REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

TANDUAY DISTILLERS, INC., Petitioner,	**CTA EB NO. 2101** (CTA Case Nos. 9017 & 9035)
- versus -	Present: **DEL ROSARIO,** ***P.J.,*** **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 2 2 2021 4:05pm

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RESOLUTION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is Tanduay Distillers, Inc.'s (**petitioner's**) Motion for Reconsideration (**MR**) filed on 16 November 2020[1], with respondent Commissioner of Internal Revenue's (**respondent's**) Opposition/Comment thereto filed on 16 December 2020.[2] The MR seeks the reversal of the Court *En Banc*'s Decision promulgated on 14 October 2020 (**assailed Decision**). The dispositive portion of the assailed Decision reads:

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[1] *Rollo*, pp. 161-181.
[2] Id., 191-195.

198

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> **WHEREFORE,** with the foregoing, petitioner Tanduay Distillers, Inc.'s Petition for Review is **DENIED** for lack of merit. Accordingly, the Decision dated 07 February 2019 and Resolution dated 28 June 2019 of the Special Second Division in CTA Case Nos. 9017 and 9035, similarly entitled *Tanduay Distillers, Inc. v. Commissioner of Internal Revenue,* are hereby **AFFIRMED.**
>
> **SO ORDERED.**
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> ...

In the instant MR, petitioner reiterates its argument that the Court erroneously brushed aside the stipulations reached by the parties which carries with it the admission of the correctness of the factual issues of the case, including the nature and volume of tax-paid raw materials factored in the production of finished goods (for which excise taxes were paid anew in 2013 and became the subject of the present claim for refund).

According to petitioner, respondent's witness, Revenue Officer Evangeline M. Casipe (**RO Casipe**) stated in her Judicial Affidavit[3] that the only reason for the denial of petitioner's claim for refund was the stringent provision of Revenue Memorandum Circular (**RMC**) No. 3-2013.[4] Petitioner further claims that the case records are bereft of any indication that the cause for the denial was due to factual reasons as nothing was discussed relative to any perceived deficiency in the volume of tax-paid raw materials used to produce the finished goods.

Petitioner also imputes error upon the Court *En Banc* as to its finding that the former failed to prove the actual payment of excise taxes passed on by its local suppliers and the remittance thereof to the Bureau of Internal Revenue (**BIR**). In support of such allegation, petitioner claims that it was able to present the pertinent documents such as accounts payable vouchers (**APV**), sales invoices, delivery receipts and local suppliers' confirmation letters as contained in the sub markings of Exhibits "P-41-2"[5], "P-41-3"[6] and "P-41-4"[7], which, in turn, provides the summary of the foregoing documents relative to its

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[3] Division Docket (CTA Case No. 9017), Volume V, pp. 2635-2639.

[4] Clarifying Certain Provisions of Revenue Regulations No. 17-2012 Implementing the Provisions of Republic Act No. 10351 as well as the Provisions of Revenue Memorandum Circular No. 90-2012 Providing the Initial Tax Classifications of Alcohol and Tobacco Products.

[5] Summary of Alcohol 140% - Asian Alcohol.

[6] Summary of Alcohol 189% - Absolut (Purchases).

[7] Summary of Alcohol 189% - Kooll Company (Purchases).

purchases from Asian Alcohol, Absolut Distillers and Kooll Company, respectively.

As to the raw materials imported from January to February 2013, petitioner contends that since Exhibits "P-43.1" to "P-43.8"[8] clearly give reference to the entry number of the import transactions and even mentioned the Central Bank Release Certificate (**CBRC**), the same have probative value for purposes of proving the importations and the payment of excise taxes. Additionally, petitioner insists that these entries in Exhibits "P-43.1" to "P-43.8" were made at or near the time of transaction by persons who were in the position to know the facts stated therein and therefore these are considered as *prima facie* evidence of the transactions as the entries have been entered in the ordinary or regular course of business.

Lastly, petitioner maintains its position that since the figures on the volume of tax-paid alcohol raw materials and the volume of finished goods removed are already presented in proof liters, there is no more need for a conversion factor. Considering that both raw materials and finished goods are already presented in proof liters, there is already a one-to-one (1:1) relationship such that one (1) proof liter of raw material is the same one (1) proof liter of finished goods, citing Section 141[9] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Petitioner further asserts that it did not present an expert witness to explain the essence of a proof liter considering that the law already provides for its definition.

8

Exhibit	Description
P-43.1	APV No. 000002800 dated 10 January 2013
P-43.2	APV No. 000002832 dated 25 January 2013
P-43.3	APV No. 000002835 dated 29 January 2013
P-43.4	APV No. 000002848 dated 01 February 2013
P-43.5	APV No. 000002859-A dated 08 February 2013
P-43.6	APV No. 000002836 dated 29 January 2013
P-43.7	APV No. 000002865 dated 15 February 2013
P-43.8	APV No. 000002866 dated 10 February 2013

9 **SEC. 141**. *Distilled Spirits*. – On distilled spirits, subject to the provisions of Section 133 of this Code, an excise tax shall be levied, assessed and collected based on the following schedules:
...

'Proof spirits' is liquor containing one-half (1/2) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (0.7939) at fifteen degrees centigrade (15°C). A 'proof liter' means a liter of proof spirits.

On the other hand, respondent contends that the Court *En Banc* correctly denied petitioner's claim for refund. He further avows that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the said burden is fatal to its claim. Lastly, respondent reiterates that claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation.

We resolve.

After considering the arguments of the parties, the Court *En Banc* is constrained to deny petitioner's MR.

At the onset, it must be emphasized that petitioner has not presented any new matter which have not yet been considered or passed upon by the Court in Division and the Court *En Banc*.

Nonetheless, for emphasis, the Court *En Banc* shall briefly discuss and reiterate its reasons for the denial of petitioner's Petition for Review and the consequent affirmance of the Court in Division's Decision and Resolution dated 07 February 2019 and 28 June 2019, respectively.

On petitioner's contention that the stipulations made by the parties were brushed aside, this Court correctly ruled that it is not bound strictly by the issues raised specifically by the parties[10] and it may also rule upon related issues, especially so in claims for refund, where the taxpayer is bound to prove every minute aspect of its case.[11]

It must be noted that RO Casipe merely confirmed the denial of the claim for refund purely on a legal basis. At most, it could only mean that, since the claim for refund was denied based on the provisions of Revenue Regulations (**RR**) No. 17-2012[12] and RMC 18-

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10 See *Commissioner of Internal Revenue v. Lancaster Philippines, Inc*, G.R. No. 183408, 12 July 2017.

11 See *KEPCO Philippines Corporation v. Commissioner of Internal Revenue,* G.R. No. 179356, 14 December 2009.

12 Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations.

201

2013[13], there was no need for the BIR to ascertain petitioner's compliance with the factual requirements in support of the said claim.

In any case, the government cannot be prejudiced by such statement of RO Casipe as estoppel does not apply to the government, especially on matters of taxation.[14] Thus, the government cannot be estopped by the mistake, negligence, or omission of its agents.[15]

As to the documents that allegedly prove the actual payment of excise taxes passed on by its local suppliers and the remittance thereof to the BIR, the Court *En Banc* reiterates that APVs, sales invoices, delivery receipts and local suppliers' confirmation letters that petitioner banked on could only prove that it was *charged* and *billed* for its purchases but not the *actual payment* of the excise taxes passed on and its *remittance* to the BIR.

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. **It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit.**[16]

With respect to petitioner's insistence that there is no more need for a conversion factor since the figures on the volume of tax-paid alcohol raw materials and the volume of finished goods removed are already presented in proof liters and citing Section 141[17] of the NIRC of 1997, as amended, it is worth stressing that the said provision merely states the definition of "proof spirits" and "proof liters". However, the same does not establish the fact that one (1) proof liter of raw material is the same one (1) proof liter of finished goods. Thus, in the absence of any evidence to prove the foregoing, the Court *En Banc* could not ascertain if the finished goods in proof liters were produced from the very same proof liters of raw materials that went into production.

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13 Further Clarifying the Taxability of Distilled Spirits Provided under Revenue Memorandum Circular No. 3-2013.

14 See *The Heirs of Atty. Jose C. Reyes, et al. v. Republic of the Philippines*, G.R. No. 150862, 03 August 2006.

15 See *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, 04 June 2014.

16 See *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, 13 June 2012.

17 Supra at note 9.

202

As a final note, petitioner's claim for refund is anchored on the exemption clause provided in Section 170[18] of the NIRC of 1997, as amended, which requires that rectified spirits were **produced exclusively** from the use of spirits upon which the excise tax has already been paid. In this case, petitioner was not able to clearly and sufficiently establish the same from the evidence it presented before the Court in Division.

In sum, petitioner failed to present any new matter as to warrant the reversal of the assailed Decision.

WHEREFORE, petitioner Tanduay Distillers, Inc.'s Motion for Reconsideration filed on 16 November 2020 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

[18] **SEC. 170.** *Requirements Governing Rectification and Compounding of Liquors.* — Persons engaged in the rectification or compounding of liquors shall, as to the mode of conducting their business and supervision over the same, be subject to all the requirements of law applicable to distilleries: *Provided*, That where a rectifier makes use of spirits upon which the excise tax has been paid, no further tax shall be collected on any rectified spirits produced exclusively therefrom: *Provided, further*, That compounders in the manufacture of any intoxicating beverage whatever, shall not be allowed to make use of spirits upon which the excise tax has not been previously paid.

203

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice