REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN MIGUEL BREWERY, INC.,
Petitioner,

CTA EB No. 2320
(CTA Case No. 9223)

- **versus** -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2327
(CTA Case No. 9223)

- **versus** -

Present:

Del Rosario, *PJ*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

SAN MIGUEL BREWERY, INC.,
Respondent.

Promulgated:
FEB 2 1 2022 3:27pm

x--x

DECISION

CASTAÑEDA, JR., *J.*:

These Petitions for Review in CTA EB Nos. 2320 and 2327, filed by petitioner San Miguel Brewery, Inc. and Commissioner of Internal Revenue, respectively, seek to partially set aside the Decision[1] dated April 11, 2019 and the Resolution[2] dated June 23, 2020 in CTA EB No. 2320, and to set aside the assailed Decision and Resolution in CTA EB No. 2327, by the CTA Special 3rd Division.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review filed by petitioner San Miguel Brewery, Inc. on December 22, 2015, is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner San Miguel Brewery, Inc. the amount of ₱55,797,176.63, representing erroneously, excessively, and/or illegally collected excise taxes due on its removals of San Mig Light in bottles and in cans for the period covering January 2, 2014 to December 29, 2014.
>
> **SO ORDERED.**"

On the other hand, the dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 11 April 2019) filed on May 6, 2019, and petitioner's Motion for Partial New Trial filed on May 10, 2019, are **DENIED.** The Decision dated April 11, 2019, is **AFFIRMED.**
>
> **SO ORDERED.**"

THE FACTS

Culled from the records are the following facts as found by the Court in Division:

> "Petitioner San Miguel Brewery, Inc. is a domestic corporation with principal office located at 40 San Miguel Avenue, Mandaluyong City, Metro Manila. It is engaged in the business of manufacture, sale and distribution of fermented and malt-based beverages, and one of its beer products is 'San Mig Light' (SML). ge

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[1] Decision dated April 11, 2019, penned by Retired Associate Justice Esperanza R. Fabon-Victorino, Court *En Banc* Docket, pp. 39-77.

[2] Resolution dated June 23, 2020, Court *En Banc* Docket, pp. 78-87.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) legally empowered to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 21, 2012, Republic Act (R.A.) No. 10351 took effect upon its publication in a newspaper of general circulation. The law amended, among others, Section 143 of the NIRC of 1997, which imposes excise tax on fermented liquors.

On December 27, 2012, the BIR issued Revenue Memorandum Circular (RMC) No. 90-2012, which provides for the revised tax rates, effective January 1, 2013, of alcohol and tobacco products under RA No. 10351. Based on the said RMC, the applicable tax rate for SML, in bottle or in can, is ₱20.57, instead of ₱20.00 as provided in Section 143 of the NIRC of 1997, as amended.

Thereafter, or during the period from January 1, 2013 to December 31, 2013, the BIR allegedly required, and petitioner was constrained to pay excise taxes on its removal of SML at the tax rate of ₱20.57 per liter for SML in bottle and in can and for SML in kegs, when it should have only paid ₱20.00 and ₱15.00 per liter, respectively, under the express provisions of the second and third paragraphs of Section 143 of NIRC of 1997, as amended. Thus, it erroneously or excessively paid the amount of ₱0.57 per liter for SML in bottle and in can and ₱5.57 per liter for SML in kegs, or in the sum of ₱83,019,296.21.

On December 9, 2014, petitioner filed with the BIR a Claim for Refund in the amount of ₱83,019,296.21, representing its erroneously and excessively paid excise taxes on SML for the period from January 1, 2013 to December 31, 2013.

Commencing January 1, 2014, the excise tax rate on SML in bottle, in can and in kegs, was increased to ₱21.39, or a four-percent (4%) add-on to the previous rate of ₱20.57, based on the provision in the eleventh paragraph of Section 143 of the NIRC of 1997, as amended.

During the period from January 1, 2014 to December 31, 2014, petitioner was again required by the BIR and was again constrained to pay excise taxes on its removal of SML at the tax rate of ₱21.39 per liter for SML in bottle and in can and for SML in kegs, when it should have only paid ₱21.00 and ₱17.00 per liter, respectively, under the express provisions of the fourth and fifth paragraphs of Section 143 of NIRC of 1997, as amended. Thus, it erroneously or excessively paid the amount of ₱0.39 per liter for SML in bottle and in can and ₱4.39 per liter for SML in kegs, or the total amount of ₱60,470,199.94.

On December 15, 2015, petitioner filed with the BIR a claim for refund in the amount of ₱60,470,199.94, representing excise taxes collected by the BIR on SML for the period covering January 1, 2014 to December 31, 2014.

Alleging inaction on its administrative claim for refund/tax credit, petitioner filed the instant Petition for Review before the Court on December 22, 2015.

In his Answer filed on January 29, 2016, respondent assails the jurisdiction of the Court over the case. According to him, petitioner primarily seeks to nullify a provision of RMC No. 90-2012 and the alleged action for refund of erroneously collected excise taxes is merely consequential thereto. Absent the nullification of RMC No. 90-2012, petitioner's cause of action has no leg to stand on. However, the authority to declare void an administrative issuance rest upon courts of general jurisdiction and not on courts of special jurisdiction such as the Court of Tax Appeals (CTA). Further, collateral attack on presumably valid administrative issuance is not allowed.

Likewise, the instant Petition was prematurely elevated to the Court for failure of petitioner to exhaust available administrative remedies. Further, the nullification of the ₱20.57 excise tax rate specified in RMC No. 90-2012 does not fall under the special jurisdiction granted by statute to the CTA. Decisions rendered by administrative bodies like the BIR in the exercise of their quasi-legislative power is appealable to the Secretary of Finance whose decision may be elevated to the Office of the President before it could reach the Court.

Further, even assuming that the Court has jurisdiction over the present case, petitioner is not entitled to a tax refund as there were no erroneously or illegally collected excise taxes. For respondent, there was no reclassification of SML because it has always been classified as a variant of San Miguel Pale Pilsen or more accurately, as a low-calorie derivative thereof. Further, petitioner is already estopped from questioning the classification of SML as a variant of San Miguel Pale Pilsen, on account of its prior representations. Further, the fact that the second part of the definition of the term 'variant brand' under the NIRC of 1997 was deleted, does not alter the fact that SML is a variant of San Miguel Beer (SMB). *gr*

In conclusion, respondent states that claims for refund are construed strictly against the taxpayer and in favor of the government.

After the pre-trial conference on April 19, 2016, the parties filed their Joint Stipulation of Facts, Documents, Issues and Other Matters on May 13, 2016, upon which the Pre-Trial Order dated June 7, 2016 was based.

During the trial, petitioner presented Noemi L. Ronquillo and Jerome Antonio B. Constantino, as its witnesses.

Petitioner's Accounting and Financial Services Manager, *Noemi L. Ronquillo* declared that she is responsible for the preparation of petitioner's financial statements, payment processing, inclusive of the computation and payment of all taxes, petitioner's insurance requirements, cash planning and financial systems. She likewise assists petitioner's Chief Finance Officer (CFO), in the submission and filing of documents with the BIR, including claims for refund of taxes illegally, excessively and/or erroneously paid by petitioner to the BIR.

Petitioner is a domestic corporation registered with the SEC, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila. It is engaged in the business of manufacture, sale and distribution of fermented and malt-based beverages, including SML, as well as water, water-based and non-alcoholic beverages.

She continued to state that after the enactment of R.A. No. 10351, petitioner, starting January 1, 2013 to December 31, 2013, paid excise tax on SML, in bottle, in can and in kegs, at the rate of ₱20.57 per liter. However, from January 1, 2014 to December 31, 2014, petitioner paid excise tax on SML, in bottle, in can and in kegs, at the increased rate of ₱21.39 per liter. The said 2014 excise tax payments are the subject of the instant case.

The witness also testified that petitioner paid the excise tax of ₱20.57 per liter from January 1, 2013 to December 31, 2013 in view of RMC No. 90-2012, issued by respondent CIR on December 27, 2012. RMC No. 90-2012 provides for the revised tax rates, effective January 1, 2013, of locally manufactured fermented liquors, among other alcohol products, implementing R.A. No. 10351, which amended, the provision of Section 143 of the NIRC of 1997, on fermented liquors. It further provides that effective January 1, 2014 until December 31, 2014, the tax rate will be increased to ₱21.39 per liter, or a 4% add-on to the previous rate of ₱20.57.

On the other hand, Section 143 of the NIRC of 1997, as amended by R.A. No. 10351, states that the excise tax on fermented liquors effective January 1, 2013, shall be ₱15.00 per liter if the net retail price per liter is ₱50.60 or less; and ₱20.00 per liter if the net retail price per liter is more than ₱50.60. Under Section 143 of the NIRC of 1997, as amended, the applicable excise tax rate for SML in bottle and in can is ₱20.00 per liter, as it was within the Tier 2 bracket, while for SML in kegs, the applicable tax rate is ₱15.00 per liter since it was within the Tier 1 bracket.

However, despite the lower tax rates provided under Section 143 of the NIRC of 1997, for the period commencing January 1, 2013 to December 31, 2013, petitioner was constrained to pay excise tax rate of ₱20.57 per liter for SML in bottle and in can and for SML in kegs, as required by the BIR, in order for it to make removal of its SML products. Such payments of excise taxes were under protest as prior to the amendment of Section 143 of the NIRC of 1997, SML, being a new, medium-priced brand, was subject to excise tax at the rate of ₱15.49 per liter. However, with the amendment of Section 143, the BIR required petitioner to pay the tax rate of ₱20.57 per liter, which is the tax rate per liter for high-priced brands, claiming that SML was a variant of 'Pale Pilsen.' Petitioner, including its parent company, San Miguel Corporation, had questioned the said imposition by the BIR before the Court and the Supreme Court which are still pending, on the principal ground that the BIR had unlawfully reclassified SML as a variant under the old provisions of Section 143 of the NIRC of 1997.

The witness further declared that on December 9, 2014, petitioner filed with the BIR a Letter/Claim for Refund in the amount of ₱83,019,296.21, for its erroneously, excessively, illegally and/or wrongfully assessed and collected excise taxes pertaining to SML for the period January 1, 2013 to December 31, 2013.

Section 143 of the NIRC of 1997, as amended by R.A. No. 10351, states that effective January 1, 2014, the excise tax on fermented liquors shall be ₱17.00 per liter, if the net retail price per liter is ₱50.60 or less but if the net retail price per liter is more than ₱50.60, the tax shall be ₱21.00 per liter. Under the cited provision, the applicable excise tax rate for SML in bottle and in can is ₱21.00 per liter, as it is within the Tier 2 bracket, while for SML in kegs, the applicable tax rate is ₱17.00 per liter since it is within the Tier 1 bracket.

Just like in 2013, petitioner was constrained to pay, as required by the BIR, excise tax at the rate of ₱21.39 per liter for SML in bottle and in can and for SML in kegs, when it should have paid only ₱21.00

per liter and ₱17.00 per liter, respectively, as provided under Section 143 of the NIRC of 1997, as amended. Thus, during the period January 1, 2014 to December 31, 2014, there was an excess assessment and collection in the amount of ₱0.39 per liter for SML in bottle and in can and ₱4.39 per liter for SML in kegs, aggregately valued at ₱60,470,199.94.

On December 15, 2015, petitioner filed a second Letter/Claim for Refund in the amount of ₱60,470,199.94, for its erroneously, excessively, illegally and/or wrongfully assessed and collected excise taxes for SML for the period from January 1, 2014 to December 31, 2014.

The witness claimed that she was personally involved in the preparation of the supporting Schedules of 'Summary of San Mig Light Removals and Tax Payment,' 'San Mig Light Removals and Tax Payment, San Mig Bottles and Cans' and 'San Mig Light Removals and Tax Payment, San Mig Light in Kegs' for the period January to December 2014, attached in the 2015 Letter/Claim for Refund. In the preparation of the said Schedules, she utilized petitioner's Excise Tax Returns, BIR Filing Reference Statements, BIR Electronic Filing and Payment System Confirmation Receipts, BIR Tax Payment Deposit Slips, Bank of the Philippine Islands ExpressLink and Tax Payment Confirmation Receipts and Union Bank of the Philippines Payment Status Forms, among others.

Petitioner also presented the Court-commissioned Independent Certified Public Accountant (ICPA), *Jerome Antonio B. Constantino*, who testified that he audited and evaluated petitioner's documents and record in support of its claim for refund dated December 10, 2015, pertaining to its excess excise taxes paid to the BIR on SML for the period January 1, 2014 to December 31, 2014.

Per his audit and as stated in his ICPA Report filed with the Court on October 7, 2016, petitioner is entitled to a tax refund of excise taxes it paid to the BIR on SML for the period January 1, 2014 to December 31, 2014 in the total amount of P60,470,199.94.

Petitioner rested after it formally offered its evidence per Resolutions dated October 20, 2017 and January 31, 2018.

On the other hand, respondent, through his counsel, manifested that he had no evidence to present.

On April 11, 2018, the case was submitted for decision after the parties filed their respective memoranda." *gr*

On April 11, 2019, the Court in Division rendered the assailed Decision. Thereafter, on June 23, 2020, the Court rendered the assailed Resolution.

On September 15, 2020, petitioner San Miguel Brewery, Inc. filed the Petition for Review in CTA EB No. 2320.[3] On the other hand, on September 4, 2020, petitioner CIR filed the Petition for Review in CTA EB No. 2327. On September 18, 2020, the Court *En Banc* issued a Resolution[4] to consolidate the instant cases. On October 29, 2020,[5] petitioners were ordered to file their respective comments to the Petitions for Review. On November 20, 2020, respondent CIR in CTA EB No. 2320 filed his Comment.[6] On the other hand, on December 2, 2020, respondent San Miguel Brewery, Inc. in CTA EB No. 2327 filed its Comment.[7]

On January 26, 2021,[8] the Court *En Banc* issued a Resolution submitting the case for decision, among others. Hence, this Decision.

THE ISSUES

Petitioner in CTA EB No. 2320 presented the following issues for the consideration of this Court:

> "8.01. Whether the Honorable Third Division erred in denying Petitioner's Claim for Refund with respect to the excise taxes paid on 'San Mig Light' in kegs.
>
> 8.02. Whether the Honorable Third Division erred in not holding that the reasons advanced by the Petitioner in his Motion for Partial New Trial fall under the grounds of excusable neglect and mistake for new trial.
>
> 8.03. Whether the Honorable Third Division also 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 the Petitioner with the BIR.
>
> 8.04. Whether the Honorable Third Division likewise 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,

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[3] Court *En Banc* Docket, pp. 9-36.
[4] Court *En Banc* Docket, p. 116.
[5] Resolution, Court *En Banc* Docket, pp. 118-119.
[6] Court *En Banc* Docket, pp. 126-131.
[7] Court *En Banc* Docket, pp. 136-149.
[8] Court *En Banc* Docket, pp. 151-152.

independently of the Sworn Statement referred to by the Court."[9]

On the other hand, petitioner in CTA EB No. 2327 raised the issue of jurisdiction in determining the validity of the rules, regulations and administrative issuances of the BIR.[10]

THE RULING

The Court *En Banc* denies both Petitions in CTA EB No. 2320 and CTA EB No. 2327.

The CTA has jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund

The Court *En Banc* shall first resolve the issue raised by petitioner CIR in CTA EB No. 2327.

The Court *En Banc* notes that petitioner CIR merely rehashed his arguments which were clearly addressed by the Court in Division. In ruling that the CTA has jurisdiction to determine the validity of Revenue Memorandum Circular (RMC) No. 90-2012, the Court in Division held that:

> "In the case of *San Miguel Brewery, Inc. v. Commissioner of Internal Revenue* involving the same parties and issues but with different taxable periods, the CTA *En Banc* held that the Court has jurisdiction to determine the validity and/or constitutionality of rules and regulations, and other administrative issuances of the BIR, as pronounced by the Supreme Court *En Banc* in the case of *Banco De Oro, et al. v. Republic, viz.*:
>
> > We revert to the earlier rulings in *Rodriguez, Leal*, and *Asia International Auctioneers, Inc.* **The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.**

[9] Statement of the Issues, Petition for Review, Court *En Banc* Docket in CTA EB No. 2320, p. 25.
[10] Assignment of Error, Petition for Review, Court *En Banc* Docket in CTA EB No. 2327, p. 3.

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Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

Section 7. Jurisdiction. — The CTA shall exercise:

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

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

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

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

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

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment

> and taxation of real property originally decided by the provincial or city board of assessment appeals;
>
> 6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;
>
> 7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

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

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

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

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

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

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

To emphasize the CTA's competence to take cognizance of petitioner's judicial claim for refund and at the same time rule on the issue of validity and/or constitutionality of RMC No. 90-2012, the Court *En Banc* states:

> Bearing in mind the foregoing jurisprudential precepts, the Court *En Banc* holds that the CTA has jurisdiction to take cognizance of petitioner's judicial claim for refund and, at the same time, resolve the issue of validity and/or constitutionality of RMC No. 90-2012.
>
> To begin with, the validity and constitutionality of RMC No. 90-2012 were directly pleaded and duly raised as issues in petitioner's judicial claim for refund. As borne by the records, the Petition for Review before the Court in Division had raised the following grounds: (1) the excise tax rate of ₱20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for 'San Might (sic) Light' in bottle and in can is directly contradictory to and inconsistent with, and violative of, the express provisions of Section 143 of the National Internal Revenue Code, as amended by Republic Act No. 10351, and is therefore not valid; and (2) the aforesaid

> tax rate of ₱20.57 per liter specified in Revenue Memorandum Circular No. 90-2012 for 'San Mig Light' in bottle and in can is not valid on the additional ground that RMC No. 90-2012 was issued without prior notice and hearing to the petitioner in utter disregard of the due process provision of the Constitution and the process required by mandatory provisions of the Administrative Code of 1987. In addition, petitioner also expressly prayed, among others, that a judgment be rendered 'declaring the excise tax rate of ₱20.57 per liter for 'San Mig Light' in bottle, can and kegs, specified in RMC No. 90-2012, as not valid.'
>
> Finally, the validity and/or constitutionality of RMC No. 90-2012 is also the *lis mota* of petitioner's judicial claim for refund. Petitioner filed the judicial claim for refund to compel respondent to refund the amount representing the difference between the amount of excise tax computed based on the rates provided under RMC No. 90-2012 and those under Section 143 of the 1997 NIRC, as amended by RA No. 10531. The Petition for Review was filed based on the theory that the aforesaid revenue issuance is invalid and unconstitutional. Petitioner's thesis is that an administrative issuance that is contrary to the provisions of law and/or the Constitution has no legal effect. Accordingly, it has no legal obligation to pay taxes in excess of what is legally required. Correspondingly, the amount of taxes already paid pursuant to an invalid and/or unconstitutional revenue issuance should be refunded as mandated by Section 229 of the 1997 NIRC. Verily, the issue of validity and/or constitutionality of RMC No. 90-2012 is inextricably linked to the issue of whether petitioner is entitled to the refund of the amount claimed. It is the declaration of invalidity and/or unconstitutionality of RMC No. 90-2012 which essentially triggers the refund.

In the case at bar, the validity and/or constitutionality of the assailed RMC No. 90-2012 is the *lis mota* of the case, as it is essentially related to the issue of whether petitioner is entitled to the refund of the amount claimed. Applying the ruling in the afore-quoted cases, it is clear that the Court has the authority to rule not only on the propriety of the instant claim for refund but also on the validity and/or constitutionality of RMC No. 90-2012.

> There is no question that RMC No. 90-2012, upon which the BIR anchored its imposition of a higher rate of excise tax on petitioner's SML was issued to implement the amendments made by R.A. 10351 to Section 143 of the NIRC of 1997. In other words, it was issued in valid exercise of respondent's right to interpret tax laws, a power explicitly vested in him under Section 4 of the NIRC, as amended."[11]

The Court *En Banc* agrees with the Court in Division. Indeed, the validity of RMC No. 90-2012 is the *lis mota* of the case because it is essential for the determination whether San Miguel Brewery, Inc. is entitled to its refund claim. Hence, The Court *En Banc* finds petitioner CIR's argument unmeritorious.

The Court in Division is correct in partially denying the claim for refund

The Court in Division is correct in denying petitioner San Miguel Brewery, Inc.'s Motion for Partial New Trial

Even assuming that there is evidence on record as to the net retail price of SML in kegs, submission of sworn statement is required under Revenue Regulation (RR) No. 17-2012

In partially denying the present claim for refund, the CTA in Division found that San Miguel Brewery, Inc. failed to submit a sworn statement in the format required under Section 7 of RR No. 17-2012, *i.e.*, must be duly notarized manufacturer's or importer's sworn statement.

On the other hand, San Miguel Brewery, Inc. asserts that it submitted the Sworn Declarations for taxable years 2013 and 2014, respectively, to the BIR. However, they failed to present it to the Court-commissioned Independent Certified Public Accountant (ICPA) and to the CTA Division due to excusable neglect and mistake, *i.e.*, due to voluminous documents.

The Court *En Banc* agrees with the Court in Division. *gr*

[11] See Note 1, pp. 53-59.

A perusal of the records shows that petitioner failed to present during the hearing the requisite sworn statements under RR No. 17-2012. This fact was confirmed by San Miguel Brewery, Inc. in the instant Petition, which was the subject of its motion for partial new trial before the Court in Division.

Consequently, the Court in Division denied San Miguel Brewery, Inc.'s motion for partial new trial on the ground that it failed to exercise ordinary diligence and prudence in preparing evidence in support of its refund claim. Thus:

> "To justify reopening of trial, the 'mistake' allowable as ground under Rule 37 of the Rules of Court, is one which ordinary prudence could not have guarded against. On the other hand, negligence to be 'excusable' must also be one which ordinary diligence and prudence could not have guarded against and by reason of which the rights of an aggrieved party have probably been impaired. The test of excusable negligence is whether a party has acted with ordinary prudence while transacting important business. In the instant case, the reasons advanced by petitioner for its failure to submit the attached 6 Sworn Declarations for TY 2014, simply do not fall under the definition of mistake or excusable negligence as stated under the Rules. Simply put, petitioner's grounds do not justify the prayed for reopening of the trial to present the required documents which in the first place were in already in its possession during the trial of the case. Petitioner utterly failed to exercise ordinary diligence and prudence in preparing evidence in support of its claim for refund."[12]

In *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*,[13] petitioner failed to present documents required under RR No. 3-88. Petitioner therein then moved for the reopening of its cases or the holding of a new trial. In ruling against petitioner, the Supreme Court reasoned that:

> Moreover, negligence, to be 'excusable,' must be one which ordinary diligence and prudence could not have guarded against. Revenue Regulations No. 3-88, which was issued on 15 February 1988, had been in effect more than two years prior to the filing by petitioner corporation of its earliest application for refund/credit of input VAT involved herein on 21 August 1990. CTA Circular No. 1-95 was issued only on 25 January 1995, after petitioner corporation had filed its Petitions before the

[12] See Note 2, p. 86.
[13] G.R. Nos. 141104 & 148763, June 8, 2007.

> CTA, but still during the pendency of the cases of petitioner corporation before the tax court. The counsel of petitioner corporation does not allege ignorance of the foregoing administrative regulation and tax court circular, only that he no longer deemed it necessary to present the documents required therein because of the presentation of alleged unrebutted evidence of the zero-rated sales of petitioner corporation. It was a judgment call made by the counsel as to which evidence to present in support of his client's cause, later proved to be unwise, but not necessarily negligent."

While the *Atlas* case is not on all fours with the instant case, it must be stressed that RR No. 17-2012 took effect in December 2012, or three (3) years from San Miguel Brewery, Inc.'s claim for refund dated December 10, 2015. Thus, it was incumbent upon San Miguel Brewery, Inc. to be aware of all the requisites necessary for its claim for refund, including the requirements under RR No. 17-2012. Following the reasoning of the Supreme Court in the *Atlas* case, the element of mistake or excusable neglect is not present in this case.

Consequently, San Miguel Brewery, Inc. argues that the Judicial Affidavits of its witnesses suffice as independent evidence to prove the net retail price of SML in kegs. However, RR No. 17-2012 categorically provides that every local manufacturer or importer of alcohol shall submit a notarized sworn statement showing the relevant information required therein. Thus, the witnesses' testimonies which were obtained only during trial cannot substitute for the specific requirements of RR No. 17-2012.

Thus, the Court *En Banc* finds petitioner's arguments unmeritorious.

Even if the the Court *En Banc* takes judicial notice of the Sworn Statements allegedly filed with the BIR, the fact remains that San Miguel Brewery, Inc. failed to comply with the requisite sworn statements under RR No. 17-2012

Finally, San Miguel Brewery, Inc. asserts that the Court in Division should have taken judicial notice of the sworn declarations it allegedly filed with the BIR.

However, as discussed earlier, the submission of sworn statements under RR No. 17-2012 is part of the necessary requirements for petitioner's successful refund claim. Hence, even if the CTA takes judicial notice of the alleged sworn declarations, non-compliance with the provisions of RR No. 17-2012 is fatal to petitioner's claim.

Considering the foregoing, the Court *En Banc* sees no cogent reason to reverse the assailed Decision and Resolution.

WHEREFORE, in view thereof, the instant Petitions for Review in CTA EB No. 2320 and CTA EB No. 2327 are **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice