REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2625** (CTA Case No. 10000)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, *and* **FERRER-FLORES**, *JJ.*
SAN MIGUEL BREWERY INC., *Respondent.*	Promulgated: AUG 02 2023 4:30 pm

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DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on June 10, 2022 by petitioner Commissioner of Internal Revenue (CIR) assailing the Decision dated September 22, 2021[2] (assailed Decision) and the Resolution dated April 28, 2022[3] (assailed Resolution) promulgated by the Court's Third Division (Court in Division) in CTA Case No. 10000, partially granting respondent San Miguel Brewery, Inc.'s claim for refund representing erroneously, excessively, and/or illegally collected excise taxes due on the removals of its beer products for the period covering January 1, 2017 to December 31, 2017.

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[1] *En Banc* (*EB*) Docket, pp. 12-53.
[2] *EB* Docket, pp. 55-86; Division Docket, pp. 445-476.
[3] *EB* Docket, pp. 88-96; Division Docket, unpaged.

THE PARTIES

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency in charge of, among others, the assessment and collection of all national internal revenue taxes, fees, and charges. He may be served with legal processes of this Court through the Litigation Division of the BIR, Room 703, BIR Bldg., Diliman, Quezon City.[4]

Respondent 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.[5]

THE FACTS

The facts, as recounted by the Court in Division, are as follows:

> On December 12, 2018, [respondent] filed an administrative claim for refund in the total amount of ₱122,620,732.71, representing alleged overpayment of excise taxes erroneously, illegally, excessively, and/or wrongfully assessed on and collected from [respondent] on the removals of its various products for the period from January 1, 2017 to December 31, 2017.
>
> The instant *Petition for Review* was filed on December 27, 2018.
>
> [Petitioner] posted his Answer on March 15, 2019, setting forth its special and affirmative defenses.
>
> On March 25, 2019, [petitioner] transmitted the BIR Records for this case.
>
> The pre-trial conference was set and held on June 25, 2019. Prior thereto, [petitioner]'s Pre-Trial Brief Ad Cautelam was filed on June 14, 2019, while [respondent]'s Pre-Trial Brief was submitted on June 19, 2019, attaching therewith a draft Joint Stipulation of Facts, Documents, Issues, and Other Matters.
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> Upon [respondent]'s motion, the Court commissioned Ms. Katherine O. Constantino as an Independent Certified Public Accountant (ICPA). The Report of the said ICPA was submitted on July 25, 2019.

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[4] Parties, *Petition for Review*, *EB* Docket, p. 14.
[5] Par., I(A)(1), Pre-Trial Order dated August 14, 2019, Division Docket, p. 281.

On July 25, 2019, [respondent] filed a Manifestation, stating that the parties had not been able to reach an agreement on the draft Joint Stipulation of Facts, Documents, Issues and Other Matters proposed by [respondent]; and hence, they would no longer file a Joint Stipulation in this case. In the Resolution dated July 31, 2019, the Court noted the said Manifestation.

Thereafter, the Court issued the Pre-Trial Order dated August 14, 2019.

Trial then proceeded.

During trial, [respondent] presented its documentary and testimonial evidence. [Respondent] offered the testimonies of the following individuals, namely: (1) Ms. Noemi L. Ronquillo, its Financial Services and Accounting Manager; and (2) Ms. Katherine O. Constantino, the Court duly commissioned ICPA.

Subsequently, on September 25, 2019, [respondent] filed its Formal Offer of Evidence. [Petitioner] submitted his Comment (on Petitioner's Formal Offer of Evidence with Manifestation) on October 9, 2019, stating, *inter alia*, that in view of the confirmation of the office conducting an investigation/audit on [respondent]'s claim for refund that there was still no report on the investigation, [petitioner] would no longer present his witness, but instead requested the Court to allow him to submit his Memorandum to further support his defense.

In the Resolution dated November 7, 2019, the Court admitted [respondent]'s exhibits, *except* for Exhibit "P-6-i-25714", for not being found in the records.

Thus, on November 26, 2019, [respondent] filed a Motion for Partial Reconsideration (Re: Resolution dated November 7, 2019); and on December 26, 2019, a Manifestation and Submission/Motion. [Petitioner] did not file his comment on the said Motion for Partial Reconsideration. In the Resolution dated June 8, 2019, the Court then granted the same, and admitted Exhibit "P-6-i-25714" in evidence.

[Petitioner]'s Memorandum was posted on August 17, 2020; while the Memorandum for the [Respondent] was filed on September 24, 2020.

On October 5, 2020, the instant case was deemed submitted for decision.

On September 22, 2021, the Court in Division promulgated the assailed Decision with the following dispositive portion:

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**.

For being contrary to Section 143 of the NIRC of 1997, as last amended by RA 10351, the following portions of Annex "A-1" of RMC 90-2012, prescribing the applicable excise tax rates per liter, 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 P50.60 per liter and below				
	xxx	xxx	xxx	
San Miguel Pale Pilsen	Bottle	1000	32.73	15.49
San Miguel Pale Pilsen (embossed label marking)	Bottle	320	45.48	15.49
Coors Light Beer	Bottle	330	43.18	20.57
San Mig Light	Bottle	330	47.99	20.57
The Original Coors	Bottle	330	32.36	20.57
The Silver Bullet Coorslight	Bottle	330	45.21	20.57
B. NRP is more than P50.60				
	xxx	xxx	xxx	
Colt Ice	Bottle	330	60.37	20.57
Coors Light Beer	Can	330	56.03	20.57
Red Horse	Can	330	56.61	20.57
San Mig Cerveza Negra	Bottle	320	66.39	20.57
San Mig Light	Can	330	61.51	20.57
San Mig Strong Ice	Bottle	330	62.66	20.57

San Mig Strong Ice	non-returnable bottle	330	65.10	20.57
San Mig Strong Ice	can	330	70.36	20.57
San Mig Oktoberfest Beer	bottle	330	74.75	20.57
San Mig Pale Pilsen		330	60.05	20.57
San Miguel Premium Malt Beer	bottle	330	91.73	20.57
San Miguel Premium Malt Beer	can	330	100.30	20.57
San Miguel Premium Malt Beer	non-returnable bottle	330	104.73	20.57
Super Dry	can	330	69.90	20.57
The Original Coors	can	330	54.00	20.57
The Silver Bullet Coorslight	can	330	57.05	20.57

II. List of Brands (not included on 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

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 P50.60 per liter and below				
	xxx	xxx	xxx	
Beer Pale Pilsen	bottle	330	45.21	20.57
B. NRP is more than P50.60				
	xxx	xxx	xxx	
Carlsberg	bottle	330	60.37	20.57
San Mig Zero	can	330	56.03	20.57
San Miguel Flavored Beer-Apple	can	330	56.61	20.57
San Miguel Flavored Beer-Lemon	bottle	320	66.39	20.57

San Miguel Flavored Beer-Strong Lager	can	330	61.51	20.57
Stag	bottle	330	62.66	20.57
The Original Coors	can	330	70.36	20.57

"

> Moreover, also for being contrary to Section 143 of the NIRC of 1997, as last amended by RA No. 10351, the portion of 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** petitioner the amount of **₱122,620,732.71**, representing erroneously, excessively, and/or illegally collected excise taxes due on the removals of "*San Mig Light*" and *"Other Beer Products"* for the period covering January 1, 2017 to December 31, 2017, **WITHOUT LEGAL INTEREST THEREON**.

On November 18, 2021, petitioner filed his *Motion for Reconsideration [Decision dated September 22, 2021]*,[6] to which respondent filed an *Opposition to [Petitioner]'s "Motion for Reconsideration....." dated November 18, 2021*[7] on March 23, 2022.

On April 28, 2022, the Court in Division issued the assailed Resolution [8] denying petitioner's *Motion for Reconsideration [Decision dated September 22, 2021]* in this manner:

> **WHEREFORE**, premises considered, [petitioner]'s Motion for Reconsideration (Decision dated September 22, 2021) is **DENIED** for lack of merit.
>
> **SO ORDERED**.

[6] Division Docket, pp. 477-508.
[7] Division Docket, unpaged.
[8] *Supra*, note 3.

PROCEEDINGS IN THE COURT *EN BANC*

On May 26, 2022, petitioner filed a *Motion for Extension of Time to File Petition for Review,*[9] praying for a 15-day extension from May 28, 2022, or until June 6, 2022 [*sic*] to file his Answer [*sic*].[10]

On May 30, 2022, petitioner filed a *Manifestation*[11] stating that the prayer in its *Motion for Extension of Time to File Petition for Review* was erroneous and should read: "that petitioner be given an extension of fifteen (15) days from 28 May 2022 or until 12 June 2022 within which to file his *Petition for Review.*"[12]

The Court issued a Minute Resolution dated June 1, 2022,[13] noting petitioner's *Manifestation* and granting petitioner an extension of 15 days, or until June 12, 2022, to file his *Petition for Review.*

On June 10, 2022, petitioner filed his *Petition for Review.*[14]

On June 30, 2022, the Court issued a Resolution[15] giving petitioner a non-extendible period of five (5) days from receipt to submit a compliant Verification and Certification of Non-Forum Shopping under Sections 4 and 5, Rule 7 of the Rules of Civil Procedure, as amended.

On July 5, 2022, petitioner filed his *Compliance* [16] attaching a Verification and Certification of Non-Forum Shopping to comply with the Resolution dated June 30, 2022.

On July 20, 2022, the Court issued a Resolution[17] noting petitioner's *Compliance* and ordering respondent to file a comment/opposition to petitioner's *Petition for Review* within ten (10) days from receipt.

On July 26, 2022, respondent filed its *Comment on the Petition for Review.*[18]

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[9] *EB* Docket, pp. 1-6.
[10] Prayer, Motion for Extension of Time to File *Petition for Review*, *EB* Docket, p. 2.
[11] *EB* Docket, pp. 7-10.
[12] *EB* Docket, p. 7.
[13] *EB* Docket, p. 11.
[14] *Supra*, note 1.
[15] *EB* Docket, p. 98-99.
[16] *EB* Docket, pp. 100-105.
[17] *EB* Docket, pp. 107-108.
[18] *EB* Docket, pp. 109-135.

On August 23, 2022, the case was submitted for decision.[19]

THE ISSUE

Petitioner raises the following grounds[20] for the Court's resolution:

> I.
> WITH ALL DUE RESPECT, THE HONORABLE COURT *A QUO* ERRED IN ASSUMING JURISDICTION OVER THE INSTANT CASE.
>
> II.
> THE HONORABLE COURT *A QUO* ERRED IN DECLARING THAT "ANNEX A-1" OF RMC NO. 90-2012 IS INVALID.
>
> III.
> THE HONORABLE COURT *A QUO* ERRED IN RULING THAT RESPONDENT IS ENTITLED TO THE TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE.

Petitioner's arguments

Petitioner submits that the Court in Division erred in assuming jurisdiction over this case. Citing Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, and Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), he insists that the Court in Division does not have jurisdiction over the nullification of the ₱20.57 per liter excise tax rate specified in Revenue Memorandum Circular (RMC) No. 90-2012[21] and the assailed provision in Revenue Regulations (RR) No. 17-2012.[22] Petitioner explains that RMC No. 90-2012 and RR No. 17-2012 were issued in accordance with his rule-making or quasi-legislative power to interpret tax laws under Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended.[23] Hence, the said issuances are appealable to the Secretary of Finance (SOF), then eventually to

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[19] Resolution dated August 23, 2022, *EB* Docket, pp. 137-138.
[20] Grounds of the Petition, *Petition for Review*, *EB* Docket, pp. 14-15.
[21] Revised Tax Rates of Alcohol and Tobacco Products Under Republic Act No. 10351, "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", December 27, 2012.
[22] 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, December 21, 2012.
[23] *Petition for Review*, *EB* Docket, pp. 23-26.

the regular courts.[24] He adds that a collateral attack on presumably valid administrative issuance is not allowed.[25]

Petitioner further argues that, assuming without conceding that, this Court may take cognizance of cases involving the validity or constitutionality of BIR issuances, this Court should dismiss the case due to petitioner's non-exhaustion of administrative remedies since petitioner was denied the opportunity to review the claim for refund for having filed a judicial claim 15 days after it filed its administrative claim.[26]

Petitioner maintains that, assuming without conceding that, this Court has jurisdiction and/or respondent has a cause of action, respondent 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 Miguel Light as it has always been classified as a variant of an existing brand.[27]

Finally, petitioner raises that claims for refund are construed strictly against the taxpayer and in favor of the government; hence, respondent has the burden of proving that its claim for refund was properly documented.[28]

Respondent's arguments

Respondent contends that the Court has jurisdiction to pass upon the issue of the nullity of RMC No. 90-2012, particularly the excise tax rate of ₱20.57 specified therein, and of Section 5 of RR No. 17-2012, which imposes higher rates effective January 1, 2014, which respondent directly challenges in this proceeding, as ruled in *Banco de Oro et al. vs. Republic of the Philippines, et al.*[29]

Respondent argues that the rule on exhaustion of administrative remedies is not applicable when circumstances indicate the urgency of judicial intervention,[30] as in this case.[31] The excise tax rate of ₱24.07 per liter, as well as the earlier tax rates of ₱20.57, ₱21.39, ₱22.25, and ₱23.14, from which it is

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[24] *Petition for Review*, *EB* Docket, p. 24.
[25] *Petition for Review*, *EB* Docket, pp. 29-31.
[26] *Petition for Review*, *EB* Docket, pp. 32-35.
[27] *Petition for Review*, *EB* Docket, pp. 35-44.
[28] *Petition for Review*, *EB* Docket, pp. 44-45.
[29] G.R. No. 198756, January 13, 2015.
[30] *Id.*
[31] Pars. 7.01-7.02, Comment on the *Petition for Review*, *EB* Docket, pp. 129-130.

derived, are contrary to and in violation of Section 143 of the NIRC, as amended, and that RMC No. 90-2012, which imposed the rate of ₱20.57, and RR No. 17-2012, which is the basis of the subsequent increased rates of ₱21.39, ₱22.25, and ₱23.14, were issued without prior notice to petitioner and without hearing in violation of respondent's constitutional and statutory rights to due process.

Respondent further counters that the only requirement for filing an administrative claim for refund with the BIR is that the claim should be filed within two (2) years after the payment of tax or penalty.[32]

Respondent adds that the reclassification of San Miguel Light as a variant is not an issue in this case. Besides, the provisions of Section 143 of the NIRC on "variant" and related matters had already been repealed by RA No. 10351.[33]

Respondent avers that "statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority" does not apply because the present claim for refund arose from the illegal and unlawful imposition and collection of an excise tax rate of ₱24.07 by the BIR on "San Mig Light" and other beer products that are violative Section 143 of the NIRC, as amended by RA No. 10351.[34]

Finally, respondent insists that the ICPA recommended that the excise tax amount subject for refund is ₱122,620,732.71, which petitioner did not rebut.[35]

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is not impressed with merit.

[32] Pars. 7.03, Comment on the *Petition for Review*, *EB* Docket, pp. 130-131.
[33] Par. 8.00, Comment on the *Petition for Review*, *EB* Docket, p. 132.
[34] Pars. 9.00-9.02, Comment on the *Petition for Review*, *EB* Docket, pp. 132-134.
[35] Par. 9.04, Comment on the *Petition for Review*, *EB* Docket, p. 134.

The Court En Banc has jurisdiction over the instant Petition for Review.

The Court shall first determine whether the present Petition is timely filed.

On April 28, 2022, the Court in Division denied respondent's *Motion for Reconsideration [Decision dated September 22, 2021]*[36] through the assailed *Resolution*,[37] a copy of which was received by petitioner on May 13, 2022.[38]

As provided under Section 3(b), Rule 8[39] of the RRCTA, petitioner had fifteen (15) days from receipt of the assailed *Resolution* on May 13, 2022, or until May 28, 2022, to file a *Petition for Review* with the Court *En Banc*.

On May 26, 2022, within the reglementary period, petitioner filed a *Motion for Extension of Time to File Petition for Review*[40] praying for a 15-day extension from May 28, 2022, or until June 6, 2022 [*sic*] to file his Answer [*sic*].[41]

On May 30, 2022, petitioner filed a *Manifestation*[42] stating that the prayer in its *Motion for Extension of Time to File Petition for Review* should read: "that petitioner be given an extension of fifteen days from 28 May 2022 or until 12 June 2022 within which to file his *Petition for Review*."[43] The Court noted the same in a Minute Resolution dated June 1, 2022,[44] and granted petitioner an extension of 15 days, or until June 12, 2022, to file his ***Petition for Review***.

On June 10, 2022, petitioner filed his *Petition for Review*.[45]

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[36] Division Docket, pp. 477-508.
[37] *Supra*, note 3.
[38] Notice of Resolution dated May 4, 2022, Division Docket, unpaged.
[39] SEC. 3. *Who may appeal; period to file petition.* – ... (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a *petition for review* within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the *petition for review*.
[40] *EB* Docket, pp. 1-6.
[41] Prayer, Motion for Extension of Time to File *Petition for Review*, *EB* Docket, p. 2.
[42] *EB* Docket, pp. 7-10.
[43] *EB* Docket, p. 7.
[44] *EB* Docket, p. 11.
[45] *Supra*, note 1.

Having settled that the Petition was timely filed, We likewise rule that the Court *En Banc* has validly acquired jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4[46] of the RRCTA.

We now discuss the merits.

At the outset, the Court notes that petitioner's arguments in this *Petition for Review* are a mere rehash of matters raised in his *Answer, Memorandum,* and *Motion for Reconsideration [Decision dated September 22, 2021]*[47] filed before the Court in Division, which have been duly considered, weighed and resolved in the assailed Decision and Resolution. Nonetheless, We shall take time to elucidate the various issues presented in this case.

The Court in Division did not err in ruling that it has jurisdiction over the original Petition for Review.

Petitioner contends that the Court in Division erred in assuming jurisdiction over the instant case. It submits that the court *a quo* does not have jurisdiction to nullify the ₱20.57 per liter excise tax rate imposed under RMC No. 90-2012 and the assailed provision[48] under RR No. 17-2012.[49]

We disagree.

This issue is not novel as it has already been settled in a plethora of cases[50] that the CTA has *exclusive* jurisdiction to

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[46] SEC. 2. *Cases within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.

[47] Division Docket, pp. 477-508.

[48] 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*)

[49] *Petition for Review, EB* Docket, pp. 15-19.

[50] *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; *Confederation for Unity and Advancement of Government Employees (COURAGE), et al. v. Commissioner, Bureau of Internal Revenue,* G.R. Nos. 213446 & 213658, July 3, 2018; *Commissioner of Internal Revenue v. Court of Tax Appeals and Petron Corporation,* G.R. No. 207843 (Resolution on Motion for Reconsideration), February 14, 2018; *Steel Corporation of the Philippines, v. Bureau of Customs (BOC), et al.,* G.R. No. 220502, February 12, 2018; *Banco de Oro,*

rule on the constitutionality or validity of a tax law, regulation, or administrative issuance, such as RMC No. 90-2012 and RR No. 17-2012.

In *Banco De Oro et al. vs. Republic of the Philippines, et al.* (*Banco De Oro*)[51] cited in the assailed Decision and Resolution, the Supreme Court *En Banc* clarified that the CTA has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law, regulation, or administrative issuance when raised by the taxpayer as a *direct challenge* or as a *defense* in disputing or contesting an assessment or claiming a refund.

In the instant case, records reveal that respondent's *Petition for Review* filed before the Court in Division alleged the following *issues*, to wit:

> 1. Whether SMBI is entitled to a refund ... of ₱122,620,732.71 ... for the period January 1, 2017 to December 31, 2017.
>
> 2. Whether the excise tax rate of ₱24.07 per liter imposed by the CIR ... 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.
>
> 3. Whether RMC 90-2012, particularly the excise tax rate of ₱20.57 imposed by said RMC on the subject beer products, is valid.
>
> 4. Whether RR 17-2012, particularly Section 5 thereof, providing that starting January 1, 2014, the applicable tax rate shall be increased by four percent (4%) annually, is valid.

Respondent prayed that judgment be rendered:

> 1. **Declaring that the excise tax rate of ₱24.07 per liter** imposed by [petitioner] on the subject Bottle or Can Products and Keg Products ..., **is not valid**;
>
> 2. **Declaring that [respondent] is entitled to a refund of the amount of ₱122,620,732.71**, representing erroneous, excessive, illegal, and/or wrongful collection from, and overpayment by, [respondent] ... of excise taxes ...;

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et al. v. Republic of the Philippines, G.R. No. 198756 (Resolution on Motion for Reconsideration), August 16, 2016; *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, G.R. No. 212530, August 10, 2016; *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the Commissioner of Internal Revenue*, G.R. No. 210987, November 24, 2014; *Asia International Auctioneers, Inc. v. Parayno, Jr.*, G.R. No. 163445, December 18, 2007; *Commissioner of Internal Revenue v. Leal*, G.R. No. 113459, November 18, 2002; and *Rodriguez v. Blaquera*, G.R. No. L-13941, September 30, 1960.

[51] G.R. No. 198756, August 16, 2016.

> 3. **Ordering [petitioner] to refund the aforesaid amount of ₱122,620,732.71** to [respondent] or issue to the latter a tax credit certificate for said amount, with legal interest; and
>
> 4. **Declaring as null and void Revenue Memorandum Circular (RMC) No. 90-2012,** particularly the portions thereof imposing the tax rate of ₱20.57, ... **and Revenue Regulations (RR) No. 17-2012**, particularly the portion of Section 5 hereof providing that "Starting January 1, 2014, the applicable tax rate shall be increase by four percent (4%) annually."

Considering that this case questions the validity of administrative issuances, *i.e.*, pertinent provisions of RMC No. 90-2012 and RR No. 17-2012, as a *direct challenge* and in connection with its refund claim, We find that there is no *collateral* but a *direct* attack on the presumably valid issuances, and the Court in Division has correctly assumed jurisdiction to entertain the same.

Anent petitioner's claim that the authority to declare an administrative issuance as void is conferred on **courts of general jurisdiction** and not on courts of special jurisdiction, the Supreme Court's pronouncement in *St. Mary's Academy of Caloocan City, Inc. vs. Henares (St. Mary's Academy)*[52] is instructive, *viz.:*

> Petitioner argues that the regular court has jurisdiction to rule on the validity and constitutionality of administrative issuances. However, the law creating the Court of Tax Appeals is clear. Republic Act No. 1125, as amended by Republic Act No. 9282, states in Section 7:
>
> > SECTION 7. *Jurisdiction.* — The Court of Tax Appeals 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 imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue[.]

[52] G.R. No. 230138, January 13, 2021.

This Court has previously applied this provision to emphasize that **it is the Court of Tax Appeals**, and **not the regional trial courts,** that has jurisdiction over questions on the validity of tax issuances by the Commissioner of Internal Revenue.

In *Blaquera v. Rodriguez*, ... [t]his Court ruled that the Court of First Instance did not have jurisdiction to hear the case; instead, it should have been brought on appeal to the Court of Tax Appeals, pursuant to Section 7 of Republic Act No. 1125.

In *Commissioner of Internal Revenue v. Leal*, the taxpayer questioned, ..., a revenue memorandum order and a revenue memorandum circular ... . *Leal* again applied Section 7 of Republic Act No. 1125 to emphasize that the jurisdiction over these cases questioning the Commissioner of Internal Revenue's issuances lies with the Court of Tax Appeals, not the regular courts. This Court declared the Regional Trial Court's ruling as void for being issued without jurisdiction.

Subsequently, in *Asia International Auctioneers v. Parayno*, the issue on jurisdiction again arose when a taxpayer questioned a revenue memorandum circular before the Regional Trial Court and prayed for its nullity. Citing both *Blaquera* and *Leal*, this Court reiterated that the Court of Tax Appeals has exclusive jurisdiction to review rulings or opinions of the Commissioner of Internal Revenue. ...

However, a year after *Asia International Auctioneers*, this Court decided *British American Tobacco v. Camacho*, which petitioner cites as authority. There, this Court allowed the taxpayer to question revenue regulations and a revenue memorandum circular before the Regional Trial Court through a petition for injunction, as the Court of Tax Appeals' jurisdiction does not include cases where the constitutionality of a law or rule is challenged. Thus:

Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same.

British American Tobacco was a deviation from the rulings in *Blaquera*, *Leal*, and *Asia International Auctioneers*.

This conflict has been resolved in *Banco de Oro v. Republic*. *Banco de Oro* acknowledged the deviation and reverted to the earlier rulings in *Blaquera*, *Leal*, and *Asia International Auctioneers*. This Court said:

> **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.**
>
> **This is now the prevailing rule**, as affirmed in *COURAGE v. Commissioner of Internal Revenue.*
>
> Thus, when petitioner filed its Petition before the Regional Trial Court to question the constitutionality and validity of RMO No. 20-2013 and RMC No. 52-2013, it brought its case before the wrong court. **The Regional Trial Court did not have jurisdiction to pass upon such issues, as it is the Court of Tax Appeals that can decide on them**.
>
> Consequently, **the Regional Trial Court's Resolution declaring RMO No. 20-2013 as unconstitutional and RMC No. 52-2013 as invalid is void**. It was then incorrect for the Court of Appeals to rule on the propriety of issuing an injunction or a writ of prohibition, as the case should have been dismissed outright by the Regional Trial Court for lack of jurisdiction. (*Emphasis supplied*)

As such, *Banco De Oro* definitively settled that the CTA has jurisdiction over challenges to the validity of tax issuances. This is now the prevailing rule, as affirmed in *COURAGE vs. Commissioner of Internal Revenue* [53] and the more recent decisions of the Supreme Court,[54] as it overturned the previous doctrine in *British American Tobacco vs. Camacho* [55] which held that such jurisdiction lies in the regular courts, not the CTA.

In fine, the Court in Division has jurisdiction over the original *Petition for Review.*

The doctrine of exhaustion of administrative remedies is not applicable in this case.

Petitioner argues that even if the Court in Division may take cognizance of cases involving the validity or constitutionality of BIR issuances, it should have dismissed the original Petition due to respondent's non-exhaustion of administrative remedies.

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[53] G.R. Nos. 213446 & 213658, July 3, 2018.
[54] *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.
[55] G.R. No. 163583, August 20, 2008.

Petitioner further argues that it was denied the opportunity to review respondent's refund claim considering that respondent filed its administrative claim on December 12, 2017, and judicial claim on December 27, 2017, a mere 15-day period.

We are not persuaded.

In *Commissioner of Internal Revenue vs. Court of Tax Appeals (First Division), et al., et seq.* (*CTA First Division*),[56] the Supreme Court explains the doctrine of exhaustion of administrative remedies and its exceptions as follows:

> '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 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: **"[the] question involved is purely legal; the urgency of judicial intervention x x x; and the futility of an appeal to the Secretary of Finance 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*,[57] when it allowed a direct challenge to the tax issuance assailed therein on the ground that 'the issue involved is purely a legal question x x x, or when there are

[56] G.R. Nos. 210501, 211294, and 212490, March 15, 2021.
[57] G.R. No. 228539, June 26, 2019.

> circumstances indicating the urgency of judicial intervention.' (*Emphasis supplied*)

Anent tax issuances, the power of the CIR to interpret the provisions of the Tax Code and other tax laws is subject to the review of the SOF.[58] Failure to raise the matter to the SOF constitutes a violation of the rule on exhaustion of administrative remedies. However, the Supreme Court, in the above *CTA First Division* case, has recognized *exceptions* to the exhaustion doctrine, such as when the question involved is *purely legal*,[59] there is an *urgency of judicial intervention*; and there is *futility of an appeal to the SOF* as the latter appeared to have adopted the challenged BIR rulings.

The Court in Division aptly found in the assailed Decision that the circumstances in this case indicate an urgency of judicial intervention.[60] Apart from the urgency, We also find that the question involved here is purely legal. Thus, We rule that there is no violation of the exhaustion doctrine even if respondent did not elevate the matter to the SOF before coming to this Court.

As to petitioner's contention that respondent's filing of its judicial claim for refund fifteen (15) days after its administrative claim denied petitioner the opportunity to review respondent's claim, We find the same specious.

Section 229[61] of the NIRC of 1997, as amended, only requires two conditions for the filing of a judicial claim: (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.[62]

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[58] 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.

[59] *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*, G.R. No. 228539, June 26, 2019.

[60] *Supra*, note 2 at p. 70.

[61] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[62] *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021.

The Supreme Court's pronouncement in *Philippine National Bank vs. Commissioner of Internal Revenue* (*PNB*)[63] is enlightening and applicable:

> **Nothing in our laws and jurisprudence supports the CIR's position that the exhaustion of an administrative claim for tax refund is a condition precedent** that must be completely acted upon by the BIR before a judicial claim for refund may be filed by the taxpayer concerned. ...
>
> ... ...
>
> Indeed, jurisprudence dictates that a taxpayer need not await the BIR's action on an administrative claim before going to the CTA.
>
> In *CBK Power Company Ltd. v. Commissioner of Internal Revenue*, CBK Power remitted withholding taxes to the BIR on March 10, 2003. ..., it had until March 10, 2005 within which to file a claim for tax refund. ..., on March 4, 2005, CBK Power filed an administrative claim for refund..., without awaiting for the BIR to act on its administrative claim, CBK Power filed a judicial claim for refund through a *petition for review* with the CTA on March 9, 2005.
>
> In rejecting the CIR's claim that CBK Power should have awaited the BIR's action on its administrative claim before instituting a case with the CTA, this Court ruled:
>
> With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA En Banc in debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage.
>
> In *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, Univation Motor Philippines, Inc. (Univation) filed on April 15, 2011 its Final Adjustment Return for 2010. On March 12, 2012, it filed an administrative claim for tax refund. Because the BIR did not act on its administrative claim, Univation filed a *petition for review* with the CTA on April 12, 2013. The CIR excoriated Univation for not awaiting its action on the administrative claim before elevating the matter to the CTA. Finding in favor of Univation, We declared:

[63] G.R. Nos. 242647, 243814 & 242842-43 (Notice), March 15, 2022.

> In the instant case, the two-year period to file a claim for refund is reckoned from April 15, 2011, ... Since respondent filed its administrative claim on March 12, 2012 and its judicial claim on April 12, 2013, ... both of respondent's administrative and judicial claim for refund were filed ... within the two-year prescriptive period provided by law. ..., if respondent awaited for the commissioner to act on its administrative claim (before resort to the Court), chances are, the two-year prescriptive period will lapse effectively resulting to the loss of respondent's right to seek judicial recourse and worse, its right to recover the taxes it erroneously paid to the government. Hence, respondent's immediate resort to the Court is justified.
>
> Contrary to petitioner CIR's assertion, there was no violation of the doctrine of exhaustion of administrative remedies. ...
>
> **The law only requires that an administrative claim be *priorly* filed**. That is, to give the BIR at the administrative level an opportunity to act on said claim. In other words, **for as long as the administrative claim and the judicial claim were filed within the two-year prescriptive period, then there was exhaustion of the administrative remedies.** (*Emphasis supplied*)

The same principles apply in the present case. Here, it is undisputed that respondent's administrative and judicial claims filed on December 12, 2018 and December 27, 2018, respectively, fell within the two-year prescriptive period. Had respondent awaited petitioner's action on its administrative claim before taking court action knowing fully well that the prescriptive period was about to end, chances are, it would have lost its right to seek judicial recourse within the prescribed two-year period, and worse, it would forever be barred from recovering the excise taxes on the beer products it erroneously paid to the BIR for CY 2017.

In fine, respondent did not violate the doctrine of exhaustion of administrative remedies when it filed its judicial claim without awaiting petitioner's action on its administrative claim, notwithstanding that the claims were filed only 15 days apart.

The Court in Division did not err in ruling that "Annex A-1" of RMC No. 90-2012 is invalid.

Petitioner argues that the Court in Division erred in declaring that "Annex A-1" of RMC No. 90-2012 is invalid, invoking respondent's alleged failure to observe the doctrine of exhaustion of administrative remedies as his ground.

The Court *En Banc* notes that the Court in Division declared as invalid pertinent portions of RMC No. 90-2012 and RR No. 17-2012.

Anent RMC No. 90-2012, We uphold the Court in Division's ruling that certain parts of Annex "A-1" of RMC No. 90-2012 are *invalid*. The disquisition of the court *a quo* on the matter is reiterated with approval, *viz.*:

> Section 3 of RA 10351, which took effect on January 5, 2013, reads, in part, as follows:
>
> "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 January 1, 2017, the tax on all fermented liquors shall be Twenty-three pesos and fifty centavos (P23.50) per liter.**
>
> Based on the foregoing provision, effective on January 1, 2013, the excise tax shall be P15.00 per liter in case the net retail price per liter of volume capacity of the fermented liquor is P50.60 or less; and the excise tax shall be P20.00 per liter, in case the net retail price per liter of volume capacity of the fermented liquor is more than P50.60. Furthermore, the BIR was tasked to classify all fermented liquors existing in the market at the time of the effectivity of RA 10351 **according to the net retail prices and the tax rates provided therein** based on the latest price survey of the said fermented liquors.

> Such being the case, **certain portions of Annex "A-1" of RMC 90-2012 must be struck down**. Particularly, said portions are as follows:
>
> "Annex 'A-1'
>
> LIST OF BRANDS OF LOCALLY MANUFACTURED FERMENTED LIQUORS
> As of December 2012
>
> ... ...
>
> Clearly, the foregoing tax impositions, respectively, are **beyond the tax rates under Section 143** of the NIRC of 1997, as last amended by RA 10351.
>
> ... ...
>
> **For being inconsistent or contrary to Section 143 of the NIRC of 1997, as last amended by RA 10351, the aforequoted portions of Annex "A-1" of RMC No. 90-2012 are invalid.** (*Emphasis supplied*)

Section 4 of the NIRC of 1997, as amended, grants the CIR the power to issue rulings or opinions interpreting the provisions of the NIRC or other tax laws. However, the CIR cannot, in exercising such power, issue administrative rulings or circulars inconsistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law but must remain consistent with the law they intend to carry out.[64] The 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]

In *Philippine Bank of Communications vs. Commissioner of Internal Revenue et al.*,[66] 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 petitioner. While it is widely accepted that 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. Hence, the Supreme Court upheld the

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[64] *Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue*, G.R. Nos. 213446 & 213658, July 3, 2018, citing the case of *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947. July 15, 2003.
[65] *Id.*, citing the case of *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999.
[66] *Id.*

nullification of RMC No. 7-85 because it was contrary to the express provision of Section 230 of the NIRC of 1977.[67]

As regards that portion of Section 5 of RR No. 17-2012, which reads: "[s]*tarting January 1, 2014, the applicable tax rate shall be increase*[d] *by four percent (4%) annually,*" We sustain the Court in Division's finding that it is invalid. Since the court *a quo's* ruling on the matter was undisputed by the parties, as it was not raised as an issue in this case, We shall not belabor to discuss the same.

The Court in Division did not err in holding that respondent is entitled to its claim for refund of the erroneously paid excise taxes amounting to ₱122,620,732.71 for CY 2017.

Petitioner maintains that the Court in Division erred in ruling that respondent is entitled to the tax refund or issuance of a tax credit certificate in the amount of ₱122,620,732.71 since there was no reclassification of San Miguel Light as it has always been classified as a variant of an existing product.

We agree with respondent that the said reclassification is not an issue here. Not a single discussion touched on this matter.

Respondent claims that under Section 143[68] of the NIRC of 1997, as amended by R.A. 10351, the excise tax rate that should have been imposed on its beer products for CY 2017 is only ₱23.50 per liter instead of ₱24.07 per liter. As a result, the difference between the said amounts, *i.e.*, **₱0.57 per liter** that

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[67] *Id.*

[68] 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 January 1, 2013
(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 (P50.60) or less, the tax shall be Fifteen pesos (P15.00) 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 (P50.60), the tax shall be Twenty pesos (P20.00) per liter.
... ...
Effective on January 1, 2017, the tax on all fermented liquors shall be Twenty-three pesos and fifty centavos (P23.50) 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. (*Emphasis supplied*)

resulted in the total amount of ₱122,620,732.71, was erroneously, excessively and/or illegally collected by petitioner.

Records reveal that the said amount was supported by pieces of evidence that the Court in Division thoroughly examined.[69] As ruled by the Court in Division, respondent was able to substantiate its claim for refund, *viz.*:

> Based on the foregoing findings, Petitioner has duly established that the removals of its *"San Mig Light" and "Other Beer Products"* for the year 2017 in the total of 215,124,092.48 liters are subject to excise tax rate of ₱23.50 only, instead of the ₱24.07 imposed by Respondent, and thus, **it is entitled to a refund corresponding to its erroneously, excessively, and/or illegally collected excise taxes** due on the removals of *"San Mig Light"* and *"Other Beer Products"* for the period covering January 1, 2017 to December 31, 2017, in the **total amount of ₱122,620,732.71**.
>
> **As for the payment of legal interest by Respondent, the same, however, cannot be granted**.
>
> It is well-settled in this jurisdiction that our national government cannot be required to pay interest in tax refunds. In the absence of statutory provision clearly or expressly directing or authorizing such payment, the National Government cannot be required to pay interest. Nevertheless, it is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness.
>
> There being no law which clearly or expressly directs the payment of interest on tax refunds, and since there is no indication that the collection of the excise taxes sought to be refunded was attended with arbitrariness, the award of legal interest cannot be made. (*Emphasis supplied*)

Unfortunately, petitioner failed to rebut these findings and put forth an argument that is *non-sequitur*, which cannot be considered in light of the evidence provided by respondent.

All told, We find that respondent was able to prove its entitlement to a refund or issuance of a tax credit certificate in the total amount of **₱122,620,732.71 without legal interest.**

[69] *Petition for Review*, Docket – p. 81.

WHEREFORE, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated September 22, 2021, and the Resolution dated April 28, 2022, of the Court's Third Division in CTA Case No. 10000 are **AFFIRMED WITH MODIFICATION**, thus:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**.
>
> For being contrary to Section 143 of the NIRC of 1997, as last amended by RA 10351, the following portions of Annex "A-1" of RMC 90-2012, prescribing the applicable excise tax rates per liter, are declared invalid, and have no force and effect, *viz.*:
>
> ... ...
>
> Moreover, also for being contrary to Section 143 of the NIRC of 1997, as last amended by RA 10351, the portion of Section 5 of RR 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 ₱122,620,732.71, representing erroneously, excessively, and/or illegally collected excise taxes due on the removals of "*San Mig Light*" and "*Other Beer Products*" for the period covering January 1, 2017 to December 31, 2017, **WITHOUT LEGAL INTEREST THEREON**.
>
> **SO ORDERED.**

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

ON LEAVE
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice