise tax as reflected in the IRSIS; or in the alternative, re-open the trial to admit as new discovered evidence the BIR Tax Clearance and the SEC Certificate of Withdrawal of License to Transact Business in the Philippines which it obtained after the case was submitted for decision.

Respondent filed his or her "Comment/Opposition Re: Petitioner's Motion for Reconsideration and for New Trial"[35] on 26 October 2021.

In the Resolution dated 07 February 2022[36], the Court denied petitioner's Motion for Reconsideration (**MR**) but granted its Motion for New Trial. The dispositive portion of the said Resolution reads as follows:

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[31] Id., pp. 1355-1362.
[32] Id., pp. 1364-1382.
[33] Id., p. 1388.
[34] Division Docket, Volume III, pp. 1407-1420.
[35] Id., pp. 1429-1435.
[36] Id., pp. 1441-1450; Emphasis and underscoring in the original text.

> ...
>
> **WHEREFORE**, the foregoing considered, petitioner's Omnibus Motion filed on 16 July 2021 is **PARTIALLY GRANTED**. Accordingly, petitioner's Motion for Reconsideration, contained in the Omnibus Motion, is **DENIED** for lack of merit. On the other hand, petitioner's Motion for New Trial, also contained in the Omnibus Motion, is hereby **GRANTED**. Consequently, this Court's Decision dated 28 June 2021 in the above-captioned is **WITHDRAWN** and **SET ASIDE**.
>
> With trial anew, let a hearing be **SET** on **21 February 2022 at 9:00 a.m.** for the presentation of petitioner's witness. Likewise, petitioner is **ORDERED** to submit a copy of its witness' judicial affidavit five (5) days prior to the date of the hearing.
>
> **SO ORDERED.**
>
> ...

On 03 March 2022, respondent filed his or her Motion for Reconsideration (Re: Resolution dated 07 February 2022)[37] (**MR to the 07 February 2022 Resolution**), assailing the grant of a new trial in petitioner's favor. Petitioner filed its "Comment/Opposition [To Respondent's Motion for Reconsideration (Re: Resolution dated 07 February 2022) dated March 3, 2022]"[38] on 25 March 2022. In the Resolution dated 13 April 2022[39], the Court denied respondent's MR to the 07 February 2022 Resolution.

A new trial thereafter ensued wherein petitioner presented Ventanilla anew. She testified that petitioner corporation has already been dissolved and has been cleared of and/or has settled its tax liabilities. Further, that petitioner, which has advance deposits of excise taxes in the BIR's IRSIS, is entitled to a tax refund.[40]

On 25 July 2022, petitioner filed its FOE.[41] Respondent filed his or her Comment/Opposition thereto on 28 July 2022.[42] In the Resolution dated 12 September 2022[43], the Court admitted petitioner's additional evidence, *i.e.*, Exhibits "P-166" to "P-168-1" and submitted the present

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37 Id., pp. 1469-1474.
38 Id., pp. 1481-1486.
39 Id., pp. 1489-1491.
40 Exhibit "P-168", id., pp. 1506-1510.
41 Id., pp. 1522-1526.
42 Id., pp. 1530-1532.
43 See Resolution dated 12 September 2022, id., pp. 1534-1535.

case for decision anew, absent any manifestation from respondent of his or her intention to present opposing evidence or testimony.

ISSUE

> WHETHER PETITIONER BRITISH AMERICAN TOBACCO (PHILIPPINES) LIMITED IS ENTITLED TO THE REFUND OF EXCISE TAXES IN THE AMOUNT OF ₱305,823,304.00 PAID FOR THE PERIOD OF 29 DECEMBER 2016 TO 18 MAY 2017.[44]

ARGUMENTS

In support of the above issue, petitioner argues that it has a right to a refund of the excise taxes it paid, comprising of the remaining balance and value of all bad and spoiled stamps prepaid to the BIR through the IRSIS. According to petitioner, it has already ceased its operations as of 31 December 2017 by virtue of a resolution passed by its head office in the United Kingdom.

Respondent, on the other hand, contends that petitioner cannot claim a refund of the subject amounts since the BIR neither illegally nor erroneously collected them.

RULING OF THE COURT

After taking a second hard look at the case, this Court resolves to grant petitioner's claim for refund.

Petitioner anchors its claim on Sections 204(C) and 229 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which respectively provide as follows:

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

[44] See Stipulation of Issues, Joint Stipulation of Facts and Issues (JSFI), id., Volume I, p. 546.

> (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 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.
>
> ...

The aforecited provisions are clear that 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. The timeliness of the filing of the claim is mandatory and jurisdictional and the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. As for a judicial claim, Our tax laws explicitly provide that it should be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment".[45]

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[45] *Commissioner of Internal Revenue v. San Miguel Corporation,* G.R. No. 180740, 11 November 2019.

Furthermore, 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.[46] Notably, **erroneous or wrongful payment includes <u>excessive payment because they all refer to payment of taxes not legally due</u>.**[47] Thus, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise tax paid is an "erroneous or illegal tax".

PETITIONER TIMELY FILED BOTH ITS ADMINISTRATIVE AND JUDICIAL CLAIMS.

In this case, the amount claimed for refund by petitioner allegedly arose from the advance payment of excise taxes through Excise Tax Returns (BIR Form No. 2200-T)[48] filed on the following dates:

Date of Payment	Filing Ref. No.	Amount Paid
29 December 2016	81600017982541	₱227,700,000.00
29 December 2016	81600017983011	231,900,000.00
06 January 2017	81700018079997	165,000.00
08 February 2017	81700018648605	12,537,165.00
12 May 2017	81600020028034	148,500,000.00
18 May 2017	81600020082524	99,000,000.00

Correspondingly, petitioner had two (2) years from the foregoing dates, respectively, within which to file its administrative and judicial claims for refund, as follows:

Date of Payment	Two (2)-Year Prescriptive Period
29 December 2016	29 December 2018
29 December 2016	29 December 2018
06 January 2017	06 January 2019
08 February 2017	08 February 2019
12 May 2017	12 May 2019
18 May 2017	18 May 2019

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46 *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, 25 April 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

47 *Commissioner of Internal Revenue v. San Roque Power Corporation, et al.*, G.R. No. 187485, 12 February 2013.

48 Exhibits "P-21" to "P-26-1", Division Docket, Volume III, pp. 1220-1233.

From the foregoing, the most late of dates that petitioner may file its administrative and judicial claims for refund of excise tax payments made as early as 29 December 2016 is only until 29 December 2018. At such date, any claim for refund arising from payments made *prior* to 29 December 2016 shall no longer prosper.

Petitioner filed its administrative claims for refund on 22 June 2018[49] and 20 December 2018[50], respectively, covering the excise tax payments made from 29 December 2016 to 18 May 2017. On the other hand, the judicial claim for refund was filed before this Court on 21 December 2018.[51] Clearly, both fell within the two-year prescriptive period.

The Court shall now proceed to rule on whether the claim for refund in the amount of ₱305,823,304.00 represents erroneous or illegal excise taxes paid by petitioner, covering the period 29 December 2016 to 18 May 2017.

PETITIONER'S PAYMENT OF THE AMOUNT OF ₱305,823,304.00 REPRESENTS ERRONEOUS OR ILLEGAL EXCISE TAXES.

To put the use and affixture of internal revenue stamps in their proper context, a brief review of the provisions relative thereto is in order.

Section 8(A) of the NIRC of 1997, as amended, by Republic Act (**RA**) No. 10351, reads as follows:

> ...
>
> **SEC. 8.** *Duty of the Commissioner to Ensure the Provision and Distribution of Forms, Receipts, Certificates, and Appliances, and the Acknowledgment of Payment of Taxes.* –
>
> (A) *Provisions and Distribution to Proper Officials.* – Any law to the contrary notwithstanding, **it shall be the duty of the Commissioner, among other things, to prescribe, provide, and**

49 Exhibits "P-8" to "P-8-1" and "P-8-2", id., Volume II, pp. 855-857 and 945.
50 Exhibits "P-9" to "P-9-1", id., pp. 946-949.
51 Supra at note 1.

> **distribute to the proper officials the requisite** licenses; <u>**internal revenue stamps**</u>; unique, secure and non-removable identification markings (hereafter called unique identification markings) such as codes or stamps, be affixed to or form part of all unit packets and packages and any outside packaging of cigarettes and bottles of distilled spirits, labels and other forms; certificates; bonds; records; invoices; books; receipts; instruments; appliances and apparatus used in administering the laws falling within the jurisdiction of the Bureau. **For this purpose, <u>internal revenue stamps</u>, or other markings and labels shall be caused by the Commissioner to be printed with adequate security features.**
>
> **<u>Internal revenue stamps</u>, whether of a bar code or fuson design, or other markings shall be firmly and conspicuously affixed or printed on each pack of cigars and cigarettes and bottles of distilled spirits subject to excise tax in the manner and form as prescribed by the Commissioner, upon approval of the Secretary of Finance.**[52]
>
> ...

The above provision mandates respondent, *inter alia*, to prescribe, provide, and distribute to the proper officials the requisite internal revenue stamps. Respondent must also cause the said internal revenue stamps to be printed with adequate security features. Specifically, the same provision requires that internal revenue stamps must be firmly and conspicuously affixed on each pack of cigars and cigarettes subject to excise tax in the manner and form as prescribed by respondent, upon the approval of the Secretary of Finance (**SOF**).

In connection with the foregoing Section 8(A), Sections 130 and 131 of the NIRC of 1997, as amended, govern the collection of excise tax on domestic and imported products, which include cigars and cigarettes:

> ...
>
> 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.* -
>
> (1) *Persons Liable to File a Return.* - Every person liable to pay excise tax imposed under this Title shall file a separate

52 Emphasis and underscoring supplied.

return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: ...

...

(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 by the manufacturer or producer before removal of domestic products from place of production: ... For this purpose, the taxpayer shall file a bond in an amount which approximates the amount of excise tax due on the removals for the said quarter. ...

(3) *Place for Filing of the Return and Payment of the Tax.* – Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to any authorized agent bank or Revenue Collection Officer, or duly authorized City or Municipal Treasurer in the Philippines.

(4) ***Exceptions.*** – **The Secretary of Finance, upon recommendation of the Commissioner, may, by rules and regulations, prescribe:**

(a) The time for filing the return at intervals other than the time prescribed in the preceding paragraphs for a particular class or classes of taxpayers after considering factors such as volume of removals, adequate measures of security and such other relevant information required to be submitted under the pertinent provisions of this Code; and

(b) The manner and time payment of excise taxes other than as herein prescribed, under a tax prepayment, advance deposit or similar schemes. ...[53]

...

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 customhouse**, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.[54]

...

[53] Emphasis and underscoring supplied.
[54] Emphasis and underscoring supplied.

Sections 244 and 245(g) of the NIRC of 1997, as amended, read:

> ...
>
> SEC. 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 provisions of this Code.**
>
> SEC. 245. ***Specific Provisions to be Contained in Rules and Regulations.*** - **The rules and regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing or defining:**
>
> ...
>
> (g) **The manner in which revenue shall be collected and paid, the instrument, document or object to which <u>revenue stamps</u> shall be affixed, the mode of cancellation of the same, the manner in which the proper books, records, invoices and other papers shall be kept and entries therein made by the person subject to the tax, as well as the manner in which** licenses and **<u>stamps</u> shall be gathered up and returned after serving their purposes**[.][55]
>
> ...

Based on the above provisions, while the law prescribes how the excise tax must be collected, it also allows the SOF by rules and regulations (upon respondent's recommendation) to prescribe: (1) the manner and time of payment of excise taxes, other than that generally prescribed, under a tax prepayment, advance deposit or similar schemes; and, (2) the manner by which revenues shall be collected and paid, and the instrument, document or object to which revenue stamps shall be affixed.

On the basis of the same provisions on internal revenue stamps, the SOF then, upon respondent's recommendation, promulgated RR No. 7-2014[56], as amended by RR Nos. 9-2015[57] and 6-2017[58], the pertinent provisions of which read, in part, as follows:

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[55] Emphasis and underscoring supplied.

[56] Supra at note 2.

[57] Amending Section 9 of Revenue Regulations No. 7-201'4 Prescribing the Affixture of Internal Revenue Stamps on Imported and Locally Manufactured cigarettes and the Use of the Internal Revenue Stamp Integrated System.

[58] Amending Certain Provisions of Revenue Regulations No. 7-2014 Prescribing the Affixture of Internal Revenue Stamps on Imported and Locally Manufactured Cigarettes and the Use of the

...

SEC. 2. DEFINITION OF TERMS. - For purposes of these Regulations, the following words and phrases shall be defined as follows:

(a) APO - shall refer to APO Production Unit, Inc., a government entity to undertake the base printing of secured internal revenue stamps and, together with the winning contractor, develop and maintain IRSIS;

(b) Bad Order stamps - shall refer to internal revenue stamps damaged while at the APO plant involving a deviation in any of the following specifications: (1) Quick Reference Code; (2) Unique Identifier Code; (3) latent image; (4) color; (5) core; and (6) dimension;

(c) Internal Revenue Stamp - shall refer to the BIR-issued stamp with a dimensional size of 23 millimeters (mm) by 43 mm containing multi-layered security features and an IRSIS-assigned Unique Identifier Code and a Quick Reference Code containing information pertinent only to the cigarette container (*e.g.* pack) to which the internal revenue stamp is affixed. The new internal revenue stamp comes in five (5) different color designs according to whether the cigarettes are packed by hand or by machine (bearing a unitary tax rate), for locally manufactured cigarettes; or imported cigarettes or for export. Internal Revenue Stamps may be ordered in banderols or pre-cut/stack or in sheets according to the machine requirements of the importer or the local manufacturers.

(d) IRSIS (Internal Revenue Stamp Integrated System) - shall refer to the web-based application system for ordering and distribution of internal revenue stamps, as well as, for real-time monitoring of the said stamps upon its affixture on the cigarette products, and for generating the required reports;

(e) Quick Reference (QR) Code - shall refer to a two-dimensional bar code that holds information on the internal revenue stamp;

(f) Spoiled Stamps - shall refer to damaged internal revenue stamps where the UIC is still visible or QR Code is still verifiable by the machine; and

Internal Revenue Stamp Integrated System (IRSIS) for the Ordering, Distribution and Monitoring Thereof.

(g) Unique Identifier Code (UIC) – shall refer to the code/serial number that represents an internal revenue stamp[.]

...

SEC. 5. PRIOR PAYMENT OF EXCISE TAX ON ORDERS OF INTERNAL REVENUE STAMPS. – Each and every order of internal revenue stamp submitted by the authorized user of the importer or local manufacturer of cigarettes shall be approved by the BIR: *Provided, however,* That the excise tax due on the total number of internal revenue stamps ordered has been paid by the importer or local manufacturer of cigarettes.

For purposes of placing the order of internal revenue stamps, through IRSIS, the excise tax payment shall only be made through the Electronic Filing and Payment System (eFPS) of the BIR. Accordingly, the importer or local manufacturer of cigarettes shall be enrolled with the eFPS.

...

SEC. 6. PAYMENT OF THE PRICE OF INTERNAL REVENUE STAMPS. ESCALATION PROVISIONS. – After the approval of the order of internal revenue stamps and prior to its release from the APO designated plant, the price thereof shall be paid by the importer or local manufacturer of cigarettes to APO in the amount of FIFTEEN CENTAVOS (P0.15) per piece of internal revenue stamp.

Based on the order reference number issued by IRSIS, the price of the said stamps shall be paid by the importer or local manufacturer of cigarettes through the on-line payment facility, over-the-counter, or bills-payment on-line facility of APO: ...

...

SEC. 7. RELEASE OF INTERNAL REVENUE STAMPS FROM APO. – The internal revenue stamps shall be released and received personally by the authorized representatives of the importer or local manufacturer of cigarettes directly from the APO-designated plant, within fifteen (15) calendar days from the scheduled date of its release as indicated in the email notification. Failure to claim the internal revenue stamps from the said period shall authorize APO to charge the said taxpayer for the reasonable storage fees. The said authorized representatives shall be able to present their identification cards duly issued by the importer or manufacturer of cigarettes.

...

Upon receipt of the internal revenue stamps by the said authorized representatives, the ownership and responsibility thereon shall be transferred in favor of the importer or local manufacturer of cigarettes. Any damage to or loss of internal revenue stamps after release thereof shall be for the account of the importer or local manufacturer of cigarettes.

SEC. 8. SPOILED INTERNAL REVENUE STAMPS, BAD ORDERS, LOSSES AND REPLACEMENTS THEREOF. - In cases where the internal revenue stamps already in the possession of the local manufacturer of cigarettes became spoiled, were damaged or rendered unfit for affixture to the cigarette products or found to be bad orders, the said stamps shall be surrendered to the BIR within fifteen (15) calendar years immediately after end of the month of production but not later than three (3) months from the date of release by APO. In the case of spoiled stamps and bad orders in the possession of the importers, the same shall be surrendered to the BIR within five (5) months immediately after receipt thereof from APO: Provided, that the importer shall report the same in accordance with the provisions of Section 10 of these Regulations.

Bad orders or spoiled stamps to be surrendered to the BIR by the importers or local manufacturers of cigarettes shall be affixed and properly arranged in rows and columns on the sheet of paper specifically provided for the purpose by APO.

The replacement of spoiled stamps shall be allowed only upon approval by the BIR using the online facility of IRSIS, with the corresponding payment of the price prevailing at the time when the spoiled stamps were originally ordered.

With respect to bad orders of internal revenue stamps, the price for the replacement thereof shall no longer be paid by the importer or manufacturer of cigarettes, subject to prior verification by APO upon the surrender thereof.

In no case shall replacement be allowed under the following instances:

(a) Failure by the importer or manufacturer of cigarettes to surrender any spoiled stamp or bad order.

(b) Unaccounted internal revenue stamps, except in cases of losses due to *force majeure* or other fortuitous events beyond the control of man.

(c) Spoiled internal revenue stamps that were surrendered to the BIR that do not bear their respective UIC or QR Codes.

(d) Spoiled internal revenue stamps that were surrendered to the BIR containing their respective UIC or QR Codes but no longer verifiable by the mobile device.

> **SEC. 9. AFFIXTURE OF STAMPS.** – Subject to the transitory provisions of Section 13 hereof, and except as provided herein, all importations and removals from the place of production of cigarettes shall be affixed with the internal revenue stamps prescribed by these Regulations.
>
> ...
>
> In order to facilitate the monitoring of internal revenue stamps duly issued to the importers and local manufacturers by the BIR, through APO, the stamps shall be affixed to the immediate containers of cigarettes on a first-in-first-out (FIFO) basis.
>
> ...

Thus, in the collection of excise tax on cigars and cigarettes *vis-à-vis* the affixture of internal revenue stamps, the SOF adopted a tax prepayment or advance deposit scheme pursuant to the afore-quoted provisions. Basically, the said provisions prescribe the process for the order and distribution of internal revenue stamps, as well as the return of bad order and spoiled stamps. The said process, in turn, involves prior or advance payment of excise taxes on orders of internal revenue stamps.

It is noteworthy that before the BIR's initial placement of the order for the stamps and approval thereof, the concerned BIR offices must ensure that the correct balances of excise tax deposits/payments are uploaded in the respective taxpayer's ledger balances of IRSIS, in accordance with part III, paragraph 7, of Revenue Memorandum Order (**RMO**) No. 33-2016.[59]

As regards bad order and spoiled stamps, the replacement thereof *"shall only be done using the ordering module of the IRSIS after crediting back the equivalent excise tax amount to the ledger of the local cigarette manufacturer/importer"*, pursuant to part IV, paragraph 1, of RMO No. 30-2016.[60] Correspondingly, any balance stated in a taxpayer's ledger may consist not only of excise tax deposits or prepayments but also credit backs from bad orders and spoiled stamps.

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59 Prescribing the Uniform Procedures for the Implementation of Internal Revenue Stamp Integrated System (IRSIS).

60 Prescribing Guidelines, Policies and Procedures for Replacement of Spoiled/Bad Order and Factory Defected Internal Revenue Stamps under the Internal Revenue Stamps Integrated System (IRSIS).

Similarly, there is no contest that what may be refunded by respondent under the earlier quoted Section 204(C) of the NIRC of 1997, as amended, is merely *"the value of internal revenue stamps"*; thus, the said balance stated in a taxpayer's ledger cannot be equated with the same (since the same provision requires that the said stamps *"are returned in good condition by the purchaser"*).

To this Court's mind, however, the IRSIS balance stated in a taxpayer's ledger may be refunded under the afore-quoted Section 229 of the NIRC of 1997, as amended, when the said balance may no longer be utilized by the same taxpayer such as when the latter is no longer a going concern (since it may fall under the category of *"any sum alleged to have been excessively...collected"*). After all, to reiterate, erroneous or wrongful payment includes **excessive payment** because they all refer to payment of taxes not legally due.[61] Furthermore, the return of what was erroneously paid is founded on the principle of *solutio indebiti*, a basic postulate that no one should unjustly enrich himself or herself at the expense of another. The caveat against unjust enrichment covers the government.[62]

In this case, petitioner was able to show that it has ceased its business operation in the Philippines[63] and it has already obtained the required tax clearance in connection therewith.[64] Such being the case, any balance reflected on petitioner's ledger relative to internal revenue stamps (as it can no longer be utilized), may be refunded as long as the same has been duly substantiated.

The next pivotal query is whether the total amount of ₱305,823,304.00 being claimed by petitioner is properly substantiated.

To recall, according to petitioner, the remaining balance of its advance deposits in IRSIS as of 31 December 2017 amounted to ₱154,865,436.00, which arose from the following schedule of advance payments of excise taxes:

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61 *Commissioner of Internal Revenue v. San Roque Power Corporation, et al.*, supra at note 47.
62 *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.)*, G.R. No. 172129, 12 September 2008.
63 Exhibit "P-167", Division Docket, Volume III, p. 1527.
64 Exhibit "P-167", id., p. 1423. Offered as Exhibit "P-166" in petitioner's Formal Offer of Evidence, filed on 25 July 2022, id., pp. 1522-1526.

Date of Payment	Filing Ref. No.	Amount Paid
29 December 2016	81600017982541	₱227,700,000.00
29 December 2016	81600017983011	231,900,000.00
06 January 2017	81700018079997	165,000.00
08 February 2017	81700018648605	12,537,165.00
12 May 2017	81700020028034	148,500,000.00
18 May 2017	81700020082524	99,000,000.00

As of 31 December 2018, the BIR gave due course to requests for credit back of spoiled stamps and bad orders given due course amounting to ₱157,454,199.00. Hence, petitioner's remaining balance in IRSIS of ₱154,865,436.00 as of 31 December 2017 and the value of spoiled stamps and bad orders amounting to ₱157,454,199.00 (credited back to IRSIS during 2018) make up the aggregate amount of ₱312,319,635.00; out of which petitioner claimed the refund of the amount of ₱305,823,304.00, while the amount of ₱6,496,331.00 was no longer claimed due to prescription.

In support of its claim, petitioner submitted the documents below which the Court-commissioned ICPA had examined, to wit:

1. Petitioner's IRSIS Taxpayer Ledger[65], basically reflecting the transactions it made in the IRSIS such as, excise tax payments or approved credit back of the value of excise tax arising from bad order or spoiled stamps with corresponding credit amounts, and orders of internal revenue stamps with corresponding debit amounts;

2. *Excise Tax Returns for Tobacco Products* (BIR Forms No. 2200-T) with eFPS Payment Details[66], showing the filing and payments of excise taxes;

3. IRSIS Stamp New Order Forms and Asian Productivity Organization Production Unit (APO) Delivery Receipts[67], indicating the details of the orders/purchases of internal revenue stamps and the actual quantity of stamps received by petitioner.

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65 Exhibit "P-11", id., pp. 1002-1016.
66 Exhibits "P-21" to "P-26-1", id., pp. 1220-1233; Exhibits "P-80" and "P-80-A".
67 Exhibits "P-12" and "P-13", id., pp. 1017-1019, respectively; Exhibits "P-53" to "P-70-A" (inclusive of sub-markings).

4. BIR Large Taxpayers Service – Excise LT Field Operations Division (ELTFOD) Memoranda[68] detailing the legal basis and validation process of petitioner's requests for credit back of excise tax on spoiled stamps and the approved volume and excise tax amounts for credit back to IRSIS.

A verification of the ICPA's finding[69] and a perusal of petitioner's documents disclosed that the excise taxes of ₱305,823,304.00 being claimed by petitioner consisted of: (i) the unapplied advance deposits and credit back of bad orders as of 31 December 2017; and, (ii) credit back of spoiled stamps and bad orders for 2018 (except the credit back of spoiled stamps and bad orders attributable to Orders prior to 29 December 2016 which have already prescribed), as summarized hereunder:

Particulars	Reference	Amount
a. Unapplied Advance Deposits and Credit Back of Bad Orders as of December 31, 2017		
Remaining Advance Deposit as of January 6, 2017 *per* IRSIS Taxpayer Ledger	Exhibit "P-11" (p. 11 of 15)	₱ 15,239,584.00
Add/(Less): Advance Payments of Excise Taxes during 2017 *per* IRSIS Taxpayer Ledger	*Annexes A* and *E-1* of the ICPA Report	707,100,000.00
Approved Credit Back of Spoiled Stamps and Bad Orders during 2017 *per* IRSIS Taxpayer Ledger	*Annexes C-1* and *E-5* of ICPA Report	1,775,852.00
Approved Stamp Orders in 2017 *per* IRSIS Taxpayer Ledger	*Annexes B* and *E-2* of ICPA Report	(569,250,000.00)
Approved Credit Back of Spoiled Stamp during 2017 attributable to 2014 to 2015 Orders which have already prescribed	*Annex D*	(746,252.00)
Unapplied Advance Deposits and Credit Back of Bad Orders as of December 31, 2017 covered by the IRSIS Taxpayer Ledger claimed for refund		**₱154,119,184.00**
b. Credit back of Spoiled Stamps and Bad Orders during 2018		
Approved Credit Back of Bad Orders during 2018 *per* IRSIS Taxpayer Ledger	*Annex C-1*	₱ 3,598,650.00
Add/(Less): Approved Credit Back of Spoiled Stamps during 2018 *per* IRSIS Taxpayer Ledger	*Annexes C-2, D and E-4*	153,855,549.00

[68] Exhibits "P-17", id., pp. 1213-1215; Exhibits "P-71" to "P-79", id., pp. 1292-1315.
[69] Exhibit "P-51" (ICPA Report), id., pp. 13-18, item 3.

Approved Credit Back of Spoiled Stamps during 2018 attributable to 2014 to 2016 Orders *per* IRSIS Taxpayer Ledger which have already prescribed	*Annex D*	(5,750,079.00)
Credit Back of Spoiled Stamps and Bad Orders credited in 2018 covered by the IRSIS Taxpayer Ledger claimed for refund		**₱151,704,120.00**
Total		**₱305,823,304.00**

UNAPPLIED ADVANCE DEPOSITS AND CREDIT BACK OF BAD ORDERS AS OF 31 DECEMBER 2017.

The remaining Advance Deposit as of 06 January 2017 *per* IRSIS Taxpayer Ledger in the amount of ₱15,239,584.00 came from the excise tax payment of ₱34,650,000.00 made on 28 December 2016, as shown below:

Particulars	**Reference (Exhibit No.)**	**Amount**	
Excise Tax Payment on December 28, 2016 *per* IRSIS Taxpayer Ledger supported by BIR Form No. 2200-T with eFPS Payment Details	"P-11" (p. 10 of 15), "P-80" and "P-80-A"		₱ 34,650,000.00
Less: Portion of Excise Tax Payment on December 28, 2016 applied/consumed for Order dated 06 January 2017:			
Approved Order dated January 06, 2017 with Order Ref. No. 2017-010-000001 supported by IRSIS Stamp New Order Form and APO Delivery Receipt	"P-11" (p. 11 of 15), "P-53" and "P-53-A"	₱19,800,000.00	
Less: Applied/consumed deposits from Advance Deposit as of December 14, 2016 *per* IRSIS Taxpayer Ledger	"P-11" (p. 10 of 15)	389,584.00	19,410,416.00
Remaining Advance Deposit as of January 06, 2017 from December 28, 2016 Excise Tax Payment			**₱15,239,584.00**

Since the Order dated 06 January 2017 amounting to ₱19,800,000.00 consumed the advance deposit balance of ₱389,584.00 as of 14 December 2016 and the portion of the ₱34,650,000.00 excise tax prepayment on 28 December 2016 amounting to ₱19,410,416.00, the amount of ₱15,239,584.00 left as advance deposit as of 06 January 2017 is the balance of the said excise tax prepayment on 28 December 2016.

The advance payments of excise taxes for 2017, *per* IRSIS Taxpayer Ledger totaling to ₱707,100,000.00, were duly supported by BIR Forms No. 2200-T, with eFPS Payment Details, to wit:

***Per* BIR Form 2200-T and eFPS Payment Details**		***Per* IRSIS Taxpayer Ledger** (Exhibit "P-11", pp. 11 to 12)		
Exhibit No.[70]	**Date**	**Reference No.**	**Transaction Date**	**Tax Payment/ Deposit**
Exhibit "P-21" to "P-21-1"	December 29, 2016	6364810360	January 19, 2017	₱227,700,000.00
Exhibit "P-22" to "P-22-1"	December 29, 2016	6364810362	January 19, 2017	231,900,000.00
Exhibit "P-25" to "P-25-1"	May 12, 2017	51269	May 24, 2017	148,500,000.00
Exhibit "P-26" to "P-26-1"	May 18, 2017	EFPS13870000004AQ244	May 18, 2017	99,000,000.00
Total				**₱707,100,000.00**

Moreover, the Approved Stamp Orders in 2017, in the aggregate amount of ₱569,250,000.00 (debited from the advance deposits in the IRSIS), were supported by IRSIS Stamp New Order Forms[71], where the quantity ordered and the corresponding excise tax amounts were verified. Likewise, the application of the Advance Payments to Orders during 2017 *per* IRSIS Taxpayer Ledger[72], on a first-in-first-out basis, is shown as follows:

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70 Division Docket, Volume III, pp. 1220-1223 and 1230-1233.
71 Exhibits "P-54" to "P-70".
72 Exhibit "P-11", supra at note 65.

Advance Payments *per* IRSIS Taxpayer Ledger (a)		**Orders *per* IRSIS Taxpayer Ledger (b)**		**Balance of Advance Payment (c = a - b)**
		Reference No.	**Applied Amount**	
Remaining Advance Payment as of January 6, 2017 (from December 28, 2016 Excise Tax Payment)		2017-010-000003	₱14,850,000.00	
		2017-010-000002	389,584.00	
	₱15,239,584.00		₱15,239,584.00	-
Excise Tax Payment - January 19, 2017 (paid December 29, 2016 *per* Excise Tax Return)		2017-010-000002	₱24,360,416.00	
		2017-010-000007	14,850,000.00	
		2017-010-000006	19,800,000.00	
		2017-010-000005	34,650,000.00	
		2017-010-000004	39,600,000.00	
		2017-010-000009	98,639,584.00	
	231,900,000.00		₱231,900,000.00	-
Excise Tax Payment - January 19, 2017 (paid December 29, 2016 *per* Excise Tax Return)		2017-010-000009	₱15,210,416.00	
		2017-010-000008	34,650,000.00	
		2017-010-000010	9,900,000.00	
		2017-010-000011	34,650,000.00	
		2017-010-000012	34,650,000.00	
		2017-010-000013	44,550,000.00	
		2017-010-000014	44,550,000.00	
		2017-010-000015	9,539,584.00	
	227,700,000.00		₱227,700,000.00	-
Excise Tax Payment - May 18, 2017		2017-010-000015	₱10,260,416.00	
		2017-010-000016	44,550,000.00	
		2017-010-000018	4,950,000.00	
		2017-010-000019	34,650,000.00	
	99,000,000.00		₱94,410,416.00	₱4,589,584.00
Excise Tax Payment May 24, 2017 (paid May 12, 2017 *per* Excise Tax Return)	148,500,000.00		-	148,500,000.00
Total	**₱722,339,584.00**		**₱569,250,000.00**	**₱153,089,584.00**

The above table reveals that the Unapplied Balance of the Advance Payment as of 31 December 2017 amounted to ₱153,089,584.00, which was the remainder from the excise tax payments made on 12 May 2017 and 18 May 2017, respectively.

As to the Approved Credit Back of Spoiled Stamps and Bad Orders for 2017 amounting to ₱1,775,852.00, the said amount was established to consist of the following:

• ***Bad Orders** consisting of short deliveries (for 2017 Orders paid from Advance Payments on January 19, 2017) per IRSIS Stamp New Order Form and APO Delivery Receipt:*		
Exhibit No.	**Short Delivery**	**Short Delivery Amount**
"P-56" to "P-56-B" (Order Ref. No. 2017-010-000004)	1,320	₱ 39,600.00
"P-57" to "P-57-B" (Order Ref. No. 2017-010-000005)	1,320	39,600.00
"P-60" to "P-60-A" (Order Ref. No. 2017-010-000008)	15,675	470,250.00
"P-61" to "P-61A" (Order Ref. No. 2017-010-000009)	8,085	242,550.00
"P-63" to "P-63-A" (Order Ref. No. 2017-010-000011)	660	19,800.00
"P-64" to "P-64-A" (Order Ref. No. 2017-010-000012)	1,320	39,600.00
"P-65" to "P-65-A" (Order Ref. No. 2017-010-000013)	4,125	123,750.00
"P-66" to 'P-66-A" (Order Ref. No. 2017-010-000014)	1,815	54,450.00
Subtotal		***₱1,029,600.00***
• ***Valid Spoiled Stamp per BIR ELTFOD Memorandum No. ELTFOD-SS-17-010-00074:***		
Exhibit No.	**Volume (in pcs)**	**Excise Tax**
"P-76"	26,653	₱ 746,252.00
Subtotal		***₱ 746,252.00***
Total Approved Credit Back in 2017		**₱1,775,852.00**

The Bad Orders reflected above in the amount of ₱1,029,600.00 pertain to Orders made in 2017. As can also be gleaned from the above table showing the application of advance payments to Orders, the payments for these Orders were from the Excise Tax Payments dated 19 January 2017 *per* the IRSIS Taxpayer Ledger.

Meanwhile, as reflected in petitioner's Summary of Approved Credit Backs pertaining to Spoiled Stamps (Prescribed)[73], the Approved Credit Back of Spoiled Stamp in the amount of ₱746,252.00 originated from Orders made in 2014 and 2015, which means that the excise tax payments for the related Orders were made prior to 29 December 2016. Since the filing for refund claim of tax payments prior to 29 December 2016 had already prescribed, petitioner excluded the said amount of

[73] Annex D of ICPA Report.

₱746,252.00 from the subject claim for refund, *albeit* the same remained unutilized.

In sum, the properly substantiated claimed balance of ₱154,119,184.00 as of 31 December 2017 *per* IRSIS Taxpayer Ledger is composed of Unapplied Advance Deposit of ₱153,089,584.00 and unutilized Credit Back of Bad Orders in the amount of ₱1,029,600.00.

CREDIT BACK OF SPOILED STAMPS
AND BAD ORDERS DURING 2018.

Anent the Credit Back of Bad Orders and Spoiled Stamps during 2018 *per* the IRSIS Taxpayer Ledger totalling ₱157,454,199.00, the same were corroborated by the related IRSIS Stamp New Order Forms, APO Delivery Receipts, and BIR ELTFOD Memoranda corroborate them, to wit:

• ***Bad Orders*** ***consisting of short deliveries (for 2017 Orders paid from Advance Payment on May 18, 2017) per IRSIS Stamp New Order Form and APO Delivery Receipt:***				
Exhibit No.	**Short Delivery**	**Short Delivery Amount**		
"P-67" to "P-67-A" (Order Ref. No. 2017-010-000015)	47,190	₱ 1,415,700.00		
"P-68" to "P-68-A" (Order Ref. No. 2017-010-000016)	16,830	504,900.00		
"P-69" to "P-69-A" (Order Ref. No. 2017-010-000018)	7,260	217,800.00		
"P-70" to "P-70-A" (Order Ref. No. 2017-010-000019)	48,675	1,460,250.00		
Subtotal		**₱ 3,598,650.00**		
• ***Valid Spoiled Stamps per BIR ELTFOD Memorandum:***				
Exhibit No.	**Volume (in pcs)**	**Excise Tax**	***Excise Tax for 2017 Orders (Annex C-2)***	***Excise Tax for 2014 to 2016 Orders (Annex D)***
"P-17" (Memo No. ELTFOD-SS-18-010-00421)	164,391	₱ 4,927,529.00	₱ 4,892,520.00	₱ 35,009.00
"P-71" (Memo No. ELTFOD-SS-18-010-00047)	1,876,875	56,306,250.00	56,306,250.00	
"P-72" (Memo No. ELTFOD-SS-18-010-00048)	1,976,535	59,296,050.00	59,296,050.00	
"P-73" (Memo No. ELTFOD-SS-18-010-00418)	133,193	3,988,134.00	3,920,370.00	67,764.00
"P-74" (Memo No. ELTFOD-SS-18-010-00419)	96,644	2,704,443.00	1,148,070.00	1,556,373.00
"P-75" (Memo No. ELTFOD-SS-18-010-00420)	761,007	22,811,324.00	22,542,210.00	269,114.00

"P-77" (Memo No. ELTFOD-SS-17-010-00151(A)) "P-78" (Memo No. ELTFOD-SS-18-010-00018)	37,253 35,178	1,020,857.00 972,322.00		1,020,857.00 972,322.00
"P-79" (Memo No. ELTFOD-SS-18-010-00042)	65,585	1,828,640.00		1,828,640.00
Subtotal		**₱153,855,549.00**	***₱148,105,470.00***	***₱5,750,079.00***
Total Approved Credit Back during 2018		**₱157,454,199.00**		

The Bad Orders during the year 2018, in the total amount of ₱3,598,650.00, were verified as related to 2017 Orders. The payments for these Orders (as seen from the application of advance payments above) were from the Excise Tax Payments dated 18 May 2017 *per* the IRSIS Taxpayer Ledger.

Meanwhile, the Credit Back of Spoiled Stamps for 2018, in the total amount of ₱153,855,549.00, was verified as related to 2014 to 2017 Orders.

As to the Credit Back of Spoiled Stamps for Orders made in 2017 amounting to ₱148,105,470.00, the earliest supported payment applied to these Orders was from the Excise Tax Payment dated 28 December 2016 *per* the IRSIS Taxpayer Ledger.[74] On the other hand, the Credit Back of Spoiled Stamps for Orders made in 2014 to 2016 amounting to ₱5,750,079.00, which petitioner properly included from the subject refund claim as the filing of refund claim for the excise tax payments applied to the related Orders prior to 29 December 2016, had already prescribed.

With the foregoing, the Court concludes that petitioner has sufficiently substantiated the claimed amount of ₱305,823,304.00, consisting of the Unapplied Excise Taxes prepaid on 18 May 2017, at the earliest, and Credit Back of Bad Orders and Spoiled Stamps during the periods of 2017 and 2018 (for 2017 Orders).

WHEREFORE, with the foregoing premises, the Petition for Review filed by petitioner British American Tobacco (Philippines), Limited on 21 December 2018 is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** petitioner the amount of **₱305,823,304.00**, representing its

[74] Exhibit "P-11", supra at note 65.

unutilized advanced deposit in Internal Revenue Stamp Integrated System, as well as the credits representing the value of unused, spoiled, and bad order internal revenue stamps, for the period from 29 December 2016 to 18 May 2017.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice