REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN MIGUEL BREWERY INC., *Petitioner,*	**CTA EB No. 1772** (CTA Case No. 8955)
	Present:
	Del Rosario, *P.J.* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 19 2018 2:35 p.m.

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D E C I S I O N

CASTAÑEDA, JR., *J.:*

This is a Petition for Review[1] filed by petitioner San Miguel Brewery Inc. on February 14, 2018 wherein petitioner seeks the reversal of the Decision dated August 18, 2017,[2] (Assailed Decision) as well as the Resolution dated January 5, 2018[3] (Assailed Resolution) of the Third Division (Court in Division) of this Court in CTA Case No. 8955, entitled *San Miguel Brewery Inc. v. Commissioner of Internal Revenue.*

[1] Court *En Banc's* Docket, pp. 9-53.
[2] Penned by Former Associate Justice Lovell R. Bautista, concurred in by Associate Justice Esperanza R. Fabon-Victorino, and with dissenting opinion by Associate Justice Ma. Belen M. Ringpis-Liban; Court *En Banc*'s Docket, pp. 58-79.
[3] Penned by Former Associate Justice Lovell R. Bautista, concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban; Court *En Banc*'s Docket, pp. 81-84.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

<u>Assailed Decision</u>:

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

<u>Assailed Resolution</u>:

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

THE FACTS

The facts of the present case, as found by the Court in Division in its Decision dated August 18, 2017, are as follows:[4]

> "On December 19, 2012, *RA No. 10351* was approved and took effect upon its publication in a newspaper of general circulation. This law amended, among others, *Section 143 of the 1997 National Internal Revenue Code, as amended* ('1997 NIRC'), which imposes an excise tax at the following rates on fermented liquors effective January 1, 2013: *(1)* if the net retail price [excluding excise tax and value-added tax ('VAT')] *per* liter of volume capacity is Php50.60 or less, the tax shall be Php15.00 *per* liter; and *(2)* if the net retail price (excluding excise tax and VAT) *per* liter of volume capacity is more than Php50.60, the tax shall be Php20.00 *per* liter. It likewise provides that '[a]ll fermented liquors existing in the market at the time of the effectivity of this Act shall be classified according to the net retail prices and the tax rates provided above based on the latest price survey of the fermented liquors conducted by the [BIR].' *gr*

[4] Court *En Banc's* Docket, pp. 60-67 (Citations omitted).

On December 27, 2012, respondent issued *RMC No. 90-2012*, which provides that, effective January 1, 2013, the applicable tax rate for San Mig Light, in bottle (net retail price of Php47.99 *per* liter, hence, less than Php50.60) and in can (net retail price of Php61.51, hence more than Php50.60) are both at Php20.57 *per* liter.

In order to remove its products from the breweries, petitioner paid the excise taxes due from January 1, 2013 to December 31, 2013.

On December 9, 2014, petitioner filed its administrative claim for refund in the amount of Php83,019,296.21, together with BIR Form No. 1914, Summary List, and Monthly Removals and Tax Payments for 2013.

Alleging inaction on the part of respondent, petitioner filed the instant Petition for Review on December 19, 2014.

On January 9, 2015 the Court issued Summons addressed to respondent.

On January 27, 2015, respondent filed a Motion for Extension of Time within Which to File Answer, which was granted by the Court in its Resolution dated January 30, 2015. Thereafter, respondent filed another Urgent Motion for Extension of Time to File Answer and the same was granted on March 11, 2015.

On March 9, 2015, respondent filed his Answer by registered mail, which was received by the Court on March 20, 2015. In his Answer, he raised the following Special and Affirmative Defenses, in sum: *(1)* the Petition for Review is not warranted to be given due course for lack of jurisdiction; *(1a)* the nullification of the Php20.57 excise tax rate specified in RMC No. 20-2012 does not fall under the special jurisdiction granted by the statute to the Court of Tax Appeals ('CTA'); *(1b)* a collateral attack on a presumably valid administrative issuance is not allowed; *(1c)* the CTA has no jurisdiction to determine the validity of the Php20.57 provision of *RMC No. 20-2012* due to petitioner's non-exhaustion of administrative remedies; *(2)* petitioner is not entitled to a tax refund since there was no erroneous or illegal collection of excise taxes; and *(3)* claims for refund are construed strictly against the taxpayer and in favor of the Government.

On May 6, 2015, Petitioner's Pre-Trial Brief and Respondent's Pre-Trial Brief were filed.

On July 24, 2015, petitioner filed a Motion for Commissioning of Independent Certified Public Accountant ('ICPA'), whose Judicial Affidavit and Personal Profile were submitted on August 3, 2015.

During the Pre-Trial Conference on August 11, 2015, the Court granted the parties fifteen (15) days or until August 26, 2015 to submit their Joint Stipulation of Facts and Issues; the Court also granted the Motion for Commissioning of ICPA. Ms. Normita L. Villaruz ('ICPA Villaruz') thereafter took her oath and was obliged to submit her ICPA Report within forty-five (45) days or until September 25, 2015.

After being granted an extension, the parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters ('JSFI') on September 4, 2015.

On September 24, 2015, the ICPA Report of ICPA Villaruz was submitted. Thereafter, the Court issued a Pre-Trial Order on September 28, 2015.

During the course of the trial, petitioner presented as witnesses the following: (1) ICPA Villaruz; and (2) Ms. Noemi L. Ronquillo ('Ms. Ronquillo'), Manager of the Accounting and Financial Services Division of petitioner.

Witness **ICPA Villaruz** testified by way of judicial affidavit that she was commissioned as an ICPA in the instant case to conduct an examination, verification, and audit of the voluminous documents of petitioner's claim for refund. She stated that she completed the work assigned to her within the original period granted by the Court and that on September 24, 2015, she submitted the ICPA Report dated September 22, 2014, consisting twenty-three (23) pages together with its attached Annexes 'A' to 'J' sub-markings inclusive, and its supporting Sub-Annexes in two (2) separate binders containing the results of the examination, verification, and audit conducted by her; and that she has seen the originals of the supporting documents before they were submitted to the Court. ICPA Villaruz stated that included in her examination were the following documents:

1. Excise Tax Returns or BIR Form No. 2200-A filed by petitioner daily for advance payment of excise tax deposits for each plant, these forms were also filed daily by petitioner's Head Office for declaration of excise taxes due on daily beer removals for each plant;

2. BIR Filing Reference Statement, which serves as proof that the Excise Tax Return has been filed under the BIR's Electronic Filing and Payment System ('EFPS') containing the following information: taxpayer's name, TIN, RDO, Type of BIR Form filed, Amounts Payable/(Over Remittance), accounting type, tax period, filing date, and tax type;

3. Payment confirmation forms from the following banks: (a) Bank of the Philippine Islands ('BPI') ExpressLink and Tax Payment Details Form; (b) Union Bank of the Philippines Payment Confirmation Form and UBP Payment Status Form; (c) China Banking Corporation (Bancnet-Chinabank) Payment Confirmation Forms, which confirms that BPI has successfully received payment instruction from the BIR EFPS through the BPI ExpressLink website (collectively referred to as 'Accredited Agent Banks');

4. Documents generated by petitioner, *i.e.,* Shipping Memorandum, Delivery Receipt, Issue/Receipt Document, Stock Transfer Receipt;

5. Official Delivery Invoice, a BIR registered Form No. 245, which is prepared daily to summarize all the removals per shipping memorandum for the day, which are duly signed by the Internal Revenue Officer and petitioner's Plant Manager;

6. Excise Taxpayer's Removal Declaration ('ETRD') or BIR Form No. 2299;

7. Gate Pass Form and Claim Memorandum;

8. Revenue Officers on Premises' ('ROOP') Daily Monitoring Report; *jc*

9. Report on Excise Tax Payments and Applications;

10. Daily and Monthly Official Register Book ('ORB'), Daily and Monthly Sworn Statement of the Volume of Removals ('SSR');

11. Movement Report with Allocated Deposits;

12. Removals Schedule; and

13. Total Removals Report.

ICPA Villaruz stated that upon verification, the advance excise tax deposits for the six (6) brewery plants from January 1, 2013 to December 31, 2013 were the total advance payments for excise taxes due on total removals of all beer products of petitioner from each of the six (6) brewery plants; that the advance excise tax deposits were reflected in the Excise Tax Returns filed by petitioner with the BIR through the BIR EFPS; that the advance excise tax deposits are reflected in the Excise Tax Returns filed by petitioner with the BIR through the BIR EFPS; that the advance payments were received by the accredited agent banks and were confirmed received by the BIR; that the excise taxes due on the removals of all beer products were deducted from the payment of advance excise tax deposits; and that the total amount of Advance Excise Tax Deposits *per* Excise Tax Returns for all beer products made by petitioner for January 1, 2013 to December 31, 2013 sufficiently covered, and in fact, exceeded, the total amount of excise taxes due, filed, and paid on total actual removals of all beer products from the six (6) plants.

ICPA Villaruz concluded that the amount of Php83,019,296.21 being claimed for refund as overpayment of excise taxes due on petitioner's removals for the period January 1, 2013 to December 31, 2013 was properly supported by the relevant documents. However, when the net adjustment mentioned in the ICPA Report is considered, the overpayment of excise taxes by petitioner (as adjusted), is Php83,019,273.64 instead of Php83,019,296.21.

Witness **Ms. Ronquillo** testified that petitioner was constrained to pay excise taxes at the rate of Php20.57 under protest to enable it to make removals of its San Mig Light products; and that the rate was based on *RMC No. 90-2012*, which was issued by respondent on December 27, 2012 and effective on January 1, 2013. She avers that petitioner did not receive any notice of hearing nor was it given an opportunity to be heard with respect to *RMC No. 90-2012*. Ms. Ronquillo stated that before *Section 143 of the 1997 NIRC* was amended by *RA No. 10351*, San Mig Light was subject to an excise tax rate of Php15.49 *per* liter, however, BIR required it to pay Php20.57 *per* liter, the tax rate for high-priced brands, contending that San Mig Light was a variant of Pale Pilsen; and that petitioner has already questioned this in several cases now pending before the CTA and the Supreme Court on the ground that the BIR unlawfully reclassified San Mig Light as a variant under the old provisions of *Section 143 of the 1997 NIRC*. Ms. Ronquillo further explained that under the amendment, excise taxes should have been at the rate of Php20.00 for San Mig Light in bottle and in can, and Php15.00 *per* liter for San Mig Light in kegs; that during the period January 1, 2013 up to December 31, 2013, there was an excess assessment and collection in the amount of Php0.57 *per* liter for San Mig Light in bottle and in can, and Php5.57 *per* liter for San Mig Light in kegs, totaling to Php83,019,296.21.

During the hearing on January 26, 2016, petitioner was granted fifteen (15) days or until February 10, 2016 to file its Formal Offer of Evidence ('FOE'); while respondent was granted a period of ten (10) days from receipt of the FOE to file his comment or opposition thereto.

On February 10, 2016, petitioner filed a Motion for Extension of Time to File FOE. This was granted by the Court on February 16, 2016. It then filed an Urgent Motion for Further Extension of Time to File FOE on February 23, 2016; which was granted by the Court on March 8, 2016. Finally, on February 26, 2016, petitioner filed its FOE, offering Exhibits 'P,' 'P-1,' 'P-1-a,' 'P-1-b,' 'P-1-b-1,' 'P-1-c' to 'P-1-aa,' 'P-2,' 'P-2-a,' 'P-3,' 'P-3-a,' 'P-4,' 'P-4-a' to 'P-4-c,' 'P-5.1' to 'P-5.491,' 'P-6.1' to 'P-6.510,' 'P-7.1' to 'P-7.498,' 'P-8.1' to 'P-8.490,' 'P-9.1' to 'P-9.487,' 'P-10.1' to 'P-10.477,' 'P-11.1' to 'P-11.12,' 'P-12.1' to 'P-12.4,982,' 'P-13.1' to 'P-13.340,' 'P-14.1' to 'P-14.1,106,' 'P-15.1' to 'P-15.336,' 'P-16.1' to 'P-16.336,' 'P-17.1' to 'P-17.315,' 'P-18.1' to 'P-18.5,470,' 'P-19.1' to P'-19.9,059,' 'P-20.1' to 'P-20.1,381,' 'P-21.1' to 'P-21.3,827,' 'P-22.1,' to 'P-22.2,993,' and 'P-23.1' to 'P-23.2,059.' In response, respondent filed his Comment (Re: Petitioner's FOE), raising no objection to the admission of the exhibits. gr

On April 6, 2016, the Court promulgated a Resolution admitting all of petitioner's evidence, except for Exhibits 'P-23.546' and 'P-23.1,966' for failure to submit the same to the Court.

On July 15, 2016, respondent filed a Manifestation stating that to save the time of the parties and of the Court, and considering that the issues advanced by the parties are legal issues, he finds it unnecessary to present his witness; instead, he requested for a period of thirty (30) days within which to file his memorandum.

During the hearing on July 18, 2016, the Court granted the parties thirty (30) days or until August 17, 2016 to submit their respective memoranda.

On August 16, 2016, a Motion for Extension of Time to File Memorandum for Petitioner was filed. This was granted by the Court on August 26, 2016. Meanwhile, respondent filed a Manifestation on August 18, 2016, stating that he is adopting the arguments he raised in his Answer as his Memorandum; which was noted by the Court on September 2, 2016.

On August 31, 2016, a Motion for Further Extension of Time to File Memorandum for Petitioner was filed; which was granted by the Court on September 14, 2016. On September 6, 2016, petitioner submitted its Memorandum for Petitioner; and its Motion to Admit Memorandum for Petitioner Dated September 5, 2016 was filed on September 14, 2016.

On September 21, 2016, the Court admitted petitioner's Memorandum and resolved to submit the case for decision; hence, this Decision."

On August 18, 2017, the Court in Division rendered the assailed Decision denying the Petition for Review.

Unsatisfied, petitioner filed a Motion for Reconsideration on September 6, 2017 which the Court in Division denied in the assailed Resolution.

On February 14, 2018, petitioner filed the present Petition for Review.

THE ISSUE

The present Petition for Review was filed based on the following grounds:[5]

A. The Honorable Third Division erred in denying the Petition for Review below on the ground that petitioner "availed of the wrong mode of appeal"; that "petitioner should have directly attacked *RMC No. 90-2012 via* a Petition for *Certiorari* at the earliest opportunity, rather than through a collateral attack *via* judicial claim for refund", and that "collateral attack[s] on a presumably valid law is not allowed".

B. The CTA Third Division erred in not resolving on the merits the grounds raised by petitioner in the case below, as follows:

1. The excise tax rate of P20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for "San Might (sic) Light" is directly contradictory to and inconsistent with, and violative of, the express provisions of Section 143 of the National Internal Revenue Code, as amended by Republic Act No. 10351, and is therefore not valid.

2. The aforesaid tax rate of P20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for "San Mig Light" is not valid on the additional ground that RMC No. 90-2012 was issued without hearing and prior notice to the petitioner in utter disregard of the due process provision of the Constitution and the process required by mandatory provisions of the Administrative Code of 1987.

3. Petitioner San Miguel Brewery Inc. is entitled to a refund in the amount of P83,019,273.64, as validated by the Independent Certified Public Accountant, representing erroneous, excessive, illegal and/or wrongful collection from, and overpayment by, San Miguel Brewery Inc. in excise taxes on "San Mig

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[5] *Id.*, pp. 26-27.

Light" for the period from January 1, 2013 up to December 31, 2013.

THE COURT *EN BANC*'S RULING

After careful evaluation of the case records and the arguments presented by the parties as well the relevant laws and jurisprudence on the matter, the Court *En Banc* finds the present Petition for Review to be meritorious.

The Court in Division denied petitioner's claim for refund on basis of the rule that the constitutionality or validity of laws, orders, or other rules with the force of law cannot be attacked collaterally.[6] The Court in Division pointed out that there is the legal presumption of validity of laws and rules, and unless the same are annulled in a direct proceeding, the legal presumption of their validity shall stand.[7] The Court in Division likewise ruled that "[w]hile the CTA has the power to rule on the validity of a particular administrative rule or regulation by virtue of its *certiorari* powers, petitioner should have directly attacked *RMC No. 90-2012 via* a Petition for *Certiorari* at the earliest opportunity, rather than through a collateral attack *via* judicial claim for refund, which indirectly but surely questions the validity of *RMC No. 90-2012*".[8]

At the outset, it must be pointed out that the Court of Tax Appeals (CTA) has jurisdiction over decisions or inaction of the CIR in cases involving claims for refund of internal revenue taxes. The law is clear on this. Section 7(a)(1) and (a)(2) of Republic Act (RA) No. 1125, as amended,[9] expressly provides:

> "Sec. 7. *Jurisdiction.* — **The CTA shall exercise:**
>
> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:**
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges**, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

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[6] *Id.*, pp. 71-73.
[7] *Id.*, p. 71.
[8] *Id.*, pp. 72-73.
[9] As amended by RA No. 9282.

> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges**, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

Guided by the aforequoted provision, it is beyond question that the alleged inaction of the CIR over petitioner's claim for refund falls squarely within the CTA's authority.

In a number of cases,[10] the Supreme Court already established that the CTA has exclusive jurisdiction to determine the validity or constitutionality of rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue. As aptly held by the Supreme Court in the *En Banc* case of *Banco De Oro, et. al. v. Republic,* to wit:[11]

> "We revert to the earlier rulings in *Rodriguez*, *Leal*, and *Asia International Auctioneers, Inc.* **The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue**.
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> x x x x x x x x x
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> **Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:**
>
> Section 7. Jurisdiction. — The CTA shall exercise: *gr*

[10] *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*, G.R. No. 207843 (Resolution), February 14, 2018; *Banco De Oro et. al. v. Republic*, G.R. No. 198756 (Resolution), August 16, 2016, 800 SCRA 392; *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, G.R. No. 212530, August 10, 2016, 800 SCRA 123; *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue*, G.R. No. 210987, November 24, 2014, 741 SCRA 578; *Asia International Auctioneers, Inc. v. Parayno, Jr.*, G.R. No. 163445, December 18, 2007, 565 Phil. 255; *Commissioner of Internal Revenue v. Leal*, G.R. No. 113459, November 18, 2002, 392 SCRA 9; *Rodriguez v. Blaquera*, G.R. No. L-13941, September 30, 1960, 109 Phil. 598.

[11] G.R. No. 198756, August 16, 2016, 800 SCRA 392 ("*Banco De Oro*").

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs

which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. **Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.**

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424." *(Emphasis and underscoring supplied; citations omitted)*

It bears emphasizing that the Supreme Court, in the recent case of *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*,[12] had confirmed that its ruling in *Banco De Oro* stands as the prevailing jurisprudence on the matter, *i.e.*, the CTA's jurisdiction to determine the validity or constitutionality of a particular tax regulation, ruling, or issuance.

As mentioned earlier, while the Court in Division acknowledged that the CTA has the power to rule on the validity of a particular administrative rule or regulation, it still denied petitioner's claim for refund because, in its view, petitioner should have directly attacked RMC No. 90-2012 via a Petition for *Certiorari* rather than through a judicial claim for refund.

Veritably, the Supreme Court had explicitly pronounced in *Banco de Oro* that the CTA has jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment, or like in the present case, in claiming a refund.[13] In taking cognizance of such matters, the CTA merely exercises the jurisdiction expressly conferred to it by law. On this point, the

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[12] G.R. No. 207843 (Resolution), February 14, 2018.
[13] *Supra*, Note 11.

dictum laid down by the Supreme Court in *Planters Products, Inc. v. Fertiphil Corporation*[14] is likewise instructive:

> **Judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice,** not necessarily in a suit for declaratory relief. Such review may be had in criminal actions, as in *People v. Ferrer* involving the constitutionality of the now defunct Anti-Subversion law, or in ordinary actions, as in *Krivenko v. Register of Deeds* involving the constitutionality of laws prohibiting aliens from acquiring public lands. <u>**The constitutional issue, however, (a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented**</u>. *(Emphasis and underscoring supplied; citations omitted)*

In *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo,*[15] the Supreme Court explained the *lis mota* requirement as follows:

> "x x x ***Lis mota* literally means 'the cause of the suit or action'**; it is rooted in the principle of separation of powers and is thus merely an offshoot of the presumption of validity accorded the executive and legislative acts of our co-equal branches of the government.
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> **This means that the petitioner who claims the unconstitutionality of a law has the burden of showing first that the case cannot be resolved unless the disposition of the constitutional question that he raised is unavoidable.** If there is some other ground upon which the court may rest its judgment, that course will be adopted and the question of constitutionality should be avoided." *(Emphasis supplied)*

Bearing in mind the foregoing jurisprudential precepts, the Court *En Banc* holds that the CTA has jurisdiction to take cognizance of petitioner's judicial claim for refund and, at the same time, resolve the issue of validity and/or constitutionality of RMC No. 90-2012.

To begin with, the validity and constitutionality of RMC No. 90-2012 were directly pleaded and duly raised as issues in petitioner's judicial claim

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[14] G.R. No. 166006, March 14, 2008, 548 SCRA 485, 506.
[15] G.R. No. 200903, July 22, 2014, 730 SCRA 322, 336.

for refund. As borne by the records, the Petition for Review before the Court in Division had raised the following grounds: (1) the excise tax rate of P20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for "San Might (sic) Light" in bottle and in can is directly contradictory to and inconsistent with, and violative of, the express provisions of Section 143 of the National Internal Revenue Code, as amended by Republic Act No. 10351, and is therefore not valid;[16] and (2) the aforesaid tax rate of P20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for "San Mig Light" in bottle and in can is not valid on the additional ground that RMC No. 90-2012 was issued without prior notice and hearing to the petitioner in utter disregard of the due process provision of the Constitution and the process required by mandatory provisions of the Administrative Code of 1987.[17] In addition, petitioner also expressly prayed, among others, that a judgment be rendered "declaring the excise tax rate of P20.57 per liter for "San Mig Light" in bottle, can and kegs, specified in RMC 90-2012, as not valid".[18]

Finally, the validity and/or constitutionality of RMC No. 90-2012 is also the *lis mota* of petitioner's judicial claim for refund. Petitioner filed the judicial claim for refund to compel respondent to refund the amount representing the difference between the amount of excise tax computed based on the rates provided under RMC No. 90-2012 and those under Section 143 of the 1997 NIRC, as amended by RA No. 10531. The Petition for Review was filed based on the theory that the aforesaid revenue issuance is invalid and unconstitutional. Petitioner's thesis is that an administrative issuance that is contrary to the provisions of law and/or the Constitution has no legal effect. Accordingly, it has no legal obligation to pay taxes in excess of what is legally required. Correspondingly, the amount of taxes already paid pursuant to an invalid and/or unconstitutional revenue issuance should be refunded as mandated by Section 229 of the 1997 NIRC. Verily, the issue of validity and/or constitutionality of RMC No. 90-2012 is inextricably linked to the issue of whether petitioner is entitled to the refund of the amount claimed. It is the declaration of invalidity and/or unconstitutionality of RMC No. 90-2012 which essentially triggers the refund.

WHEREFORE, the present Petition for Review is **GRANTED**. Accordingly, the assailed Decision dated August 18, 2017 and Resolution dated January 5, 2018 rendered by the Court in Division in CTA Case No. 8955 are **REVERSED** and **SET ASIDE**.

Let this case be **REMANDED** to the Court in Division for the resolution of the case on the merits, in conformity with this Decision. 9r

[16] Petition for Review, p. 10, Division Docket Vol. I, p. 23.
[17] Petition for Review, p. 14, Division Docket Vol. I, p. 27.
[18] Petition for Review, p. 18, Division Docket Vol. I, p. 31.

SO ORDERED.

Juanito C. Castañeda, Jr.
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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in 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