REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SAN MIGUEL BREWERY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8955

Members:

RINGPIS-LIBAN, *Chairperson, and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 2 2 2024
3:16 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before the Court is respondent's **Motion for Reconsideration (Re: Decision promulgated 14 September 2023)** filed on October 13, 2023, with petitioner's **Comment on/Opposition to "Motion for Reconsideration….." dated October 2, 2023 of Commissioner of Internal Revenue**, filed on January 16, 2024.

On September 14, 2023, the Court promulgated a Decision finding partial merit in petitioner's claim for refund of overpayment of excise taxes due on its removals of *San Mig Light* (SML) for calendar year 2013, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**.
>
> Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱83,018,504.21**, representing overpayment of excise taxes on the 'San Mig Light' removals for the period from January 1, 2013 to December 31, 2013.
>
> **SO ORDERED**."

In the instant Motion, respondent raises the following grounds in support of his arguments, *viz*:

I.

Whether or not the Honorable Court erred when it ruled that it has jurisdiction to determine the validity and/or constitutionality of rules and regulations, and other administrative issuances of the BIR.

II.

Whether or not the Honorable Court erred in granting respondent's claim for refund of alleged overpayment if excise taxes in the reduced amount of ₱83,018,504.21.

As to the first ground, respondent assails the Court's ruling that the Court of Tax Appeals (CTA) *En Banc* has already resolved the first issue and its resolution has already became the law of the case. Respondent argues that petitioner's claim for refund is anchored on the alleged invalidity of the subject Bureau of Internal Revenue (BIR) issuances, and the Court's nullification of the ₱20.57 per liter excise tax rate specified in Revenue Memorandum Circular (RMC) No. 90-2012 and the assailed provision in Revenue Regulation (RR) No. 17-2012 does not fall under the special jurisdiction granted by the statute to the CTA. Respondent further claims that, assuming without conceding, the Court may hear and decide cases involving the validity or constitutionality of BIR issuances, it is still subject to the compliance with the doctrine of exhaustion of administrative remedies for the court action to prosper, otherwise the petition should be dismissed for lack of cause of action.

With regard to the second ground, respondent maintains that petitioner is not entitled to a tax refund since there was no erroneous or illegal collection of excise taxes that had transpired in the present case. Respondent insists that there was no reclassification made by the BIR of SML because it has always been classified as a variant of an existing brand. Lastly, respondent asserts that claims for tax refund are construed *strictissimi juris* against the taxpayer and liberally in favor of taxing authority.

On the other hand, in its Comment, petitioner primarily points out that the arguments raised herein by respondent, specifically on, lack of jurisdiction, failure to exhaust administrative remedies, reclassification of SML as a variant, and on strict construction of claims for refund, are mere reproduction of the same arguments set forth in his Answer to the Petition for Review. Petitioner claims that the aforestated issues had already been taken into account by the Court when it rendered the assailed Decision and respondent offers nothing new which may serve as basis for the Court to reconsider its Decision.

Petitioner also asserts that the issue of jurisdiction has already been settled by the Supreme Court and that the doctrine of administrative remedies is not applicable in the present case since RMC No. 90-2012 unlawfully imposed collection of excise tax rate that is expressly contradictory and violative of Section 143 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10351 (An Act Restructuring the Excise Tax on Alcohol and Tobacco Products), and was issued in violation of petitioner's constitutional and statutory right to due process of law. Petitioner likewise argues that respondent's contention that there was no reclassification of SML because it has always been classified as a variant of an existing brand, is irrelevant since the issue of SML being allegedly a variant of *Pale Pilsen* is not among the issues involved herein and the said issue is in fact now purely academic because the same has already been resolved with finality by the Supreme Court adversely against the respondent.

Lastly, petitioner submits that the rule of *strictissimi juris* is likewise not applicable herein considering the present case encompasses a claim for refund and not a claim for tax exemption.

The Court finds respondent's Motion for Reconsideration bereft of merit.

As correctly pointed out by petitioner, a close evaluation of the case records reveal that the arguments raised by respondent in his Motion are, indeed, mere rehashes of same issues which had been settled and resolved by the Court *En Banc* in its Decision dated September 19, 2018 and Resolution dated January 24, 2019, as well this Court's Decision dated September 14, 2023.

To stress, in the cases of *Banco De Oro, et. al. v. Republic*[1] and *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation,*[2] the Supreme Court already established that the CTA has exclusive jurisdiction to determine the validity or constitutionality of rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue (CIR). The Supreme Court had expressly pronounced in *Banco De Oro* that 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 like in the present case, in claiming a refund. It is only in lawful exercise of its power to pass upon all matter brought before it, as sanctioned by Section 7 of RA No. 1125, as amended by RA No. 9282.

In the same vein, the Supreme Court clarified, in the case of *Planters Products, Inc. v. Fertiphil Corporation*,[3] that judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice, not necessarily in a suit for declaratory

[1] G.R. No. 198756, August 16, 2016.
[2] G.R. No. 207843 (Resolution), February 14, 2018.
[3] G.R. No. 166006, March 14, 2008.

relief. However, the constitutional issue must be properly raised and presented in the case, and its resolution is necessary to the determination of the case, *i.e.*, the issue of constitutionality must be the very *lis mota* of the case.

As held in the assailed Decision, 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 considering that the validity and constitutionality of RMC No. 90-2012 were directly pleaded and duly raised as issues in petitioner's judicial claim for refund. Also, the invalidity and/or constitutionality of the said RMC is the *lis mota* of petitioner's judicial claim for refund as the former is inextricably linked to the issue of whether petitioner is entitled to the refund of the amount claimed. In fact, even respondent in his instant Motion acknowledges that petitioner's claim for refund is anchored on the alleged invalidity of the subject BIR issuances. Simply stated, the declaration of invalidity and/or unconstitutionality of RMC No. 90-2012 essentially triggers the refund.

Moreover, this Court held that RMC No. 90-2012 is void for lack of prior notice and hearing and it is contrary to RA No. 10351. The act of increasing the applicable tax rate per liter for SML – the subject matter of the present refund claim, the BIR acted in a legislative capacity and/or has supplemented RA No. 10351 by creating "additional obligations", particularly on provisions on the applicable excise tax rate per liter for SML, to which a prior notice and hearing are required for its validity. To illustrate, based on the Section 143 of the NIRC of 1997, as amended by RA No. 10351, 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 net liquor is ₱50.60 or less; and the excise tax shall be ₱20.00 per liter, in case the retail price per liter of volume capacity of the fermented liquor is more than ₱50.60. However, Annex "A-1" of RMC No. 90-2012 imposes excise tax in the fixed amount of ₱20.57, regardless of whether the net retail price per liter is less or more than the amount of ₱50.60. Evidently, the difference between the said amounts, *i.e.*, P0.57 per liter for SML in bottle/in can (previously ₱20.00) and P5.57 per liter for SML in kegs (previously ₱15.00), have been erroneously, illegally, excessively and/or wrongfully collected from petitioner by the BIR.

Indeed, RMC No. 90-2012 expanded the provision of Section 143 of the NIRC of 1997, as amended by RA No. 10351, insofar as the imposition of excise tax on San Mig Light, as a fermented liquor, is concerned. As such, the same must be struck down and shall have no force and effect.

It is also noteworthy that the issue of San Mig Light being a new brand and not a variant of an existing brand had already been resolved in the case of

Commissioner of Internal Revenue v. San Miguel Corporation, etseq.,[4] where the Supreme Court held that:

> "Petitioner [CIR] argues that 'San Mig Light,' launched in November 1999, is not a new brand but merely a low-calorie variant of "San Miguel Pale Pilsen." Thus, the application of the higher excise tax rate for variant products is appropriate and respondent should not be entitled to a refund or issuance of a tax credit certificate.
>
> Respondent [San Miguel Corp.] counters that 'San Mig Light' is a new brand; the classification of 'San Mig Light' as a new and medium-priced brand may not be revised except by an act of Congress; and the Court of Tax Appeals did not err in granting its claim for refund or issuance of tax credit certificate.
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> We find for respondent.
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> Parenthetically, the Bureau of Internal Revenue's actions reflect its admission and confirmation that 'San Mig Light' is a new brand.
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> When respondent's October 19, 1999 letter requested the registration and authority to manufacture "San Mig Light," to be taxed at ₱12.15 per liter, the Bureau of Internal Revenue granted the request.
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> The response dated February 7, 2002 of the LTAD II Acting Chief confirmed that respondent was allowed to register, manufacture, and sell 'San Mig Light' as a new brand.
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> The May 28, 2002 Notice of Discrepancy was effectively nullified by the subsequent issuance of Revenue Memorandum Order No. 6-2003, which included "San Mig Light" as a new brand.
>
> The Bureau of Internal Revenue issued Revenue Memorandum Order No. 6-2003 dated March 11, 2003 with the subject, Prescribing the Guidelines and Procedures in the Establishment of Current Net Retail Prices of New Brands of Cigarettes and Alcohol Products Pursuant to Revenue Regulations No. 9-2003. Annex 'A-3' is the Master List of Registered Brands of Locally Manufactured Alcohol Products as of February 28, 2003, and the list includes 'San Mig Light,' classified as 'NB' or 'new brand registered on or after January 1, 1997'
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> x x x
>
> In any event, petitioner's letters and Notices of Discrepancy, which effectively changed San Mig Light's brand's classification from '*new brand* to *variant* of existing brand,' necessarily changes San Mig

[4] G.R. No. 205045 and G.R. No. 205723, January 25, 2017.

> Light's tax bracket. Based on the legislative intent behind the classification freeze provision, petitioner has no power to do this.
>
> A reclassification of a fermented liquor brand introduced between January 1, 1997 and December 31, 2003, such as 'San Mig Light,' must be by act of Congress. There was none in this case."

In view of the foregoing disquisitions, there being no new matter or substantial issue raised in respondent's Motion, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on September 14, 2023.

WHEREFORE, premises considered, respondent's Motion for Reconsideration (Re: Decision promulgated 14 September 2023) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice