

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 2544

(CTA Case Nos. 8953 & 8954)

- versus -

GINEBRA SAN MIGUEL, INC.,

Respondent.

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GINEBRA SAN MIGUEL, INC.,

Petitioner,

CTA EB No. 2555

(CTA Case Nos. 8953 & 8954)

Present:

- versus -

DEL ROSARIO, PJ,

RINGPIS-LIBAN,

MANAHAN,

BACORRO-VILLENA,

MODESTO-SAN PEDRO,

REYES-FAJARDO,

CUI-DAVID,

FERRER-FLORES, and

ANGELES, II.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JAN 18 2024

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DECISION

REYES-FAJARDO, I.:

Before the Court *En Banc* are consolidated Petitions for Review filed by the following:

- 1) the Commissioner of Internal Revenue (CIR) on November 29, 2021, docketed as CTA EB No. 2544;¹ and
- 2) Ginebra San Miguel, Inc. (GSMI) on January 4, 2022, docketed as CTA EB No. 2555.²

These petitions assail the Amended Decision dated February 1, 2021 (Assailed Decision)³ and the Resolution dated October 28, 2021 (Assailed Resolution)⁴ of the Court of Tax Appeals Third Division (Court in Division) in CTA Case Nos. 8953 & 8954. The assailed issuances granted GSMI's claim for refund to the extent of ₱319,755,320.82.

The dispositive portions of the Assailed Decision and Resolution are reproduced below.

Assailed Decision

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision dated July 28, 2020 is hereby **AMENDED** to read as follows:

*"WHEREFORE, in light of the foregoing, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, that petitioner is entitled to a refund of its erroneously and excessively paid excise taxes for its finished goods removals from January 1, 2013 to May 31, 2013 that were produced using tax-paid raw materials, in the modified amount of **THREE HUNDRED NINETEEN MILLION SEVEN HUNDRED FIFTY-FIVE THOUSAND THREE HUNDRED TWENTY PESOS AND EIGHTY-TWO CENTAVOS (Php319,755,320.82)**, computed as follows:*

	Proof Liters	Excise Tax Amount
Excise tax on finished goods claimed by the Petitioner	25,375,105.00	Php715,258,843.38
Less: Excise tax claimed by the Petitioner on finished goods that were	5,808,619.00	164,548,611.59

¹ *Rollo* (CTA EB No. 2544), pp. 1-20.

² *Rollo* (CTA EB No. 2555), pp. 10-60.

³ Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justices Erlinda P. Uy and Maria Rowena Modesto-San Pedro concurring; *Rollo* (CTA EB No. 2544), pp. 27-39.

⁴ Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justices Erlinda P. Uy and Maria Rowena Modesto-San Pedro concurring; *Rollo* (CTA EB No. 2544), pp.40-52.

produced from ethyl alcohol after RA 10351.		
Ethyl alcohol and equivalent excise tax amount not included in the December 31, 2012 inventory under the Petition for review but reflected in the ORB.	4,063,500.00	114,842,431.59
Compounded ethyl alcohol inventories and equivalent excise tax amount wherein the Petitioner has difficulty in identifying the related purchase documents. These were used to produce finished goods for the periods.		
January 1, 2013 to May 31, 2013.	391,639.00 ^a	11,068,474.19 ^b
<i>As adjusted per ICPA report</i>	15,111,347.00	Php424,799,326.01
Less: Not properly supported raw materials on importation per this Court's verification	3,716,799.65 ^c	105,044,005.19 ^d
Refundable Excise Taxes	11,394,547.35	Php319,755,320.82
^a Computed as: 744,997.10 alcohol proof liters divided by total alcohol proof liters of 57,426,118.60 then multiplied by the corresponding proof liters produced using FIFO method based on movements in ORB of 30,188,433.		
^b Computed as: ₱10,936,556.14 divided by the total excise tax paid of ₱843,015,420.98 then multiplied by the corresponding excise tax of the finished goods produced using FIFO method based on movements in ORB of ₱853,183,977.34.		
^c Computed as: 7,070,303.30 alcohol proof liters divided by total alcohol proof liters of 57,426,118.60 then multiplied by the corresponding proof liters produced using FIFO method based on movements in ORB of 30,188,433.		
^d Computed as: Php103,792,052.60 divided by the total excise tax paid of ₱843,015,420.98 then multiplied by the corresponding excise tax of the finished goods produced using FIFO method based on movements in ORB of ₱853,183,977.34.		

SO ORDERED."

SO ORDERED.⁵

Assailed Resolution

WHEREFORE, petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration (Amended Decision promulgated 1 February 2021) are both DENIED for lack of merit.

SO ORDERED.

⁵ Rollo (CTA EB No. 2544), pp. 37-38. In-paragraph cross-references omitted.

Antecedents

Republic Act (RA) No. 9334⁶ amended Section 141 of the National Internal Revenue Code of 1997 (1997 Tax Code) to read:

SEC. 141. Distilled Spirits. — On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:

x x x

This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits, and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substances either in the process of original production or by any subsequent process.

x x x

'Spirits or distilled spirits' is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products of mixtures.

'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.

The 1997 Tax Code further provided:

SECTION 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. —

(1) x x x

(2) *Time for Filing of Return and Payment of the Tax.* — Unless otherwise specifically allowed, the return shall be filed and the excise

⁶ An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, As Amended, Republic Act No. 9334, December 21, 2004.

tax paid by the manufacturer or producer **before removal of domestic products from place of production** x x x

SECTION 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. (Boldfacing supplied)

RA No. 10351,⁷ which took effect on December 21, 2012, amended Section 141 (Tax Code, as amended) to read as follows:

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:

x x x

This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits, and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process.

‘Spirits or distilled spirits’ is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures.

‘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). ‘proof liter’ means a liter of proof spirits.

⁷ *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 19, 2012.

On even date, the Secretary of Finance, upon the CIR's recommendation, promulgated *Revenue Regulations (RR) No. 17-12*⁸ to implement Section 141 of the Tax Code, as amended by RA No. 10351. Based on Illustration No. 1⁹ thereof, the regulation appeared to impose tax on *whisky, a transformed form of ethyl alcohol*, upon removal from the factory. Section 3 thereof further provides:

SECTION 12. *Transitory Provisions.* — Upon the effectivity of the Act, the following transitory provisions shall be strictly observed by all concerned:

(a) x x x

(c) The specific tax that was paid on the physical inventory of ethyl alcohol held in possession by manufacturers of compounded liquors as of the effectivity of the Act subsequently used as raw materials in the production of compounded liquors shall not be entitled to tax credit/refund or shall not be deducted from the total excise tax due on compounded liquors.

Subsequently, Revenue Memorandum Circular (RMC) Nos. 3-13¹⁰ and 18-13¹¹ set out clarifications relative to RR No. 17-12, *viz.*:

RMC No. 3-13

2. Taxability of distilled spirits under Section 3 of R.R. No. 17-2012.

⁸ *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.*

⁹ ILLUSTRATION:

No. 1 — Distilled Spirits

Facts: ABC Corp. removes from its factory Brand "XEY" Whisky with the following details:

- 2400 bottles @ 330 ml bottle
- 40% alcohol strength
- Net Retail Price (NRP) is Php30.00 per bottle

Step 1. Compute the proof of Brand "XEY" by multiplying the alcohol strength by 2.
 $40\% \times 2 = 80$ proof

Step 2. Compute the excise tax due on the removals.

¹⁰ *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, January 8, 2013.*

¹¹ *Further Clarifying the Taxability of Distilled Spirits Provided Under Revenue Memorandum Circular No. 3-2013, February 15, 2013.*

92

Section 141 of the Tax Code of 1997, as amended, defined "Spirits or distilled spirits", for purposes of excise taxation, is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures.

In line with the aforesaid definition of distilled spirits, all end-products, such as ethyl alcohol, ethanol or other similar products or mixtures are separate and distinct distilled spirits apart from the above-enumerated alcoholic products (i.e., whisky, brandy, rum, etc.) and, therefore, the same should be likewise subjected to the imposition of a separate and distinct excise tax prescribed under the same Section of the Tax Code. (Boldfacing supplied)

RMC No. 18-13

Considering that all existing manufacturers of compounded liquors are now liable to pay the excise tax on every removal of compounded liquors from its place of production pursuant to RA No. 10351, the amount of the initial manufacturer's bond prescribed under Section 160 of the NIRC of 1997, as amended, shall be equivalent to the excise due on the total volume of compounded liquors that have been actually removed from the place of production in the immediately previous year of operation.

With respect to the tolling, bottling and other sub-contracting agreements prescribed under Section 21 of R.R. No. 3-2006 of alcohol products, the owner of the alcohol products shall be the person liable to pay the excise tax before removal thereof from the place of production of the toller or sub-contractor.

The excise tax that has already been paid on ethyl alcohol or ethanol pursuant to RMC No. 3-2013 shall not be entitled to tax credit/refund or shall not be deducted from the total excise tax due on compounded liquors. (Boldfacing supplied)

The present controversy stems from GSMI's claim seeking the refund or credit of allegedly erroneously or illegally collected excise taxes, grounded on the implementation of RR No. 17-12 and RMC Nos. 3-13 and 18-13.

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Administrative Claims

GSMI confirmed that it uses *ethyl alcohol* as the main ingredient in manufacturing distilled spirits, such as gin, rum, vodka, and mixed drinks,¹² and, as such, these finished products are subject to excise tax pursuant to Section 141 of the Tax Code, as amended.¹³ However, it pointed out that, prior to the amendment to Section 141, it did not pay further excise tax on its *finished goods*, as excise tax on the *ethyl alcohol* used to produce the same was already paid prior or upon acquisition¹⁴ either through direct importation or third parties, *viz.*:

GSMI sources its alcohol from **local distillers**, who process the same from molasses supplied by GSMI under tolling agreements, from **local importers**, and/or **directly through importation**.

In the case of alcohol acquired from **local distillers**, the distilleries pay the proper excise tax due thereon in accordance with Section 141 of the [Tax Code], which imposes an excise tax on distilled spirits upon removal or withdrawal of the said alcohol from the registered rectification/compounding. Subsequently, GSMI, as owner of the ethyl alcohol, pays the corresponding tolling fees for the distillation of alcohol and reimburses the distilleries for the said excise tax payments.

With respect to alcohol acquired from **local importers**, payment of the excise taxes thereon is made by the importers to the Bureau of Customs upon release from the ports, also in accordance of the [Tax Code]. GSMI pays the purchase price of imported alcohol, then reimburses the excise tax payments made by the local importers.

As to the ethyl alcohol **imported directly by GSMI**, the latter pays the appropriate excise taxes thereon upon release from the Bureau of Customs, likewise in accordance with Section 141 of the [Tax Code].¹⁵ (Boldfacing supplied)

Significantly, in the implementation of RA No. 10351 *via* RR No. 17-12 and RMC No. 18-13, between January 1, 2013 and May 31, 2013, the Bureau of Internal Revenue (BIR) required GSMI to pay additional excise taxes on its finished products upon removal thereof from GSMI's plants, notwithstanding that these had been produced

¹² Docket (CTA Case No. 8953) - Vol. 1, p. 56.

¹³ Docket (CTA Case No. 8953) - Vol. 1, p. 57.

¹⁴ Docket (CTA Case No. 8953) - Vol. 1, p. 58.

¹⁵ Docket (CTA Case No. 8953) - Vol. 1, p. 57.

exclusively from GSMI's ethyl alcohol inventory (*i.e.*, sourced from local distillers, local importers, and/or direct importations) upon which excise tax had already been paid. It was GSMI's position that the excise taxes paid on its *finished goods*, on top of those already paid on its *ethyl alcohol* inventory, was illegally and erroneously collected. Thus, GSMI sought the refund or credit of such excise taxes in the aggregate amount of ₱715,258,768.00 (hereinafter referred to as "administrative claims"), computed as follows:

Exh.	Date of Claim	Relative to Ethyl Alcohol	Amount
"P-2"	September 24, 2013	From 2012 Ending Inventory	₱581,707,875.00 ¹⁶
"P-3"	October 30, 2014	From 2013 Purchases from Local Distilleries	133,550,893.00 ¹⁷
			<u>₱715,258,768.00</u>

Judicial Claims

The above administrative claims led to the filing of two Petitions for Review before this Court, docketed as CTA Case Nos. 8953 and 8954, respectively. In the main, GSMI argued that the further imposition of excise taxes on its finished liquor products, manufactured exclusively from its inventories of ethyl alcohol on which excise taxes were already paid, is contrary to the mandate of Section 170 of the Tax Code, as amended, and constitutes double taxation. GSMI also sought to nullify Section 12(c) of RR No. 17-12.

During trial, GSMI presented its documentary and testimonial evidence, among which was the testimony of the court-commissioned Independent Certified Public Accountant (ICPA).

ICPA Report

The ICPA was tasked to validate the instant claim for refund or credit, particularly, to verify GSMI's allegations as follows:

(1) That as of the end of 2012, GSMI held in its possession an inventory of ethyl alcohol totaling 57,426,118.60 proof liters with excise tax payments amounting to ₱843,015,420.97, a portion of which, was

¹⁶ Pre-Trial Order, Par. 2.02, Docket (CTA Case No. 8953) - Vol. 1, p. 428.

¹⁷ Pre-Trial Order, Par. 2.02, Docket (CTA Case No. 8953) - Vol. 1, p. 428.

used in the periods from January 1, 2013 to May 31, 2013 for the production of finished liquor products;¹⁸

(2) That during the period from January 8, 2013 to February 15, 2013, the GSMI purchased from distilleries ethyl alcohol totaling 6,564,537 proof liters with excise tax payments amounting to ₱150,984,351.00;¹⁹

(3) That the GSMI utilized a portion of its 2012 year-end inventories of ethyl alcohol and alcohol purchases for the period from January 8, 2013 to February 15, 2013 in the manufacture of its finished products for the periods January 1, 2013 to May 31, 2013 and January 8, 2013 to March 31, 2013, respectively;²⁰

(4) That excise taxes amounting to P581,707,875.00 were paid on the removal of finished products for the period from January 1, 2013 to May 31, 2013 that were processed and produced exclusively from 2012 year-end inventories (CTA Case 8953);²¹ and

(5) That excise taxes amounting to P133,550,893.00 were paid on the removal of finished products for the period from January 8, 2013 to March 31, 2013 that were processed and produced exclusively from alcohol purchases for the period from January 8, 2013 to February 15, 2013 (CTA Case 8954).²²

Based on the above verification procedures, the ICPA arrived at the following conclusion:

VI. CONCLUSION

Based on the procedures performed and ORBs examined using the FIFO method of accounting, we summarize our findings as follows:

	Proof Liters	Excise Tax Amount
Excise tax on finished goods claimed by the Petitioner	25,375,105	₱715,258,843.38

¹⁸ ICPA Report, Docket (CTA Case No. 8953) – Vol. 2, p. 749.

¹⁹ ICPA Report, Docket (CTA Case No. 8953) – Vol. 2, p. 749.

²⁰ ICPA Report, Docket (CTA Case No. 8953) – Vol. 2, p. 750.

²¹ ICPA Report, Docket (CTA Case No. 8953) – Vol. 2, p. 750.

²² ICPA Report, Docket (CTA Case No. 8953) – Vol. 2, p. 750.

Less: Excise tax claimed by the Petitioner on finished goods that were produced from ethyl alcohol after RA 10351. (see Table 2 on page 12)	5,808,619	164,548,611.59
Ethyl alcohol and equivalent excise tax amount not included in the December 31, 2012 inventory under the Petition for review but reflected in the ORB. (see Table 3 on page 13)	4,063,500	114,842,431.59
Compounded ethyl alcohol inventories and equivalent excise tax amount wherein the Petitioner has difficulty in identifying the related purchase documents. These were used to produce finished goods for the periods January 1, 2013 to May 31, 2013.	391,639 *	11,068,474.19 **
As adjusted	15,111,347	P424,799,325.50 ²³

*Computed as: 744,997.10 alcohol proof liters divided by total alcohol proof liters of 57,426,118.60 (see table on page 8) then multiplied by the corresponding proof liters produced using FIFO method based on movements in ORB of 30,188,433 (see Table 1 page 12).

**Computed as: P10,936,556.14 divided by the total excise tax paid of P843,015,420.98 (see table on page 8) then multiplied by the corresponding excise tax of the finished goods produced using FIFO method based on movements in ORB of P853,183,977.34 (see Table 1 page 12).

If the Honorable Court will allow the following inventories not included in the claim for refund under the Petition for Review, the finished goods and corresponding excise tax that can be claimed based on the ORBs are as follows:

	Proof Liters	Excise Tax Amount
Finished goods as adjusted	15,111,347	P424,799,325.50

Add: Excise tax on finished goods not included in the claim for refund but were produced from 2012 year-end inventories and alcohol purchases

²³ Should be P424,799,326.01 per computation; Variance of P0.51.

from period January 8, 2013 to
February 15, 2013 (see Table 2 on
page 12) 10,621,947 302,473,746.06

Ethyl alcohol and equivalent excise
tax amount not included in the
December 31, 2012 inventory under
the Petition for review but reflected
in the ORB (see Table 3 on page 13) 4,063,500 114,842,431.59

29,796,794 ₱842,115,503.15

We wish to emphasize that the appreciation of the contents and completeness of our reports, as well as the final amount due, rests solely at the discretion of the Honorable Court. (Boldfacing supplied)

The ICPA found that items in the aggregate amount of ₱290,459,517.37 should be disallowed and, consequently, is entitled to a refund or credit amounting to ₱424,799,325.50. Further, the ICPA stated that, **upon the Court's discretion**, the Court may consider authorizing a refund or credit amounting to ₱842,115,503.15 on account of excise taxes in the aggregate amount of ₱417,316,177.65,²⁴ which were not included in GSMI's judicial claim but verified during the pendency of the trial through the ICPA's examination of the relevant documents (Additional Recommendation of ICPA).

Ruling of the Court in Division

Original Decision

In a Decision promulgated on July 28, 2020, the Court in Division held as follows:

First, the imposition of excise taxes on finished liquor produced from tax-paid ethyl alcohol is contrary to the mandate of Section 170 of the Tax Code, as amended. It underscored that under RA No. 10351, raw materials (such as ethyl alcohol) are not subject to tax, taken that excise tax on distilled spirits shall be imposed on the final product. However, when RR No. 17-12 and RMC No. 18-13 disallowed the tax crediting of the excise taxes paid under the old law on the raw materials (i.e., ethyl alcohol inventory at the time of the effectivity of

²⁴ ₱417,316,177.65 = ₱302,473,746.06 + ₱114,842,431.59,

92

the new excise tax law), against excise taxes due on the compounded liquor, GSMI was, in effect, subjected to paying excise tax twice: *initially* on the raw materials and *then again* on the finished goods. Thus, this part of the transitory provision of RR No. 17-12 and RMC No. 18-13 was struck down for lack of legal basis.

Second, GSMI's claims were filed within the two-year prescriptive period, counted from the earliest date of finished goods removal and based the prescription of Petitioner's claim therefrom, *viz.:*

Docket No.	Earliest Payment Date	Last Day of Two-Year Period	Filing Date	
			Administrative	Judicial
CTA Case No. 8953	January 2, 2013	January 2, 2015	September 25, 2014	December 19, 2014
CTA Case No. 8954	February 1, 2013	February 4, 2015	November 17, 2014	December 19, 2014

Third, the above notwithstanding, GSMI is not entitled to the refund sought for failure to show the quantity of finished goods that were produced using tax-paid raw materials.

Aggrieved, GSMI moved for reconsideration, maintaining that the ICPA sufficiently proved the quantity of finished goods that were produced using tax-paid raw materials.

Amended Decision

In the Assailed Decision, the Court in Division ruled in GSMI's favor, granting the claim for refund or credit to the extent of ₱319,755,320.82, computed as follows:

	Proof Liters	Excise Tax Amount
Excise tax on finished goods claimed by the Petitioner	25,375,105.00	₱715,258,843.38
Less: Excise tax claimed by the Petitioner on finished goods that were produced from ethyl alcohol after RA 10351.	5,808,619.00	164,548,611.59
Ethyl alcohol and equivalent excise tax amount not included in the December 31, 2012 inventory under the Petition for review but reflected in the ORB.	4,063,500.00	114,842,431.59

Compounded ethyl alcohol inventories and equivalent excise tax amount wherein the Petitioner has difficulty in identifying the related purchase documents. These were used to produce finished goods for the periods.

January 1, 2013 to May 31, 2013.	391,639.00	11,068,474.19
<i>As adjusted per ICPA report</i>	15,111,347.00	₱424,799,326.01
Less: Not properly supported raw materials on importation per this Court's verification	3,716,799.65	105,044,005.19
Refundable Excise Taxes	11,394,547.35	₱319,755,320.82

Stated differently, the Court in Division adopted the ICPA's findings and recommendations insofar as GSMI's entitlement to a refund or credit amounting to ₱424,799,326.01, but adjusted this amount based on the conduct of its independent verification procedures. In sum, the Court in Division **disallowed/excluded** four items from the total amount claimed by GSMI (₱715,258,843.38), *viz.*:

First, the amount of **₱164,548,611.59** pertaining to the excise taxes paid on 5,808,619 proof liters of **finished goods**, which were manufactured from ethyl alcohol purchased in 2013. To recall, GSMI claim for refund is grounded on the theory that the liquor it produced from January to May 2013 were transformed from ethyl alcohol purchased in 2012 and formed part of the raw materials ending inventory as of December 31, 2012.

Second, the amount of **₱114,842,431.59** pertaining to the equivalent excise taxes paid on 4,063,500 proof liters of **ethyl alcohol**, which GSMI failed to include in its judicial claim. To recall, in its Petition for Review in CTA Case No. 8953, GSMI alleged that the raw materials ending inventory consisted of ethyl alcohol with a volume of 57,426,118.60.²⁵ However, GSMI failed to include the 4,063,500 proof liters in question in said balance. The ICPA explained that the ending inventory alleged in the petition was based on the 2012 year-end *physical* inventory count, which failed to consider shipments of ethyl alcohol that were still in transit and, thus, not in GSMI's physical custody when the inventory count was conducted.²⁶

Third, the amount of **₱11,068,474.19** pertaining to the equivalent excise taxes paid on 391,639 proof liters of **compounded ethyl alcohol**

²⁵ Docket (CTA Case No. 8953) Vol. 1, p. 24.

²⁶ Exhibit "P-6", Docket (CTA Case No. 8953) Vol. 2, p. 761.

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used to produce the subject finished goods but the supporting documents for which were not available for verification.²⁷

Fourth, the amount of **₱105,044,005.19** pertaining to the equivalent excise taxes paid in connection with 7,070,303.30 proof liters²⁸ of **imported raw materials** not supported by their corresponding Import Entry Internal Revenue Declarations (IEIRDs), Single Administrative Documents (SADs), and Statements of Duties and Taxes (SSDTs), *viz.*:

	Proof Liters
Raw materials inventory with incomplete/partial documentation	15,055,756.81
Less: Ethyl alcohol sourced from tolling - Mandaue Plant	124,327.74
Ethyl alcohol sourced from local importer - DBI Plant	7,861,125.77
<hr/> Raw materials sourced via direct importation	<hr/> 7,070,303.30

Absent the importation documents, receipt of the goods and the payment of excise taxes thereon were not established.

Undaunted, GSMI moved for reconsideration²⁹ of the Amended Decision and insisted that it is entitled to ₱842,115,503.15 after taking into consideration the Additional Recommendation of the ICPA. GSMI averred as follows: (a) The Court in Division should have included the amounts not originally prayed for in the Petition for Review but were sufficiently verified by the ICPA (*i.e.*, ₱417,316,177.65).³⁰ Its broad allegations contained in the petitions were sufficient to cover the additional amounts the ICPA recommended for refund. Further, the CIR did not object to the ICPA Report. Thus, pursuant to the Rules of Court, the ICPA's findings that have been left uncontroverted, tried with the parties' consent, must be regarded as if these have been raised in the pleadings.³¹ Foremost, the Court in Division already held that the imposition of excise taxes on GSMI's finished liquor products manufactured from tax-paid ethyl alcohol is contrary to Section 170 of the Tax Code, as amended.³² Thus, to disallow these amounts based on

²⁷ The following explanatory note was provided in the ICPA Report: "Compounded alcohols are alcohols that have undergone the process of compounding or refining. The documents to support the excise tax payments are difficult to identify as to which particular purchases the compounded alcohols originated. However, these alcohols were reflected in the January ORBs." Exhibit "P-6", Docket (CTA Case No. 8953) Vol. 2, p. 756.

²⁸ See Page 5 of Amended Decision.

²⁹ Docket (CTA Case No. 8953) Vol. 4, pp. 1558-1569.

³⁰ See Note 24.

³¹ Docket (CTA Case No. 8953) Vol. 4, p. 1562.

³² Docket (CTA Case No. 8953) Vol. 4, p. 1565.

97

technicality and strictly construing the ICPA Report only allows the government to unjustly enrich itself;³³ (b) The Court in Division should not have disallowed that portion of the claim pertaining to excise taxes paid on importations not supported by IEIRDs, SADs, and SSDTs (*i.e.*, ₱105,044,005.19). The supplier invoices and bills of ladings submitted to support the subject importations are sufficient to establish receipt of the goods and payment of corresponding taxes.³⁴

The CIR likewise moved for partial reconsideration of the Amended Decision.³⁵ However, the Court in Division denied³⁶ both GSMI and the CIR's motions.

Hence, the parties filed the present petitions.

The Petitions for Review

GSMI's Arguments

GSMI cites the following grounds in support of its petition:

- A. THE HONORABLE THIRD DIVISION ERRED IN DISALLOWING THE ADDITIONAL EXCISE TAXES OF P302,473,746.06 AND P114,842,431.59 RECOMMENDED BY THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT COMMISSIONED BY THE COURT FOR REFUND TO THE PETITIONER.
- B. THE HONORABLE THIRD DIVISION ERRED IN DISALLOWING THE EXCISE TAXES IN THE AMOUNT OF P105,044,005.18 EVEN IF THIS ITEM IS SUPPORTED BY SUPPLIER'S INVOICES FOR ALCOHOL PURCHASES AND BILLS OF LADING.
- C. THE HONORABLE THIRD DIVISION ERRED IN DISREGARDING THE FINDINGS OF THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, AS CONTAINED IN HIS REPORT, AND HIS TESTIMONY THEREON.

³³ Docket (CTA Case No. 8953) Vol. 4, p. 1566.

³⁴ Docket (CTA Case No. 8953) Vol. 4, p. 1564.

³⁵ Docket (CTA Case No. 8953) Vol. 4, pp. 1570-1586.

³⁶ Resolution dated October 28, 2021.

92

- D. THE HONORABLE THIRD DIVISION ERRED IN APPLYING THE RULE OF STRICT CONSTRUCTION AGAINST THE PETITIONER IN THESE CASES.
- E. THE HONORABLE THIRD DIVISION ERRED IN NOT DECLARING THAT THE PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT OF P842,115,503.15, AS RECOMMENDED BY THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, REPRESENTING ERRONEOUS, EXCESSIVE, ILLEGAL AND/OR WRONGFUL COLLECTION FROM AND OVERPAYMENT BY, THE PETITIONER TO THE BUREAU OF INTERNAL REVENUE OF EXCISE TAXES ON ITS FINISHED PRODUCTS DURING THE PERIOD FROM JANUARY 1, 2013 UP TO MAY 31, 2013.³⁷

CIR's Arguments

The CIR counters as follows:

(a) The Court in Division should have dismissed GSMI's judicial claims, inasmuch as the ultimate relief sought by GSMI was the nullification of RR 17-12.³⁸ The CTA's jurisdiction over "other matters" does not include authority to try the question of validity or constitutionality of BIR issuances,³⁹ and,

(b) In any case, GSMI is not entitled to the refund sought. "Based on the facts upon which the claim for refund is based, respondent acquired the aforesaid ethyl alcohol from local registered distillers, who processed the same from molasses supplied by respondent under tolling arrangements, and from local importers for which excise tax payments were made thru reimbursements. It is therefore the local distilleries and local importers, not GSMI, who pays the excise tax on ethyl alcohol used in the manufacturing of the distilled spirits, hence the tax being imposed now under RA 10351 as implemented by RR 17-12 and RMC 18-13 is the excise tax on the finished products thus, negating double taxation."⁴⁰

Issues

³⁷ *Rollo* (CTA EB No. 2555), p. 40.

³⁸ *Rollo* (CTA EB No. 2544), p. 12.

³⁹ *Rollo* (CTA EB No. 2544), p. 12.

⁴⁰ *Rollo* (CTA EB No. 2544), p. 13.

Based on the above submissions, We restate the issues as follows:

- I. Did the Court in Division err in taking cognizance of GSMI's judicial claims?
 - Does the CTA have jurisdiction over the issue of constitutionality or validity of tax issuance?

- II. Did the Court in Division err in ruling that the collection of excise tax on GSMI's finished goods was erroneous or illegal?
 - Does the Tax Code, as amended, authorize the collection of excise tax on GSMI's finished goods manufactured using ethyl alcohol upon which excise tax had already been paid (Tax-Paid Ethyl Alcohol)?

- III. Did the Court in Division err in granting GSMI a partial refund?
 - Is the CTA bound by the ICPA's findings and recommendations?

 - Is GSMI entitled to the refund of excise taxes amounting to ₱417,316,177.65 pursuant to the ICPA's additional recommendation?

Our Ruling

The Petitions for Review lack merit.

The Court in Division correctly took cognizance of GSMI's judicial claims. CTA has jurisdiction over the issue of constitutionality or validity of tax issuances.

We reject the CIR's argument that the Court in Division had no jurisdiction over GSMI's judicial claims, which included a prayer to nullify Section 12(c) of RR No. 17-12.

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It is already settled that “[t]he 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.”⁴¹

The Court in Division correctly held that collection of excise tax on GSMI’s finished goods was erroneous. Collection of excise tax on GSMI’s finished goods is contrary to Section 170 of the Tax Code, as amended.

We agree with the Court in Division that the imposition of excise taxes on the finished liquor products manufactured from tax-paid ethyl alcohol is contrary to law.

Under the Tax Code, as amended, the term “spirits or distilled spirits” refers to ethyl alcohol in its raw form and includes even mixtures and combinations derived from or manufactured using ethyl alcohol, such as whisky, brandy, rum, gin and vodka. Thus, under Section 141 thereof, ethyl alcohol, either in its *raw* or *transformed* form, is regarded as an excisable article. The liability for excise tax on distilled spirits attaches as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process.⁴²

On the other hand, under the said Section 170, when a manufacturer of distilled spirits uses ethyl alcohol which was already subjected to excise tax in producing whisky, brandy, rum, gin, vodka, etc., *it shall not pay further excise tax on the finished goods* upon the removal of the same from the place of production.

Stated differently, Section 170 of the Tax Code, as amended, confines the operation of Section 141 thereof. While there are different

⁴¹ *Banco De Oro v. Republic*, G.R. No. 198756 (Resolution), August 16, 2016.

⁴² See *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222480, November 7, 2018.

forms of distilled spirits, there is but *one incidence of taxation*: that is, when the ethyl alcohol in its raw form comes to existence (*i.e.*, when removed from the place of production/distillery or upon importation, as the case may be). When the raw form is further rectified into other combinations or mixtures, such finished products are still regarded as distilled spirits but do not give rise to a separate liability to pay excise tax.

In *Tanduay Distillers, Inc. v. Commissioner of Internal Revenue*,⁴³ the CTA Special Second Division described the imposition of excise tax, *first*, on ethyl alcohol used as raw material in the production of compounded liquor and, *again*, upon removal of the compounded liquor from the place of production as **double taxation**. This ruling was affirmed on appeal by the CTA *En Banc* in CTA EB Case No. 2101⁴⁴ and the Supreme Court in G.R. No. 256740.⁴⁵

The foregoing discussion leads Us to the following conclusions: *First*, the Court in Division was correct in striking down RR No. 17-12, and RMC Nos. 3-13 and 18-13. These issuances treat the acquisition/importation of ethyl alcohol and removal of compounded liquor produced exclusively from ethyl alcohol as **separate and distinct taxable incidents**, contrary to Section 170 of the Tax Code, as amended. *Second*, there is no legal requirement to pay excise tax on compounded liquor produced using tax-paid ethyl alcohol. Payments made otherwise are erroneous⁴⁶ and may be the subject of refund or credit under Section 229 of the Tax Code, as amended.

At this point, We stress that while the right to refund is clear in the present case, this does not dispense with GSMI's burden of proving its entitlement, particularly, substantiating the amount of refund it seeks.

⁴³ C.T.A. Case Nos. 9017 & 9035, February 7, 2019.

⁴⁴ October 14, 2020.

⁴⁵ G.R. No. 256740 (Notice), February 13, 2023.

⁴⁶ *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 703 PHIL 310-434.

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The Court in Division correctly ruled that GSMI is entitled to a partial refund.

To justify a grant of refund of excise tax, the taxpayer-claimant must establish the following: *First*, the excise taxes on its raw materials and importations were paid during the period in question. *Second*, the amount of the claim is composed entirely of finished goods produced from tax-paid raw materials.⁴⁷

In the present case, in its judicial claims, GSMI alleged that: (1) between January 1, 2013 to May 31, 2013, it paid excise taxes in the aggregate amount of ₱715,258,768.00 upon the removal of *finished goods* with a volume of 25,375,105 proof liters, and, (2) said finished goods were manufactured from tax-paid ethyl alcohol: (a) from *raw materials inventory* as of December 31, 2012 with a volume of 57,426,118.60 proof liters, and (b) *purchased from local distillers* between January 8, 2013 to February 15, 2013 with a volume of 6,564,537 proof liters.

Based on the ICPA's findings and recommendations, supplemented by its own verification procedures, the Court in Division found that GSMI is entitled to a partial refund amounting to ₱319,755,320.82. In the instant petition, GSMI assails said judgment and claims that it is entitled to an aggregate amount of ₱842,115,503.15, computed as follows:

Refundable amount, per Amended Decision	₱319,755,320.82
Add: Equivalent excise taxes paid on importations of ethyl alcohol disallowed by the Court in Division for lack of substantiation but in fact supported by suppliers' sales invoices and bills of lading	₱105,044,005.19 <i>Item 1*</i>
Equivalent excise taxes paid on ethyl alcohol not included in the raw materials ending inventory as declared/alleged in the Petition for Review but verified by the ICPA	114,842,431.59 <i>Item 2*</i>

⁴⁷ *Tanduay Distillers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 256740 (Notice), February 13, 2023.

Excise taxes paid on finished goods not included in the amount of refund prayed for in the petition for review but verified by ICPA	302,473,746.06	Item 3*	522,360,182.84
Refundable amount, per GSMI arguments			₱842,115,503.66
Variance noted in ICPA Report ⁴⁸			0.51
Refundable amount, per instant petition			₱842,115,503.15

* For purposes of the succeeding discussion, each disputed amount shall be referred to as Item 1, 2, or 3, as the case may be.

GSMI insists that it is entitled to this amount because the CTA is bound by the ICPA's findings and that its entitlement shall not be limited by what was alleged or prayed for originally in its judicial claims.

We find this position unmeritorious.

The CTA is not bound by the ICPA's findings and recommendations.

The Revised Rules of the CTA⁴⁹ expressly provide:

RULE 13
TRIAL BY COMMISSIONER

x x x

SEC. 3. Findings of independent CPA. - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**

Certainly, the ICPA Report is not binding upon the CTA; at best, it is merely recommendatory. The CTA may opt to adopt the ICPA's findings and conclusions in whole or in part and/or make a separate determination based on its independent verification.⁵⁰

⁴⁸ See Note 23.

⁴⁹ A.M. No. 05-11-07-CTA, November 22, 2005.

⁵⁰ Also see *Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 211589 (Notice), March 12, 2018.

Thus, it was within the Court in Division's jurisdiction to further disallow *Item 1* and reject the ICPA's suggestion to include *Items 2 and 3* in the amount to be granted to GSMI. Furthermore, for reasons set out below, the Court in Division's treatment of these items was justified.

Disallowance of Item 1.

The Court in Division verified that ethyl alcohol sourced *via* direct importation with a volume of 7,070,303.30 proof liters⁵¹ were not supported by the relevant importation documents (*e.g.*, IEIRD, SAD, and/or SSDT). To be sure, these are importations, not regular purchases from local distillers. Thus, contrary to GSMI's theory, supplier sales invoices and bills of lading are insufficient to establish receipt of the goods and payment of excise tax.

Disallowance/Exclusion of Item 2.

We observe the following: (a) In its Petition for Review in CTA Case No. 8953, GSMI expressly declared that its raw materials ending inventory consisted of tax-paid ethyl alcohol with a volume of 57,426,118.60 proof liters;⁵² (b) There were shipments of ethyl alcohol with a volume of 4,063,500 proof liters that were *en route* to GSMI's depots (In-Transit Ethyl Alcohol) at the time the December 31, 2012 year-end physical inventory count was conducted;⁵³ and, (c) the raw materials ending inventory volume alleged in GSMI's petition consisted only of ethyl alcohol physically located in GSMI's depots.

In other words, the raw materials ending inventory volume alleged in the petition, inasmuch as it represents only **physical inventory**, does not include the **in-transit** ethyl alcohol which was yet to be in GSMI's physical custody as of December 31, 2012. Notably, GSMI acknowledges that it failed to include the in-transit volume in its petition, as well as in its administrative claim.⁵⁴ However, We do not accept GSMI's posturing that its **general allegations** were sufficient to cover the in-transit volume and, in effect, cure the deficient manner by which it set out its allegations.

⁵¹ See Note 28.

⁵² Docket (CTA Case No. 8953) Vol. 1, p. 24.

⁵³ Docket (CTA Case No. 8953) Vol. 2, p. 757.

⁵⁴ Paragraphs 10.04 and 10.12, *Rollo* (CTA EB No. 2555), pp. 44 and 46

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Foremost, the well-settled rule is that refunds are construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power.⁵⁵ This exacting standard requires the claimant not only to establish entitlement to refund, but also to make **faithful representations** in its application, ensuring that the allegations therein are **true and correct, not merely speculative**.⁵⁶

We underscore that GSMI made the specific allegation as to the volume of raw materials ending inventory **directly and voluntarily, and attested that this was true and correct**.⁵⁷ It is undisputed that, as the owner of the goods, GSMI had the right to treat the in-transit ethyl alcohol as part of its ending inventory. That it disclosed an **understated** volume of raw materials inventory as of **December 31, 2012** in the judicial claim filed on **December 19, 2014** indicates that GSMI had ample time to put its affairs in order but was still remiss in its responsibility in preparing the books of accounts and financial records (*e.g.*, Schedule of Alcohol Inventory).⁵⁸

Exclusion of Item 3.

Finally, the subject claim amounted only to ₱715,258,768.00 and GSMI does not dispute that Item 3 was not included in its administrative and judicial claims. As Item 3 was never presented for the CIR's consideration, the CTA had no jurisdiction over the same.

"[A]pplications for refunds of internal revenue taxes lie within the primary jurisdiction of the Commissioner of Internal Revenue, and **the Court of Tax Appeals may take cognizance of these claims only on an appellate basis**. Specifically, under Section 7, the Court of Tax Appeals can review by appeal decisions, or "inactions deemed denial," of the Commissioner of Internal Revenue in applications for refund of internal revenue taxes."⁵⁹

All in all, there is no reason for Us to deviate from the Court in Division's conclusion.

⁵⁵ *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015, 752 PHIL 375-412.

⁵⁶ See Rule 7, Section 4, Rules of Court, and *Victoriano v. Dominguez*, G.R. No. 214794, July 23, 2018.

⁵⁷ Docket (CTA Case No. 8953) - Vol. 1, p. 41.

⁵⁸ Docket (CTA Case No. 8953) - Vol. 1, p. 107.

⁵⁹ *Commissioner of Internal Revenue v. Carrier Air Conditioning Philippines, Inc.*, G.R. No. 226592, July 27, 2021.

WHEREFORE, in light of the foregoing considerations, the Petitions for Review are **DENIED** for lack of merit. Accordingly, the Amended Decision dated February 1, 2021 and the Resolution dated October 28, 2021 of the Court of Tax Appeals Third Division in CTA Case Nos. 8953 & 8954 are **AFFIRMED**.


SO ORDERED.



MARIAN IVY F. REYES-FAJARDO
Associate Justice

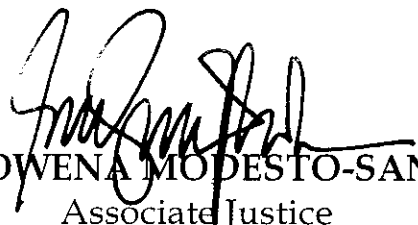
WE CONCUR:


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


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

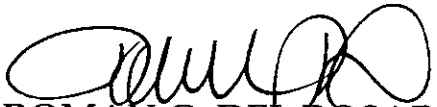

LANEÉ S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice


HENRY S. ANGELES
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 consolidated cases were assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice