REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SAN MIGUEL BREWERY, INC.,
Respondent.

CTA EB NO. 2283
(CTA Case No. 9743)

x - x

SAN MIGUEL BREWERY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2284
(CTA Case No. 9743)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
FEB 10 2022 1:20 pm

x- -x

DECISION

RINGPIS-LIBAN, ***J.:***

The Case

Before the Court are the following:

1) Petition for Review[1] filed by the Commissioner of Internal Revenue ("CIR"), docketed as CTA EB No. 2283, praying that the Decision[2] dated October 14, 2019 ("Assailed Decision") of the Court of Tax Appeals First Division ("First Division") be partially reversed and set aside and a new one be rendered dismissing San Miguel Brewery, Inc.'s ("SMB") petition for lack of jurisdiction or in the alternative, denying the entire claim for refund; and

2) Petition for Review[3] filed by SMB, docketed as CTA EB No. 2284, praying for the following:

   a. That the Court *En Banc* take into consideration the Sworn Declarations it submitted with the court a *quo*, under Section 1(a) of Rule 37 of the Revised Rules of Civil Procedure governing new trial and under the second paragraph of Section 3 of Rule 129 of the Rules of Evidence governing judicial notice; and

   b. Thereafter, the portion of the Assailed Decision be set aside and *in lieu* thereof, the CIR be ordered to refund to SMB the amount of Php2,623,597.20, or to issue to SMB a tax credit certificate in the aforesaid amount, representing excess excise taxes paid on *San Mig Light* ("SML") in kegs for taxable year 2016, in addition to and apart from the amount of Php27,967,813.47 which was ordered refunded to it in the Assailed Decision.

The Parties

SMB, a subsidiary of San Miguel Corporation, is a domestic corporation, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[4]

On the other hand, the CIR is the head of the Bureau of Internal Revenue ("BIR") who has the power to, among others, grant refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as

---

1 Rollo (CTA EB No. 2283), pp. 7-22.
2 Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. del Rosario and Associate Justice Catherine T. Manahan concurring. Docket, pp. 401-432.
3 Rollo (CTA EB No. 2284), pp. 8-30.
4 Docket, Decision dated October 14, 2019, p. 401.

amended, or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR Building, BIR Road, Diliman, Quezon City.[5]

The Facts

On December 14, 2017, SMB filed with the BIR a letter claim for refund dated December 13, 2017, allegedly representing overpayment of excise taxes erroneously assessed on and collected on removals of its various products for the period from January 01, 2016 to December 31, 2016, in the amount of Php30,591,410.67.[6]

Shortly thereafter, or on December 29, 2017, SMB filed a Petition for Review before the First Division, docketed as CTA Case No. 9743.[7]

On February 23, 2018, the CIR filed his Answer.[8]

After the Pre-trial Conference, a Pre-Trial Order was issued on May 21, 2018 thereby terminating the said proceeding. Trial ensued during which petitioner presented as witnesses the Manager of its Accounting and Financial Services, Noemi L. Ronquillo and the Independent Certified Public Accountant ("ICPA"), Katherine O. Constantino, both of whom testified on direct examination by way of their respective judicial affidavits.[9]

In the Resolution dated August 07, 2018, the Court admitted all the documentary exhibits formally offered by SMB who then rested its case.[10]

During the hearing for the reception of evidence for the CIR, his counsel manifested that he would not present any.[11]

In the Resolution dated October 16, 2018, the case was submitted for decision.[12]

The Ruling of the First Division

The Court in Division promulgated a Decision on October 14, 2019 partially granting SMB's claim for refund in the amount of Php27,967,813, representing erroneously collected excise taxes relating to its removals of SML

---

5 *Id.*, p. 401-402.
6 *Id.*, p. 402.
7 *Id.*
8 *Id.*
9 *Id.*, p. 403.
10 *Id.*, p. 406.
11 *Id.*
12 *Id.*

(in bottles and cans) and other beer products for taxable year 2016. The dispositive portion of the Assailed Decision provides:

> "**WHEREFORE,** the Petition for Review dated December 27, 2017 filed by...San Miguel Brewery, Inc. is **PARTIALLY GRANTED**. Accordingly, [the CIR] is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of [SMB] in [*sic*] the reduced amount of **[Php]27,967,813.47**, representing erroneously and excessively collected excise taxes on its removals of SML (in bottles and in cans) and Other Beer Products for the period covering January 1, 2016 to December 31, 2016
>
> **SO ORDERED.**"[13]

The First Division however rejected a fragment of a similar claim in the amount of Php2,623,597.20 pertaining to SMB's removals of SML in keg for its failure to present the prescribed Sworn Statements showing the suggested net retail price ("NRP") of the said product as required under Revenue Memorandum Circular ("RMC") No. 3-2013 in relation to RMC No. 17-2012.

Not satisfied with the decision of the Court in Division, SMB filed a "Motion for Partial New Trial"[14] on October 29, 2019, while the CIR filed a "Motion for Reconsideration [Re: Decision dated October 14, 2019]"[15] on November 04, 2019.

A Resolution was issued by the Court in Division on June 10, 2020 denying both motions by the CIR and SMB, to wit:

> "**WHEREFORE**, [SMB's] Motion for Partial New Trial dated October 28, 2019 and [the CIR's] Motion for Reconsideration dated November 4, 2019 are **DENIED**, for lack of merit. The impugned Decision dated October 14, 2019 is **AFFIRMED**.
>
> **SO ORDERED**."[16]

The Proceedings in the Court of Tax Appeals En Banc

On July 08, 2020, the CIR filed a "Motion for Extension of Time to File Petition for Review"[17] requesting for a fifteen (15)-day extension from July 09, 2020 or until July 24, 2020 within which to file his Petition for Review.

---

13 *Id.*, pp. 431-432.
14 *Id.*, pp. 433-440.
15 *Id.*, pp. 455-471.
16 *Id.*, p. 514.
17 Rollo, CTA EB No. 2283, pp. 1-4.

This motion was granted by the Court in a Minute Resolution[18] dated July 10, 2020.

On July 24, 2020, the CIR filed his "Petition for Review"[19] with the Court *En Banc* through registered mail, docketed as CTA *EB* No. 2283 entitled *Commissioner of Internal Revenue v. San Miguel Brewery, Inc.*

On the other hand, SMB filed a "Motion for Extension of Time to File Petition for Review"[20] on July 08, 2020 requesting for an extension of fifteen (15) days from July 14, 2020 or until July 29, 2020 within which to file its Petition for Review.

This motion was granted by the Court in a Minute Resolution[21] dated July 10, 2020.

On July 20, 2020, SMB filed its "Petition for Review"[22] with the Court *En Banc* docketed as CTA *EB* No. 2284 entitled *San Miguel Brewery, Inc. v. Commissioner of Internal Revenue.*

On September 03, 2020, the Court issued a Minute Resolution[23] consolidating both Petitions for Review considering that these cases are appeals from the same Decision dated October 14, 2019 and Resolution dated June 10, 2020, rendered by the Court in Division in CTA Case No. 9743.

On October 07, 2020, the Court issued a Resolution[24] ordering the CIR to submit a compliant Amended Verification and Certification of Non-Forum Shopping within ten (10) days from notice, and directing him to file a comment on the "Petition for Review" in CTA EB No. 2284 also within the same period.

On October 22, 2020, the CIR filed a Compliance[25] submitting the attached "Amended Verification and Certification of Non-Forum Shopping".

On November 10, 2020, the Court issued a Resolution[26] (a) noting the CIR's "Compliance", (b) admitting the "Amended Verification and Certification of Non-Forum Shopping" as part of the records of the consolidated cases, and

---

18 *Id.*, p. 6.
19 *Id.*, pp. 7-24.
20 Rollo, pp. CTA EB No. 2284, pp. 1-6.
21 *Id.*, p. 7.
22 *Id.*, pp. 8-30.
23 Rollo, pp. CTA EB No. 2283, p. 72.
24 *Id.*, pp. 74-76.
25 *Id.*, pp. 77-82.
26 *Id.*, pp. 84-85.

(c) directing SMB to file a comment on the "Petition for Review" in CTA EB No. 2283 within ten (10) days from notice.

On December 10, 2020, San Miguel filed its "Comment on the Petition for Review in CTA EB No. 2283"[27], while the CIR failed to file his comment.[28]

In a Resolution[29] dated February 23, 2021, the consolidated cases were deemed submitted for decision.

Assignment of Errors

The CIR raised a single error in CTA EB No. 2283[30], that is, the First Division erred in ruling that it has jurisdiction over SMB's petition.

Whereas in CTA EB No. 2284[31], SMB enumerated four (4) errors. *First*, the First Division erred in denying SMB's claim for refund with respect to the excise taxes paid on SML in kegs for taxable year 2016 in the amount of Php2,623,597.30, stating that SMB did not submit the sworn statement provided for in Section 7 of Revenue Regulations ("RR") No. 17-2012 so as to establish the net retail price of SML in kegs.

Second, the First Division erred in not holding that the reasons advanced by SMB in his "Motion for Partial New Trial" fall under the grounds of excusable negligence and mistake for new trial. *Third*, the First Division likewise erred in not taking judicial notice, pursuant to the second paragraph of Section 3 of Rule 129 of the Rules on Evidence pertaining to judicial notice, of the sworn statements filed by SMB with the BIR with respect to SML in kegs.

Lastly, the First Division erred in not holding that in any case, there is evidence on record in the case below as to the net retail price of SML in kegs, independently of the sworn statement referred to by the Court.

The Arguments of the Parties

CTA EB No. 2283

The CIR claims that SMB's ultimate prayer in its petition filed with the court *a quo* is to seek the nullification of RMC No. 90-2012, the action for refund of taxes being merely consequential to the primary matter being sought. Thus,

---

27 *Id.*, pp. 90-105.
28 *Id.*, Records Verification Report dated January 21, 2021 p. 106.
29 *Id.*, pp. 108-109.
30 *Id.*, Petition for Review dated July 24, 2020, Assignment of Error, p. 9.
31 Rollo (CTA EB No. 2284), Petition for Review dated July 17, 2020, Grounds Relied Upon Review, pp. 19-20.

the jurisdiction over SMB's petition lies with the regular courts and not with the Court of Tax Appeals ("CTA").

The CIR alleges that the validity or constitutionality of BIR issuances is not within the purview of the clause "other matters arising under the National Internal Revenue Code" under Section 7(a)(1) of Republic Act ("R.A.") No. 1125, as amended by R.A. 9282, the law which provides for the jurisdiction of the CTA. The remedy of a party aggrieved by administrative issuances issued by the BIR should seek review with the Secretary of Finance, and in the event that the latter affirm the same, the matter should be elevated to the regular courts.

The CIR also avers that assuming the primary cause of action of SMB is to seek refund, and that the sought nullification of RMC No. 90-2012 is merely consequential, still the same cannot be allowed. The CIR maintains that a collateral attack on a presumably valid administrative issuance is not allowed.

In its "Comment on the Petition for Review in CTA EB No. 2283", SMB contravenes the CIR's claim that the CTA has no jurisdiction to annul RMC No. 90-2012 and RR No. 17-2012, particularly the excise tax rates specified and authorized therein. Citing *Banco De Oro, et. al. v. Republic of the Philippines, et. al.* ("*Banco De Oro v. Republic*"), SMB asserts that the prevailing jurisprudence on the matter provide that the CTA has exclusive jurisdiction to determine the validity or constitutionality of rules and regulations, and other administrative issuances of the CIR.

SMB further declares that the instant proceedings are not a collateral but a direct attack on the validity of (a) the excise tax rate of Php23.14, (b) RMC No. 90-2012, specifically the excise tax rate of Php20.57 specified therein, and (c) RR No. 17-2012, particularly Section 5 thereof which provides for a four percent (4%) increase on the previous rate. The express objective of SMB's petition is to challenge the validity of the aforesaid excise tax rates and BIR issuances, not mere secondary to the claim for refund.

CTA EB No. 2284

SMB submits that there was excusable negligence and mistake in the non-presentation of the Sworn Declarations to the ICPA and ultimately to the First Division as part of the evidence for SMB. Hence, the court *a quo* should have considered the Sworn Declarations attached to the Judicial Affidavit of Atty. Andrei Jose Y. Kasilag, in support of SMB's motion for new trial.

According to SMB, the only documents presented to the ICPA were those documents mentioned in the ICPA's Report. SMB provided the ICPA a Schedule of Net Retail Price of SML Products, which was based on the Sworn Statements submitted to the BIR. Due to the time pressure, in view of the voluminous documents which were being collated, the personnel of the Tax Services Group of SMB were of the honest belief that the Schedule of Net Retail Price of SML Products was already sufficient to establish the net retail price of SML in kegs.

SMB likewise insists that the First Division should have taken judicial notice of the Sworn Declarations filed with the BIR, pursuant to the second paragraph of Section 3 of Rule 129 of the Rules on Evidence.

Finally, SMB posits that even without the Sworn Declarations, the court *a quo* should have granted the portion of SMB's claim for refund with respect to SML in kegs, on the basis of the uncontradicted and therefore, conclusive testimony of its witness, Noemi L. Ronquillo.

The Ruling of the Court

Timeliness of Petitions

The Court in Division issued a Resolution denying the CIR's "Motion for Reconsideration (Re: Decision dated October 14, 2019)" and SMB's "Motion for Partial New Trial", on June 10, 2020. The CIR received said Resolution on June 24, 2020 whereas SMB received it on June 29, 2020.[32] Pursuant to Rule 4, Section 2(a)(1)[33] in relation to Rule 8, Section 3(b)[34] of the Revised Rules of the Court of Tax Appeals[35] ("RRCTA"), the CIR and SMB had fifteen (15) days from date of receipt of the resolution or until July 09, 2020 and July 14, 2020, respectively, within which to file their petitions for review.

---

32 Docket, Notice of Resolution dated June 10, 2020, p. 505-506.

33 **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

34 **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

35 A.M. No. 05-11-07-CTA, November 22, 2005.

On July 08, 2020, the CIR filed a "Motion for Extension of Time to File Petition for Review", praying for an extension of fifteen (15) days to file. The Court granted the same in a Minute Resolution dated July 10, 2020. On July 24, 2020, the CIR timely filed its "Petition for Review" *via* registered mail.

Meanwhile, SMB filed a "Motion for Extension of Time to File Petition for Review" on July 08, 2020, praying for an extension of fifteen (15) days to file. The Court granted the same in a Minute Resolution dated July 10, 2020. On July 20, 2020, SMB timely filed its "Petition for Review".

Hence, the Court *En Banc* validly acquired jurisdiction over the two (2) petitions. We now proceed to the merits of the case.

At the outset, it must be emphasized that the issues raised by the CIR and SMB in their petitions are mere reiterations of the same issues which had already been duly considered, passed upon and resolved by the First Division in the Assailed Decision and Resolution dated June 10, 2020. Nevertheless, We shall discuss the issues anew if only to reinforce the earlier disquisition of the Court in Division.

<u>CTA EB No. 2283</u>

The First Division properly exercised its jurisdiction over the instant case

At the outset, it must be pointed out that the 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 R.A. No. 1125[36], as amended by R.A. 9282[37], 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, **<u>refunds of internal revenue taxes</u>, fees or other charges**, penalties

36 An Act Creating The Court Of Tax Appeals, June 16, 1954.

37 An Act Expanding The Jurisdiction Of The Court Of Tax Appeals (CTA), Elevating Its Rank To The Level Of A Collegiate Court With Special Jurisdiction And Enlarging Its Membership, Amending For The Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known As The Law Creating The Court Of Tax Appeals, And For Other Purposes, March 30, 2004.

in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue in cases** involving disputed assessments, **<u>refunds of internal revenue taxes</u>, fees or other charges**, penalties in relations 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;"[38]

Guided by the provision above, it is beyond question that SMB's claim for refund falls squarely within the CTA's jurisdiction.

For that matter, the First Division ascertained that SMB's administrative and judicial claims for refund or issuance of a tax credit certificate were timely filed in accordance with Sections 204(C)[39] and 229[40] of the NIRC of 1997, as amended. Pertinent portion of the Assailed Decision are reproduced hereunder:

"Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the periods within which to file both the administrative

---

38 *Emphasis and underscoring supplied.*

39 **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.

40 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.*- no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, 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.

and judicial claims for refund of erroneously or illegally collected tax, to wit:

xxx xxx xxx

...**Perforce, both claims for refund with the BIR and its subsequent appeal to the CTA must be filed within the two (2)-year period from the date of payment of tax**.

However, to determine the reckoning for the two (2)- year prescriptive period, the law and rules regarding the time of payment of excise taxes must first be examined.

In the case of excise taxes, Section 130(A)(2) of the NIRC of 1997, as amended, requires payment of corresponding excise tax before the goods subject thereto can be removed from the place of production, thus:

xxx xxx xxx

It appears that for the year 2016, [SMB] paid advance excise tax deposits for its beer products from all of its six (6) plant locations, namely, 1) Bacolod; 2) Davao; 3) Mandaue, Cebu; 4) Sta. Rosa, Laguna; 5) San Fernando, Pampanga; and 6) Polo, Valenzuela, in the aggregate amount of [Php]33,916,801,000. The payments were evidenced by the Excise Tax Returns (BIR Form No. 2200- A) duly filed and paid by petitioner through the BIR's Electronic Filing and Payment System (eFPS), from January 4, 201618 to December 29, 2016.

Thus, counting two (2) years from the earliest date the Excise Tax Returns (BIR Form No. 2200-A) were filed and paid for, which was on January 4, 2016, [SMB] had until January 4, 2018 to file both its administrative and judicial claims for refund/TCC.

Evidently, [SMB's] administrative and judicial claims for refund/TCC were seasonably filed on December 14, 2017 and December 29, 2017, respectively. In fine, the Court has jurisdiction over the present Petition."[41]

Additionally, jurisprudence already established that the CTA has exclusive jurisdiction to determine the validity or constitutionality of rules and regulations, and other administrative issuances of the CIR, whether as part of the assessment

---

41 *Emphasis supplied.*

or refund case being heard or a direct challenge thereof. The Supreme Court's pronouncement in the *En Banc* case of *Banco De Oro v. Republic*[42] is clear:

> "**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

[42] G.R. No. 198756 (Resolution), August 16, 2016.

> 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."[43]

The ruling in *Banco De Oro v. Republic* was echoed in *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et. al. v. Commissioner, Bureau of Internal Revenue et. al.*[44] ("*COURAGE v. Commissioner*"), to wit:

> "Moreover, echoing its pronouncements in *City of Manila v. Grecia-Cuerdo*, that the CTA has the power of *certiorari* within its appellate jurisdiction, the Court declared that '**it is now within the power of the CTA, through its power of certiorari, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction**. Hence, it can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based.'
>
> Subsequently, **<u>in *Banco de Oro v. Republic*, the Court, sitting *En Banc*, further held that the CTA has exclusive appellate jurisdiction to review, on certiorari, the constitutionality or validity of revenue issuances</u>** ..."[45]

Likewise, in *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation*[46], the Supreme Court had confirmed that the doctrine in *Banco De Oro v. Republic* **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.

More recently, the High Tribunal in *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division), et. al.*[47], unequivocally ruled that it is the CTA which has jurisdiction over questions on the validity or constitutionality of tax laws and issuances, and not the regular courts, *viz.*:

---

43 *Emphasis and underscoring supplied.*
44 G.R. Nos. 213446 & 213658, July 03, 2018.
45 *Emphasis and underscoring supplied.*
46 G.R. No. 207843 (Resolution), February 14, 2018.
47 G.R. Nos. 210501, 211294 and 212490, March 15, 2021.

"However, on August 16, 2016, **the Court *En Banc* promulgated *Banco De Oro v. Republic of the Philippines (Banco De Oro)*, wherein it was definitively settled that the CTA has jurisdiction over challenges to the validity of tax issuances. Notably, this overturned the previous doctrine in *British American Tobacco v. Camacho (British American Tobacco)*, which held that such jurisdiction lies in the regular courts, and not the CTA**.

To recount, in *Banco De Oro*, the Court held that the CTA's power to issue writs of certiorari in order to strike down tax issuances is inherent in the exercise of its appellate jurisdiction as derived from the CTA Law, which - being the special and later law - should take precedence over the general provisions of Batas Pambansa Bilang 129…"[48]

Justice Amy C. Lazaro-Javier's *Concurring and Dissenting Opinion* in the said Decision provides a more in-depth discussion and is particularly instructive, thus:

"**c. Regular courts no longer have jurisdiction over questions on the validity or constitutionality of tax laws and issuances**

xxx xxx xxx

Public petitioners rely on ***British American Tobacco v. Camacho*** where the Court held that the CTA's jurisdiction to resolve tax disputes in general does not include cases challenging the constitutionality of a law or rule. Although Section 7(a)(l) states that the CTA has jurisdiction over 'other matter[s] arising from under the National Internal Revenue Code,' these 'other matters' contemplated by law only cover those directly related to disputed assessments or claims for refund.

The argument must fail.

The doctrine in *British American Tobacco* had already been overturned in the *En Banc* case of *Banco de Oro*. In the latter case, the Court declared in no uncertain terms that the CTA may 'take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue

48 *Emphasis and underscoring supplied.*

<u>memorandum circulars, rulings).'</u> For within the judicial system, RA 1125, as amended by RA 9282 intended the CTA to have exclusive jurisdiction to resolve all tax problems. The Court's position in ***Banco de Oro*** was cemented in the subsequent case of ***COURAGE*** which summarized relevant juris prudence, thus:

xxx xxx xxx

This paradigm shift from ***British American Tobbaco*** [*sic*] was brought about by a growing trend which the Court noted in ***Philamlife*** - both the CTA and the Court of Appeals were disclaiming jurisdiction over tax cases. On the one hand, mere prayer for the declaration of a tax measure's unconstitutionality or invalidity before the CT A would result in a petition's outright dismissal though it may include a n appeal from a disputed assessment; on the other hand, the Court of Appeals would have also dismissed the same petition had it found that the primary issue raised was not the validity of the tax measure *per se* but the assessment applying such tax measure. To prevent this double disclaiming of jurisdiction, the Court departed from ***British American Tobacco*** and ruled that the CTA has jurisdiction to determine the validity of the CIR's interpretative issuances upon review by the Secretary of Finance. ***Philamlife*** decreed:

xxx xxx xxx

Verily, whether an assailed tax ruling was issued in the performance of quasi-legislative or quasi-judicial functions is no longer material. The CTA would have appellate jurisdiction over it just the same. **<u>Its exclusive appellate jurisdiction over 'other matters' now covers the constitutionality of tax measures</u>**. The only requirement is prior review by the Secretary of Finance. But since review by the Secretary of Finance may be excused here as earlier discussed, PSPC correctly assailed Tax Ruling M-059-2012 before the CTA rather than the regular courts."[49]

To summarize, the First Division correctly assumed jurisdiction over the instant case for refund, by virtue of Sections 7(a) of R.A. No. 1125[50], as amended by R.A. 9282, and the court *a quo* found that SMB's administrative and judicial

---

49 *Emphasis and underscoring supplied.*
50 An Act Creating The Court Of Tax Appeals, June 16, 1954.

claims were timely filed based on Sections 204(C)[51] and 229[52] of the NIRC of 1997, as amended. In addition, the Court in Division has jurisdiction to determine the validity of BIR issuances in line with the Supreme Court decisions discussed above.

All in all, We find no sufficient basis for the CIR's Petition for Review.

CTA EB No. 2284

The First Division did not err in denying SMB's claim for refund in the amount of Php2,623,597.20, representing excess excise taxes paid on SML in kegs for taxable year 2016

We do not subscribe to SMB's argument that the Sworn Statements it submitted in support of its "Motion for Partial New Trial", should have been admitted by the court *a quo*.

---

51 **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.

52 **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* - no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, 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.

A motion for new trial under Section 1[53], Rule 37 of the Revised Rules of Court and Section 5[54], Rule 15 of the RRCTA may only be granted upon specific well-defined grounds. With this in mind, we agree with the First Division that excusable negligence, which SMB contends to be present in the non-presentation of the sworn declarations to the ICPA, does not find application in the case at bar.

As held by the First Division in the Resolution dated June 10, 2020, "to invoke negligence as a ground for a new trial, the provision specifically requires that it must be one which ordinary diligence and prudence could not have guarded against...and abandonment [of procedural rules] should only be done in the most exceptional circumstances".

The failure by SMB personnel to submit to the ICPA the sworn declarations due to time and workload constraints is a mundane occurrence, and does not constitute excusable negligence as to warrant the opening of the trial and the reception of evidence. While it may be allowed that the Tax Services Group of SMB is swamped with work, some system can always be devised to give priority to refund cases such as this. Moreover, other SMB personnel may be reassigned or may provide assistance to the department handling the assignment. The reason SMB offered only proved that it was actually negligent in substantiating its refund claim, and the degree of neglect the SMB personnel displayed was neither gross nor of simple inadvertence that the Court in its discretion may overlook.

Furthermore, SMB cannot expect the ICPA to require the submission of the sworn statements for her examination for this is not part of her duties. We agree with the First Division in disposing the issue in the following fashion:

> "For one, [SMB] as the claimant had, under the rules and jurisprudence, the burden of proving the veracity of its claim for refund by presenting all the evidence in its possession to justify the

---

53 **Section 1.** *Grounds of and period for filing motion for new trial or reconsideration.* - Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

54 **SEC. 5.** *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

> grant of the relief sought. Obviously, [SMB] miserably failed on this regard for it was not able to present and verify the required documents when the ball was in its court.
>
> For another, the ICPA was not legally obligated to demand upon [SMB] submission of particular documents for her examination and audit for it was [SMB] who determined what documents to be transmitted to the ICPA in support of its claimed entitlement. The ICPA, as an officer of the Court, needed only to examine and verify the transmitted documents and thereafter submit the result thereof to the Court to aid in its determination of the case."

On a final note, SMB's argument that the uncontradicted testimony of its witness alone sufficiently proves its entitlement to the excess excise taxes paid on SML in kegs deserves scant consideration. This Court cannot simply accept hook, line and sinker SMB's allegation without any adequate evidence to prove the same.

As such, SMB's claim for refund in the amount of Php2,623,597.20 is unmeritorious.

WHEREFORE, premises considered, the Court **DENIES** the instant Petitions for Review for lack of merit. The Decision dated October 14, 2019 and Resolution dated June 10, 2020 of the First Division in CTA Case No. 9743 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
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 consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice