REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

CTA CASE NO. 10745

SAN MIGUEL BREWERY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AYESHA HANIA B. GUILING-MATANOG
ATTY. CLARISSA J. VIRTUDES-BABARAN
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

SYCIP SALAZAR HERNANDEZ & GATMAITAN
4th Floor, SyCiplaw Center
105 Paseo de Roxas, Makati City

GREETINGS:

You are hereby notified by these presents that on **November 18, 2024,**a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 20, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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SAN MIGUEL BREWERY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10745

Members:

DEL ROSARIO, *P.J.*, *Chairperson*,
BACORRO-VILLENA, and
CUI-DAVID, JJ.

Promulgated:

NOV 18 2024; 2:40PM

x - x

DECISION

DEL ROSARIO, P.J.:

At bar is a Petition for Review filed by San Miguel Brewery, Inc. (SMB) on February 2, 2022 seeking the Court to render judgment:

1. declaring null and void:

    (a) the excise tax rate of ₱27.07 per liter imposed by respondent Commissioner of Internal Revenue (CIR) on petitioner's beer products during the period January 23, 2020 to February 9, 2020;

    (b) Revenue Memorandum Circular (RMC) No. 90-2012, particularly the portions thereof imposing the tax rate of ₱20.57 instead of the tax rates provided for in Section 143 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 17-2012, particularly the portion of Section 5 thereof providing that "Starting January 1, 2014, the applicable tax rate shall be increase[d] by four percent (4%) annually"; and,

    (c) RMC No. 65-2020, as amended by RMC No. 113-2020 which provides that the effectivity date of Republic Act (RA)

No. 11467 is on January 23, 2020 or the date of posting on the Official Gazette's website;

2. declaring that petitioner is entitled to a refund of the excise taxes subject of its claims for refund filed with respondent on December 6, 2021 and January 12, 2022, which excise taxes were allegedly erroneously, excessively, illegally and/or wrongfully assessed on, and collected by respondent from petitioner; and,

3. ordering respondent to refund or issue a corresponding tax credit certificate (TCC) to petitioner the total amount of ₱1,068,775,829.04 representing the excise taxes allegedly erroneously, excessively, illegally and/or wrongfully assessed on and collected from petitioner.[1]

THE PARTIES

Petitioner SMB is a corporation duly organized and existing under Philippine laws, with principal office or place of business at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[2] It is engaged in the business of, among others, manufacture, sale, and distribution of fermented and malt-based beverages.[3]

Respondent CIR heads the Bureau of Internal Revenue (BIR) and is vested by law with the power to decide, approve, and grant claims for refund or tax credit of internal revenue taxes. Respondent holds office at the Office of the Commissioner of Internal Revenue, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[4]

THE FACTS

On December 19, 2012, Congress enacted **RA No. 10351**[5] amending, among others, Section 143 of the NIRC of 1997, as amended, which imposes an excise tax on fermented liquors at tiered rates from 2013 to 2016, a uniform rate in 2017 and a 4% indexation starting 2018. It took effect on December 21, 2012.

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[1] Petition for Review, CTA Docket Vol. I, pp. 50-51.
[2] Par. 26, Petition for Review, CTA Docket Vol. I, p. 17.
[3] Par. 28, Petition for Review, CTA Docket Vol. I, p. 18.
[4] Par. 1, Stipulated Facts, Joint Stipulation, CTA Docket Vol. II, p 874.
[5] An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 And 288 of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes.

om

To implement RA No. 10351, then Secretary of Finance (SOF) Cesar V. Purisima, upon recommendation of the then CIR Kim S. Jacinto-Henares, issued RR No. 17-2012[6] on December 21, 2012. In turn, CIR Henares issued RMC No. 90-2012[7] on December 27, 2012.

On January 22, 2020, **RA No. 11467**[8] was signed into law further amending Section 143 of the NIRC of 1997, as amended, and increasing the excise tax for fermented liquors effective January 1, 2020 to ₱35.00, among others.

Relative thereto, then CIR Caesar R. Dulay issued **RMC No. 65-2020** dated June 22, 2020 which states that RA No. 11467 took effect immediately after its complete publication in a newspaper of general circulation on **January 27, 2020**. On October 14, 2020, CIR Dulay issued **RMC No. 113-2020** clarifying that RA No. 11467 was published in the Official Gazette on **January 23, 2020** through its website.

Claim A

To remove its beer products from the breweries for the period from January 23, 2020 to February 9, 2020, petitioner paid excise taxes thereon at the tax rate of ₱27.07, instead of ₱26.44, per liter. For this payment, petitioner filed with the BIR a claim for refund[9] amounting to ₱8,278,851.12, representing the difference in the tax rates per liter under RA No. 10351.

Claim B

The BIR Large Taxpayers Service (LTS) – Excise LT Field Operations Division issued a Notice of Discrepancy (NOD) dated July 8, 2020,[10] assessing petitioner for deficiency excise tax amounting to ₱941,871,604.98, inclusive of increments, covering withdrawals of beer products from January 27, 2020 to February 12, 2020, allegedly

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[6] SUBJECT: Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations.
[7] SUBJECT: Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring The Excise Tax on Alcohol And Tobacco Products By Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known As The National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes".
[8] An Act Amending Sections 109, 141, 142, 143,144, 147, 152, 263, 263-A, 265, And 288-A, And Adding a New Section 290-A To Republic Act No. 8424, As Amended, Otherwise Known As The National Internal Revenue Code Of 1997, and for Other Purposes.
[9] Exhibit "P-4", CTA Docket Vol. III, p. 1068.
[10] Exhibit "P-8", CTA Docket Vol. III, pp. 1080-1081.

due to the increase in the excise tax rates on fermented liquors which purportedly took effect on January 27, 2020.

On September 4, 2020, petitioner paid the excise tax difference in the amount of ₱168,959,037.24 covering withdrawals of beer products for the period from February 10, 2020 to February 12, 2020, premised on the effectivity of RA No. 11467 on February 10, 2020 upon its actual publication in the Official Gazette on even date.[11]

The BIR then issued a revised NOD dated September 22, 2020[12] which reiterated its new position that RA No. 11467 took effect on **January 23, 2020**, and adjusted petitioner's alleged deficiency excise tax to ₱1,035,355,418.45 (net of the payment of ₱168,959,037.24).

In its Letter dated December 10, 2020,[13] petitioner advised the BIR that it would pay under protest the alleged deficiency excise tax on December 21, 2020 in the adjusted amount of ₱1,060,496,977.92 through TCCs.

The BIR issued a Revised NOD dated December 15, 2020 adjusting the alleged deficiency taxes to ₱1,060,496,977.92.[14] On December 21, 2020, petitioner paid the alleged deficiency excise tax, as adjusted.

On **January 12, 2022**, petitioner filed with the BIR a claim for refund[15] dated January 10, 2022 amounting to ₱1,060,496,977.92, representing excise taxes excessively passed on, or collected from, petitioner in respect of its beer products from January 23, 2020 to February 9, 2020.

Citing inaction of respondent on both claims, petitioner filed the present Petition for Review on **February 2, 2022**.[16]

Summonses were served on respondent on March 4, 2022 and the Office of the Solicitor General on March 7, 2022.[17] Subsequently, respondent filed a Motion for Extension of Time to File Answer[18] which

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[11] Exhibits "P-12" and "P-12-a", CTA Docket Vol. III, pp. 1095-1102.
[12] Exhibit "P-13", CTA Docket Vol. III, pp. 1103-1104.
[13] Exhibits "P-17" and "P-17-a", CTA Docket Vol. III, p. 1154.
[14] Exhibit "P-18", CTA Docket Vol. III, pp. 1156-1157.
[15] Although Exhibit "P-19" (CTA Docket Vol. III, p. 1165) shows that the stamped date of receipt is January 11, 2022, petitioner alleged, and respondent did not controvert, that the actual date of receipt is January 12, 2022.
[16] CTA Docket Vol. I, p.10.
[17] CTA Docket Vol. II., p. 762.
[18] CTA Docket Vol. II., pp. 763-765.

the Court granted in the Resolution[19] dated April 8, 2022, giving respondent until May 3, 2022 within which to file Answer.

On April 28, 2022, within the extended period, respondent filed his Answer,[20] raising the following special and affirmative defenses:

(i) the instant petition is not warranted to be given due course for lack of jurisdiction;

(ii) assuming without conceding that the Court may take cognizance of cases involving validity or constitutionality of BIR issuances, the Court should dismiss the instant petition due to petitioner's non-exhaustion of administrative remedies;

(iii) assuming without conceding that the Court has jurisdiction and/or petitioner has cause of action, petitioner is not entitled to a tax refund because there was no erroneous or illegal collection of excise taxes; and,

(iv) RA No. 11647 was made effective upon its complete publication in the website of the Official Gazette and thus, RA No. 11647 became effective beginning January 23, 2020; and,

(v) claims for refund are construed strictly against the taxpayer and in favor of the government.

Respondent's Pre-Trial Brief[21] was filed on May 25, 2022 while the Pre-Trial Brief for the Petitioner[22] was filed on July 4, 2022. The Pre-Trial Conference was held on July 7, 2022.[23]

On July 28, 2022, the parties filed their Joint Stipulation[24] which was approved by the Court in the Resolution dated August 18, 2022, thereby terminating the Pre-Trial.[25]

On September 12, 2022, the Pre-Trial Order[26] was issued.

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[19] CTA Docket Vol. II, p. 768.
[20] CTA Docket Vol. II, pp. 774-800.
[21] CTA Docket Vol. II, pp. 803-806.
[22] CTA Docket Vol. II, pp. 810-836.
[23] Order dated July 7, 2022. CTA Docket Vol. II, pp. 847-852.
[24] CTA Docket Vol. II, pp. 874-882.
[25] CTA Docket Vol. II, p. 893.
[26] CTA Docket Vol. II, pp. 928-943.

Upon motion[27] of petitioner, the Court commissioned Mr. Jerome Antonio B. Constantino, as Independent Certified Public Accountant (ICPA), on September 1, 2022.[28]

During trial, petitioner presented the testimonies of Mr. Joel L. Atienza, petitioner's Manager for Tax Services,[29] and Mr. Jerome Antonio B. Constantino, the Court-commissioned ICPA.[30]

On December 12, 2022, petitioner filed its Formal Offer of Evidence.[31] In the Resolution dated February 17, 2023,[32] the Court admitted all of petitioner's exhibits, except: (i) Exhibits "P-31-5001" to "P-31-5500", for the USB/flash drive submitted to the Court which purportedly contains said documents is inaccessible; and, (ii) Exhibit "P-36" for petitioner's failure to identify the same. The Court, however, in a subsequent Resolution dated October 26, 2023,[33] admitted in evidence Exhibits "P-31-5001" to "P-31-5500" upon access of the same in the replacement USB/flash drive, and Exhibit "P-36" after Mr. Constantino had identified the same in his Supplemental Affidavit.

In the same Resolution, considering counsel for respondent's manifestation during the hearing on November 10, 2022 that he was waiving the right to present evidence, both parties were given a non-extendible period of thirty (30) days from notice to submit their respective memoranda.

Respondent's Memorandum[34] was filed on March 13, 2023, while petitioner's Memorandum Ad Cautelam[35] and Supplemental Memorandum for the Petitioner[36] were filed on March 29, 2023 and November 20, 2023, respectively. Thereafter, the case was finally submitted for decision on January 4, 2024.[37]

ISSUES

The issues to be resolved in this case are the following:[38]

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[27] CTA Docket Vol. II, pp. 853-855.
[28] CTA Docket Vol. II, pp. 899-901.
[29] Exhibit "P-20", CTA Docket Vol. II, pp. 597-619.
[30] Exhibit "P-21", CTA Docket Vol. II, pp. 856-862; Exhibit "P-23", CTA Docket Vol. III, pp. 1211-1215; Exhibit "P-44", CTA Docket Vol. II, pp. 997-1015; Exhibit "P-46", CTA Docket Vol. III, pp. 1299-1304.
[31] CTA Docket Vol. III, pp. 1031-1051.
[32] CTA Docket Vol. III, p. 1237.
[33] CTA Docket Vol. III, pp. 1426-1428.
[34] CTA Docket Vol. III, pp. 1238-1263.
[35] CTA Docket Vol. III, pp. 1314-1372.
[36] CTA Docket Vol. IV, pp. 1438-1456.
[37] Resolution dated January 5, 2024, CTA Docket Vol. IV, p. 1821.
[38] Pre-Trial Order, CTA Docket IV, pp. 935-936.

1. Whether or not petitioner is entitled to an excise tax refund in the total amount of ₱1,068,775,829.04, representing excise taxes erroneously, excessively, illegally and/or wrongfully assessed on, and collected from, petitioner by respondent; and,

2. Whether or not the Court has jurisdiction to act on the present Petition for Review.

PARTIES' ARGUMENTS

Petitioner argues that:[39]

(i) the Court has jurisdiction to act on and resolve the present Petition for Review;

(ii) it is entitled to an excise tax refund in the amount of ₱8,278,851.12, representing erroneous, excessive, illegal and/or wrongful collection from, and overpayment by petitioner of excise taxes on its subject beer products for the period beginning January 23, 2020 up to February 9, 2020;

a. the excise tax of ₱27.07 per liter imposed by respondent on petitioner's subject beer products, as well as RMC No. 90-2012 and RR No. 17-2012 on which said tax rate is based, are void for being directly contradictory to and violative of the express provisions of the sixth and seventh paragraphs of Section 143 of the NIRC, as amended by RA No. 10351;

b. the excise tax rate of ₱27.07 is void since RMC No. 90-2012 and RR No. 17-2012, from which said tax rate of ₱27.07 per liter is based, are invalid, unconstitutional and confiscatory for having been issued without prior notice to petitioner and the conduct of a hearing, in utter disregard of the due process provisions of the Administrative Code of 1987 requiring the BIR to afford affected parties the opportunity to be heard prior to the implementation of such issuances;

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[39] Petition for Review, CTA Docket Vol. I, pp. 31-46; Memorandum Ad Cautelam, CTA Docket Vol. III, pp. 1314-1372; Supplemental Memorandum, CTA Docket Vol. IV, pp. 1438-1456.

(iii) it is entitled to an excise tax refund in the amount of ₱1,060,496,977.92, representing erroneous, excessive, illegal and/or wrongful collection from, and overpayment by petitioner of excise taxes on its subject beer products using the ₱35.00 per liter tax rate under RA No. 11467 for the period beginning January 23, 2020 up to February 9, 2020;

a. the excise tax rate of ₱35.00 per liter provided under RA No. 11467 should have been imposed starting from the date of effectivity of RA No. 11467, or on February 10, 2020, when RA No. 11467 was published in the Official Gazette pursuant to Article 2 of the Civil Code and the ruling in *Garcillano vs. The House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communications Technology, and Suffrage and Electoral Reforms*[40];

b. no less than Congress or the Legislative Department itself recognizes that the current law does not allow online publication in the Official Gazette and that online publication in the Official Gazette can be done only through an amendment of the Civil Code;

c. the Executive Department itself, through the Official Gazette website, recognizes that the online version of the Official Gazette (as seen on the website and mobile applications) provides only a copy of the issuance and does not serve as official publication for purposes of effectivity of the issuance; and,

d. since RA No. 11467 was published in the February 10, 2020 issue of the actual/physical Official Gazette (Volume 116, No. 6), the higher excise tax rate of ₱35.00 should be applied beginning February 10, 2020 only, and not from January 23, 2020.

Respondent counter-argues that:[41]

(i) the instant petition is not warranted to be given due course for lack of jurisdiction;

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[40] G.R. No. 170338, December 23, 2008.
[41] Answer, CTA Docket Vol. II, pp. 775-779; Memorandum, CTA Docket Vol. III, pp. 1238-1263.

(ii) assuming without conceding that this Court may take cognizance of cases involving validity or constitutionality of BIR issuances, the Court should dismiss the instant petition due to petitioner's non-exhaustion of administrative remedies;

(iii) assuming without conceding that this Court has jurisdiction and/or petitioner has cause of action, petitioner is not entitled to a tax refund because there was no erroneous or illegal collection of excise taxes;

(iv) RA No. 11467 was made effective upon its complete publication in the website of the Official Gazette, thus, RA No. 11467 became effective beginning January 23, 2020; and,

(v) claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

The Court finds the Petition for Review meritorious.

The Petition for Review was timely filed; hence, the Court has jurisdiction over the case

The Court is vested with ample authority to review respondent's inaction on the refund claim pursuant to Section (7)(a)(2) of RA No. 1125, as amended by RA No. 9282,[42] in relation to Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended.[43]

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[42] "SEC. 7. Jurisdiction. – The Court shall exercise:

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

x x x

(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;"

[43] "SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x

(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 xxx;"

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide the prescriptive period for filing of administrative and judicial claims for refund or recovery of tax erroneously or illegally collected, to wit:

> **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) 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.
>
> 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, 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.

Section 204 of the NIRC of 1997, as amended, applies to administrative claims for refund, while Section 229 of the same Code pertains to judicial claims for refund.[44]

Based on the foregoing, within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period.

For excise tax on domestic products in general, the return is filed and the excise tax is paid by the manufacturer or producer before removal of the products from the place of production. The date of payment of excise tax on domestic products depends on the date of actual removal of the taxable domestic products from the place of production.[45] Hence, the reckoning point for the two (2)-year period to file both administrative and judicial claims is the date of the removal of the products from the place of production.

The relevant dates relative to the subject claim for refund are as follows:

	DATE OF PAYMENT	DATE OF FILING OF ADMINISTRATIVE CLAIM	DATE OF FILING OF JUDICIAL CLAIM
Claim A	January 23, 2020 to February 9, 2020	December 6, 2021	January 21, 2022[46]
Claim B	December 21, 2020	January 12, 2022	

With regard to petitioner's Claim A, counting two (2) years from January 23, 2020 to February 9, 2020, petitioner had until **January 24, 2022[47] to February 9, 2022, to file its administrative and judicial claims**. On the other hand, for its Claim B, petitioner had until **December 21, 2022 to file its administrative and judicial claims**.

Petitioner filed its administrative claims on **December 6, 2021** and **January 12, 2022** for Claim A and Claim B, respectively, which dates, undeniably, fall within the two (2)-year period.

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[44] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.
[45] *Commissioner of Internal Revenue v. San Miguel Corp.*, G.R. Nos. 180740 & 180910, November 11, 2019
[46] CTA Docket Vol. II, p. 386.
[47] January 23, 2022 fell on a Sunday.

On the other hand, with regard to petitioner's judicial claim for its Claim A covering the period January 23, 2020 to February 9, 2020, due to the increasing COVID-19 cases,[48] the Supreme Court (SC) extended the filing period until **February 1, 2022** for pleadings and other court submissions that fell due in the month of January 2022. Thus, for Claim A, petitioner had until February 1, 2022 to February 9, 2022, at the latest, within which to file its judicial claim for refund. Notably, petitioner's judicial claim, covering both Claim A and Claim B, was filed on **January 21, 2022**.

In fine, petitioner timely filed its administrative and judicial claims.

The Court has jurisdiction to determine the constitutionality and validity of a revenue issuance in a Petition for Review questioning respondent's inaction on a refund claim

The SC *En Banc*'s ruling in *Banco de Oro, et al. vs. Republic of the Philippines et al.*[49] is unambiguous in holding that the Court of Tax Appeals (CTA) has jurisdiction to rule on the constitutionality or validity of a tax law, regulation, or administrative issuance, to wit:

> **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 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)**.
>
> x x x
>
> **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

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[48] Item 4, SC Memorandum Order No. 10-2022 dated January 12, 2022.
[49] G.R. No. 198756, August 16, 2016.

> omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals. *(Boldfacing supplied)*

Banco De Oro emphatically highlighted the exclusive authority of the CTA to adjudicate the constitutionality or validity of tax laws, regulations or administrative issuances. Such jurisdiction is undoubted, whether the challenge presented is brought directly before the Court or arises as a defense in an assessment case or refund case.

In this case, petitioner assails the issue of validity of RMC No. 90-2012 and RR No. 17-2012 in support of its position that it is entitled to its claim for refund. Thus, in line with the SC's pronouncement in *Banco De Oro*, this Court has jurisdiction to determine the validity of RMC No. 90-2012 and RR No. 17-2012.

Exhaustion of administrative remedies is not applicable in this case

RMC No. 90-2012 and RR No. 17-2012 were issued by respondent in view of his power to interpret the provisions of the NIRC and other tax laws pursuant to Section 4 of the NIRC of 1997, as amended. This authority has been characterized as a rule-making or quasi-legislative power delegated by Congress to the CIR.[50]

As held by the SC in *Alliance of Non-Life Insurance Workers of the Philippines, et al. vs. Hon. Leandro R. Mendoza, et al.*,[51] the doctrine of exhaustion of administrative remedies does not apply when the questioned act is quasi-legislative in character, *viz.*:

> However, it is settled that **the doctrine of exhaustion of administrative remedies finds no application when a questioned act was done in the exercise of quasi-legislative powers**:
>
> > **In questioning the validity or constitutionality of a rule or regulation issued by an administrative agency, a party need not exhaust administrative remedies before going to court.** This principle applies only where the act of the administrative agency concerned was performed pursuant to its quasi-judicial function, and not when the assailed act pertained to its rule-making or quasi-legislative power. x x x (*Boldfacing supplied*)

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[50] *Commissioner of Internal Revenue vs. Court of Tax Appeals (Second Division) and Petron Corporation*, G.R. No. 207843, July 15, 2015.
[51] G.R. No. 206159, August 26, 2020.

Verily, petitioner need not file an appeal before the SOF seeking a review of the validity of the aforesaid issuances, as its recourse to this Court to seek judicial redress is proper.

Petitioner is entitled to its excise tax refund in the full amount of ₱1,068,775,829.04

Petitioner's Claim A and Claim B in the amounts of ₱8,278,851.12 and ₱1,060,496,977.92, respectively, pertain to the following beer products of petitioner:

Beer Products	Packaging
San Mig Light	bottle, can, keg
Other Beer Products:	
Pale Pilsen	can
San Mig Zero	bottle
Premium All Malt	bottle, can
Super Dry	can
Red Horse	can
San Miguel Flavored Beer Apple	bottle
San Miguel Flavored Beer Lemon	bottle

Claim A - ₱8,278,851.12

For Claim A, petitioner alleges that from January 23, 2020 up to February 9, 2020, it was constrained to pay the excise taxes on the removals of its beer products at the rate of ₱27.07 per liter, instead of only ₱26.44 per liter.

Section 143 of the NIRC of 1997, as amended by RA No. 10351, reads:

> **SEC. 3.** Section 143 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, is hereby further amended to read as follows:
>
> > SEC. 143. Fermented Liquors. – There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except *tuba*, *basi*, *tapuy* and similar fermented liquors in accordance with the following schedule:

cm

Effective on January 1, 2013

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (P50.60) or less, the tax shall be Fifteen pesos (P15.00) per liter; and

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (P50.60), the tax shall be Twenty pesos (P20.00) per liter.

Effective on January 1, 2014

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (P50.60) or less, the tax shall be Seventeen pesos (P17.00) per liter; and

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (P50.60), the tax shall be Twenty-one pesos (P21.00) per liter.

Effective on January 1, 2015

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (P50.60) or less, the tax shall be Nineteen pesos (P19.00) per liter; and

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (P50.60), the tax shall be Twenty-two pesos (P22.00) per liter.

Effective on January 1, 2016

(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifty pesos and sixty centavos (P50.60) or less, the tax shall be Twenty-one pesos (P21.00) per liter; and

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifty pesos and sixty centavos (P50.60), the tax shall be Twenty-three pesos (P23.00) per liter.

Effective on January 1, 2017, the tax on all fermented liquors shall be Twenty-three pesos and fifty centavos (P23.50) per liter.

The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance. However, in case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this Section, the four percent (4%) increase shall apply to their respective applicable tax rates.

x x x

> **Any <u>downward reclassification</u> of present categories, for tax purposes, of fermented liquors duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be <u>prohibited</u>.**
>
> The proper tax classification of fermented liquors, whether registered before or after the effectivity of this Act, shall be determined every two (2) years from the date of effectivity of this Act.
>
> **All fermented liquors <u>existing in the market at the time of the effectivity of this Act</u> shall be <u>classified according to the net retail prices and the tax rates provided above based on the latest price survey</u> of the fermented liquors conducted by the Bureau of Internal Revenue**. *(Boldfacing and underscoring supplied)*

To implement the afore-quoted provision introduced by RA No. 10351, RR No. 17-2012[52] and RMC No. 90-2012[53] were issued.

Section 3 of RR No. 17-2012 states:

> **SEC. 3. REVISED RATES AND BASES OF THE SPECIFIC TAX**. – There shall be levied, assessed and collected an excise tax on alcohol or tobacco products, in accordance with the following schedule:

PRODUCT	DATE OF EFFECTIVITY OF TAX RATES					
	January 1, 2013	**January 1, 2014**	**January 1, 2015**	**January 1, 2016**	**January 1, 2017**	**2018 Onwards**
A. ALCOHOL PRODUCTS						
(1) Distilled Spirits (a) Ad Valorem tax Rate						

[52] SUBJECT: Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations.
[53] SUBJECT: Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "An Act Restructuring The Excise Tax on Alcohol And Tobacco Products By Amending Sections 141, 142, 143, 144, 145, 8, 131 And 288 of Republic Act No. 8424, Otherwise Known As The National Internal Revenue Code Of 1997, as amended By Republic Act No. 9334, And For Other Purposes".

Based on the net retail price per proof (excluding the excise and value-added taxes), and	15%	15%	20%	20%	20%	20%
(b) Specific Tax Per Proof liter	Php20.00	Php20.00	Php20.00	Php20.80	Php21.63	Effective 1/1/2016, the specific tax rate shall be increased by 4% every year thereafter
(2) Wines	Per liter	Per liter	Per liter	Per liter	Per liter	
(a) Sparkling wines/champagnes, where the net retail price (excluding the excise and value-added taxes) per bottle of 750 ml., regardless of proof is:						
(1) Five Hundred Pesos (P500.00) or less	Php250.00	Php260.00	Php270.40	Php281.22	Php292.47	Effective 1/1/2014, the specific tax rate shall be increased by 4% every year thereafter
(2) More than Five Hundred Pesos (P500.00)	Php700.00	Php728.00	Php757.12	Php787.40	Php818.90	
(b) Still wines and carbonated wines containing fourteen percent (14%) of alcohol by volume or less	Php30.00	Php31.20	Php32.45	Php33.75	Php35.10	
(c) Still wines and carbonated wines containing more than fourteen percent (14%) of						

alcohol by volume but not more than twenty-five percent (25%) of alcohol by volume	Php60.00	Php62.40	Php64.90	Php67.50	Php70.20	
(d) Fortified wines containing more than twenty-five (25%) percent of alcohol by volume shall be taxed as distilled spirits	Taxed as Distilled Spirits	Taxed as Distilled Spirits	Taxed as Distilled Spirits	Taxed as Distilled Spirits	Taxed as Distilled Spirits	
(3) Fermented liquors, where the net retail price (excluding excise and value-added taxes) per liter of volume capacity is:	<u>Per Liter</u>	<u>Per Liter</u>	<u>Per Liter</u>	<u>Per Liter</u>	<u>Per Liter</u>	Effective 1/1/2018, the specific tax rate shall be increased by 4% every year thereafter
(a) Fifty Pesos and Sixty Centavos (P50.60) or less	Php15.00	Php17.00	Php19.00	Php21.00	Php23.50	
b. More than Fifty Pesos and Sixty Centavos (P50.60)	Php20.00	Php21.00	Php22.00	Php23.00	Php23.50	
Fermented liquors brewed and sold at microbreweries or small establishments such as pubs and restaurants, regardless of the net retail price.	Php28.00	Php29.12	Php30.28	Php31.50	Php32.76	Effective 1/1/2014, the specific tax rate shall be increased by 4% every year thereafter

Meanwhile, Section 5 of RR No. 17-2012 provides:

> **SEC. 5.** DOWNWARD RECLASSIFICATION OF FERMENTED LIQUORS. – Any downward reclassification of any fermented liquor product that is duly registered with the BIR at the time of effectivity of the Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited. **Starting January 1, 2014, the applicable tax rate shall be increased by four percent (4%) annually**; *Provided*,

however, it shall not be lower than the rates prescribed under Section 3 of these regulations. *(Boldfacing supplied)*

Meanwhile, Annex "A-1" of RMC No. 90-2012 prescribes an excise tax rate of **₱20.57 per liter – the tax rate that petitioner had been paying prior to RA No. 10351** – for petitioner's beer products effective January 1, 2013, as shown below:

Annex A-1

LIST OF BRANDS OF LOCALLY MANUFACTURED FERMENTED LIQUORS
As of December 2012

I. List of Brands Based on 2010 BIR Price Survey

	BRAND NAME/ Product Description	TYPE OF PACKAGING	CONTENT PER TYPE OF PACKAGING (in milliliter)	NET RETAIL PRICE (Based on 2010 BIR Price Survey) Per Liter	Applicable Excise Tax Rate Per Liter (Effective January 1, 2013)
	A. NRP is P50.60 per liter and below				
1	Beer Macho	bottle	1000	42.65	15.00
2	Beer Pale Pilsen	bottle	1000	36.79	15.00
3	Beer Pale Pilsen	bottle	320	48.84	15.00
4	Colt-45	bottle	1000	31.05	15.00
5	Colt-45	bottle	330	30.04	15.00
6	Colt-45	bottle	500	31.27	15.00
7	Gold Eagle Beer King	bottle	1000	28.75	15.00
8	Lone Star	bottle	330	39.02	15.00
9	Lone Star Light	bottle	330	31.62	15.00
10	Manila Beer	bottle	330	50.26	15.00
11	Manila Beer Litro	bottle	1000	40.58	15.00
12	Manila Beer Strong - (Regional)	bottle	330	41.77	15.00
13	Manila Light	bottle	330	50.58	15.00
14	Manila Premium	bottle	330	47.18	15.00
15	Red Horse	bottle	1000	48.07	15.00
16	Red Horse	bottle	330	45.85	15.00
17	Red Horse	bottle	500	38.97	15.00
18	San Miguel Pale Pilsen	bottle	1000	32.73	15.49

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19	San Miguel Pale Pilsen (embossed label marking)	bottle	320	45.48	15.49
20	Coors Light Beer	bottle	330	43.18	20.57
21	**San Mig Light**	**bottle**	**330**	**47.99**	**20.57**
22	The Original Coors	bottle	330	32.36	20.57
23	The Silver Bullet Coorslight	bottle	330	45.21	20.57
	B. NRP is more than P50.60				
24	Beer Pale Pilsen	bottle	750	67.74	20.00
25	Cerveza Negra	non-returnable bottle	330	77.99	20.00
26	Cerveza Negra	bottle	320	69.15	20.00
27	Colt-45	can	330	56.81	20.00
28	Lone Star	can	330	57.49	20.00
29	Lone Star Light	can	330	60.26	20.00
30	Manila Beer	can	330	55.97	20.00
31	Manila Light	can	330	55.97	20.00
32	San Miguel Pale Pilsen (with paper label)	bottle	320	77.88	20.00
33	Super Dry	non-returnable bottle	330	73.87	20.00
34	Super Dry	bottle	330	69.53	20.00
35	**Super Dry**	**can**	**330**	**78.33**	**20.00**
36	Colt Ice	bottle	330	60.37	20.57
37	Coors Light Beer	can	330	56.03	20.57
38	**Red Horse**	**can**	**330**	**56.61**	**20.57**
39	San Mig Cerveza Negra	bottle	320	66.39	20.57
40	**San Mig Light**	**can**	**330**	**61.51**	**20.57**
41	San Mig Strong Ice	bottle	330	62.66	20.57
42	San Mig Strong Ice	non-returnable bottle	330	65.10	20.57
43	San Mig Strong Ice	can	330	70.36	20.57
44	San Miguel Oktoberfest Beer	bottle	330	74.75	20.57
45	**San Miguel Pale Pilsen**	**can**	**330**	**60.05**	**20.57**

46	**San Miguel Premium All Malt Beer**	**bottle**	**330**	**91.73**	**20.57**
47	**San Miguel Premium All Malt Beer**	**can**	**330**	**100.30**	**20.57**
48	San Miguel Premium All Malt Beer	non-returnable bottle	330	104.73	20.57
49	**Super Dry**	**can**	**330**	**69.90**	**20.57**
50	The Original Coors	can	330	54.00	20.57
51	The Silver Bullet Coorslight	can	330	57.05	20.57

II. List of Brands (not included in 2010 BIR Price Survey and introduced in the market before effectivity of R.A. No. 10351) Based on Latest Suggested Net Retail Price Per Sworn Statement Submitted by the Manufacturer or Importer

	BRAND NAME/ Product Description	TYPE OF PACKAGING	CONTENT PER TYPE OF PACKAGING (in milliliter)	NET RETAIL PRICE (Based on Latest Suggested Net Retail Price Per Sworn Statement) Per Liter	Applicable Excise Tax Rate Per Liter (Effective January 1, 2013)
	A. NRP is P50.60 and below				
1	Lone Star	bottle	500	48.00	15.00
2	Manila Beer	bottle	500	44.00	15.00
3	Manila Beer Strong	bottle	330	41.76	15.00
4	Stag	bottle	320	36.36	15.00
5	Stag	bottle	330	37.50	15.00
7	**Beer Pale Pilsen**	**can**	**330**	**48.48**	**20.57**
	B. NRP is more than P50.60				
8	Carlsberg	bottle	330	57.58	20.00
9	Carlsberg Chill	bottle	330	100.00	20.00
10	Gold Eagle Beer	bottle	320	56.25	20.00
11	Lone Star Ultra	bottle	330	54.55	20.00
12	Manila Ice	bottle	330	78.79	20.00
13	Manila Ice	Can	330	109.09	20.00
14	Carlsberg	Can	330	78.79	20.57
15	**San Mig Zero**	**Bottle**	**330**	**60.58**	**20.57**
16	**San Miguel Flavored Beer-Apple**	**Bottle**	**330**	**75.76**	**20.57**

	BRAND NAME/ Product Description	TYPE OF PACKAGING	CONTENT PER TYPE OF PACKAGING (in milliliter)	NET RETAIL PRICE (Based on Latest Suggested Net Retail Price Per Sworn Statement) Per Liter	Applicable Excise Tax Rate Per Liter (Effective January 1, 2013)
17	**San Miguel Flavored Beer-Lemon**	**Bottle**	**330**	**75.76**	**20.57**
18	San Miguel Magnum Beer Strong Lager	Bottle	330	55.18	20.57
19	Stag	Can	330	68.18	20.57
20	The Original Coors	Bottle	1000	55.00	20.57

(Boldfacing supplied)

Using the excise tax rate of ₱20.57 per liter as a starting rate in 2013, respondent imposed a compounding 4% increase pursuant to Section 5 of RR No. 17-2012. Hence in 2020, the excise tax rate for petitioner's beer products pursuant to RMC No. 90-2012 in relation to RR No. 17-2012 was already at ₱27.07 per liter.

Below is a summary comparing side by side the excise tax rates pursuant to Section 143 of the NIRC, as amended by RA No. 10351 *vis-à-vis* the excise tax rates under RR No. 17-2012 and RMC No. 90-2012 for the taxable years 2013 to 2020:

Period	**Excise Tax Rate per Liter under Section 143 of the NIRC, as amended by RA No. 10351**	**Excise Tax Rate per liter under RR No. 17-2012 and RMC No. 90-2012**
2013	**15.00/20.00**	**20.57**
2014	17.00/21.00	21.39
2015	19.00/22.00	22.25
2016	21.00/23.00	23.14
2017	**23.50**	**24.06**
2018	24.44	25.03
2019	25.42	26.03
2020	**26.44**	**27.07**

To address the controversy surrounding Claim A, the critical issue that must be resolved is the correct excise tax rate applicable to petitioner in 2013; specifically, whether it should be ₱15.00/₱20.00 per liter based on Section 143 of the NIRC, as amended by Section 3 of

RA No. 10351, or ₱20.57 per liter as prescribed under RMC No. 90-2012.

Petitioner contends that the previous excise tax rate of ₱20.57, which it had paid under protest to the BIR in 2012, was already superseded by the new rates (i.e., ₱15.00/₱20.00 per liter in 2013, ₱17.00/₱21.00 per liter in 2014, and so on) as provided under Section 143 of the NIRC of 1997, as amended by Section 3 of RA No. 10351. Conversely, in assessing petitioner deficiency excise tax based on the rate of ₱27.07 for 2020, respondent effectively asserts that the excise tax rate of ₱20.57 was retained and served as the initial rate for the indexation starting from 2014 until 2020, when it was ultimately adjusted to ₱27.07.

Respondent anchors its position in the "no downward reclassification" provision found in Section 3 of RA No. 10351, which reads:

> The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance. However, in case of fermented liquors affected by the 'no downward reclassification' provision prescribed under this Section, the four percent (4%) increase shall apply to their respective applicable tax rates.

Allegedly, under the "no downward reclassification", a reclassification from <u>high-tier to low-tier category</u> is prohibited as it reduces the excise tax imposed consistent with the subsequent paragraph in Section 3 of RA No. 10351, *viz.*:

> Any downward reclassification of present categories, for tax purposes, of fermented liquors duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited.

Aside from the prohibition of reclassification from high-tier to low-tier category, it is respondent's position that the "no downward reclassification" provision likewise contemplates **"no downgrading of pre-RA No. 10351 rates"** (₱20.57 in the case of petitioner) to the new rates of ₱15.00 or ₱20.00 per liter for 2013 per Section 143 of the NIRC, as amended by Section 3 of RA No. 10351. Consequently, according to respondent, petitioner, having paid ₱20.57 per liter prior to the enactment of RA No. 10351, is required to continue paying the same rate, instead of the new rates of ₱15.00 or ₱20.00 per liter.

The Court agrees with petitioner.

The "no downgrading of pre-RA 10351 rates" rule espoused by respondent runs contrary to the clear mandate of Section 3 of RA No. 10351 which expressly states that:

> All 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 Bureau of Internal Revenue.

Otherwise stated, the "no downgrading of pre-RA 10351 rates" rule may not necessarily be construed as within the context of the "no downward reclassification" provision in Section 3 of RA No. 10351. For one, there is nothing in Section 3 of RA No. 10351 which states that rates specified therein may not be applied if it results in downward reduction of rates, *i.e.,* from a higher pre-RA No. 10351 excise tax rate per liter, to a lower RA No. 10351 excise tax rate per liter.

Even assuming that the "no downgrading of pre-RA 10351 rates" rule is construed to be within the context of the "no downward reclassification" provision, it would appear that there is an inconsistency within the law itself. On one hand, Congress intended for existing brands to maintain their pre-RA No. 10351 excise tax rates under the "no downgrading of rates" rule allegedly embedded in the "no downward reclassification" provision. On the other hand, another provision in the same Section, mandates that all fermented liquors existing in the market at the effectivity date of the law, must be classified as low-tier or high-tier categories based on the net retail prices as outlined therein.

In essence, adhering to respondent's proposition would simply give rise to conflict between two (2) provisions of Section 3 of RA No. 10351 as one stipulates, albeit impliedly, that fermented liquors already subject to higher pre-RA No. 10351 rates must retain those rates, while another expressly mandates a comprehensive classification of all existing fermented liquors based on their net retail prices and the corresponding tax rates as outlined in Section 3 of RA No. 10351.

A statute must be construed as to harmonize all apparent conflicts and give effect to all its provisions whenever possible.[54] However, in case of irreconcilable conflict between two provisions of the same statute, the last in order of position is frequently held to

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[54] *People vs. Antillon*, G.R. No. L-31675, June 29, 1982.

prevail, unless it clearly appears that the intent of the legislature is otherwise.[55]

Given the irreconcilable nature of the two provisions and the fact that the provision mandating the classification of all fermented liquors existing in the market during the effectivity of RA No. 10351 is a later provision, the latter prevails. In effect, the no downgrading rule is rendered ineffectual.

Having established that the "no downward reclassification" provision insofar as it prohibits the downgrading of previous excise tax rates paid on fermented liquors existing in the market upon the effectivity of RA No. 10351 has been rendered ineffective by the later provision, **the applicable initial excise tax rate for 2013 is ₱15.00/₱20.00, not ₱20.57 per liter**.

In *San Miguel Brewery, Inc. vs. Commissioner of Internal Revenue*,[56] which involves the same parties and issues but pertaining only to a different taxable period (i.e., January 1, 2018 to December 31, 2018), the Court's Second Division issued a Decision[57] declaring that the applicable excise tax rate for 2013 is ₱15.00/₱20.00, depending on the net retail price, to wit:

> Upon review, the Court finds that certain parts of Annex "A-1" of RMC No. 90-2012 imposed excise tax rates per liter (effective January 1, 2013) either by ₱15.49 or ₱20.57 regardless of whether the net retail price per liter of volume capacity of the fermented liquor is below or more than ₱50.60 per liter. **This is contrary to the afore-quoted Section 143 of the NIRC of 1997, as amended by RA No. 10351, which imposed excise tax rates per liter at ₱15.00 and ₱20.00** only of the net retail price per liter of volume capacity of the fermented liquor is ₱50.60 or less, or more than ₱50.60 (effective January 1, 2013), respectively. *(Boldfacing supplied)*

Accordingly, Section 5 of RR No. 17-2012 insofar as it implements the "no downgrading" rule, as well as Annex "A-1" of RMC No. 90-2012 insofar as it prescribes the initial tax rate of ₱20.57 per liter as basis for indexation, are deemed null and void for being contrary to RA No. 10351.

In *Commissioner of Internal Revenue vs. The Hon. Court of Appeals, R.O.H. Auto Products Philippines, Inc. and The Hon. Court of*

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55 *Cuyegkeng, et al. vs. Cruz*, G.R. No. L-16263, July 26, 1960.
56 CTA Case No. 10223, July 5, 2023.
57 Penned by Honorable Associate Justice Lanee S. Cui-David, and joined by Associate Justice Jean Marie A. Bacorro-Villena.

Tax Appeals,[58] the Supreme Court clarified that BIR issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement, to wit:

> The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. **Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor modify, the law.** *(Boldfacing supplied)*

More recently, in *Department of Finance (DOF), et al. vs. Asia United Bank, et al.,*[59] the Supreme Court, in voiding Revenue Regulations No. 4-2011, held that administrative issuances, like BIR regulations, cannot simply amend the law they seek to implement, to wit:

> We rule that RR 4-2011 is void. We now expound.
>
> It is settled that administrative issuances must not override, supplant, or modify the law; they must remain consistent with the law they intend to carry out. When the application of an administrative issuance modifies existing laws or exceeds the intended scope, the issuance becomes void, not only for being *ultra vires*, but also for being unreasonable. Surely, courts will not countenance such administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.
>
> We underline that the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature. It bears stressing, however, that administrative bodies are allowed under their power of subordinate legislation to implement the broad policies laid down in a statute by 'filing in' the details. All that is required is that the regulation be germane to the objectives and purposes of the law; that the regulation does not contradict but conforms with the standards prescribed by law.

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[58] G.R. No. 108358, January 20, 1995.
[59] G.R.Nos. 240163 & 240168-69, December 1, 2021.

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> Indeed, **administrative issuances, such as revenue regulations, cannot simply amend the law it seeks to implement.** In *Commissioner of Internal Revenue v. Seagate Technology (Philippines),* **We held that a mere administrative, issuance like a BIR regulation, cannot amend the law; the former cannot purport to do any more than implement the latter. To reiterate, the courts will not countenance an administrative regulation that overrides the statute it seeks to implement**. *(Boldfacing supplied)*

Following the nullification of the initial tax rate of ₱20.57 per liter as provided in Annex "A-1" of RMC No. 90-2012, petitioner's beer products are subject to the excise tax rates outlined in Section 3 of RA No. 10351. **Therefore, applying the 4% indexation rate starting January 1, 2018, the correct excise tax rate for 2020 applicable to petitioner's beer products is ₱26.44 per liter**.

Recall that there is a difference of ₱0.63 between the excise tax rate of ₱27.07 per liter erroneously, illegally, excessively and/or wrongfully imposed upon petitioner by the BIR for the removal of the former's beer products from January 23, 2020 to February 9, 2020, and the correct excise tax rate of ₱26.44 per liter.

The imposition of the additional ₱0.63 excise tax rate per liter totalled ₱8,278,851.12, which is broken down as follows:

EXHIBIT NO.	PLANT	PRODUCT DESCRIPTION	VOLUME OF REMOVALS (IN LITERS)	TAX RATE PER LITER	EXCISE TAX PAID	APPLICABLE TAX RATE	SHOULD BE EXCISE TAX AMOUNT	DIFFERENCE
For the period January 23, 2020 to January 31, 2020								
P-29-108	STA. ROSA	SML BOTTLE	146,543.76	27.07	₱ 3,966,939.58	26.44	₱ 3,874,617.01	₱ 92,322.57
P-29-110	DAVAO	SML BOTTLE	361,848.96	27.07	9,795,251.35	26.44	9,567,286.50	227,964.85
P-29-110	DAVAO	SM APPLE	269,478.00	27.07	7,294,769.46	26.44	7,124,998.32	169,771.14
P-29-112	BACOLOD	SML BOTTLE	464,959.44	27.07	12,586,452.04	26.44	12,293,527.59	292,924.45
P-29-114	MANDAUE	SML BOTTLE	466,353.36	27.07	12,624,185.46	26.44	12,330,382.84	293,802.62
P-29-114	MANDAUE	SM APPLE	336,156.48	27.07	9,099,755.91	26.44	8,887,977.33	211,778.58
P-29-116	SAN FERNANDO	SML BOTTLE	2,272,065.84	27.07	61,504,822.29	26.44	60,073,420.81	1,431,401.48
P-29-118	POLO	SML BOTTLE	1,549,738.08	27.07	41,951,409.83	26.44	40,975,074.84	976,334.99
P-29-118	POLO	SML DRAFT 30 LITERS	9,300.00	27.07	251,751.00	26.44	245,892.00	5,859.00
P-29-118	POLO	SML DRAFT 50 LITERS	16,200.00	27.07	438,534.00	26.44	428,328.00	10,206.00
P-29-118	POLO	SML CAN	567,333.36	27.07	15,357,714.06	26.44	15,000,294.04	357,420.02
P-29-118	POLO	PALE PILSEN CAN	52,279.92	27.07	1,415,217.43	26.44	1,382,281.08	32,936.35

P-29-118	POLO	PREMIUM 330ML CAN	2,304.72	27.07	62,388.77	26.44	60,936.80	1,451.97
P-29-118	POLO	SUPER DRY CAN	17,843.76	27.07	483,030.58	26.44	471,789.01	11,241.57
P-29-118	POLO	RED HORSE CAN	201,072.96	27.07	5,443,045.03	26.44	5,316,369.06	126,675.97
P-29-118	POLO	SAN MIG BEER APPLE	972,480.96	27.07	26,325,059.59	26.44	25,712,396.58	612,663.01
P-29-118	POLO	SAN MIG BEER LEMON	171,848.16	27.07	4,651,929.69	26.44	4,543,665.35	108,264.34
P-29-118	POLO	PREMIUM 330ML	3,397.68	27.07	91,975.20	26.44	89,834.66	2,140.54
P-29-118	POLO	SAN MIG ZERO 330 BTL	205.92	27.07	5,574.25	26.44	5,444.52	129.73
Subtotal - January 23, 2020 to January 31, 2020			*7,881,411.36*		*₱ 213,349,805.52*		*₱ 208,384,516.36*	*₱ 4,965,289.16*
EXHIBIT NO.	**PLANT**	**PRODUCT DESCRIPTION**	**VOLUME OF REMOVALS (IN LITERS)**	**TAX RATE PER LITER**	**EXCISE TAX PAID**	**APPLICABLE TAX RATE**	**SHOULD BE EXCISE TAX AMOUNT**	**DIFFERENCE**
For the period February 1, 2020 to February 9, 2020								
P-29-109	STA. ROSA	SML BOTTLE	705,291.84	27.07	19,092,250.11	26.44	18,647,916.25	444,333.86
P-29-111	DAVAO	SML BOTTLE	32,820.48	27.07	888,450.39	26.44	867,773.49	20,676.90
P-29-111	DAVAO	SM APPLE	51,400.80	27.07	1,391,419.66	26.44	1,359,037.15	32,382.51
P-29-113	BACOLOD	SML BOTTLE	439,029.36	27.07	11,884,524.78	26.44	11,607,936.28	276,588.50
P-29-115	MANDAUE	SML BOTTLE	286,300.08	27.07	7,750,143.17	26.44	7,569,774.12	180,369.05
P-29-115	MANDAUE	SM APPLE	55.44	27.07	1,500.76	26.44	1,465.83	34.93
P-29-117	SAN FERNANDO	SML BOTTLE	1,273,147.92	27.07	34,464,114.19	26.44	33,662,031.00	802,083.19
P-29-119	POLO BREWERY	SML BOTTLE	1,077,579.36	27.07	29,170,073.28	26.44	28,491,198.28	678,875.00
P-29-119	POLO BREWERY	SML DRAFT 30 LITERS	12,690.00	27.07	343,518.30	26.44	335,523.60	7,994.70
P-29-119	POLO BREWERY	SML DRAFT 50 LITERS	9,200.00	27.07	249,044.00	26.44	243,248.00	5,796.00
P-29-119	POLO	SML CAN	494,889.12	27.07	13,396,648.48	26.44	13,084,868.33	311,780.15
P-29-119	POLO	SML 15LTS KEG	450.00	27.07	12,181.50	26.44	11,898.00	283.50
P-29-119	POLO	PALE PILSEN CAN	112,804.56	27.07	3,053,619.44	26.44	2,982,552.57	71,066.87
P-29-119	POLO	PREMIUM 330ML CAN	2,233.44	27.07	60,459.22	26.44	59,052.15	1,407.07
P-29-119	POLO	SUPER DRY CAN	6,233.04	27.07	168,728.39	26.44	164,801.58	3,926.81
P-29-119	POLO	RED HORSE CAN	235,366.56	27.07	6,371,372.78	26.44	6,223,091.85	148,280.93
P-29-119	POLO	SAN MIG BEER APPLE	291,012.48	27.07	7,877,707.83	26.44	7,694,369.97	183,337.86
P-29-119	POLO	SAN MIG BEER LEMON	58,782.24	27.07	1,591,235.24	26.44	1,554,202.43	37,032.81
P-29-119	POLO	PREMIUM 330ML	950.40	27.07	25,727.33	26.44	25,128.58	598.75
P-29-119	POLO	PREMIUM 330ML - CAN	451.44	27.07	12,220.48	26.44	11,936.07	284.41
P-29-119	POLO	SAN MIGUEL BEER APPLE	97,724.88	27.07	2,645,412.50	26.44	2,583,845.83	61,566.67
P-29-119	POLO	SAN MIGUEL BEER LEMON	7,128.00	27.07	192,954.96	26.44	188,464.32	4,490.64
P-29-119	POLO	SAN MIG ZERO 330 BTL	32,646.24	27.07	883,733.72	26.44	863,166.59	20,567.13
P-29-119	POLO	SAN MIG BEER APPLE	31,434.48	27.07	850,931.37	26.44	831,127.65	19,803.72
Subtotal - February 1, 2020 to February 9, 2020			*5,259,622.16*		*₱ 142,377,971.88*		*₱ 139,064,409.92*	*₱ 3,313,561.96*
AMOUNT SUBJECT FOR REFUND (Claim A)			**13,141,033.52**		**₱ 355,727,777.40**		**₱ 347,448,926.28**	**₱ 8,278,851.12**

To support the subject refund claim, petitioner adduced in evidence the following pertinent documents, which were all examined and verified by the Court-commissioned ICPA:

Document	Exhibit No.
Excise Tax Returns (ETR) and eFPS Filing Reference Numbers	"P-25-1" to "P-25-521"
Official Register Books (ORB)	"P-29"; "P-29-1"; "P-29-2"; "P-29-3"; "P-29-4"; "P-29-5"; "P-29-6"; "P-29-7"; "P-29-8"; "P-29-9"; "P-29-10"; "P-29-11"; "P-29-12"; and, "P-29-13"
Movement Reports with Allocated Deposits	"P-28-1", "P-28-1"
eFPS Payment Details - BPI	"P-26" to "P-26-117"
eFPS Payment Details - Unionbank	"P-27" to "P-27-113"

Scrutiny of petitioner's ETRs, with supporting eFPS filing reference numbers[60] and eFPS Payment Details,[61] shows that petitioner paid advance excise taxes from January 23, 2020 to February 9, 2020 in the aggregate amount of ₱2,842,568,000.00, broken down as follows:

Exhibit Nos.	Plant	Amount of Excise Tax Deposit
For the period January 23, 2020 to January 31, 2020		
"P-27", "P-27-1", "P-27-2", "P-27-3", "P-27-4", "P-27-5", "P-27-6"	Sta. Rosa	₱ 279,773,000.00
"P-27-7", "P-27-8", "P-27-9", "P-27-10", "P-27-11", "P-27-12", "P-27-13"	Davao	215,803,000.00
"P-27-14", "P-27-15", "P-27-16", "P-27-17", "P-27-18", "P-27-19", "P-27-20"	Bacolod	103,716,000.00
"P-27-21", "P-27-22", "P-27-23", "P-27-24", "P-27-25", "P-27-26", "P-27-27"	Mandaue	387,473,000.00
"P-27-28", "P-27-29", "P-27-30", "P-27-31", "P-27-32", "P-27-33", "P-27-34"	San Fernando	580,130,000.00

[60] Exhibit Nos. "P-25-1" to "P-25-521".
[61] Exhibit Nos. "P-26" to "P-26-117" and "P-27" to "P-27-113".

"P-27-35", "P-27-36", "P-27-37", "P-27-38", "P-27-39", "P-27-40", "P-27-41"	Polo	293,842,000.00
Subtotal - January 23, 2020 to January 31, 2020		*₱ 1,860,737,000.00*
Exhibit No.	**Plant**	**Amount of Excise Tax Deposit**
For the period February 1, 2020 to February 9, 2020		
"P-26", "P-26-1", "P-26-2", "P-26-3", "P-26-4"	Sta. Rosa	₱ 126,091,000.00
"P-26-5", "P-26-6", "P-26-7", "P-26-8", "P-26-9"	Davao	98,822,000.00
"P-26-10", "P-26-11", "P-26-12", "P-26-13", "P-26-14"	Bacolod	50,837,000.00
"P-26-15", "P-26-16", "P-26-17", "P-26-18", "P-26-19"	Mandaue	181,909,000.00
"P-26-20", "P-26-21", "P-26-22", "P-26-23", "P-26-24"	San Fernando	340,881,000.00
"P-26-25", "P-26-26", "P-26-27", "P-26-28", "P-26-29"	Polo	183,291,000.00
Subtotal - February 01, 2020 to February 9, 2020		*₱ 981,831,000.00*
Total Advance Excise Tax Deposits For January 23, 2020 To February 9, 2020		**₱ 2,842,568,000.00**

In its January and February 2020 Monthly Movement Report with Allocated Deposit[62] as cross-referred to its ORB and ETR, petitioner had excise taxes due amounting to ₱2,810,518,941.08 on the total removals of all its beer products from the following plants for the period January 23, 2020 to February 9, 2020, computed as follows:

Exhibit No.		**Plant**	**Amount of Removals**
ORB	**ETR**		
For the period January 23, 2020 to January 31, 2020			
"P-29"	"P-25-1", "P-25-3",	Sta. Rosa	₱ 255,913,282.81

62 Exhibit Nos. "P-28" to "P-28-1", USB.

	"P-25-5", "P-25-7", "P-25-9", "P-25-11", "P-25-13"		
"P-29-2"	"P-25-25", "P-25-27", "P-25-29", "P-25-31", "P-25-33", "P-25-35", "P-25-37"	Davao	198,055,796.00
"P-29-4"	"P-25-49", "P-25-51", "P-25-53", "P-25-55", "P-25-57", "P-25-59", "P-25-61"	Bacolod	88,221,238.41
"P-29-6"	"P-25-73", "P-25-75", "P-25-77", "P-25-79", "P-25-81", "P-25-83" "P-25-85"	Mandaue	364,860,687.58
"P-29-8"	"P-25-97", "P-25-99", "P-25-101", "P-25-103", "P-25-105", "P-25-107", "P-25-109"	San Fernando	510,695,060.96
"P-29-10"	"P-25-121", "P-25-123", "P-25-125", "P-25-127", "P-25-129", "P-25-131", "P-25-133"	Polo	276,589,023.51
Subtotal - January 23, 2020 to January 31, 2020			*₱1,694,335,089.27*
Exhibit No.		**Plant**	**Amount of Removals**
ORB	**ETR**		
For the period February 1, 2020 to February 9, 2020			
"P-29-1"	"P-25-14", "P-25-16", "P-25-18", "P-25-20",	Sta. Rosa	₱ 150,329,188.92

	"P-25-22", "P-25-163"		
"P-29-3"	"P-25-38", "P-25-40", "P-25-42", "P-25-44", "P-25-46", "P-25-164"	Davao	113,891,352.93
"P-29-5"	"P-25-62", "P-25-64", "P-25-66", "P-25-68", "P-25-70", "P-25-165"	Bacolod	65,164,225.59
"P-29-7"	"P-25-86", "P-25-88", "P-25-90", "P-25-92", "P-25-94", "P-25-166",	Mandaue	211,571,839.95
"P-29-9"	"P-25-110", "P-25-112", "P-25-114", "P-25-116", "P-25-118", "P-25-167"	San Fernando	374,560,924.59
"P-29-11"	"P-25-134", "P-25-136", "P-25-138", "P-25-140", "P-25-142", "P-25-168"	Polo	200,666,319.83
Subtotal - February 1, 2020 to February 9, 2020			*₱1,116,183,851.81*
TOTAL REMOVALS OF BEER PRODUCTS FROM JANUARY 23, 2020 TO FEBRUARY 9, 2020			**₱2,810,518,941.08**

Petitioner's total advance excise tax deposits for the period January 23, 2020 to February 9, 2020 in the amount of ₱2,842,568,000.00 were sufficient to cover the total excise tax due amounting to ₱2,810,518,941.08 on the removal of all its beer products from the above listed six plants for the same period, as shown below:

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Plant	Exhibit No.	Beginning Available Excise Tax Deposit, January 23, 2020	Add: Advance Excise Tax Payments	Less: Removals			Unused/Excess Advance Tax Deposit, January 31, 2020
				Related to Claim	Not Related to Claim	Total	
As of the Period from January 23, 2020 to January 31, 2020							
Sta. Rosa	"P-29"	₱ 7,130,840.37	₱ 279,773,000.00	₱ 3,966,939.58	₱ 251,946,343.23	₱ 255,913,282.81	₱ 30,990,557.56
Davao	"P-29-2"	3,691,563.28	215,803,000.00	17,090,020.81	180,965,775.19	198,055,796.00	21,438,767.28
Bacolod	"P-29-4"	1,507,297.20	103,716,000.00	12,586,452.04	75,634,786.37	88,221,238.41	17,002,058.79
Mandaue	"P-29-6"	23,219,016.90	387,473,000.00	21,723,941.37	343,136,746.21	364,860,687.58	45,831,329.32
San Fernando	"P-29-8"	7,906,927.11	580,130,000.00	61,504,822.29	449,190,238.67	510,695,060.96	77,341,866.15
Polo	"P-29-10"	22,026,360.75	293,842,000.00	96,477,629.43	180,111,394.08	276,589,023.51	39,279,337.24
TOTAL (January 23-31, 2020)		*₱65,482,005.61*	*₱ 1,860,737,000.00*	*₱ 213,349,805.52*	*₱ 1,480,985,283.75*	*₱ 1,694,335,089.27*	*₱ 231,883,916.34*

As of the Period from February 01, 2020 to February 9, 2020

Plant	Exhibit No.	Beginning Available Excise Tax Deposit, January 23, 2020	Add: Advance Excise Tax Payments	Less: Removals			Unused/Excess Advance Tax Deposit, February 9, 2020
				Related to Claim	Not Related to Claim	Total	
Sta. Rosa	"P-29-1"	₱ 30,990,557.56	₱ 126,091,000.00	₱ 19,092,250.11	₱ 131,236,938.81	₱ 150,329,188.92	₱ 6,752,368.64
Davao	"P-29-3"	21,438,767.28	98,822,000.00	2,279,870.05	111,611,482.88	113,891,352.93	6,369,414.35
Bacolod	"P-29-5"	17,002,058.79	50,837,000.00	11,884,524.78	53,279,700.81	65,164,225.59	2,674,833.20
Mandaue	"P-29-7"	45,831,329.32	181,909,000.00	7,751,643.93	203,820,196.02	211,571,839.95	16,168,489.37
San Fernando	"P-29-9"	77,341,866.15	340,881,000.00	34,464,114.19	340,096,810.40	374,560,924.59	43,661,941.56
Polo	"P-29-11"	39,279,337.24	183,291,000.00	66,905,568.82	133,760,751.01	200,666,319.83	21,904,017.41
TOTAL (February 01-9, 2020)		*₱ 231,883,916.34*	*₱ 981,831,000.00*	*₱ 142,377,971.88*	*₱ 973,805,879.93*	*₱ 1,116,183,851.81*	*₱ 97,531,064.53*

To recapitulate, for the period from January 23, 2020 to February 9, 2020, petitioner had total advance excise tax payments of ₱2,908,050,005.61 (sum of the beginning balance as of January 23, 2020 amounting to ₱65,482,005.61 and additional payments during the period amounting to ₱2,842,568,000.00). During the same period, petitioner had total removals of ₱2,810,518,941.08, of which ₱355,727,777.40 relates to petitioner's claim. Deducting the total removals of ₱2,810,518,941.08 from the advance deposits of ₱2,908,050,005.61, petitioner had unused or excess advance tax deposit in the amount of ₱97,531,064.53.

As shown above, petitioner paid ₱355,727,777.38[63] for the subject removals based on the tax rate of ₱27.07. However, based on the applicable tax rate of ₱26.44, the amount due should have been ₱347,448,926.26 only. Consequently, this discrepancy resulted in an overpayment of excise tax in the amount of ₱8,278,851.12.

In fine, petitioner has sufficiently proven that it is entitled to the refund of its Claim A representing overpayment of the excise taxes due on its removals of various beer products from January 23, 2020 to February 9, 2020 in the amount of ₱8,278,851.12.

Claim B - ₱1,060,496,977.92

Petitioner's Claim B represents the excise tax deficiency assessed by the BIR pursuant to the Revised NOD dated December 15, 2020[64], and paid by petitioner on December 21, 2020 using TCCs,[65] *viz.*:

Plant	NRP of P50.60 and BELOW old rate (in liter) *[a]*	NRP of P50.60 and MORE THAN old rate (in liter) *[b]*	TOTAL (in LITER) *([c]=[a]+[b])*	SPECIFIC TAX at P26.44/liter (in PHP) *([d] = [c]x[P26.44])*	NRP of MORE THAN P50.60 old rate (in liter) *[e]*	SPECIFIC TAX at P27.07/liter (in PHP) *([f]=[e]xP27 07)*	Excise Tax paid per EFPS *([g]=[d]+[f])*	SPECIFIC TAX at P35.00/liter NEW RATE (in PHP) *([h]=([c]+[e])xP35)*	Basic Excise Tax Deficiency (in PHP) *([h]-[g])*
Polo	10,339.814.00	3,278,782.44	*13,618,596.44*	*360.075,689.87*	7,700,014.64	*208,439,396.30*	568.515,086.18	*746.151,387.80*	*177,636,301.62*
Mandaue	22.403,412.00	1.436.928.00	*23,840,340.00*	*630.338,589.60*	1,404.992.16	*38,033.137.77*	668,371.727.37	*883,586,625.60*	*215.214.898.23*
San Fernando	32,435.382.00	2,500,238 40	*34.935,620.40*	*923,697,803.38*	4.056,140.88	*109,799,733 62*	1,033,497,537.00	*1.364,711,644 80*	*331,214,107.80*
Davao	12,220.278.00	673,436.64	*12,893,714.64*	*340.909.815 08*	836,692.56	*22,649.267.60*	363,559,082 68	*480.564,252.00*	*117.005,169.32*
Bacolod	3,917,867.28	2.120.795.28	*6,038,662.56*	*159,662,238.09*	924,992.64	*25,039,550.76*	184,701.788.85	*243,727,932.00*	*59,026,143.15*
Sta. Rosa	16,850.586.00	319,120.56	*17,169,706.56*	*453,967,041.45*	931 170.24	*25.206,778.40*	479,173,819.84	*633,530,688.00*	*154,356,868.16*
Tagoloan	6.707,916.00	489,240.00	*7.197.156.00*	*190,292,804.64*	83.825.28	*2.269.150.33*	192,561,954.97	*254.834,344.80*	*62.272.389.83*
TOTAL	**104,875,255.28**	**10,818,541.32**	**115,693,796.60**	**3,058,943,982.10**	**15,937,828.40**	**431,437,014.79**	**3,490,380,996.89**	**4,607,106,875.00**	**1,116,725,878.11**

The total amount due, inclusive of interests, is computed as follows:

Basic Excise Tax Deficiency	₱ 1,116,725,878.11
Less: Excise Tax Payment (due from 02/10/2020 to 02/12/2020)	168,959,037.24
Balance	947,766,840.87
Add: Interest (computed from 01/23/2020 to 09/04/2020)	79,140,464.93

[63] Petitioner's computation had a negligible difference of ₱.02.
[64] CTA Docket Vol. I, p. 346.
[65] CTA Docket Vol. I, pp. 295-298.

Add: Interest (computed from 09/05/2020 to 12/21/2020)		33,589,672.12
Total Amount Still Due	₱	**1,060,496,977.92**

Section 15 of RA No. 11467 provides:

> Section 15. *Effectivity.* – This Act shall take effect on **January 1, 2020** after its complete publication either in the Official Gazette or in newspaper of general circulation. *(Boldfacing supplied)*

Notably, the effectivity clause states that RA No. 11467 "shall take effect on January 1, 2020". Considering that the law was approved by President Rodrigo R. Duterte only on January 22, 2020, and the publication thereof at a much later date, it effectively calls for retroactive application.

The general rule is that retrospective laws are unconstitutional if they disturb or destroy existing or vested rights, as where they disturb or destroy existing or vested rights embodied in judgments or judicial decisions, **or create new obligations with respect to past transactions, as by creating a substantive right, or a fundamental cause of action where none existed before and making such retroactive**, or by arbitrarily recreating a right or liability already extinguished by operating of law.[66]

In this case, applying RA No. 11467 retroactively to transactions predating its publication imposes new obligations in the form of additional tax liabilities. Undoubtedly, this retroactive imposition encroaches upon vested property rights, including the right to enter into transactions that are governed by tax laws in force, and not by tax rates imposed by laws inexistent, at the time.

Even the Department of Finance took the position that January 1, 2020 is not the effectivity date of RA No. 11467. In a Memorandum dated January 29, 2020[67] from Undersecretary Antonette C. Tionko, Revenue Operations Group of the Department of Finance, for SOF Carlos G. Dominguez. The Memorandum states:

> RA No. 11467 is a tax measure that imposes higher tax rates on certain products. As such, the retroactive application of RA No. 11467 to 1 January 2020 cannot be applied since it will be unjust against the affected taxpayer whose liabilities and responsibilities are increased. **Taxpayers relied in good faith and paid the correct taxes at the**

[66] 16 C.J.S. 99-102.
[67] The Memorandum was attached to RMC No. 65-2020 dated June 22, 2020.

> **time when the law is yet to be published should not be required to pay additional taxes**. *(Boldfacing supplied)*

Clearly, RA No. 11467 took effect not on January 1, 2020, but upon publication.

The issue now lies on the date of publication of RA No. 11467.

As mentioned, petitioner claims that RA No. 11467 took effect on February 10, 2020 citing a Certification dated July 27, 2020 issued by the Malacañang Records Office[68] which states that said Republic Act was published in the February 10, 2020 issue of the Official Gazette (Volume 116, No. 6). Thus, the increased excise tax rate of ₱35.00 per liter could be imposed only starting February 10, 2020.

On the other hand, respondent insists that RA No.11467 took effect on January 23, 2020 based on RMC No. 113-2020 which published the full text of the Letter dated August 18, 2020 from Undersecretary Tionko, clarifying that RA No. 11467 was published in the Official Gazette on January 23, 2020 through its **website**. Thus, petitioner should pay the increased excise tax rate beginning January 23, 2020.

Publication is a necessary component of procedural due process to give as wide publicity as possible so that all persons having an interest in the proceedings may be notified thereof.[69] The requirement of publication is intended to satisfy the basic requirements of due process. It is imperative for it will be the height of injustice to punish or otherwise burden a citizen for the transgressions of a law or rule of which he had no notice whatsoever.[70]

In *Garcillano*, the SC clarified that pursuant to *Tañada vs. Tuvera*,[71] publication is restricted to the Official Gazette and newspapers of general circulation, and other mediums, such as the internet, do not satisfy this requirement, to wit:

> Respondents justify their non-observance of the constitutionally mandated publication by arguing that the rules have never been

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[68] Exhibit "P-10", CTA Docket Vol. III, p. 1088.
[69] *National Association of Electricity Consumers for Reforms (NASECORE) vs. Energy Regulatory Commission (ERC)*, G.R. No. 163935, August 16, 2006.
[70] *Garcillano vs. House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communication Technology, and Suffrage and Electoral Reforms*, G.R. No. 170338, December 23, 2008.
[71] G.R. No. L-63915 April 24, 1985.

amended since 1995 and, despite that, they are published in booklet form available to anyone for free, and accessible to the public at the Senate's internet web page.

The Court does not agree. The absence of any amendment to the rules cannot justify the Senate's defiance of the clear and unambiguous language of Section 21, Article VI of the Constitution. The organic law instructs, without more, that the Senate or its committees may conduct inquiries in aid of legislation only in accordance with duly published rules of procedure, and does not make any distinction whether or not these rules have undergone amendments or revision. The constitutional mandate to publish the said rules prevails over any custom, practice or tradition followed by the Senate.

Justice Carpio's response to the same argument raised by the respondents is illuminating:

> **The publication of the *Rules of Procedure* in the website of the Senate, or in pamphlet form available at the Senate, is not sufficient under the *Tañada vs. Tuvera* ruling which requires publication either in the Official Gazette or in a newspaper of general circulation.** The *Rules of Procedure* even provide that the rules 'shall take effect seven (7) days after publication in two (2) newspapers of general circulation', precluding any other form of publication. Publication in accordance with the due process requirement because the *Rules of Procedure* put a person's liberty at risk. A person who violates the Rules of Procedure could be arrested and detained by the Senate. *(Boldfacing supplied)*

Indeed, taxpayers who acted in good faith and paid the appropriate taxes prevailing before an amendatory law was published should not be compelled to pay additional taxes. Pursuant to *Garcillano*, publication can only be made in print through the Official Gazette or in a newspaper of general circulation. Thus, prior to the publication of RA No. 11467 in the printed version of the Official Gazette on February 10, 2020, petitioner, who relied in good faith and paid the then prevailing excise tax rates cannot be compelled to pay the additional excise tax levied under the amendatory law.

For declaring a contradictory effectivity date of RA No. 11467, RMC No. 65-2020 which initially declared that RA No. 11467 took effect on January 27, 2020, and RMC No. 113-2020 which finally clarified that RA No. 11467 took effect on January 23, 2020 instead, are deemed null and void.

Relatedly, the Court takes judicial notice of pending bills before the House of Representatives (i.e., House Bill Nos. 200,[72] 4494,[73] and 6226[74]) and the Senate (i.e., Senate Bill No. 1645[75]), all seeking to amend both Article 2 of the Civil Code[76] and Section 18 of Executive Order No. 292[77] to include online publication in either the Official Gazette or newspapers of general circulation as a mode of publication of laws.

The legislature is presumed to have known existing laws on the subject and not to have enacted conflicting statutes.[78] By extension, legislators are presumed to be knowledgeable about existing laws and to refrain from proposing bills that unnecessarily duplicate laws already in force. Indeed, if it were the case that the publication of laws, rules and regulations through the online version of the Official Gazette was already contemplated in and covered by the Civil Code and the Administrative Code, then there would have been no need for our legislators to author bills seeking to amend pertinent provisions of law relative to publication of laws.

In accordance with *Garcillano*, and as supported by the fact that Congress has yet to pass a law amending the modes of publication of laws to include online publication, RA No. 11467 is deemed to have taken effect only upon its publication in print in the Official Gazette, specifically on February 10, 2020, as certified by the Malacañang Records Office. Accordingly, the increased excise tax rate of ₱35.00 per liter may only be imposed beginning February 10, 2020.

The premature imposition of the increased excise tax rate for the period from January 23, 2020 to February 9, 2020 on petitioner's beer products resulted to an erroneous, excessive, illegal and/or wrongful

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[72] Full Title, As Filed: AN ACT PROVIDING FOR THE PUBLICATION OF LAWS IN THE PRINT OR ONLINE VERSION OF THE OFFICIAL GAZETTE AND OF A NEWSPAPER OF GENERAL CIRCULATION; CTA Docket Vol. IV, pp. 1794-1798.
[73] Full Title, As Filed: AN ACT PROVIDING FOR THE PUBLICATION OF LAWS IN THE PRINT OR ONLINE VERSION OF THE OFFICIAL GAZETTE AND OF A NEWSPAPER OF GENERAL CIRCULATION; CTA Docket Vol. IV, pp. 1799-1802.
[74] Full Title, As Filed: AN ACT PROVIDING FOR THE PUBLICATION OF LAWS IN THE PRINT OR ONLINE VERSION OF THE OFFICIAL GAZETTE AND OF A NEWSPAPER OF GENERAL CIRCULATION; CTA Docket Vol. IV, pp. 1803-1807.
[75] Full Title, As Filed: AN ACT PROVIDING FOR THE PUBLICATION OF LAWS IN THE PRINT OR ONLINE VERSION OF THE OFFICIAL GAZETTE AND OF A NEWSPAPER OF GENERAL CIRCULATION; CTA Docket Vol. IV, pp. 1808-1812.
[76] ARTICLE 2. Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided.
[77] SECTION 18. When Laws Take Effect. – Laws shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette or in a newspaper of general circulation, unless it is otherwise provided.
[78] *Remman Enterprises, Inc. vs. Professional Regulatory Board of Real Estate Service*, G.R. No. 197676, February 4, 2014, citing *Government Service Insurance System vs. City Assessor of Iloilo City*, G.R. No. 147192, June 27, 2006.

payment of ₱1,060,496,977.92 by petitioner, which it may claim as refund.

To prove that petitioner paid the afore-stated basic deficiency excise tax of ₱1,060,496,977.92 it presented its Letter dated January 4, 2021 sent to the BIR regarding such payment with attached BIR Payment Form (BIR Form No. 0605),[79] eFPS Filing Reference and Payment Confirmation,[80] and Tax Debit Memos.[81] These documents sufficiently prove petitioner's payment of the ₱1,060,496,977.92 it seeks to refund.

In sum, petitioner is entitled to the full amount of its Claim A and Claim B in the total amount of ₱1,068,775,829.04 for the period from January 23, 2020 to February 9, 2020.

WHEREFORE, the Petition for Review is **GRANTED**. Accordingly:

(i) Section 5 of Revenue Regulations No. 17-2012 dated December 21, 2012 insofar as it implements the "no downgrading" rule embedded in the "no downward reclassification" provision is deemed null and void;

(ii) Annex "A-1" of Revenue Memorandum Circular No. 90-2012 dated December 27, 2012 insofar as it prescribes the excise tax rate of ₱20.57 is deemed null and void;

(iii) Revenue Memorandum Circular No. 65-2020 dated June 22, 2020 and Revenue Memorandum Circular No. 113-2020 dated October 14, 2020 insofar as they provide an erroneous effectivity date of Republic Act No. 11467 are deemed null and void;

(iv) The excise tax rate of ₱27.07 per liter imposed during the period from January 23, 2020 to February 9, 2020 pursuant to Revenue Regulations No. 17-2012 in relation to Revenue Memorandum Circular No. 90-2012 is void; and,

(v) Respondent Commissioner of Internal Revenue is ordered to refund or issue a tax credit certificate in favor of petitioner San Miguel Brewery, Inc. in the amount of

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[79] Exhibit "P-18", CTA Docket Vol. III, pp. 1158-1159.
[80] Exhibit "P-18", CTA Docket Vol. III, pp. 1160-1162.
[81] Exhibit "P-18", CTA Docket Vol. III, pp. 1163-1164.

₱1,068,775,829.04 representing the excise taxes erroneously, excessively, illegally and/or wrongfully collected from petitioner for the period from January 23, 2020 to February 9, 2020.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
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