REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC., Petitioner,	**CTA EB NO. 1977 (CTA Case No. 8968)**
	Present:
-versus-	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto-San Pedro, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 30 2020 4:30 p.m.

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DECISION

CASTAÑEDA, JR., J.:

In the Court *a quo*, Philip Morris Philippines Manufacturing, Inc. (PMPMI) sought the refund or issuance of tax credit certificate of ₱152,877,472.10 corresponding to the excise tax it allegedly advanced on tobacco and cigarette products it exported for the period covering January 12, 2009 to December 31, 2009.[1]

Now, before the Court *En Banc*, is a Petition for Review filed by the PMPMI under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court which seeks to reverse and set aside the following:

[1] Decision, *Rollo*, p. 45.

1. August 3, 2018 Decision[2] of the CTA First Division[3] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby DENIED for lack of merit.
>
> **SO ORDERED**."

2. November 15, 2018 Resolution[4] denying petitioner's Motion for Reconsideration (of the Decision dated 3 August 2018) for lack of merit.

THE FACTS

The facts are summarized from the August 3, 2018 Decision and condensed from the records, as follows:

The Parties

Petitioner PMPMI is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Its office address is at 27th Floor, Tower One, The Enterprise Centre, 6766 Ayala Avenue corner Paseo de Roxas, Makati City.[5] It is "primarily engaged in the tobacco and cigarette industry",[6] "and in connection therewith, to manufacture, process, pack, buy, sell on wholesale, distribute and otherwise deal in cigarettes and cigarette flavorings, casings, tobacco, packaging, labels, filters, plants, machines, equipment, instruments, apparatus; xxx."[7]

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code of 1997 (NIRC) or other laws administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[8]

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[2] Annex A, Petition for Review, *Rollo*, pp. 44-67.
[3] Penned by Associate Justice Cielito N. Mindaro-Grulla with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy.
[4] Annex B, Petition for Review, *Rollo*, pp. 68-76.
[5] Decision, *Rollo*, p. 45.
[6] Letter dated December 11, 2014, Exhibit P-5, Division Docket, Vol. I, p. 752.
[7] Amended Articles of Incorporation, Exhibit P-2, Division Docket, Vol. I, p. 732.
[8] Decision, *Rollo*, p. 45.

Relevant Facts

On January 22, 2008, respondent issued Revenue Regulations (RR) No. 3-08 in order to regulate the collection and administration of excise tax on certain excisable articles.[9] Specifically, it amended "certain provisions of existing revenue regulations which grant exemption from excise tax on the removal of excisable articles intended to be exported or sold/delivered to international carriers or tax-exempt entities/agencies," and prescribed "the provisions for availing a claim for product replenishment as a remedy on the imposition of excise tax on such removals."[10]

Consequently, RR No. 3-08 revoked or withdrew the BIR permits previously granted to all bonded storage facilities and instead required tobacco exporters to pay excise tax on the removal of "excisable articles" even if the same were intended for export, subject to the subsequent filing of a claim for excise tax credit or refund or product replenishment.[11]

In 2009, petitioner PMPMI established a plant in Lot 3, Phase 1 B, First Philippine Park, Sto. Tomas, Batangas where it manufactures tobacco products, which are all destined for export abroad.[12]

In compliance with RR No. 3-08 and to highlight the nature of the payments as being advances or deposits rather than tax payments, PMPMI paid the advance excise tax by using the general payment form (BIR Form No. 0605) and not the regular excise tax form (BIR Form No. 2200T). Thus, from January 12, 2009 to December 31, 2009, petitioner PMPMI advanced the excise taxes on tobacco and cigarette products it exported.[13] As of December 31, 2009, advanced excise tax which remains unreplenished or unrefunded under RR No. 3-08 amounted to ₱152,877,472.10.

On December 11, 2014, petitioner filed with the BIR Large Taxpayers Excise Audit Division II an administrative claim for refund or issuance of tax credit certificate in the amount of ₱152,877,472.10, allegedly representing excise tax that petitioner advanced or deposited on tobacco and cigarette products it exported for the period covering January 12, 2009 to December 31, 2009, which has not been replenished or refunded under RR No. 3-08 including Product Replenishment Certificates (PRCs) with outstanding balances and Product Replenishment Debit Memo (PRDM) for replenishment.[14]

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[9] *Id.* at p. 45.
[10] Section 1, Revenue Regulations No. 3-08.
[11] Decision, *Rollo*, pp. 45-46.
[12] Letter dated December 11, 2014, Exhibit "P-5", Division Docket, Vol. I, p. 752.
[13] Decision, *Rollo*, p. 46.
[14] *Id.*

Respondent, however, in a letter dated June 22, 2015, denied the administrative claim on the ground of prescription.[15]

CTA 1st Division Proceedings

On January 12, 2015, petitioner filed a Petition for Review with the Court *a quo*.

On February 20, 2015, respondent filed his Answer interposing the following special and administrative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 5. The amount of ₱152,877,472.10 representing the amount of excise tax allegedly advanced by petitioner on its exported products for the period 12 January 2009 to 31 December 2009 was not properly documented.
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 7. Petitioner must show that it has complied with the provisions of Section 229 of the NIRC of 1997 on the prescriptive period for claiming tax refund/credit xxx."[16]

Respondent, likewise, stated that petitioner's right to claim for refund had already prescribed; that RR No. 3-08 is valid; and, that the taxpayer has the burden of proof to establish the factual basis of its claim for tax credit or refund.[17]

On May 7, 2015, the pre-trial conference was set by the Court *a quo*. Respondent filed his Pre-Trial Brief on March 18, 2015 while petitioner filed its Pre-Trial Brief on April 30, 2015.[18]

On May 27, 2015, the parties filed their Joint Stipulation of Facts and Issues. Subsequently, the Court *a quo* issued a Pre-Trial Order on July 24, 2015 and terminated the pre-trial.[19]

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[15] Exhibit "R-3", BIR Records, pp. 56-57; Judicial Affidavit of Ms. Flor Jasmin R. Soriano, Exhibit "R-4", Division Docket, Vol. II, pp. 817-818.
[16] Decision, *Rollo*, pp. 46-47.
[17] *Id.* at p. 47.
[18] *Id.*
[19] *Id.*

During trial, petitioner presented Ms. Catherine de Asa, its Senior Tax Manager, and Mr. Jerome Antonio Constantino, the court-commissioned Independent Certified Public Accountant (CPA), as its witnesses.[20]

On January 4, 2016, petitioner filed its Formal Offer of Evidence for Petitioner consisting of Exhibits "P-1" to "P-25", inclusive of submarkings. In the Resolution dated March 16, 2016, the Court *a quo* denied a number of exhibits offered by petitioner for failure to present the originals for comparison.[21] On April 4, 2016, petitioner filed a Manifestation and Omnibus Motion [(i) For Reconsideration of the Resolution dated 16 March 2016; (ii) to Admit Supplemental Affidavit of Mr. Jerome Antonio B. Constantino; and (iii) for Leave to File Amended and Supplemental Formal Offer of Evidence]. Thereafter, on November 29, 2016, the Court *a quo* issued a Resolution partially granting petitioner's omnibus motion, but still upheld the denial of admission of Exhibits "P-15.2" and "P-18.1" to "P-18.486" for failure to present the originals for comparison.[22]

On December 20, 2016, petitioner filed a Manifestation with Proffer of Evidence, with respondent's Opposition, as regards Exhibits "P-18.1" to "P-18.486', which was duly noted by the Court and made part of the records of the case.[23]

On April 20, 2017, respondent presented Revenue Officer Flor Jasmin R. Soriano as witness.[24]

Subsequently, on April 25, 2017, respondent filed his Formal Offer of Evidence consisting of Exhibits "R-1", "R-2", "R-3", "R-4", and "R-4-a". The Court admitted all of respondent's evidence in the Resolution dated July 19, 2017.[25]

On October 2, 2017, considering the filing of petitioner's Memorandum on August 18, 2017 and of respondent's on September 25, 2017, the Court *a quo* declared the case submitted for decision.[26]

The parties submitted the following issues for the resolution of the Court a quo:

> "1. Whether Petitioner is entitled to a refund or issuance of a tax credit certificate for the total amount of ₱152,877,472.10 corresponding to the excise tax advanced or deposited by Petitioner on tobacco and cigarette products it exported for the period of 12 January 2009 to 31 December 2009 which has not been replenished or refunded under RR 03-08, including Product Replenishment Certificates (PRCs) with outstanding balances and Product Replenishment Debit Memo (PRDM) for replenishment.

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[20] *Id.*
[21] *Id.* at pp. 47-48.
[22] *Id.* at p. 48.
[23] *Id.*
[24] *Id.* at p. 49.
[25] *Id.* at p. 50.
[26] *Id.*

> 2. Whether the amounts corresponding to the excise tax advanced or deposited by Petitioner under RR 03-08 should be returned to Petitioner in accordance with Section 130(D) of the Tax Code and/or the principle of *solutio indebiti*.
>
> 3. Whether the provisions of RR 03-08 should be declared null and void for being contrary to Sections 129 and 130(D) of the Tax Code.
>
> 4. Whether Petitioner's right to claim for refund of the excise tax advanced or deposited by Petitioner on tobacco and cigarette products it exported for the period of 12 January 2009 to 31 December 2009 which has not been replenished or refunded under RR 03-08, including Product Replenishment Certificates (PRCs) with outstanding balances and Product Replenishment Debit Memo (PRDM) for replenishment, has already prescribed.
>
> 5. Whether this Honorable Court has jurisdiction to act on the instant Petition for Review."[27]

Petitioner's Arguments

Petitioner PMPMI contended that the amounts advanced or deposited under RR No. 3-08 should be refunded pursuant to the principle of *solutio indebiti* and Section 130(D) of the NIRC. It stated that under Section 129 of the NIRC, products manufactured or produced in the Philippines for *domestic* sales and consumption are subject to excise tax. However, articles for export and consumption *outside* the Philippines are *not* subject to excise tax. Allegedly, petitioner advanced or deposited the excise tax on such locally manufactured products pursuant to RR No. 3-08 but respondent recognized that such products were earmarked for exportation and were actually exported. Subsequently, petitioner received corresponding foreign exchange payment for such exported products.[28]

Petitioner further stated that the mere fact that it was able to obtain PRC and PRDM from the BIR proved that it was able to submit documentary evidence to the BIR that its products were actually exported. In this regard, since the exported articles were not subject to excise tax, allegedly, the BIR effectively approved petitioner's claim for refund when it issued PRCs.[29]

Petitioner pointed out that its claim is based on Section 130(D) of the NIRC and that it was able to comply with the requirements for said claim and that respondent is duty-bound to return such payment under the principle of *solutio indebiti*.[30]

Petitioner also asserted that RR No. 3-08 is void as it conflicts with the provisions of the NIRC. Specifically, it effectively amended Sections 129 and 130(D) of said law. The issuance also required the payment of excise tax on

[27] *Id.* at pp. 50-51.
[28] *Id.*
[29] *Id.* at pp. 51-52.
[30] *Id.* at p. 52.

articles for export or consumption outside the Philippines when these articles should not be subject to excise tax.[31]

Petitioner insisted that the product replenishment under RR No. 3-08 is in also clear conflict with Section 130(D) of the NIRC, which only required submission of the proof of actual exportation and the corresponding foreign exchange payment as conditions for granting refund, without imposing any additional conditions or time limit.[32]

Petitioner submitted that the Court has jurisdiction to declare RR No. 3-08 invalid because the case involves a claim for refund, which is within its jurisdiction.[33]

Lastly, petitioner argued that the two-year prescriptive period under Sections 204(C) and 229 of the 1997 NIRC are not applicable as it purportedly seeks the recovery of excise tax advanced or deposited to the government and *not* erroneously or illegally collected tax and Section 130(D) of the 1997 NIRC does not provide a deadline for the filing of a refund claim.[34]

Respondent's Arguments

Respondent counter-argued that the claim for refund was filed beyond the two-year reglementary period. Petitioner PMPMI, respondent stated, must show that it has complied with the provisions of Section 229 of the 1997 NIRC on the prescriptive period for claiming refund or tax credit. Respondent asserted that petitioner's claim for refund of its alleged advance payments of excise tax for the period January 12, 2009 to December 31, 2009 had already prescribed pursuant to said provision.[35]

Further, respondent submitted that RR No. 3-08 has basis in fact and in law. Respondent declared that the BIR's interpretation of laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain. Respondent maintained that assuming *arguendo* that the BIR exercised administrative legislation, the same is not illegal *per se*. Administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress. Respondent stated that the latest in our jurisprudence indicates that delegation of legislative power has become the rule and its non-delegation the exception.[36]

Moreover, respondent discussed that considering petitioner's primary cause of action is the nullification of duly issued administrative issuance, this Court has no jurisdiction over the same. Respondent explained that, assuming

[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.* at pp. 52-53.
[36] *Id.* at p. 53

petitioner's primary cause of action is to seek refund and that the requested nullification is merely consequential, the same should still not be allowed as it is a well-established legal precept that a collateral attack on a presumably valid administrative issuance is not permitted.[37]

On August 3, 2018, the Court a quo promulgated the Decision which denied the petition.[38]

On November 15, 2018, the Court a quo denied petitioner's Motion for Reconsideration (of the Decision dated 3 August 2018) for lack of merit.[39]

CTA En Banc Proceedings

On December 28, 2018, the petitioner PMPMI filed the instant Petition for Review.[40]

On January 18, 2019, the Court *En Banc* issued a Resolution which ordered respondent to file a comment, within ten (10) days from notice.[41]

On January 29, 2019, respondent filed his Comment (Re: Petition for Review).[42]

In a February 18, 2019 Resolution, the Court *En Banc* noted respondent's filing of his Comment and, moreover, ordered the parties to file their memoranda within thirty (30) days from notice.[43]

On March 5, 2019, respondent filed a Manifestation declaring that he is adopting the arguments raised in the Comment (Re: Petition for Review) as his Memorandum in compliance with the February 18, 2019 Resolution.[44] This Manifestation was noted by the Court *En Banc*.[45]

On March 28, 2019, petitioner PMPMI filed its Memorandum.[46]

Finally, with the filing of petitioner's Memorandum and considering respondent's Manifestation, Court *En Banc* submitted the case for decision in a Resolution dated April 11, 2019.[47]

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[37] *Id.*
[38] *Rollo*, pp. 44-67.
[39] *Id.* at pp. 68-76.
[40] *Id.* at pp. 7-42.
[41] *Id.* at pp. 101-102.
[42] *Id.* at pp. 103-112.
[43] *Id.* at pp. 115-116.
[44] *Id.* at pp. 117-119.
[45] Minute Resolution dated March 13, 2019, *Rollo*, p. 121.
[46] *Rollo*, pp. 122-157.
[47] *Id.* at pp. 161-162.

THE ISSUES

In assailing the August 3, 2018 Decision and November 15, 2018 Resolution, the petitioner PMPMI raised three issues similar to the ones raised before the Court *a quo*:[48]

1. "Whether the Honorable First Division erred in holding that there is no conflict between the provisions of Section 129 and 130(D), on the one hand, and RR 03-08, on the other;

2. Whether the Honorable First Division erred in denying petitioner's claim for refund on the ground that the same was filed beyond the two-year prescriptive period for filing administrative and judicial claims for refund as provided under Sections 204(C) and 229 of the Tax Code; and,

3. Whether the Honorable First Division erred in denying petitioner's claim for refund on the ground that the principle of *solutio indebiti* is not applicable in this case."

THIS COURT'S RULING

We resolve to deny the petition and uphold the assailed decision of the CTA First Division.

The provisions of RR 3-08 are not contrary to Sections 129 and 130(D) of the 1997 NIRC.

Petitioner questions the validity of RR No. 3-08 on the ground that it allegedly goes beyond the scope of Sections 129 and 130(D) of the 1997 NIRC when it required the payment of excise tax on articles that are *not* subject to such tax and instead of outright exemption, manufacturers were required to file a claim either in the form of (1) a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the 1997 NIRC; or (2) a product replenishment.

Section 129 of the 1997 NIRC provides:

> "**SEC. 129.** *Goods Subject to Excise Taxes.* — <u>Excise taxes apply to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported</u>. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV. *Jr*

[48] Petition for Review, *Rollo*, pp. 14-15; Memorandum, *Rollo*, p. 129.

> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit or measurement shall be referred to as **'specific tax'** and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as **'ad valorem tax'**." (*Underscoring supplied*)

Section 130(D) of the same law, furthermore, entitles the taxpayer a credit or refund of the excise taxes *paid* on articles which were actually exported, subject to certain specified conditions, to wit:

> "**SEC. 130.** *Filing of Return and Payment of Excise Tax on Domestic Products.* —
>
> xxx xxx xxx
>
> (D) *Credit for Excise Tax on Goods Actually Exported.* — When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, <u>any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment</u>: *Provided*, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported." (*Underscoring supplied*)

RR No. 3-08 entitled "Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment" dated January 22, 2008 explains in pertinent part the policy behind the regulations:

> "xxx xxx xxx
>
> "BACKGROUND:
>
> While the government recognizes the immunity from taxation and other tax privileges enjoyed by certain persons or entities provided under the National Internal Revenue Code (NIRC) and other special laws, as well as those granted under their own respective charters or tax treaties, conventions and other international agreements, it is our declared policy to regulate the grant of tax relief in order to prevent possible abuses.
>
> <u>As a general rule, all withdrawals of excisable articles from their place of production must be subject to excise tax</u>. <u>The grant of an outright tax exemption is discouraged because it deprives the Bureau of Internal Revenue (BIR) the opportunity to evaluate thoroughly the factual and legal bases of the tax relief sought. It is for these reasons that remedies after</u>

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payment of the tax is more favored by the government because this option will give more protection to revenue collections without diminishing the impact of the tax relief to which the taxpayers are entitled. These remedies may either come in the form of: (1) a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the NIRC; or (2) a product replenishment, the mechanics of which is provided in these regulations.

Accordingly, these revenue regulations are being issued for the sole purpose of attempting to maintain the enjoyment of tax privileges by these tax-exempt persons or entities but, at the same time, maintaining the equilibrium between stability of revenue collections on one side, and giving the taxpayers what is legally due them on the other. These regulations likewise intend to minimize the rising incidents of reported diversions of declared articles for export to the local market, as well as domestic sales originally declared as intended to tax-exempt persons and entities but are subsequently found in possession of persons or entities that are not entitled to such tax exemption privilege. Moreover, these regulations also intend to rationalize the practice of some taxpayers of immediately availing outright tax exemption but are delaying and/or totally ignoring the prescribed submission and full liquidation of their claimed tax-exempt shipments with complete supporting documents.

SECTION 1. *Scope.* — Pursuant to the provisions of Section 244 in relation to Section 245 of the National Internal Revenue Code (NIRC) of 1997, as amended, these Regulations are hereby promulgated in order to amend certain provisions of existing revenue regulations which grant exemption from excise tax on the removal of excisable articles intended to be exported or sold/delivered to international carriers or tax-exempt entities/agencies, and to prescribe the provisions for availing a claim for product replenishment as a remedy on the imposition of excise tax on such removals.

SECTION 2. *Imposition of Excise Tax on Removal of Excisable Articles for Export or Sale/Delivery to International Carriers and Other Tax-Exempt Entities/Agencies.* — Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies: Provided, That in case the said articles are likewise being sold in the domestic market, the applicable excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.

In the absence of a similar article that is being sold in the domestic market, the applicable excise tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable." (*Underscoring supplied*)

Petitioner PMPMI's arguments against the validity of RR 3-08 must yield to the clear provisions of law. *gr*

A careful reading of Section 129 of the 1997 NIRC does *not* support petitioner's view that the "Tax Code does *not* impose any excise tax on tobacco products exported by" it.[49]

First, petitioner should note that the text of Section 129 does *not* provide for such exemption. The law states that excise taxes "apply to goods manufactured or produced in the Philippines for domestic sale or consumption *or for any other disposition*".[50] This *clear* imposition of excise tax on exported

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[49] Petition for Review, Rollo, p. 16.

[50] Italics supplied. Under the older versions of Section 129, the *exemption* from excise tax of goods locally produced or manufactured but actually exported is plainly stated:

> **"Title IV. --- Specific Taxes**
>
> **Chapter I – Articles Subject to Specific Tax**
>
> SEC. 134. *Articles subject to specific tax.* — Specific internal revenue taxes apply to things manufactured or produced in the Philippines for domestic sale or consumption and to things imported, **but not anything produced or manufactured here which shall be removed for exportation and is actually exported without returning to the Philippines whether so exported in its original state or as ingredient or part of any manufactured article or product**.
>
> In case of importations the internal-revenue tax shall be in addition to the customs duties, if any.
>
> However, petroleum products sold to an international carrier for its use or consumption outside the Philippines shall not be subject to specific tax: *Provided*, That the country of said carrier exempts from tax petroleum products sold to Philippine carriers." (*Underscoring and emphasis supplied*)

On November 5, 1985, Presidential Decree No. 1994, which revised Title IV of the National Internal Revenue Code of 1977, also renumbered the provision to Section 109:

> "SECTION 20. Title IV of the National Internal Revenue Code is hereby amended to read as follows:
>
> 'TITLE IV
> *Excise Taxes*
>
> CHAPTER I
> *General Provisions*
>
> Sec. 109. *Article subject to excise taxes.* —Excise taxes apply to articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported, **but not to anything locally produced or manufactured which shall be removed for exportation and is actually exported without returning to the Philippines**, whether so exported in its original state or as an ingredient or part of any manufactured articles or products. In case of importations, excise taxes shall be in addition to the customs duties, if any.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specific value of the article be referred to as 'ad valorem tax.'" (*Underscoring and emphasis supplied*)

Thereafter, on June 25, 1986, Executive Order No. 22 amended Section 109 and *deleted* the clause on the exemption: Je goods is further reinforced in Section 130(D) which states that "any excise tax *paid*" on "goods locally produced or manufactured" which "are removed and actually exported without returning to the Philippines, xxx" "shall be credited or refunded."

It is a fundamental rule in statutory construction that the legislative intent must be determined from the language of the statute itself especially when the words and phrases therein are clear and unequivocal. The statute in such a case must be taken to mean exactly what it says.[51] Its literal meaning should be followed; to depart from the meaning expressed by the words is to alter the statute.[52]

Second, it is precisely this credit or refund mechanism that is the subject of the assailed RR 03-08. RR 03-08, therefore, was issued merely to implement the mechanisms available to taxpayers who exported excisable goods based on Section 130(D).

As stated in the Background of the assailed regulations, as a general rule, all withdrawals of excisable articles from their place of production are subject to excise tax. Contrary to the position of the petitioner,[53] even goods subsequently exported for consumption abroad are subject to excise tax once removed from their place of production. However, Section 130(D) of the 1997 NIRC grants the taxpayer product replenishment or tax credit or refund for the excise tax paid on those goods actually exported.

In other words, as an underlying policy, RR 3-08 explains that the grant of an outright tax exemption is discouraged because it deprives the BIR of the opportunity to evaluate thoroughly the factual and legal bases of the tax relief sought. Accordingly, the taxpayer's remedies *after* the payment of the tax are favored by the government because they will give more protection to revenue collections without diminishing the impact of the tax relief to the taxpayers.

Under said revenue regulations, the remedies of the taxpayer may either be in the form of: *gr*

"SECTION 1. Section 109 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

'SEC. 109. *Articles subject to excise taxes.* — <u>Excise taxes apply to articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported</u>. In case of importations, excise taxes shall be in addition to the customs duties, if any.

For purposes of this Title, excise tax herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as 'specific tax' and an excise tax herein imposed and based on selling price or other specified value of the article shall be referred to as 'ad valorem tax'." (*Underscoring supplied*)

[51] *Doroteo Banawa, et al. v. Primitiva Mirano, et al.*, G.R. No. L-24750, May 16, 1980.
[52] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 148512, June 26, 2006.
[53] Prefatory Statement, Petition for Review, *Rollo*, p. 7; Memorandum for Petitioner, *Rollo*, pp. 122-123, 129-142.

1. A claim for excise tax credit/refund pursuant to Sections 204 and 229 of the 1997 NIRC; or,

2. A product replenishment, the mechanics of which are provided in these regulations. The procedure in availing of the second option for refund is detailed in Section 6.[54]

Under the product replenishment mechanism, the procedures for availment are summarized as follows:

1. Upon removal of the excisable products from the place of production or storage facility, the taxpayer shall pay the excise tax on the locally manufactured excisable goods intended for export through BIR Form No. 0605.[55]

2. The taxpayer will then proceed with processing the actual exportation of said excisable goods.

3. For every shipment of excisable goods, the taxpayer will file an application for Product Replenishment Certificate (PRC) within ninety (90) days from the date of export/actual shipment together with the complete documentation provided under RR No. 3-08.[56]

4. The BIR shall approve the PRC application upon satisfaction of the documents submitted by the taxpayer.[57]

5. Utilize/apply the approved PRCs on *subsequent* excise tax liabilities of locally manufactured goods intended for export through the filing of a Product Replenishment Debit Memo (PRDM).[58]

    a. If the excise tax credit reflected in the PRC is MORE than the excise tax due on the subsequent exportation, the unutilized portion of the PRC may be used on other subsequent exportations.[59]

    b. If the excise tax credit reflected in the PRC is LESS than the excise tax due on the subsequent exportation, the taxpayer shall pay the difference thru BIR Form No. 0605 prior to removal of the goods within the Philippines.[60]

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[54] Background, RR 3-08.
[55] Sections 6(A)(d) and 6(A)(e), RR 3-08.
[56] Sections 6(A)(e), 6(B), 6(C) and 6(D), RR 3-08.
[57] Section 6(D), RR 3-08.
[58] Section 6(E), RR 3-08.
[59] Section 6(A)(c)(1), RR 3-08.
[60] Section 6(A)(c)(2), RR 3-08.

Under this mechanism, on the one hand, the duly approved PRC serves as proof of the excise tax credits which entitles the taxpayer to utilize it on *subsequent* excise tax due on the exported products.[61] On the other, the duly approved PRDM serves as proof of the utilization of the PRCs, which in effect serves as an authority to remove excisable article from the place of production without the requisite payment of excise tax.[62] The PRCs shall remain valid within five (5) years from the date of issuance thereof, subject to one-time revalidation before the expiration.[63]

Petitioner's use of the general payment form (BIR Form 0605), as prescribed in RR 3-08,[64] instead of the regular excise tax form (BIR Form No. 2200T), only serves to:

1. Stress that the payments made were indeed *excise taxes* subject to product replenishment, tax credit or refund; and,

2. Facilitate the processing of the claims for product replenishment, tax credit or refund.[65]

After a careful reading of the texts of the law [Sections 129 and 130(D) of the 1997 NIRC] and the implementing regulations (RR 3-08), the Court *En Banc* finds that there is *no* conflict between them.

Third, the basic tax principle remains that exemptions shall be strictly construed against the taxpayer and it is only Congress who can grant the same by a *clear* provision of law. One who seeks an exemption must justify it by words "too plain to be mistaken and too categorical to be misinterpreted."[66]

Finally, as defined, Revenue Regulations are issuances signed by the Secretary of Finance, upon recommendation of the respondent CIR, that specify, prescribe or define rules and regulations for the effective enforcement of the provisions of the Tax Code and related statutes.[67] One cannot question the authority of the respondent CIR to promulgate rules and regulations to effectuate the clear intent of the 1997 NIRC. It is also well settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts. Thus, in *Nestle Philippines, Inc. v. Court of Appeals and Securities and Exchange Commission*,[68] the Supreme Court reiterated this principle:

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[61] Section 6(A)(e) and Annex B Guidelines and Instructions, RR 3-08.
[62] Section 6(E), RR 3-08.
[63] Section 6(F), RR 3-08.
[64] Section 6(A)(d), RR 3-08.
[65] Section 8, RR 3-08.
[66] *Commissioner of Internal Revenue v. J.P. Morgan Chase Bank, N.A.-Philippine Customer Care Center*, G.R. No. 210528, November 28, 2018.
[67] Section II(A)(a)(a.1), Revenue Memorandum Order No. 12-97.
[68] G.R. No. 86738, November 13, 1991.

"In the first place, it is a principle too well established to require extensive documentation that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the Constitution and other laws. As long ago as 1903, this Court said in *In re Allen* that

> '[t]he principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly embedded in our jurisdiction that no authorities need be cited to support it.'

The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs* the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret." (*Underscoring supplied and citations omitted*)

Petitioner's claim for refund is barred by prescription

As declared in RR 3-08, the taxpayer has the option to avail of a tax credit or refund under Sections 204 and 229 of the 1997 NIRC.[69] Accordingly, the two-year prescriptive period under Sections 204(C) and 229 of the 1997 NIRC can be applied in this case, thus:

"**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)

[69] Background, RR 3-08.

> 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. (*Underscoring supplied*)
>
> xxx xxx xxx
>
> **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, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, 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. (*Underscoring supplied*)

In the case at bench, petitioner paid the excise taxes from January 12, 2009 to December 31, 2009. Counting two years from those dates, petitioner only had until January 12, 2011 to January 2, 2012[70] to file both its administrative and judicial tax credit or refund claims. However, based on the records, petitioner filed its administrative claim only on December 11, 2014, and the judicial claim on January 12, 2015,[71] *beyond* the prescriptive periods.

Without doubt, petitioner's claim is barred by prescription under Sections 204(C) and 229 of the 1997 NIRC.

Petitioner contends that the two-year prescription under Sections 204(C) and 229 of the 1997 NIRC does not apply in its case, since it seeks the recovery of excise tax allegedly advanced or deposited to the government and *not* erroneously or illegally collected tax and that Section 130(D) of the NIRC of 1997 does not prescribe a deadline for filing a claim for refund.

The Court *En Banc* is not convinced.

Jurisprudence has established that the two-year prescriptive periods under Sections 204(C) and 229 of the NIRC of 1997 (formerly Sections 309 and 306 of the Tax Code, respectively), apply in this case.

[70] December 31, 2011 fell on a Saturday.
[71] Decision, *Rollo*, p. 46.

As cited by the Court *a quo*, in *Commissioner of Internal Revenue v. Insular Lumber Company and Court of Tax Appeals*,[72] the Supreme Court *En Banc* dismissed the taxpayer's petition for refund on the ground of prescription. More significantly, the Supreme Court *En Banc* clarified that the prescriptive periods under Sections 306 and 309 (now Sections 229 and 204(C) of the 1997 NIRC, respectively) apply to *specific taxes*, *even when the law does not state that the refund is subject to Section 309* [now Section 204(C)]:

> "The main issue is whether or not the right to file the instant claim for refund has prescribed.
>
> Appellant supports the affirmative view for the reason that the claim in question, which was filed on February 23, 1961, was made more than two years from 1958 — the year the tax was paid and the year the mineral oils and fuels were used — citing Sections 306 and 309 of the Tax Code, which read:
>
> > 'SEC. 306. *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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; 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 begun after the expiration of two years from the date of payment of the tax or penalty.'
> >
> > 'SEC. 309. *Authority of Commissioner to make compromises and to refund taxes.* — The Commissioner of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund taxes erroneously or illegally received, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive.
> >
> > He shall refund the value of internal revenue stamps when the same are returned in good condition by the purchaser, and may, in his discretion, redeem or exchange unused stamps that have been rendered unfit for use, and may refund their value upon proof of destruction.
> >
> > The authority of the Commissioner of Internal Revenue to credit or refund taxes or penalties under this

[72] G.R. No. L-24221, December 11, 1967. The holding in *Insular Lumber* was cited and reiterated by the Supreme Court *En Banc* in *Commissioner of Internal Revenue v. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.

> section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty.'

On the other hand, appellees subscribe to the view that Sections 306 and 309, quoted above, apply to refund of taxes erroneously or illegally collected; and that since in this case the collection of the tax was not erroneous or illegal, said sections should not be applied herein. Appellees rely on *Muller & Phipps (Manila) Ltd. v. Collector of Internal Revenue*, 103 Phil. 145.

Sections 306 and 309 of the National Internal Revenue Code were intended to govern all kinds of refunds of internal revenue taxes — those taxes imposed and collected pursuant to the National Internal Revenue Code. Thus, this Court stated that 'this provision,' referring to Section 306, 'which is mandatory, is not subject to qualification, and, hence, it applies regardless of the conditions under which payment has been made.' And to hold that the instant claim for refund of a specific tax, an internal revenue tax imposed in Section 142 of the National Internal Revenue Code, is beyond the scope of Sections 306 and 309 is to thwart the aforesaid intention and spirit underlying said provisions.

Note that the case at bar is not the only instance in the Tax Code when a tax is initially collected legally, but later becomes refundable to the taxpayer by the happening of a *supervening cause*. Section 146 grants refund of specific tax on negative films, unprinted positive films and reversal films of sixteen millimeters or less used in amateur photography. The second paragraph of Section 182(B)(2), as amended by Republic Act 1856, allows refund of occupation tax paid in excess of the rates in effect prior to January 1, 1957. Section 53(2)(d) authorizes refund of the excess of the tax withheld at source at rates therein provided over the tax subsequently determined in the income tax return. In all those instances the law specifically subjects the refund to the provisions of Section 309. Section 142(d), as amended by Republic Act 755, allows refund of 50% of the specific tax on denatured alcohol used for motive power in agriculture and aviation during the five years from June 18, 1952. In said instance, however, like in the case at bar, the law does not state that such refund shall be subject to Section 309. Said silence notwithstanding, the intention is clear that refunds of internal revenue taxes are generally governed by Sections 306 and 309 of the Tax Code. Since in those cases the tax sought to be refunded was collected legally, the running of the two-year prescriptive period provided for in Section 306 should commence, *not from the date the tax was paid, but from the happening of the supervening cause which entitled the taxpayer to a tax refund.* And the claim for refund should be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted, within the said two year period.

In this case, it was the use in 1958 of the manufactured mineral oils and fuels in the operation of its forest concession which gave Insular Lumber Company the right to claim refund of 25% of the specific tax paid thereon. The claim for refund was filed with the Commissioner of Internal Revenue on February 23, 1961 and the petition for review was filed in the Court of Tax Appeals on February 17, 1962. Both the aforesaid dates are more than two years after 1958, the year the oils and fuels were actually used. Consequently, the right to claim refund of the tax in question has prescribed.

> The effect of the lower court's decision would be to subject the right to file a similar claim for refund with the Commissioner of Internal Revenue to a prescriptive period of ten years as provided for in paragraph (2) of Article 1144 of the Civil Code. Considering that under Section 337 of the Tax Code the taxpayer is required to keep his books and records for only five years, the Commissioner will have no way of verifying with the books and records of the taxpayer any claim filed after the fifth year. Certainly, the legislators did not intend to so handicap the Commissioner, for whose benefit the period of limitations was obviously devised.
>
> Moreover, public policy demands that tax adjustments be made as clearly and expeditiously as possible. The reason is that it is on taxes that the government depends for its operation and that any uncertainty or controversy on those matters will somehow impair the smooth functioning of the governmental machinery. Lengthening, therefore, of the period of limitations on refund from two to ten years would be adverse to public policy. <u>Finally, when our legislators codified our internal revenue laws in 1939 they intended to concentrate national tax matters in the Tax Code. For Us to look elsewhere for provisions governing taxes would be to veer away from such legislative intent</u>." (*Underscoring supplied and citations omitted*)

Finally, petitioner PMPMI, by availing of the RR 3-08 mechanism and using the prescribed payment forms (BIR Form No. 0605), is *estopped* to oppose the application of Sections 204(C) and 229 specifically referred to as taxpayer's remedies in said regulations.

Based on the foregoing, petitioner's claim for refund or issuance of tax credit certificate was filed out of time.

Finally, the prescriptive period for solutio indebiti under the Civil Code is not applicable

Petitioner argues that the principle of *solutio indebiti* applies considering that RR No. 3-08 is void because it requires petitioner to pay excise tax on its exported tobacco and cigarette products under a product replenishment and/or refund mechanism that, it insists, finds no basis in law. Thus, the BIR is not legally entitled to collect the amounts sought to be refunded by petitioner.

The Court *En Banc* finds petitioner's reliance in *solutio indebiti* untenable.

Art. 2154 of the Civil Code defines *solutio indebiti* as a juridical relation in this manner:

> Art. 2154 "If something is received when there is no right to demand it, and it is unduly delivered through mistake, the obligation to return it arises."

Solutio indebiti, falls under the Civil Code classification of quasi-contract. Accordingly, an action arising from it must be commenced within six (6) years from date of payment pursuant to Article 1145(2) of the Civil Code.[73]

Nonetheless, in *Commissioner of Internal Revenue v. Manila Electric Company*,[74] the Supreme Court rejected the application of *solutio indebiti* and its six-year prescription and held that the tax refund of final withholding tax was barred by the *two-year prescription* under Section 229 of the 1997 NIRC, viz.:

> "Notwithstanding the foregoing, however, we uphold the ruling of the CTA En Banc that the claim for tax refund in the aggregate amount of Thirty-Nine Million Three Hundred Fifty-Nine Thousand Two Hundred Fifty-Four Pesos and Seventy-Nine Centavos (₱39,359,254.79) pertaining to the period from January 1999 to July2002 must fail since the same has already prescribed under Section 229 of the Tax Code, to wit:
>
> > **Section 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, of any sum alleged to have been excessively or in any manner wrongfully 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.
>
> As can be gleaned from the foregoing, the prescriptive period provided is mandatory regardless of any supervening cause that may arise after payment. It should be pointed out further that while the prescriptive

[73] *Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation*, G.R. No. 144440, September 1, 2004.
[74] G.R. No. 181459, June 9, 2014.

period of two (2) years commences to run from the time that the refund is ascertained, the propriety thereof is determined by law (in this case, from the date of payment of tax), and not upon the discovery by the taxpayer of the erroneous or excessive payment of taxes. The issuance by the BIR of the Ruling declaring the tax-exempt status of NORD/LB, if at all, is merely confirmatory in nature. As aptly held by the CTA-First Division, there is no basis that the subject exemption was provided and ascertained only through BIR Ruling No. DA-342-2003, since said ruling is not the operative act from which an entitlement of refund is determined. In other words, the BIR is tasked only to confirm what is provided under the Tax Code on the matter of tax exemptions as well as the period within which to file a claim for refund.

In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, 'a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim.' (*Underscoring supplied and citations omitted*)

Applying the *Manila Electric Company* holding, petitioner PMPMI evidently has a binding obligation to pay the excise tax under Section 129 of the 1997 NIRC and under RR 3-08. The allegedly advanced payment or deposit of said excise tax was, therefore, *not* made through *mistake* but was voluntarily done in compliance with RR 3-08 and the mechanisms outlined therein. Hence, the six-year prescriptive period for actions arising from *solutio indebiti* cannot apply.

Finally, tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[75] "This is the reason why a claimant must positively show compliance with the

[75] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016.

statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[76]

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The August 3, 2018 Decision and the November 15, 2018 Resolution are hereby **AFFIRMED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[76] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice