REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SAN MIGUEL BREWERY INC., *Petitioner,*	**CTA CASE NO. 10223** *Members*:
-versus-	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 05 2023

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4:15 p.m.

DECISION

CUI-DAVID, J.:

Before this Court is a *Petition for Review,* [1] filed on December 11, 2019 by petitioner San Miguel Brewery Inc. against respondent Commissioner of Internal Revenue (CIR), praying for the refund of the amount of ₱146,874,562.00 allegedly representing erroneous, excessive, illegal, and/or wrongful collection of excise taxes on its beer products for the period from January 1, 2018 to December 31, 2018.

THE PARTIES

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

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[1] Docket, pp. 6-37.
[2] Par. 1, Stipulation of Facts, Pre-Trial Order dated January 11, 2021, Docket, p. 272.
[3] Par. 4, Stipulation of Facts, Pre-Trial Order dated January 11, 2021, Docket, p. 273.

Among the fermented products being manufactured by petitioner are "San Mig Light" in bottle, in can, and in kegs, "Pale Pilsen" in can, "San Mig Zero" in bottle, "San Mig Zero" in carton, "Premium All-Malt" in bottle, "Premium All-Malt" in can, "Premium All-Malt" in carton, "Super Dry" in can, "Red Horse" in can, "San Miguel Flavored Beer-Apple" in bottle, and "San Miguel Flavored Beer-Lemon" in bottle.[4]

Respondent CIR is the head of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[5]

THE FACTS

On October 17, 2019, petitioner filed an Application for Tax Credits/Refunds (BIR Form No. 1914) and a letter dated October 14, 2019 with the Excise LT Audit Division I of the BIR,[6] claiming for refund in the total amount of ₱146,874,562.00, allegedly representing overpayment of excise taxes erroneously, illegally, excessively, and/or wrongfully assessed on and collected from petitioner, on the removals of its various products for the period from January 1, 2018 to December 31, 2018.

On December 11, 2019, petitioner filed the present *Petition for Review.*

On January 21, 2020, respondent filed a *Motion for Extension of Time to File Answer,*[7] which the Court granted.[8]

Respondent posted his *Answer* on February 20, 2020,[9] interposing his special and affirmative defenses, to wit: (a) the instant petition must not be given due course for lack of jurisdiction; (b) assuming 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; (c) assuming that the Court has jurisdiction and/or petitioner has a cause of action, petitioner is not entitled to a tax refund because there was no erroneous or illegal collection of excise taxes; and (d)

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[4] Par. 1.00, *Petition for Review*, Docket, p. 6.
[5] Par. 2, Stipulation of Facts, Pre-Trial Order dated January 11, 2021, Docket, p. 273.
[6] Exhibit "P-3" (Annex "C", *Petition for Review*), Docket, pp. 71 to 80.
[7] Docket, pp. 98 to 100.
[8] Order dated January 23, 2020, Docket, p. 102.
[9] Docket, pp. 103 to 130.

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

The Pre-Trial Conference was initially set on March 26, 2020,[10] but was reset to July 22, 2020.[11] In the Resolution dated July 7, 2020,[12] the scheduled Pre-Trial Conference was cancelled and reset until further orders from the Court. Upon petitioner's filing of the *Motion for Holding Hearings via Video Conference* on June 23, 2020,[13] the Pre-Trial Conference was set anew on October 21, 2020.[14] However, for lack of quorum, the Pre-Trial Conference was again reset to and held on November 11, 2020.[15]

In the meantime, *Respondent's Pre-Trial Brief Ad Cautelam* was filed on July 17, 2020,[16] while *Petitioner's Pre-Trial Brief* was submitted on October 14, 2020.[17]

On December 10, 2020, petitioner filed a *Manifestation*,[18] stating that the parties have not been able to agree on stipulations other than those already admitted in their pleadings. Hence, the parties will no longer file a joint stipulation of facts, documents, and issues. In the Resolution dated January 6, 2021,[19] the Court, *inter alia*, noted the said *Manifestation*.

Thereafter, the Court issued the Pre-Trial Order on January 11, 2021.[20]

The trial then proceeded.

During the trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals: (1) Atty. Andrei Josef Y. Kasilag, [21] Manager for Tax Services of petitioner; and (2) Mr. George V. Villaruz, [22] the Court-commissioned Independent Certified Public Accountant (ICPA).[23]

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[10] *Notice of Pre-Trial Conference* dated February 26, 2020, Docket, pp. 132 to 133.
[11] Docket, p. 134.
[12] Docket, p. 220.
[13] Docket, pp. 216 to 218.
[14] Resolution September 11, 2020, Docket, pp. 228 to 229.
[15] *Notice of Resetting* dated October 19, 2020, Docket, p. 249; Order dated November 11, 2020, Docket, p. 251.
[16] Docket, pp. 221 to 224.
[17] Docket, pp. 230 to 241.
[18] Docket, pp. 261 to 262.
[19] Docket, pp. 268 to 269.
[20] Docket, pp. 272 to 275.
[21] Exhibit "P-4", Docket, pp. 138 to 156; Order dated February 3, 2027, Docket, p. 331.
[22] Exhibit "P-7", Docket, pp. 355 to 371; Order dated February 9, 2022, Docket, p. 391.
[23] Order dated February 3, 2027, Docket, p. 331.

The *Report* of the said ICPA was submitted on May 19, 2021.[24]

On February 16, 2022, petitioner filed its *Formal Offer of Evidence.*[25] Respondent failed to file his comment thereon.[26] In the Resolution dated March 30, 2022,[27] the Court admitted all petitioner's offered evidence.

On May 19, 2022, respondent filed a *Manifestation,*[28] stating that he would not present any witness. Hence, in the Resolution dated June 2, 2022,[29] the Court cancelled the initial presentation of evidence for the respondent through a video conference previously scheduled on June 15, 2022, and granted the parties 30 days from notice to file their respective memoranda.

The *Memorandum for the Petitioner* was filed on June 30, 2022,[30] while respondent's *Memorandum* was submitted on July 7, 2022.[31]

On July 19, 2022, the present case was deemed submitted for decision.[32]

THE ISSUE

The main issue[33] for the Court's resolution is:

> Whether petitioner is entitled to a refund by the BIR of the amount of ₱146,874,562.00 as having been erroneously, excessively, illegally, and/or wrongfully collected from and overpaid by it as excise taxes on its subject beer products for the period from January 1, 2018 to December 31, 2018.

Petitioner raised the following corollary issues:[34]

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[24] Exhibit "P-5".
[25] Docket, pp. 392 to 411.
[26] *Records Verification* issued on March 16, 2022 by this Court's Judicial Records Division, Docket, p. 412.
[27] Docket, pp. 414 to 415.
[28] Docket, pp. 422 to 424.
[29] Docket, p. 427.
[30] Docket, pp. 428 to 471.
[31] Docket, pp. 472 to 499.
[32] Resolution dated July 19, 2022, Docket, p. 501.
[33] Stipulation of Issue, Pre-Trial Order dated January 11, 2021, Docket, p. 273.
[34] Statement of the Issues, Petition for Review, Docket, p. 22, *vis-à-vis* Grounds in Support of the *Petition for Review*, Memorandum for the Petitioner, Docket, p. 443.

a. Whether the excise tax rate of ₱25.03 per liter imposed by the respondent on petitioner's subject beer products during the period from January 1, 2018 to December 31, 2018, is directly contradictory to and inconsistent with, and violative of, the express provisions of Section 143 of the NIRC, as amended by RA No. 10351, and therefore not valid.

b. Whether RMC No. 90-2012, particularly the excise tax rate of ₱20.57 imposed by said RMC on the subject beer products, is valid.

c. Whether RR No. 17-2012, particularly Section 5 thereof providing that "Starting January 1, 2014, the applicable tax rate shall be increase (sic) by four percent (4%) annually," is valid.

Petitioner's arguments:[35]

Petitioner argues that:

a. The excise tax rate of ₱25.03 per liter imposed by respondent on its beer products during the period from January 1, 2018 to December 31, 2018, is directly contradictory to and inconsistent with, and violative of, the express provisions of the eleventh paragraph of Section 143 of the NIRC, as amended by RA No. 10351, and is therefore not valid;

b. The aforesaid tax rate of ₱25.03 per liter is not valid on the additional ground that the previous tax rates of ₱20.57, ₱21.39, ₱22.25, ₱23.14, and ₱24.07 from which it is derived were based on Revenue Memorandum Circular (RMC) No. 90-2012 and Revenue Regulations (RR) No. 17-2012, which RMC and RR are directly contradictory to and inconsistent with, and violative of, the express provisions of the relevant paragraphs of Section 143 of the NIRC, as amended, and therefore not valid;

c. RMC No. 90-2012 and RR No. 17-2012 are not valid on the additional ground that they were issued without prior notice to petitioner and without hearing in utter disregard of the due process provision of the

[35] Pars. 15.00 to 23.03, *Petition for Review*, Docket, pp. 23-34, *vis-à-vis* pars. 6.00 to 20.03, Memorandum for the Petitioner, Docket, pp. 445-470.

Constitution and the process required by mandatory provisions of the Administrative Code of 1987;

d. Petitioner is entitled to a refund in the amount of ₱146,874,562.00, representing erroneous, excessive, illegal and/or wrongful collection by the BIR from petitioner of excise taxes on its beer products for the period from January 1, 2018 up to December 31, 2018;

e. Respondent has not presented any evidence to refute or rebut the overwhelming evidence adduced by petitioner; and

f. The arguments raised by respondent in his *Answer* to the *Petition for Review* are baseless and without merit.

Respondent's counter-arguments:[36]

Respondent raises the following as his defenses:

a. The instant petition is not warranted to be given due course for lack of jurisdiction of the Court to pass upon the nullity of certain provisions of RMC No. 90-2012 and RR No. 17-2013;

b. The Court should dismiss the instant petition due to petitioner's non-exhaustion of administrative remedies;

c. Petitioner is not entitled to a tax refund because there was no erroneous or illegal collection of excise taxes since there was no reclassification of San Mig Light because it has always been classified as a variant of an existing brand, San Miguel Pale Pilsen; and

d. Claims for refund are construed strictly against the taxpayer and in favor of the government.

[36] Pars. 4-57, Special and Affirmative Defenses, Answer, Docket, pp. 104-128, *vis-à-vis* Arguments and Discussions, Memorandum, Docket, pp. 474-497.

THE COURT'S RULING

The *Petition for Review* is partly meritorious.

The Court has jurisdiction over the Petition for Review.

In a claim for refund or credit of erroneously paid or illegally collected taxes, Sections 204 (C) and 229 of the NIRC of 1997, as amended, provide as follows:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
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> ... ...
>
> (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 <u>within two (2) years after the payment of the tax or penalty</u>:** *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund. (*Emphasis supplied*)
>
> 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**, 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, <u>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</u> regardless of any supervening cause that may arise after payment:** ... (*Emphases supplied*)

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Section 204 refers to the CIR's administrative authority to credit or refund erroneously paid or illegally collected taxes. Under this provision, an administrative claim for refund or credit must be filed with the CIR *within two years* from payment of the tax or penalty.

Section 229, on the other hand, requires two conditions for filing judicial claims: (1) an administrative claim must be filed first, and (2) the judicial claim must be filed within two years after payment of the tax sought to be refunded.[37]

Reading the two provisions together, the administrative and judicial claims must be filed within two years. Furthermore, the administrative claim must be filed before the judicial claim.[38] The timeliness of the filing of the claim is mandatory and jurisdictional. This Court cannot take cognizance of a judicial claim for refund or credit filed prematurely or out of time.[39]

Consequently, petitioner had two years from the date of payment or remittance to the BIR of the alleged overpaid excise taxes to file a claim for refund or credit, both administrative and judicial.

To determine the reckoning for the 2-year prescriptive period, the law, rules, and regulations regarding the time of payment of excise taxes must first be examined.

Under Section 130(A)(2) of the NIRC of 1997, as amended, the excise tax return on domestic products is filed, and the excise tax is paid by the manufacturer, producer, or person liable before the removal of the products from the place of production,[40] to wit:

> SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* –
>
> (A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –
>
> ... ...

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[37] *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021.
[38] *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592. July 27, 2021.
[39] *Id.*, citing *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, G.R. No. 209776, December 7, 2016.
[40] *Commissioner of Internal Revenue v. San Miguel Corporation, et seq.*, G.R. Nos. 180740 & 180910, November 11, 2019.

> (2) *Time for Filing of Return and Payment of the Tax.* - Unless otherwise specifically allowed, **the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**: ... (*Emphasis supplied*)

Corollary to it, RR No. 2-97,[41] which governs the excise taxation on distilled spirits, wines, and fermented liquors, states:

> SEC. 11. *Time, Manner and Place of Payment.* –
>
> 11.1 *For Locally produced Alcohol Products.*
>
> 1) *FILING OF RETURN* - **Any person liable to pay specific tax on locally produced alcohol products shall before removal of such products, file in triplicate a consolidated return** (BIR Form 2200) and supporting attachments (BIR Form 2201 and 2207) setting forth the registered brand names and brand codes, the total production during the return period, the quantity to be removed and the excise tax due.
>
> 2) *PAYMENT OF SPECIFIC TAX*
>
> a) *When to Pay* - Unless otherwise especially allowed, **excise tax due** on locally manufactured or produced alcohol products **shall be paid by the manufacturer before removal from the place of production**, or by the person who is found in possession of untaxed domestically produced alcohol products.
>
> b) *Advance Payment or Deposit* – **Every person liable to pay** specific tax **who is authorized to avail of the advance payment scheme may be allowed to effect removals of exciseable articles from his place of production without prior filing of the prescribed excise tax return and supporting attachments <u>provided he has sufficient balance of deposits with the BIR to cover full payment of the excise tax due on said removals</u>.** The prescribed excise tax return and all attachments may be filed with a duly accredited bank or duly authorized collection agents not later than the first

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[41] Revenue Regulations Governing Excise Taxation on Distilled Spirits, Wines and Fermented Liquors, January 1, 1997.

> working day of the calendar week immediately after the week of actual removals. Payment of excise tax deposits shall be made by filing in triplicate a Payment Form (BIR Form No. 0605). (*Emphases supplied*)

The foregoing regulation authorizes advance payment or deposit of excise taxes to allow the removal of exciseable articles from the manufacturer's place of production without prior filing of the excise tax return and supporting documents, provided that the advance payments/deposits are sufficient to cover full payment of the excise tax due on the removals.

The Court-commissioned ICPA reported that during the year 2018, petitioner paid excise taxes in advance before the actual removal of its domestic beer products from its six (6) brewery plant locations, namely, (1) Polo, Valenzuela; (2) San Fernando, Pampanga; (3) Sta. Rosa, Laguna; (4) Bacolod City, Negros Occidental; (5) Mandaue City, Cebu; and (6) Davao City.[42] Thus, the two years prescribed in Sections 204(C) and 229 of the NIRC of 1997, as amended, should be reckoned from the date of actual withdrawal/removal of the beer products from their place of production, as it was only at that point that the deposits were recognized as payments for excise tax.

An examination of the *Excise Tax Returns* (BIR Forms No. 2200-A) filed by petitioner for 2018 for its six brewery plants shows that the earliest removal covered by the instant claim was on *January 2, 2018*.[43] Thus, petitioner had two (2) years from said date, or until *January 2, 2020*, to file its administrative and judicial claims for refund or credit.

Earliest Removal Date (BIR Form No. 2200-A)	**2-year prescriptive period**	**Administrative Claim Filed**	**Judicial Claim Filed**
January 2, 2018	January 2, 2020	October 17, 2019	December 11, 2019

Considering the above, petitioner's administrative claim before the CIR and judicial claim before this Court were seasonably filed within the two-year prescriptive period on October 17, 2019 and December 11, 2019,[44] respectively.

[42] Exhibit "P-5", pp. 5 to 6.
[43] Exhibits "P-6-a-1" to "P-6-2950".
[44] Docket, p. 6.

Further, this Court has jurisdiction to determine the constitutionality or validity of tax laws, rules, regulations, and other administrative issuances, *i.e.*, RMC No. 90-2012 and RR No. 17-2012.

Here, petitioner assails the validity of the excise tax rate of ₱20.57 imposed by RMC No. 90-2012 and the 4% annual increase of excise tax rate starting January 1, 2014, under Section 5[45] of RR No. 17-2012.

Respondent argues that the Court has no jurisdiction to determine the constitutionality and validity of the pertinent provisions of RMC No. 90-2012 and RR No. 17-2012 because these issuances were in the exercise of his quasi-legislative power that is subject to review by the Secretary of Finance, which is appealable to the courts of general jurisdiction.[46]

The Court disagrees with respondent.

The issue presented is not novel, as it has already been long settled in the case of *Banco De Oro et al. v. Republic of the Philippines et al.* (*Banco De Oro*)[47] that the CTA has jurisdiction to rule on the constitutionality or validity of a tax law, regulation, or administrative issuance, *viz.*:

> **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)**.
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> 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

[45] 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 increase[d] by four percent (4%) annually: *Provided, however*, it shall not be lower than the rates prescribed under Section 3 of these Regulations.
[46] Pars. 15-18, Answer, Docket, pp. 108-109.
[47] G.R. No. 198756, August 16, 2016.

> Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.
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> 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.
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> 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. ... 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. (*Emphases supplied*)

The *Banco de Oro* case, cited in the recent decisions of the Supreme Court, [48] further stressed that such undoubted jurisdiction to pass upon the constitutionality or validity of a tax law, regulation, or administrative issuance, is exclusively vested in the CTA whether raised by the taxpayer *directly* or as a *defense* [49] in disputing or contesting an assessment or claiming a refund.

The *Banco De Oro* case definitively settled that the CTA has jurisdiction over challenges to the validity of tax issuances. This overturned the previous doctrine in *British American Tobacco v. Camacho*, [50] which held that such jurisdiction lies in the regular courts, not the CTA.

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[48] *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division)*, G.R. Nos. 210501, 211294 & 212490, March 15, 2021; *St. Mary's Academy of Caloocan City, Inc. v. Henares*, G.R. No. 230138, January 13, 2021; *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 & 218924, January 15, 2020; *Steel Corporation of the Philippines, v. Bureau of Customs (BOC), et al.*, G.R. No. 220502. February 12, 2018.

[49] *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. Nos. 215801 & 218924, January 15, 2020, citing *Banco De Oro, et al. v. Republic of the Philippines, et al.*, supra, note 47.

[50] G.R. No. 163583, August 20, 2008.

Given the foregoing, this Court has jurisdiction to determine the validity of administrative issuances, *i.e.*, the provisions of RMC No. 90-2012 and RR No. 17-2012, both as a direct challenge and in connection with petitioner's refund or credit claim.

In fine, this Court has jurisdiction over the instant Petition for Review.

The doctrine of exhaustion of administrative remedies does not apply in the instant case.

Before the Court rules on the validity of the subject administrative issuances, We shall first determine whether the *doctrine of exhaustion of administrative remedies* applies in the present case.

Respondent argues that assuming this Court may take cognizance of cases involving validity or constitutionality of BIR issuances, the instant petition, nonetheless, should be dismissed due to petitioner's non-exhaustion of administrative remedies.[51]

Petitioner counters that the rule on exhaustion of administrative remedies is not applicable, among others, (a) when there is a violation of due process; (b) when the issue involved is purely a legal question; (c) when the administrative action is patently illegal; and (d) when there are circumstances indicating the urgency of judicial intervention.

The Supreme Court's pronouncement in *Commissioner of Internal Revenue v. Court of Tax Appeals (First Division), et al., et seq.* (*First Division* case)[52] is instructive and squarely addressed the issue, *viz.*:

> Under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts. It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the

[51] Pars. 38-44, Answer, Docket, pp. 117-119, *vis-à-vis* part II, Memorandum, Docket, pp. 487-489.
[52] G.R. Nos. 210501, 211294, and 212490, March 15, 2021.

> Rules of Court justifying the dismissal of the complaint." As case law illumines, the rule on exhaustion of administrative remedies emanates from the policy of allowing administrative agencies to tackle matters within the specialized areas of their respective competence, which, in turn, is based on comity and convenience.
>
> In the matter of tax issuances, such as BIR Rulings, the power of the CIR to interpret the provisions of the Tax Code and other tax laws is subject to the administrative remedy of a direct review of the Secretary of Finance (SOF). Failure to raise the matter to the SOF constitutes a violation of the exhaustion doctrine.
>
> **The doctrine of exhaustion of administrative remedies, however, admits of certain exceptions.** With respect to challenges against tax issuances, *Banco De Oro* recognized the following exceptions: **"<u>[the] question involved is purely legal</u>; <u>the urgency of judicial intervention</u> x x x; and <u>the futility of an appeal to the Secretary of Finance</u> as the latter appeared to have adopted the challenged Bureau of Internal Revenue rulings."** This was reiterated more recently by the Court in *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue,*[53] when it allowed a direct challenge to the tax issuance assailed therein on the ground that "the issue involved is <u>purely a legal question</u> x x x, or when there are circumstances indicating the <u>urgency of judicial intervention</u>." (*Emphases supplied*)

Indeed, while tax issuances are within the power of the CIR to interpret tax laws, subject to the review of the Secretary of Finance under Section 4 of the NIRC of 1997,[54] the Supreme Court has recognized *exceptions* to the *doctrine on exhaustion of administrative remedies*, particularly when the issue involved is a *purely legal question*—which does not involve an examination of the probative value of the evidence presented by the litigants or any of them—that needs *urgent judicial intervention.*[55]

Applying the Supreme Court pronouncement in the *First Division* case, which cited the *Banco De Oro* case, petitioner did not violate the said doctrine when it filed the petition before this Court as the challenge against tax issuances falls under the following exceptions: "the question involved is *purely legal*; the *urgency of judicial intervention*; and the *futility of an appeal* to

[53] G.R. No. 228539, June 26, 2019.
[54] SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
[55] *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue,* G.R. No. 228539, June 26, 2019.

the Secretary of Finance as the latter appeared to have adopted the challenged Bureau of Internal Revenue rulings."

We shall now proceed to resolve whether the portions of RMC No. 90-2012 and RR No. 17-2012 are valid in determining whether the claim for refund in the amount of ₱146,874,562.00 represents erroneous or illegal excise taxes paid by petitioner covering the year 2018.

The pertinent provisions of RMC No. 90-2012 and RR No. 17-2012 are invalid for being contrary to Section 143 of the NIRC of 1997, as amended by RA No. 10351.

The excise tax on liquors is governed by Section 143 of the NIRC of 1997, as amended by Section 3 of RA No. 10351,[56] which took effect on December 21, 2012,[57] *viz.*:

> 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:**
> >
> > **Effective on <u>January 1, 2013</u>**
> >
> > (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 (**₱50.60**) **or less, the tax shall be** Fifteen pesos (**₱15.00**) **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 (**₱50.60**), **the tax shall be** Twenty pesos (**₱20.00**) **per liter.**

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[56] 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. Approved on December 19, 2012.

[57] See note 5, *Purisima, et al., v. Philippine Tobacco Institute, Inc.*, G.R. No. 210251. April 17, 2017.

> ... ...
>
> **Effective on January 1, 2017, the tax on all fermented liquors shall be** Twenty-three pesos and fifty centavos (**₱23.50**) **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.
>
> ... ...
>
> 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.
>
> 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 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. ...." (*Emphases supplied*)

It is clear under Section 143 of the NIRC, as amended by RA No. 10351, that effective on January 1, 2013, the excise tax shall be **₱15.00 per liter** in case the net retail price per liter of volume capacity of the fermented liquor is *₱50.60 or less*; and the excise tax shall be **₱20.00 per liter**, in case the net retail price per liter of volume capacity of the fermented liquor is *more than ₱50.60*. Also, the BIR was tasked to classify all fermented liquors existing in the market at the time of the effectivity of RA No. 10351 according to the net retail prices and the tax rates provided therein based on the latest price survey of the said fermented liquors.

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To implement the provisions of RA No. 10351, the BIR issued RR No. 17-2012 on December 21, 2012.[58]

Subsequently, on December 28, 2012, RMC No. 90-2012 was issued to provide the initial classifications of alcohol products, among others, effective January 1, 2013.

In this case, petitioner assails the excise tax rates provided in Annex "A-1" [59] of RMC No. 90-2012, imposing excise tax rate

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[58] Published in The Philippine Star/Manila Bulletin on December 28, 2012.

[59] Annex "A-1" reads:

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 ₱50.60 per liter and below				
	...	...	...		
18	San Miguel Pale Pilsen	bottle	1000	32.73	**15.49**
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 ₱50.60				
		...	...	...	
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 per liter effective January 1, 2013 at ₱20.57 and Section 5[60] of RR No. 17-2012, which increased the applicable excise tax rate by 4% annually, starting January 1, 2014.

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 if 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.

Meanwhile, Section 5 of RR No. 17-2012 increased the excise tax rate by 4% "[s]tarting January 1, 2014." This also contravenes Section 143 of the NIRC of 1997, as amended by RA No. 10351, which states that the increase by 4% shall be "effective [only] on January 1, 2018," subject to the "no downward reclassification" rule.

	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 ₱50.60 per liter and below				
	...	...	...		
7	Beer Pale Pilsen	can	330	48.48	**20.57**
	B. NRP is more than ₱50.60				
		...	...	...	
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**
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**

(*Emphasis supplied*)

[60] 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 increase[d] by four percent (4%) annually**: *Provided, however*, it shall not be lower than the rates prescribed under Section 3 of these Regulations. (*Emphasis supplied*)

The Court also notes that Section 3 of RA No. 10351, amending Section 143 of the NIRC of 1997, unequivocally provides that the excise tax rate per liter imposable on all fermented liquors effective on January 1, 2017 is ₱23.50, regardless of the net retail price per liter of volume capacity of the fermented liquor; and that the increase in the said tax rate, by 4%, shall only be made effective on January 1, 2018, subject to the "no downward reclassification" provision prescribed therein.

In *Philippine Bank of Communications v. Commissioner of Internal Revenue et al.*,[61] the Supreme Court considered RMCs as administrative rulings (in the sense of more specific and less general interpretations of tax laws) issued from time to time by respondent. Granted, the interpretation placed upon a statute by executive officers, whose duty to enforce it, is entitled to great respect by the courts, such interpretation is not conclusive and will be ignored if judicially found to be erroneous.[62]

Meanwhile, administrative regulations, such as RR No. 17-2012, cannot amend or revoke the law.[63] A mere regulation that "operates to create a rule out of harmony with the statute is a mere nullity" and the law must prevail.[64]

Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.[65]

As such, for having imposed excise taxes that are greater than and inconsistent with what the amendment has provided in RA No. 10351, said portions of Annex "A-1" of RMC No. 90-2012 and Section 5 of RR No. 17-2012 must be declared void for being contrary to law.

The Court shall now determine whether the subject excise taxes paid by petitioner are "erroneous" or "illegal."

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[61] G.R. No. 112024, January 28, 1999.
[62] *Id.*
[63] See *Commissioner of Internal Revenue vs. Central Luzon Drug Corporation*, G.R. No. 159647, April 15, 2005.
[64] *Id.*
[65] *Supra*, note 61.

The amount of ₱146,874,562.00 represents erroneous or illegal excise taxes paid by petitioner covering the year 2018.

Petitioner alleges that during the period from January 1, 2018 up to December 31, 2018, so that it will be able to make removals of its subject beer products without penalty, it was constrained to pay, as required by the BIR, excise taxes on its removals of the said products at the tax rate of *₱25.03 per liter*, when it should have paid only *₱24.44 per liter*—the 4% increase contemplated under the tenth paragraph[66] of Section 143 of the NIRC of 1997, as amended by R.A. 10351.[67]

A close reading of Section 143 of the NIRC of 1997, as amended by R.A. 10351, reveals that the excise tax rate that should have been imposed for 2018 is only ₱24.44[68] per liter instead of ₱25.03 per liter. Hence, it is evident that the difference between the said amounts, *i.e.,* ₱0.59 per liter, has been erroneously, illegally, excessively and/or wrongfully collected from petitioner by the BIR.

Hence, the said difference amounting to ₱0.59 per liter resulted in a total amount of ₱146,874,562.00, which is the subject of the present claim, broken down as follows:[69]

	Removals (In Liters)	**2018 Excise Tax Payment @₱25.03/liter**	**Excise Taxes Due @ P24.44/liter pursuant to Section 143 of the NIRC of1997, as amended by RA No. 10351**	**Difference**
San Mig Light – Can	14,382,601.20	₱359,996,508.04	₱351,510,773.33	₱8,485,734.71
San Miguel Pale Pilsen – Can	6,791,669.28	169,995,482.08	165,988,397.20	4,007,084.88

[66] The **rates of tax imposed** under this Section **shall be increased by four percent (4%) every year thereafter effective on <u>January 1, 2018</u>**, 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. (*Emphasis supplied*)
[67] Par. 12.02, Petition for Review, Docket, p. 20.
[68] ₱23.50 (excise tax rate effective on January 1, 2017) + 0.94 (₱23.50 x 4% increase effective January 1, 2018).
[69] Petition for Review, Docket – p. 81.

	Removals (In Liters)	**2018 Excise Tax Payment @₱25.03/liter**	**Excise Taxes Due @ ₱24.44/liter pursuant to Section 143 of the NIRC of1997, as amended by RA No. 10351**	**Difference**
San Mig Light – Bottle	176,351,052.24	4,414,066,837.57	4,310,019,716.75	104,047,120.82
San Miguel Premium All Malt Beer	373,332.96	9,344,523.99	9,124,257.54	220,266.45
San Miguel Premium All Malt Beer – Can	166,929.84	4,178,253.90	4,079,765.29	98,488.61
San Mig Zero	582,769.44	14,586,719.08	14,242,885.11	343,833.97
Super Dry – Can	264,005.28	6,608,052.16	6,452,289.04	155,763.12
Red Horse – Can	6,160,920.48	154,207,839.61	150,572,896.53	3,634,943.08
San Miguel Flavored Beer – Apple	37,866,090.24	947,788,238.71	925,447,245.47	22,340,993.24
San Miguel Flavored Beer – Lemon	4,723,424.64	118,227,318.74	115,440,498.20	2,786,820.54
San Mig Light in Kegs – 30 Liters	500,250.00	12,521,257.50	12,226,110.00	295,147.50
San Mig Light in Kegs – 50 Liters	776,500.00	19,435,795.00	18,977,660.00	458,135.00
San Mig Light in Kegs – 15 Liters	390.00	9,761.70	9,531.60	230.10
Total	**248,939,935.60**	**₱6,230,966,588.07**	**₱6,084,092,026.06**	**₱146,874,562.00**

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Based on petitioner's 2018 *Excise Tax Returns* (BIR Forms No. 2200-A), the Court-commissioned ICPA examined the balance of excise tax advance payments/deposits carried from the previous return and the excise tax advance payments/deposits made in the year 2018, then compared the same with all the excise tax applications/due on removals for the same year as follows:[70]

Plant Location	Beginning Balance of Excise Tax Advance Payments/ Deposits	Excise Tax Advance Payments/Deposits for the period January 1, 2018 to December 31, 2018	Total	Excise Taxes Due on Removals of All Beer Products for the period January 1, 2018 to December 31, 2018	Balance of Excise Tax Advance Payments/ Deposits, December 31, 2018[71]
	(a)	*(b)*	*(c) = (a) + (b)*	*(d)*	*(e) = (c) – (d)*
Polo	₱85,602,266.81	₱7,696,958,228.42	₱7,782,560,495.23	₱7,659,368,809.48	₱123,191,685.75
San Fernando	212,532,766.53	17,222,810,777.94	17,435,343,544.47	17,245,150,234.25	190,193,310.22
Sta. Rosa	29,020,714.30	4,641,754,922.52	4,670,775,636.82	4,588,761,715.48	82,013,921.34
Bacolod City	24,269,457.62	2,843,775,439.77	2,868,044,897.39	2,806,314,328.92	61,730,568.47
Mandaue City	142,772,242.51	10,589,932,502.13	10,732,704,744.64	10,584,416,678.24	148,288,066.40
Davao City	62,737,502.44	5,842,870,130.12	5,905,607,632.56	5,828,501,081.58	77,106,550.98
TOTAL	**₱556,934,950.21**	**₱48,838,102,000.90**	**₱49,395,036,951.11**	**₱48,712,512,847.95**	**₱682,524,103.16**

As can be seen from the above table, the total amount of excise tax advance payments/deposits during the year 2018 amounting to ₱48,838,102,000.90 when added to the beginning balance of excise tax advance payments/deposits amounting to ₱556,934,950.21 will result to a total amount of ₱49,395,036,951.11. The sum is sufficient to cover the total excise taxes due for 2018 of ₱48,712,512,847.95 and will result in an excess excise tax advance payment of ₱682,524,103.16 as of December 31, 2018. Thus, it is established that petitioner had enough excise tax advance payments/deposits to cover all its removals in 2018.

The beginning balance of excise tax advance payments/deposits carried forward to January 2018 in the amount of ₱556,934,950.21 can be verified through the

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[70] Exhibit "P-5", Annex E.

[71] With a minimal difference of ₱0.63 when compared with that shown per Excise Tax Returns:

Plant Location	Balance of Excise Tax Advance Payments/Deposits, December 31, 2018			*Difference*
	As Computed	Per Excise Tax Returns	Exhibit	
Polo	₱123,191,685.75	₱123,191,685.65	"P-6-a-494" p. 3	₱ 0.10
San Fernando	190,193,310.22	190,193,310.13	"P-6-a-984" p. 3	0.09
Sta. Rosa	82,013,921.34	82,013,921.28	"P-6-a-1478" p. 3	0.06
Bacolod City	61,730,568.47	61,730,568.23	"P-6-a-1971" p. 3	0.24
Mandaue City	148,288,066.40	148,288,066.39	"P-6-a-2458" p. 3	0.01
Davao City	77,106,550.98	77,106,550.85	"P-6-a-2950" p. 3	0.13
Total	**₱682,524,103.16**	**₱682,524,102.53**		**₱0.63**

corresponding *Excise Tax Returns* (BIR Forms No. 2200-A)[72] duly filed by petitioner.

The excise tax advance payments/deposits made for the year 2018 in the amount of ₱48,838,102,000.90[73] was properly supported by Excise Tax Returns (BIR Form No. 2200-A);[74] Bank of the Philippine Islands Tax Payment Details Form;[75] Union Bank of the Philippines (UBP) Payment Confirmation Form, UBP Payment Status Form and EFPS Payment Details;[76] and Landbank BIR Payment Deposit Slips for the Manual Payment.[77]

On the other hand, the total excise tax due and paid in the amount of ₱48,712,512,847.95[78] was for the actual removals of all beer products from petitioner's six brewery plants in the total of 1,987,137,410.04 liters, as evidenced by the monthly Movement Report with Allocated Deposits, as attached to the monthly Total Removals report and Removals Schedule duly filed with and stamped "Received" by the BIR.[79] Out of the said total volume, 248,939,935.60 liters pertain to petitioner's beer products, subject of the present claim, namely, "San Mig Light" in can, in bottle, and kegs, "San Miguel Premium Alt Malt Beer," in bottle and in can, "San Miguel Pale Pilsen" in can, "Super Dry" in can, "Red Horse" in can, "San Mig Zero" in bottle, "San Miguel Flavored Beer-Apple" in bottle, and San Miguel Flavored-Lemon" in bottle while the remaining 1,738,197,474.44 liters pertain to petitioner's other beer products, as shown below:[80]

2018	***Other Beer Products***				***Subject Beer Products***		**Total Qty in Liters**	**Total Excise Taxes Due, Filed, and Paid (in PhP)**
	With Net Retail Price per liter (excluding the excise and VAT) of Php50.60 and below- Tax rate - P24.44/liter		**With Net Retail Price per liter (excluding the excise and VAT) of more than Php50.60-** Tax rate - P24.44/liter		Tax rate - P25.03/liter			
	Qty in Liters	**Excise Tax (in PhP)** *[a]*	**Qty in Liters**	**Excise Tax (in PhP)** *[b]*	**Qty in Liters**	**Excise Tax (in PhP)** *[c]*		*[a+b+c]*
Jan	123,334,175.60	3,014,287,251.47	14,154,187.92	345,928,352.13	19,496,819.04	488,005,379.94	156,985,182.56	3,848,220,983.54
Feb	120,466,404.00	2,944,198,913.57	14,719,113.96	359,735,144.59	18,109,686.00	453,285,440.03	153,295,203.96	3,757,219,498.19
Mar	124,644,732.96	3,046,317,273.40	17,506,791.00	427,865,971.42	21,390,970.08	535,415,980.52	163,542,494.04	4,009,599,225.34
Apr	123,949,447.84	3,029,324,505.09	16,793,224.80	410,426,413.53	20,392,808.16	510,431,987.66	161,135,480.80	3,950,182,906.28
May	132,272,790.72	3,232,747,004.99	17,045,743.44	416,597,969.07	20,250,148.08	506,861,205.82	169,568,682.24	4,156,206,179.88
Jun	127,922,484.88	3,126,425,530.30	14,279,517.36	348,991,403.77	20,950,716.24	524,396,427.03	163,152,718.48	3,999,813,361.10
Jul	129,809,399.44	3,172,541,722.15	15,177,124.32	370,928,917.79	21,538,754.96	539,115,036.04	166,525,278.72	4,082,585,675.98
Aug	127,422,301.04	3,114,201,037.27	14,032,905.96	342,964,221.16	19,058,641.12	477,037,786.64	160,513,848.12	3,934,203,045.07
Sep	121,041,119.36	2,958,244,957.04	14,616,121.08	357,217,998.65	19,101,162.48	478,102,096.35	154,758,402.92	3,793,565,052.04
Oct	133,248,610.08	3,256,596,030.20	15,865,964.88	387,764,181.10	20,682,022.96	517,671,034.05	169,796,597.92	4,162,031,245.35
Nov	134,632,832.80	3,290,426,433.50	17,015,545.44	415,859,930.10	22,175,762.64	555,059,338.31	173,824,140.88	4,261,345,701.91
Dec	149,135,816.08	3,644,879,344.83	19,111,119.48	467,075,759.70	25,792,443.84	645,584,868.74	194,039,379.40	4,757,539,973.27
Total	**1,547,880,114.80**	**37,830,190,003.81**	**190,317,359.64**	**4,651,356,263.01**	**248,939,935.60**	**6,230,966,581.13**	**1,987,137,410.04**	**48,712,512,847.95**

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72 Exhibits "P-6-a-1", "P-6-a-495", "P-6-a-985", "P-6-a-1479", "P-6-a-1972", and "P-6-a-2459" (under Line 19A).
73 Exhibit "P-5", Annexes B, B_1 to B_6, $B_{1.1}$ to $B_{1.12}$, $B_{2.1}$ to $B_{2.12}$, $B_{3.1}$ to $B_{3.12}$, $B_{4.1}$ to $B_{4.12}$, $B_{5.1}$ to $B_{5.12}$, and $B_{6.1}$ to $B_{6.12}$.
74 Exhibits "P-6-a-1" to "P-6-a-2950".
75 Exhibits "P-6-b-1" to "P-6-b-574".
76 Exhibits "P-6-c-1" to "P-6-c-820".
77 Exhibits "P-6-d-1 to P-6-d-68".
78 Exhibit "P-5", Annexes C, C_1 to C_6, $C_{1.1}$ to $C_{1.12}$, $C_{2.1}$ to $C_{2.12}$, $C_{3.1}$ to $C_{3.12}$, $C_{4.1}$ to $C_{4.12}$, $C_{5.1}$ to $C_{5.12}$, and $C_{6.1}$ to $C_{6.12}$.
79 Exhibits "P-6-e-1" to "P-6-e-12".
80 Sum total of the figures reflected in Annexes C_1 to C_6 of Exhibit "P-5".

The details of the subject beer removals of 248,939,935.60 liters from petitioner's six brewery plants and the corresponding excise taxes paid at the rate of ₱25.03 per liter are as follows:[81]

Subject Beer Products	Removals (In Liters)							Excise Tax Paid @ ₱25.03/liter
	Polo, Valenzuela Plant	San Fernando, Pampanga Plant	Sta. Rosa, Laguna Plant	Bacolod Plant	Mandaue, Cebu Plant	Davao Plant	Total	
San Mig Light – Can	14,382,601.20	-	-	-	-	-	14,382,601.20	₱359,996,508.04
San Miguel Pale Pilsen – Can	6,791,669.28	-	-	-	-	-	6,791,669.28	169,995,482.08
San Mig Light – Bottle	48,657,541.68	67,208,027.04	16,139,748.24	17,183,089.44	16,612,865.28	10,549,780.56	176,351,052.24	4,414,066,837.57
San Miguel Premium All Malt Beer – Bottle	373,332.96	-	-	-	-	-	373,332.96	9,344,523.99
San Miguel Premium All Malt Beer – Can	166,929.84	-	-	-	-	-	166,929.84	4,178,253.90
San Mig Zero – Bottle	582,769.44	-	-	-	-	-	582,769.44	14,586,719.08
Super Dry –Can	264,005.28	-	-	-	-	-	264,005.28	6,608,052.16
Red Horse – Can	6,160,920.48	-	-	-	-	-	6,160,920.48	154,207,839.61
San Miguel Flavored Beer- Apple – Bottle	27,879,152.40	-	-	-	9,986,937.84	-	37,866,090.24	947,788,238.71
San Miguel Flavored Beer- Lemon – Bottle	4,723,424.64	-	-	-	-	-	4,723,424.64	118,227,318.74
San Mig Light in Kegs - 30 Liters	500,250.00	-	-	-	-	-	500,250.00	12,521,257.50
San Mig Light in Kegs - 50 Liters	776,500.00	-	-	-	-	-	776,500.00	19,435,795.00
San Mig Light in Kegs - 15 Liters	390.00	-	-	-	-	-	390.00	9,761.70
Total	**111,259,487.20**	**67,208,027.04**	**16,139,748.24**	**17,183,089.44**	**26,599,803.12**	**10,549,780.56**	**248,939,935.60**	**₱6,230,966,588.07**[82]

Additionally, petitioner submitted the *Monthly Official Register Books* (ORBs) and *Sworn Statements* duly signed and attested by the BIR Revenue Officer-On-Premise (ROOP) and stamped received by the BIR,[83] *Daily and Monthly Sworn Statements of the Volume of Removals* duly signed and attested

[81] Sum total of the figures reflected in the monthly Removals Schedule (Exhibits "P-6-e-1" to "P-6-e-12", pp. 3 to 8).
[82] With minimal difference of ₱6.94 when compared with the amount of ₱6,230,966,581.13 shown per Excise Tax Returns (BIR Forms No. 2200-A).
[83] Exhibits "P-6-f-1" to "P-6-f-373" and "P-6-f-1040" to "P-6-f-1799".

by BIR ROOP and stamped received by the BIR[84] which the ICPA likewise examined. The ORBs and *Sworn Statements* included information about, among others, the total volume of removals of each beer product, corresponding excise taxes due, and the beginning balance of excise tax deposits, total deposits paid, and ending balance of the excise tax deposits.

Furthermore, the ICPA examined other related documents supporting the volume of removals, such as *Shipping Memoranda, Issue/Receipt Documents, Stock Transfer Receipts, Delivery Receipts*[85] as well as *Excise Tax Removal Declarations* (ETRDs), duly signed and attested to by the BIR ROOP.[86]

In sum, petitioner has duly established that the removals of the subject beer products for the year 2018 in the total of 248,939,935.60 liters should have been subjected to an excise tax rate of only ₱24.44 per liter under Section 143 of the NIRC of 1997, as amended by RA No. 10351, as opposed to ₱25.03 per liter imposed by respondent. Thus, the ₱0.59 per liter difference in tax rates was erroneously, excessively and/or illegally collected on the subject beer removals of 248,939,935.60 liters amounting to ₱146,874,555.07, as computed below:

	Tax Rate Per Liter	**Subject Beer Removals (In Liters)**	**Amount**
Excise Tax Paid per Returns	₱25.03		₱6,230,966,581.13[87]
Less: Excise Tax Due under Section 143 of the NIRC of 1997, as amended by RA No. 10351	24.44	248,939,935.60	6,084,092,026.06
Erroneously, excessively and/or illegally collected Excise Tax	**₱0.59**		**₱146,874,555.07**

WHEREFORE, premises considered, the instant *Petition for Review* is **PARTIALLY GRANTED**.

[84] Exhibits "P-6-f-374" to P-6-f-1039".
[85] Exhibits "P-6-h-1" to "P-6-h-44065".
[86] Exhibits "P-6-g-1" to "P-6-g-2046".
[87] Amount shown per Excise Tax Returns (BIR Forms No. 2200-A).

For being contrary to Section 143 of the NIRC of 1997, as amended by RA No. 10351, the following portions of Annex "A-1" of RMC No. 90-2012, prescribing the applicable excise tax rates per liter of fermented liquors, are declared invalid, and have no force and effect, *viz*:

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 ₱50.60 per liter and below				
		...	...	...	
18	San Miguel Pale Pilsen	bottle	1000	32.73	15.49
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 Coors light	bottle	330	45.21	20.57
	B. NRP is more than ₱50.60				
		...	...	...	
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 the 2010 BIR Price Survey and introduced in the market before the effectivity of R.A. No. 10351) Based on the 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 ₱50.60 per liter and below				
		...	...	...	
7	Beer Pale Pilsen	can	330	48.48	20.57
	B. NRP is more than ₱50.60				
		...	...	...	
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

Also, the proviso in Section 5 of RR No. 17-2012, which states that "[s]tarting January 1, 2014, the applicable tax rate shall be increase[d] by four percent (4%) annually" is likewise declared as invalid and has no force and effect of law.

Lastly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱146,874,555.07**, without legal interest, [88] representing erroneously, excessively, and/or illegally collected excise taxes due on the removals of "San Mig Light" in can, in bottle and kegs, "San Miguel Premium All Malt Beer," in bottle and in can, "San Miguel Pale Pilsen" in can, "Super Dry" in can, "Red Horse" in can, "San Mig Zero" in bottle, "San Miguel Flavored Beer-Apple" in bottle, and San Miguel Flavored-Lemon" in bottle for the period covering January 1, 2018 to December 31, 2018.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

[88] The Supreme Court in *Commissioner of Customs v. Borres, et al.*, G.R. No. L-12867, November 28, 1959, citing *Collector of Internal Revenue v. St. Paul's Hospital of Iloilo*, G. R. No. L-12127, May 25, 1959, has long held that "our national government cannot be required to pay interest on tax refund ... in the absence of a statutory provision clearly or expressly directing or authorizing such payment."

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice