REPUBLIC OF THE PHILIPPINES

COURT OF TAX APPEALS

QUEZON CITY

SECOND DIVISION

GINEBRA SAN MIGUEL, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 9059

Members:
CASTAÑEDA, JR., Chairperson,
MINDARO-GRULLA, and
BACORRO-VILLENA, *JJ.*

Promulgated:
JUN 0 9 2020 1:40 pm

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court is a Motion for Reconsideration filed by Ginebra San Miguel, Inc. (GSMI)[1] seeking to set aside the Decision promulgated on February 6, 2020,[2] the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by Ginebra San Miguel, Inc. is **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**"

In its motion, GSMI alleges that the Court erred in ruling that it is not entitled to the refund or issuance of tax credit certificate (TCC) of its erroneously paid excise taxes on removals of its distilled spirits or finished products for the

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[1] Dockets, Vol. II, filed on February 20, 2020.
[2] Dockets, Vol. II.

period June 1, 2013 to July 31, 2013 on the ground that it was able to prove its present claim in relation to the erroneously paid excise taxes.

On the other hand, the Commissioner of Internal Revenue (CIR)[3] argues that GSMI's claim for refund has no basis in fact and in law, thus, the denial of its claim is justified.

The motion is bereft of merit.

While the Independent Certified Public Accountant (ICPA) Report used the "First-in First-out" (FIFO) method to determine the proof liters of alcohol utilized from the 2012 inventory to produce the finished products, GSMI failed to point out the portions of the raw materials that have been used in producing the finished goods. As such, the Court is at a loss as to which portions of the tax-paid raw materials have been "first-out" by petitioner.[4]

Since GSMI failed to match what tax-paid raw materials were utilized against the finished goods produced, it cannot determine with certainty the volume of finished goods that were produced therefrom. As stated by GSMI, what are described in the Certificates of Stocks Inventory and Official Registry Books are already the finished products and the stocks being stored in separate storage tanks per brand does not quantify the tax-paid materials of ethyl alcohol that were used to produce finished goods. As of ICPA's summary of findings,[5] the raw alcohol used in producing a portion of the finished goods produced from June 1, 2013 to July 31, 2013 were actually purchased in 2013, which means that a certain portion of the finished goods from the covered claim already made use of raw materials purchases that were not subjected to excise taxes in 2012, and this was ascertained by the Court's findings, to reiterate:

> "It was observed that the raw alcohol beginning balance (*i.e.,* 2012 year-end ending inventory

[3] Opposition, Docket Vol. II, filed on March 12, 2020.
[4] *Tanduay Distilleries Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9017 & 9035, June 28, 2019.
[5] Page 26 of the Assailed Decision.

> balance) has already been used up for compounding by the first 2 months of the year 2013. However, after being compounded, the raw alcohol still goes through other processes in order to form the actual finished product that is then transferred to packing.
>
> The Court followed the tracing of the flow of raw alcohol usage in Annexes 5.1 to 5.3 which presented three columns – Alcohol Utilized, Transfer to Tollers, and Finished Goods Produced. From the Beginning Balance under Alcohol Utilized, the proof liters transferred to tolling and the finished goods produced are both deducted to arrive at the running balance.
>
> Upon following the said procedure, the Court discovered that at some point before June 1, 2013, the beginning balance of raw alcohol gets used up, so additional raw alcohol is being added to the balance to be used for further tolling or for production of finished goods. However, the supporting ETRDs for these additional raw alcohols are dated in 2013." (Underlining supplied.)

As ruled in the case of *Tanduay Distilleries Inc. vs. Commissioner of Internal Revenue*:[6]

> "However, such explanation is not supported by any documentary evidence or judicial affidavit of an expert who can fully elucidate to the Court how these raw materials are being processed into finished goods. The Court needs to ascertain that such 52,910,790.65 proof liters were the actual amount of the raw materials that went into production and converted into finished goods. Petitioner's explanations are lacking in concrete basis, and therefore, the Court finds no reason to overturn its original ruling." (Underlinings supplied.)

To reiterate, the formulation of its finished product to clearly establish how much raw alcohol material is used in the process of converting it into finished products would this Court only be able to ascertain the exact portion of tax-paid raw

[6] *Ibid.*

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materials that went into each finished good for purposes of this refund.

GSMI also contended that the Court should allow the amount claimed for refund but did not form part of the Petition for Review. GSMI filed with the CIR a Claim for Refund in the total amount of ₱26,243,274.00. To allow GSMI to add ₱3,528,237.16 from its original claim for the first time would be depriving the CIR of its power to decide administratively on the said additional amount in clear violation of Doctrine of Exhaustion of Administrative Remedies. Moreover, the Court only acquires jurisdiction upon filing of docket fee based on the amount being claimed in the Petition for Review. Without payment of docket fee on the said additional amount, the Court cannot delve on it as an issue.

Well-settled is the rule that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[7] Petitioner has the burden of proof to establish the factual basis of its claim for tax refund.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

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

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[7] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc.*, G.R. No 127105, June 25, 1999.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice