

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

**EN BANC**

**COMMISSIONER OF  
INTERNAL REVENUE,**  
*Petitioner,*

**CTA *EB* No. 2890**  
(CTA Case No. 8955)

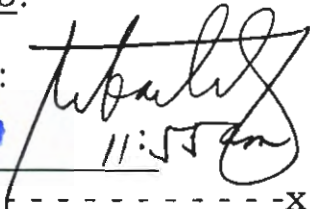
*Members:*

**DEL ROSARIO, P.J.,  
RINGPIS-LIBAN,  
MANAHAN,  
BACORRO-VILLENA,  
MODESTO-SAN PEDRO,  
REYES-FAJARDO,  
CUI-DAVID,  
FERRER-FLORES, and  
ANGELES, J.J.**

-versus-

**SAN MIGUEL BREWERY INC.**  
*Respondent.*

Promulgated:  
**NOV 26 2024**



Handwritten signature and date stamp: 11:55 am

x- - - - -x

**DECISION**

***CUI-DAVID, J.:***

Before the Court *En Banc* is a *Petition for Review (Petition)* dated March 15, 2024, filed by petitioner Commissioner of Internal Revenue. The *Petition* seeks to reverse the *Decision* dated September 14, 2023 (the “**assailed Decision**”), and the *Resolution* dated February 22, 2024 (the “**assailed Resolution**”), both rendered by the Court’s Special Third Division, (Court in Division), which partially granted respondent’s claim for a refund in the amount of ₱83,018,504.21.

**THE PARTIES**

Petitioner 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



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Manila. It is engaged in the business of manufacture, sale, and distribution of fermented and malt-based beverages. One of the beer products being manufactured by petitioner is San Mig Light.<sup>1</sup>

Respondent Commissioner of Internal Revenue (**CIR**) is the head of the Bureau of Internal Revenue (**BIR**), with office address at the Office of the CIR, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.<sup>2</sup>

**THE FACTS**

The uncontroverted facts, as narrated by the Court in Division in its *Decision* dated August 18, 2017,<sup>3</sup> are as follows:

On December 19, 2012, RA No. 10351 was approved and took effect upon its publication in a newspaper of general circulation. This law amended, among others, Section 143 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC"), which imposes an excise tax at the following rates on fermented liquors effective January 1, 2013: (1) if the net retail price [excluding excise tax and value-added tax ("VAT")] per liter of volume capacity is Php50.60 or less, the tax shall be Php15.00 per liter; and (2) if the net retail price (excluding excise tax and VAT) per liter of volume capacity is more than Php50.60, the tax shall be Php20.00 per liter. It likewise provides that "[a]ll fermented liquors existing in the market at the time of the effectivity of this Act shall be classified according to the net retail prices and the tax rates provided above based on the latest price survey of the fermented liquors conducted by the [BIR]."

On December 27, 2012, [petitioner] issued RMC No. 90-2012, which provides that, effective January 1, 2013, the applicable tax rate for San Mig Light, in bottle (net retail price of Php47.99 per liter, hence, less than Php50.60) and in can (net retail price of Php61.51, hence more than Php50.60) are both at Php20.57 per liter.

In order to remove its products from the breweries, [respondent] paid the excise taxes due from January 1, 2013 to December 31, 2013.



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<sup>1</sup> Joint Stipulation of Facts, Documents, Issues, and Other Matters ("JSFI"), Division Docket -- Vol. I, pp. 393-394.

<sup>2</sup> *Ibid.*

<sup>3</sup> CTA Case No. 8955, August 18, 2017.

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On December 9, 2014, [respondent] filed its administrative claim for refund in the amount of Php83,019,296.21, together with BIR Form No. 1914, Summary List, and Monthly Removals and Tax Payments for 2013.

Alleging inaction on the part of [petitioner], [respondent] filed the instant Petition for Review on December 19, 2014.

On January 9, 2015 the Court issued Summons addressed to [petitioner].

On January 27, 2015, [petitioner] filed a Motion for Extension of Time within Which to File Answer, which was granted by the Court in its Resolution dated January 30, 2015. Thereafter, [petitioner] filed another Urgent Motion for Extension of Time to File Answer and the same was granted on March 11, 2015.

On March 9, 2015, [petitioner] filed his Answer by registered mail, which was received by the Court on March 20, 2015. In his Answer, he raised the following Special and Affirmative Defenses, in sum: (1) the Petition for Review is not warranted to be given due course for lack of jurisdiction; (1a) the nullification of the Php20.57 excise tax rate specified in RMC No. 20-2012 does not fall under the special jurisdiction granted by the statute to the Court of Tax Appeals ('CTA'); (1b) a collateral attack on a presumably valid administrative issuance is not allowed; (1c) the CTA has no jurisdiction to determine the validity of the Php20.57 provision of RMC No. 20-2012 due to [respondent]'s non-exhaustion of administrative remedies; (2) [respondent] is not entitled to a tax refund since there was no erroneous or illegal collection of excise taxes; and (3) claims for refund are construed strictly against the taxpayer and in favor of the Government.

On May 6, 2015, [Respondent]'s Pre-Trial Brief and [Petitioner]'s Pre-Trial Brief were filed.

On July 24, 2015, [respondent] filed a Motion for Commissioning of Independent Certified Public Accountant ('ICPA'), whose Judicial Affidavit and Personal Profile were submitted on August 3, 2015.

During the Pre-Trial Conference on August 11, 2015, the Court granted the parties fifteen (15) days or until August 26, 2015 to submit their Joint Stipulation of Facts and Issues; the Court also granted the Motion for Commissioning of ICPA. Ms. Normita L. Villaruz ('ICPA Villaruz') thereafter took her oath and was obliged to submit her ICPA Report within forty-five (45) days or until September 25, 2015.



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After being granted an extension, the parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters ('JSFI') on September 4, 2015.

On September 24, 2015, the ICPA Report of ICPA Villaruz was submitted. Thereafter, the Court issued a Pre-Trial Order on September 28, 2015.

During the course of the trial, [respondent] presented as witnesses the following: (1) ICPA Villaruz; and (2) Ms. Noemi L. Ronquillo ('Ms. Ronquillo'), Manager of the Accounting and Financial Services Division of [respondent].

Witness ICPA Villaruz testified by way of judicial affidavit that she was commissioned as an ICPA in the instant case to conduct an examination, verification, and audit of the voluminous documents of [respondent]'s claim for refund. She stated that she completed the work assigned to her within the original period granted by the Court and that on September 24, 2015, she submitted the ICPA Report dated September 22, 2014, consisting twenty-three (23) pages together with its attached Annexes 'A' to 'J' sub-markings inclusive, and its supporting Sub-Annexes in two (2) separate binders containing the results of the examination, verification, and audit conducted by her; and that she has seen the originals of the supporting documents before they were submitted to the Court. ICPA Villaruz stated that included in her examination were the following documents:

1. Excise Tax Returns or BIR Form No. 2200-A filed by [respondent] daily for advance payment of excise tax deposits for each plant, these forms were also filed daily by [respondent]'s Head Office for declaration of excise taxes due on daily beer removals for each plant;

2. BIR Filing Reference Statement, which serves as proof that the Excise Tax Return has been filed under the BIR's Electronic Filing and Payment System ('EFPS') containing the following information: taxpayer's name, TIN, RDO, Type of BIR Form filed, Amounts Payable/(Over Remittance), accounting type, tax period, filing date, and tax type;

3. Payment confirmation forms from the following banks: (a) Bank of the Philippine Islands ('BPI') ExpressLink and Tax Payment Details Form; (b) Union Bank of the Philippines Payment Confirmation Form and UBP Payment Status Form; (c) China Banking Corporation (Bancnet-Chinabank) Payment Confirmation Forms, which confirms that BPI has successfully received payment instruction from the BIR EFPS through the BPI ExpressLink website (collectively referred to as 'Accredited Agent Banks');



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4. Documents generated by [respondent], *i.e.*, Shipping Memorandum, Delivery Receipt, Issue/Receipt Document, Stock Transfer Receipt;

5. Official Delivery Invoice, a BIR registered Form No. 245, which is prepared daily to summarize all the removals per shipping memorandum for the day, which are duly signed by the Internal Revenue Officer and [respondent]'s Plant Manager;

6. Excise Taxpayer's Removal Declaration ('ETRD') or BIR Form No. 2299;

7. Gate Pass Form and Claim Memorandum;

8. Revenue Officers on Premises' ('ROOP') Daily Monitoring Report;

9. Report on Excise Tax Payments and Applications;

10. Daily and Monthly Official Register Book ('ORB'), Daily and Monthly Sworn Statement of the Volume of Removals ('SSR');

11. Movement Report with Allocated Deposits;

12. Removals Schedule; and

13. Total Removals Report.

ICPA Villaruz stated that upon verification, the advance excise tax deposits for the six (6) brewery plants from January 1, 2013 to December 31, 2013 were the total advance payments for excise taxes due on total removals of all beer products of [respondent] from each of the six (6) brewery plants; that the advance excise tax deposits were reflected in the Excise Tax Returns filed by [respondent] with the BIR through the BIR EFPS; that the advance excise tax deposits are reflected in the Excise Tax Returns filed by [respondent] with the BIR through the BIR EFPS; that the advance payments were received by the accredited agent banks and were confirmed received by the BIR; that the excise taxes due on the removals of all beer products were deducted from the payment of advance excise tax deposits; and that the total amount of Advance Excise Tax Deposits per Excise Tax Returns for all beer products made by [respondent] for January 1, 2013 to December 31, 2013 sufficiently covered, and in fact, exceeded, the total amount of excise taxes due, filed, and paid on total actual removals of all beer products from the six (6) plants.



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ICPA Villaruz concluded that the amount of Php83,019,296.21 being claimed for refund as overpayment of excise taxes due on [respondent]'s removals for the period January 1, 2013 to December 31, 2013 was properly supported by the relevant documents. However, when the net adjustment mentioned in the ICPA Report is considered, the overpayment of excise taxes by [respondent] (as adjusted), is Php83,019,273.64 instead of Php83,019,296.21.

Witness Ms. Ronquillo testified that [respondent] was constrained to pay excise taxes at the rate of Php20.57 under protest to enable it to make removals of its San Mig Light products; and that the rate was based on RMC No. 90-2012, which was issued by [petitioner] on December 27, 2012 and effective on January 1, 2013. She avers that [respondent] did not receive any notice of hearing nor was it given an opportunity to be heard with respect to RMC No. 90-2012. Ms. Ronquillo stated that before Section 143 of the 1997 NIRC was amended by RA No. 10351, San Mig Light was subject to an excise tax rate of Php15.49 per liter, however, BIR required it to pay Php20.57 per liter, the tax rate for high-priced brands, contending that San Mig Light was a variant of Pale Pilsen; and that [respondent] has already questioned this in several cases now pending before the CTA and the Supreme Court on the ground that the BIR unlawfully reclassified San Mig Light as a variant under the old provisions of Section 143 of the 1997 NIRC. Ms. Ronquillo further explained that under the amendment, excise taxes should have been at the rate of Php20.00 for San Mig Light in bottle and in can, and Php15.00 per liter for San Mig Light in kegs; that during the period January 1, 2013 up to December 31, 2013, there was an excess assessment and collection in the amount of Php0.57 per liter for San Mig Light in bottle and in can, and Php5.57 per liter for San Mig Light in kegs, totaling to Php83,019,296.21.

During the hearing on January 26, 2016, [respondent] was granted fifteen (15) days or until February 10, 2016 to file its Formal Offer of Evidence ('FOE'); while [petitioner] was granted a period of ten (10) days from receipt of the FOE to file his comment or opposition thereto.

On February 10, 2016, [respondent] filed a Motion for Extension of Time to File FOE. This was granted by the Court on February 16, 2016. It then filed an Urgent Motion for Further Extension of Time to File FOE on February 23, 2016; which was granted by the Court on March 8, 2016. Finally, on February 26, 2016, [respondent] filed its FOE, offering Exhibits 'P,' 'P-1,' 'P-1-a,' 'P-1-b,' 'P-1-b-1,' 'P-1-c' to 'P-1-aa,' 'P-2,' 'P-2-a,' 'P-3,' 'P-3-a,' 'P-4,' 'P-4-a' to 'P-4-c,' 'P-5.1' to 'P-5.491,' 'P-6.1' to 'P-6.510,' 'P-7.1' to 'P-7.498,' 'P-8.1' to 'P8.490,' 'P-9.1' to 'P-9.487,' 'P-10.1' to 'P-10.477,' 'P-11.1' to 'P-11.12,' 'P-12.1' to 'P-12.4,982,' 'P-13.1' to 'P-13.340,' 'P-

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14.1' to 'P-14.1,106,' 'P-15.1' to 'P-15.336,' 'P-16.1' to 'P-16.336,' 'P-17.1' to 'P-17.315,' 'P-18.1' to 'P-18.5,470,' 'P-19.1' to 'P-19.9,059,' 'P-20.1' to 'P-20.1,381,' 'P-21.1' to 'P-21.3,827,' 'P-22.1,' to 'P-22.2,993,' and 'P-23.1' to 'P-23.2,059.' In response, [petitioner] filed his Comment (Re: [Respondent]'s FOE), raising no objection to the admission of the exhibits.

On April 6, 2016, the Court promulgated a Resolution admitting all of [respondent]'s evidence, except for Exhibits 'P-23.546' and 'P-23.1,966' for failure to submit the same to the Court.

On July 15, 2016, [petitioner] filed a Manifestation stating that to save the time of the parties and of the Court, and considering that the issues advanced by the parties are legal issues, he finds it unnecessary to present his witness; instead, he requested for a period of thirty (30) days within which to file his memorandum.

During the hearing on July 18, 2016, the Court granted the parties thirty (30) days or until August 17, 2016 to submit their respective memoranda.

On August 16, 2016, a Motion for Extension of Time to File Memorandum for [Respondent] was filed. This was granted by the Court on August 26, 2016. Meanwhile, [petitioner] filed a Manifestation on August 18, 2016, stating that he is adopting the arguments he raised in his Answer as his Memorandum; which was noted by the Court on September 2, 2016.

On August 31, 2016, a Motion for Further Extension of Time to File Memorandum for [Respondent] was filed; which was granted by the Court on September 14, 2016. On September 6, 2016, [respondent] submitted its Memorandum for [Respondent]; and its Motion to Admit Memorandum for [Respondent] Dated September 5, 2016 was filed on September 14, 2016.

On September 21, 2016, the Court admitted [respondent]'s Memorandum and resolved to submit the case for decision; hence, this Decision.

The Court in Division promulgated the *Decision* dated August 18, 2017<sup>4</sup> with the following dispositive portion:

**"WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**, [respondent] having availed of the wrong mode of appeal.

<sup>4</sup> Docket — Vol. 2, pp. 652 to 668.



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**SO ORDERED."**

Respondent filed a *Motion for Reconsideration* on September 6, 2017,<sup>5</sup> while petitioner filed his *Opposition Re: [Respondent]'s Motion for Reconsideration* on October 13, 2017.<sup>6</sup>

In a *Resolution* dated January 5, 2018,<sup>7</sup> the Court denied respondent's *Motion for Reconsideration*, stating:

**"WHEREFORE**, premises considered, [respondent]'s Motion for Reconsideration is hereby DENIED for lack of merit. Accordingly, the Assailed Decision dated August 18, 2017 is **AFFIRMED** and **UPHELD**.

**SO ORDERED."**

On February 14, 2018, respondent filed a *Petition for Review* before the Court *En Banc*, which was docketed as CTA EB No. 1772.<sup>8</sup> Petitioner filed his *Comment* on this *Petition* on April 5, 2018.


In its *Decision* dated September 19, 2018 in CTA EB No. 1772,<sup>9</sup> the Court *En Banc* remanded the case to the Court in Division for resolution on the merits. The dispositive portion of the *Decision* reads:

**"WHEREFORE**, the present *Petition for Review* is **GRANTED**. Accordingly, the assailed *Decision* dated August 18, 2017 and *Resolution* dated January 5, 2018 rendered by the Court in Division in CTA Case No. 8955 are **REVERSED** and **SET ASIDE**.

Let this case be **REMANDED** to the Court in Division for the resolution of the case on the merits, in conformity with this *Decision*.

**SO ORDERED."**

Petitioner then filed a *Motion for Reconsideration Re: Decision dated 19 September 2018* on October 10, 2018.<sup>10</sup> On November 28, 2018, respondent filed its *Opposition to the [Petitioner]'s "Motion for Reconsideration"* dated October 9, 2018.<sup>11</sup>

  
<sup>5</sup> Docket — Vol. 2, pp. 675 to 688.

<sup>6</sup> Docket — Vol. 2, pp. 695 to 707.

<sup>7</sup> Docket — Vol. 2, pp. 712 to 715.

<sup>8</sup> EB Docket (CTA EB No. 1772) - pp. 9 to 53.

<sup>9</sup> Docket — Vol. 2, pp. 728 to 745.

<sup>10</sup> Docket — Vol. 2, pp. 749 to 760.

<sup>11</sup> Docket — Vol. 2, pp. 768 to 776.



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In a *Resolution* dated January 24, 2019,<sup>12</sup> the Court *En Banc* denied petitioner's *Motion for Reconsideration*, stating:

"**WHEREFORE**, [petitioner]'s Motion for Reconsideration (Re: Decision dated 19 September 2018) is **DENIED** for lack of merit.

**SO ORDERED.**"

Thereafter, the Court *En Banc* issued a *Resolution* dated February 15, 2021<sup>13</sup> with the following pronouncements:

"On July 28, 2020, this Court received a Notice of the Resolution dated January 8, 2020 issued by the Supreme Court, Third Division Re: G.R. No. 244738 (*Commissioner of Internal Revenue v. San Miguel Brewery, Inc.*) declaring that the said case is considered closed and terminated, in light of the CIR's Manifestation that he opted not to file a petition for review on certiorari.

On December 16, 2020, this Court received an Entry of Judgment Re: G.R. No. 244738 which states that the Supreme Court Resolution on said case has become final and executory on July 2, 2020 and was recorded in the Book of Entries of Judgments.

In view of the withdrawal of the CIR's appeal before the Supreme Court, the Court *En Banc*'s Decision in the above-captioned case has become final and executory. In accordance with CTA A.M. No. 18-6-2015, the present case is REMANDED to the Court in Division for its resolution on the merits.

SO ORDERED."

For the proceedings following the remand of the case, the Court *En Banc* quotes the *Decision* of the Court in Division,<sup>14</sup> *viz.*:

On March 1, 2021, [respondent] filed a Motion for Leave to File, and for Admission of, the Attached "Supplemental Formal [Offer of] Evidence" dated February 26, 2021. [Petitioner] filed his Comment (Re: [Respondent]'s Motion for Leave to File, and for Admission of, the Attached Supplemental Formal Offer of Evidence dated February 26, 2021 on March 19, 2021.

<sup>12</sup> Docket — Vol. 2, pp. 783 to 786.

<sup>13</sup> Docket — Vol. 2, pp. 795 to 797.

<sup>14</sup> CTA Case No. 8955, September 14, 2023.

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In the Resolution dated June 22, 2021, the Court: (1) set the case for Commissioner's hearing, (2) recalled [respondent]'s witness, Ms. Noemi L. Ronquillo, and (3) declared that after the said hearing, [respondent]'s Motion for Leave shall be deemed submitted for resolution.

At the hearing held on April 6, 2022, Ms. Noemi L. Ronquillo testified on direct and cross examination. In the same hearing, [respondent], upon motion, was given fifteen (15) days within which to file an Amended Supplemental Formal Offer of Evidence. Thus, on April 12, 2022, [respondent] submitted the same. However, [petitioner] failed to file his comment thereon.

In the Resolution dated July 20, 2022, the Court granted the [respondent]'s Motion for Leave, and admitted all of the latter's offered exhibits.

On August 11, 2022, the Supplemental Memorandum for [Respondent] was submitted. [Petitioner], however, failed to file his supplemental memorandum.

In the Resolution dated September 20, 2022, the present case was deemed submitted anew for decision

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

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

Accordingly, [petitioner] is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of [respondent] in the reduced amount of P83,018,504.21, representing overpayment of excise taxes on the 'San Mig Light' removals for the period from January 1, 2013 to December 31, 2013.

**SO ORDERED.**"

Petitioner filed his *Motion for Reconsideration (Re: Decision promulgated 14 September 2023)* filed on October 13, 2023, and respondent filed its *Comment on/Opposition to "Motion for Reconsideration . . ."* dated October 2, 2023, on January 16, 2024.

On February 22, 2024, the Court in Division promulgated the assailed *Resolution*, with the following dispositive portion:

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

**SO ORDERED.**

**PROCEEDINGS BEFORE THE COURT**

On March 20, 2024, petitioner filed his *Petition for Review*.

After being ordered to comment,<sup>15</sup> respondent filed its *Comment on the Petition for Review* on April 30, 2024.

On May 15, 2024, the Court submitted the instant case for decision.<sup>16</sup>

**THE ISSUES**

Petitioner assigns the following errors:

I.

WHETHER OR NOT THE SPECIAL THIRD DIVISION OF THE HONORABLE COURT ERRED WHEN IT RULED THAT IT HAS JURISDICTION TO DETERMINE THE VALIDITY AND/OR CONSTITUTIONALITY OF RULES AND REGULATIONS AND OTHER ADMINISTRATIVE ISSUANCES OF THE BIR.

II.

WHETHER OR NOT THE SPECIAL THIRD DIVISION OF THE HONORABLE COURT ERRED IN GRANTING RESPONDENT'S CLAIM FOR REFUND OF ALLEGED OVERPAYMENT OF EXCISE TAXES IN THE REDUCED AMOUNT OF ₱83,018,504.21.

**Petitioner's Arguments**

Petitioner states that the nullification of the excise tax rate of ₱20.57 per liter specified in Revenue Memorandum Circular (**RMC**) No. 90-2012 and the challenged provision under Revenue Regulations (**RR**) No. 17-2012 does not fall within the special jurisdiction granted to the Court of Tax Appeals (**CTA**) by statute. According to petitioner, this action pertains to the exercise of his quasi-legislative power, which is appealable first

<sup>15</sup> Minute Resolution dated February 28, 2024, Docket, p. 66.

<sup>16</sup> Docket, p. 165.

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to the Secretary of Finance, and thereafter to regular courts. Petitioner contends that only his decisions or inactions arising from the exercise of his quasi-judicial power fall under the Court’s jurisdiction, invoking the principle of *expressio unius est exclusio alterius*.

Petitioner further states that even if the Court were to validly acquire jurisdiction, the *Petition* should still prosper considering that: (1) respondent failed to exhaust administrative remedies, (2) there was no erroneous or illegal collection of excise taxes as there was no reclassification of SML because it has always been classified as a variant of an existing brand, and (3) respondent is estopped from questioning the classification of SML as a variant of San Miguel Pale Pilsen.

**Respondent’s Counter-arguments**

In its *Comment*, respondent asserts that it is “a victim of illegal and unlawful imposition and collection of excise taxes,” and therefore, the rule of *strictissimi juris* should not apply, citing *Petron Corp. v. Commissioner of Internal Revenue*<sup>17</sup> and the civil law principle of *solutio indebiti*. Respondent states that it presented Mrs. Normita L. Villaruz, an independent Certified Public Accountant commissioned by the Court, as a witness. Mrs. Villaruz testified that the amount of ₱83,019,273.64, supported by relevant documents, should be refunded.

Respondent also argues that the issue of jurisdiction has already been settled in CTA *EB* No. 1772, where the Court said that the CTA has “exclusive jurisdiction to determine the validity or constitutionality of rules, regulations, and other administrative issuances of the [CIR].” This decision has become final and executory. Respondent further states that the issue of the validity and/or constitutionality of RMC No. 90-2012 is inextricably tied to the issue of whether petitioner is entitled to the refund of the amount claimed.

Respondent also states that the doctrine of exhaustion of administrative remedies is inapplicable in the instant case and that the reclassification of SML as a variant is not an issue in the case at hand.



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<sup>17</sup> G.R. No. 255961, March 20, 2023.

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**THE COURT *EN BANC*'S RULING**

***The Court En Banc has jurisdiction over the instant Petition.***

Before addressing the merits of the case, the Court *En Banc* must first determine whether it has jurisdiction over the present *Petition*.

On February 22, 2024, petitioner's *Motion for Reconsideration* was denied by the Court in Division through the assailed *Resolution*, which petitioner received on **March 7, 2024**.

In accordance with Section 3(b), Rule 8<sup>18</sup> of RRCTA, petitioner had fifteen (15) days from receipt of the assailed *Resolution*, or until **March 22, 2024**, to file a *Petition for Review*.

On **March 20, 2024**, petitioner timely filed the *Petition for Review*.<sup>19</sup>

Having jurisdiction over the case, the Court *En Banc* now proceeds to resolve the merits of the *Petition*.

***The Court in Division has jurisdiction to rule on the validity of RMC No. 90-2012.***

This issue has already been settled by the Supreme Court in *Banco De Oro v. Republic, viz.:*<sup>20</sup>

In 2004, Republic Act No. 9282 was enacted. It expanded the jurisdiction of the Court of Tax Appeals and elevated its rank to the level of a collegiate court with special jurisdiction. Section 1 specifically provides that the Court of Tax Appeals is of the same level as the Court of Appeals and possesses "all the inherent powers of a Court of Justice."

Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

Section 7. Jurisdiction. — The CTA shall exercise:

<sup>18</sup> *Supra* at note 2.

<sup>19</sup> *Id.*, pp. 6-46.

<sup>20</sup> G.R. No. 198756 (Resolution), August 16, 2016.



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(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1) Decisions of the Commissioner of Internal Revenue ...;

2) Inaction by the Commissioner of Internal Revenue ...;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases ...;

4) Decisions of the Commissioner of Customs ...;

5) Decisions of the Central Board of Assessment Appeals ...;

6) Decisions of the Secretary of Finance ...;

7) Decisions of the Secretary of Trade and Industry, ....

**The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund.** It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that **the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).**

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.



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Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, **actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.**

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, **the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended**, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424. [*Emphasis and underscoring supplied*]

Accordingly, whether challenged directly or as an incident to a disputed assessment or claim for refund, this Court has jurisdiction to rule on the constitutionality or validity of a revenue issuance from the BIR, such as RMC No. 90-2012.

Anent petitioner's claim that the authority to declare an administrative issuance void is vested in **courts of general jurisdiction** and not in courts of special jurisdiction, the Supreme Court's pronouncement in *St. Mary's Academy of Caloocan City, Inc. vs. Henares (St. Mary's Academy)*<sup>21</sup> 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:

<sup>21</sup> G.R. No. 230138, January 13, 2021.



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- (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[.]

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.

*M*



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*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 respondent aptly argued, this issue has been settled in CTA EB Case No. 1772,<sup>22</sup> where it was ruled that the Court in Division has jurisdiction to decide on the constitutionality of RMC No. 90-2012. This decision has already become final and executory, and petitioner cannot belatedly raise this as an issue anew.

The ruling in *Banco de Oro* remains the prevailing rule and has been consistently applied by the Supreme Court in multiple cases.

Most recently, in *Manila Peninsula Hotel, Inc. v. Commissioner of Internal Revenue*,<sup>23</sup> the Supreme Court held that the CTA has jurisdiction to determine the validity of RMC No. 46-2008 and RMC No. 31-2011. Notably, in that case, the Supreme Court excused *Manila Peninsula Hotel, Inc.*'s non-

<sup>22</sup> Decision dated September 19, 2018.

<sup>23</sup> G.R. No. 229338, April 17, 2024.

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compliance with the procedure set forth under Department of Finance Department Order No. 007-02,<sup>24</sup> which outlines the procedure and requirements for appealing an adverse ruling of the CIR in its power to interpret tax laws.

Similarly, in *Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue*,<sup>25</sup> the Supreme Court remanded the case to the CTA to rule on the validity of RMC No. 17-2013, despite *Oceanagold's* failure to exhaust administrative remedies.

In *Department of Finance v. Asia United Bank*,<sup>26</sup> the Supreme Court nullified the *Decision* of the Regional Trial Court that declared RR No. 4-2011 null and void, emphasizing that the RTC lacked jurisdiction over the subject matter. The Supreme Court reiterated that the CTA has the authority to rule on the constitutionality or validity of tax laws, regulations, or administrative issuances.

These cases, along with others, lead to a single conclusion: the CTA has jurisdiction to pass upon the validity of RMC No. 90-2012.

***The Court in Division did not err in declaring RMC No. 90-2012 null and void.***

It is a well-established principle that rules and regulations implementing a law are designed to fill in the details or to make explicit what is general, as these cannot all be incorporated in the provision of the law.<sup>27</sup> Administrative issuances must not override, supplant, or modify the law; they must remain consistent with the law intended to carry out.<sup>28</sup> Particularly, administrative issuances, such as revenue memorandum circulars, cannot amend or modify the law.<sup>29</sup>

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<sup>24</sup> In the said *Order*, a taxpayer is granted 30 days from receipt of the adverse ruling of the CIR to file with the Office of the Secretary of Finance a request for review in writing and under oath.

<sup>25</sup> G.R. No. 234614, June 14, 2023.

<sup>26</sup> G.R. Nos. 240163 & 240168-69, December 1, 2021.

<sup>27</sup> *La Suerte Cigar and Cigarette Factory v. Court of Appeals*, G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 & 165499, November 11, 2014.

<sup>28</sup> *In the matter of declaratory relied on the validity of Revenue Memorandum Circular No. 65-2020, Bureau of Internal Revenue (BIR), as herein represented by its Commissioner Kim S. Jacinto-Henares and Revenue District Officer (RDO) Ricardo B. Espiritu v. First E-Bank Tower Condominium Corp.*, G.R. No. 215801, January 15, 2020; and *First E-Bank Tower Condominium Corp. v. Bureau of Internal Revenue (BIR), as herein represented by its Commissioner Kim S. Jacinto-Henares*, G.R. No. 218924, January 15, 2020.

<sup>29</sup> *ING Bank N.V., engaged in banking operations in the Philippines as ING Bank N.V. Manila Branch v. Commissioner of Internal Revenue*, G.R. No. 167679, April 20, 2016.

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In *La Suerte Cigar and Cigarette Factory v. Court of Appeals*,<sup>30</sup> the Supreme Court ruled:

... To be valid, a revenue regulation must be within the scope of statutory authority or standard granted by the legislature. Specifically, the regulation must be germane to the object and purpose of the law; (2) **not contradict, but conform to, the standards the law prescribes**; and (3) be issued for the sole purpose of carrying into effect the general provisions of our tax laws. [*Emphasis and underscoring supplied*]

Similarly, in the recent case of *Manila Peninsula Manila Hotel, Inc. v. Commissioner of Internal Revenue*,<sup>31</sup> the Supreme Court cited *Philippine Bank of Communications v. Commissioner of Internal Revenue*,<sup>32</sup> wherein it upheld the nullification of RMC No. 7-85 for being inconsistent with Section 230 of the 1977 NIRC. The Supreme Court emphasized that the BIR did not simply interpret the law but legislated guidelines contrary to the statute passed by Congress. Thus, the Supreme Court held:

“It bears repeating that Revenue [Memorandum Circulars] are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, **courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.**” (*Emphasis added*)

Additionally, in *Saint Wealth Ltd. v. Bureau of Internal Revenue*,<sup>33</sup> the Supreme Court *En Banc* declared certain parts of RMC No. 102-2017 and RMC No. 78-2018 invalid and unconstitutional, as they lacked statutory basis and encroached upon the legislative power to enact laws.

Further, as correctly invoked by the Court in Division, the Supreme Court in *Philippine Stock Exchange, Inc. v. Secretary of Finance*<sup>34</sup> established another requirement:

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<sup>30</sup> G.R. Nos. 125346, 136328-29, 144942, 148605, 158197 & 165499, November 11, 2014.

<sup>31</sup> *Supra* note 23.

<sup>32</sup> G.R. No. 112024, January 28, 1994.

<sup>33</sup> G.R. Nos. 252965 and 254102, December 7, 2021.

<sup>34</sup> G.R. No. 213860, July 5, 2022.

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In fine, the gauge on determining if a regulation requires prior notice and hearing is its substance or content. Prior notice and hearing are required if the regulation substantially increases the burden of those governed, notwithstanding its nomenclature — despite the regulation being called or designated as interpretative.

Thus, **if the questioned regulations here in this case are legislative rules or substantially increase the burden of those governed, they should have undergone prior notice and hearing (which, in this case, are undisputedly absent) for their validity.** If they are interpretative rules, prior notice and hearing are not essential for their validity. [*Emphasis and underscoring supplied*]

The Court *En Banc* affirms the findings of the Court in Division that RMC No. 90-2012 is void for going beyond the scope of the law and for being issued without prior notice and hearing.

We quote with approval the discussion of the Court in Division regarding the assailed RMC's lack of prior notice and hearing, *viz.*:

Notably, in prescribing the applicable excise tax rate per liter for SML — the subject matter of the present refund claim, the BIR acted in a legislative capacity and/or has supplemented RA No. 10351. In fact, as it imposes additional obligations, at least, on the part of petitioner in the form of excise tax on the SML, as will be shown momentarily, RMC No. 90-2012 [n] vis-à-vis Annex "A-1" thereof, should be considered as a legislative rule. Be that as it may, even granting that the said administrative issuance may be considered as an interpretative rule or regulation, the same substantially change or increase the burden of those governed (particularly petitioner).

Correspondingly, RMC No. 90-2012, with its Annexes, should have undergone prior notice and hearing for its validity.

In this case, petitioner's witness, Ms. Noemi L. Ronquillo, testified that petitioner "did not receive any notice of hearing and was not given the opportunity to be heard or to give its side or position with respect to RMC 90-2012." This testimony was not disproved or refuted by respondent. As such, it may be concluded that no prior notice and hearing was indeed done by respondent or the BIR. For failure to conduct notice and hearing prior to its issuance, RMC No. 90-2012 is therefore void.



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Likewise, We affirm the Court in Division's finding that RMC No. 90-2012 exceeded the provisions of RA No. 10351:

In any event, it must be pointed out that the "additional obligations" imposed by RMC No. 90-2012 [n], on the aforementioned Annex "A-1" thereof, particularly on the applicable excise tax rate per liter for SML, are not in accord with the provisions introduced by RA No. 10351.

Based on the above-quoted Section 143 of the NIRC of 1997, as amended by RA No. 10351, effective on January 1, 2013, the excise tax shall be ₱15.00 per liter, in case the net retail price per liter of volume capacity of the fermented liquor is ₱50.60 or less; and the excise tax shall be ₱20.00 per liter, in case the net retail price per liter of volume capacity of the fermented liquor is more than ₱50.60. However, Annex "A-1" of RMC No. 90-2012 imposes excise tax on the SML in the fixed amount of ₱20.57, regardless of whether the net retail price per liter is less or more than the amount of ₱50.60.

It is then clear that RMC No. 90-2012, with Annex "A" thereof, expanded the provision of Section 143 of the NIRC of 1997, as amended by RA No. 10351, insofar as the imposition of excise tax on SML, as a fermented liquor, is concerned. Thus, the same must be struck down, and shall have no force and effect.

This Court notes that the ruling invalidating RMC No. 90-2012 is consistent with its decision in *Commissioner of Internal Revenue v. San Miguel Brewery, Inc.*<sup>35</sup>

Notably, the Supreme Court, in *Purisima v. Philippine Tobacco Institute, Inc.*,<sup>36</sup> ruled against the validity of RMC No. 90-2012 for contravening the provisions of RA No. 10351. Although the challenged annex in that case was Annex "D-1," pertaining to the excise tax rates of tobacco products, Annex "A-1" on alcoholic products suffers from the same infirmity. Therefore, the Court is constrained to declare Annex "A-1" of RMC No. 90-2012 null and void.

<sup>35</sup> CTA *EB* Case No. 2625 (C.T.A. Case No. 10000), August 2, 2023.

<sup>36</sup> G.R. No. 210251, April 17, 2017.

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***The Court in Division did not err in partially granting respondent's claim for refund.***

First, the Court notes that the timeliness of respondent's claim for refund is not in dispute. Accordingly, the Court *En Banc* affirms the Court in Division's ruling that respondent's administrative claim for a refund, filed on December 9, 2014,<sup>37</sup> and the judicial claim for a refund, filed before the Court in Division on December 19, 2014,<sup>38</sup> both fell within the two (2)-year period prescribed under Sections 204(C)<sup>39</sup> and 229<sup>40</sup> of the NIRC of 1997, as amended.

Moreover, given the nullity of RMC No. 90-2012, the Court concludes that payments made under the rates prescribed by this void RMC are erroneous and, consequently, refundable under the mentioned NIRC provisions.

Annex "A-1" of RMC No. 90-2012 provides the net retail price of SML (per the 2010 BIR Price Survey) and prescribes the applicable excise tax rate per liter for SML. According to the Annex, both the 330-milliliter (mL) bottle and the 330 mL can of SML are subject to an excise tax of **₱20.57 per liter**. However, considering the nullity of RMC No. 90-2012, Court *En Banc* applies the statutory rates prescribed by Congress in Section 143 of the NIRC of 1997, as amended by RA No. 10351, effective January 1, 2013. Accordingly, the excise tax shall be **₱15.00 per liter**, in case the net retail price per liter of volume capacity of the fermented liquor is ₱50.60 or less, which is applicable to

<sup>37</sup> Exhibits "P-1" to "P-1-aa", Division Docket — Vol. 1, pp. 56 to 86.

<sup>38</sup> *Petition for Review*, Division Docket — Vol. 1, pp. 14 to 34.

<sup>39</sup> SEC. 204. Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes. — The Commissioner may —

... ..  
(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

<sup>40</sup> 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, 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.

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SML sold in kegs having a net retail price of ₱46.41;<sup>41</sup> and the excise tax shall be **₱20.00 per liter**, in case the net retail price per liter of volume capacity of the fermented liquor is more than ₱50.60, which is applicable to a 330 mL can of SML having a net retail price of ₱81.91 and a 330 mL bottle of SML having a net retail price of ₱54.86.<sup>42</sup>

Simply put, respondent made an erroneous overpayment of **₱5.57 per liter**<sup>43</sup> for the production and removal of **kegs** of SML and **₱0.57 per liter**<sup>44</sup> for the production and removal of its 330 mL **cans** and 330 mL **bottles** of SML.

As to the payments made and the volume of SML removed, Court *En Banc* finds these to be supported by the ICPA Report<sup>45</sup> and the un rebutted evidence presented by respondent:

<b>Brewery Plant</b>	<b>Documents</b>	<b>Exhibits</b>
Polo, Valenzuela; San Fernando, Pampanga; Sta. Rosa, Laguna; Bacolod City, Negros Occidental; Mandaue City, Cebu; and Davao City	Movement Reports with Allocated Deposits	"P-11.1" to "P-11.12"
Polo, Valenzuela	Excise Tax Returns and related documents	"P-5.1" to "P-5,491"
	Official Register Books	"P-12.1" to "P-12.342"
	Excise Taxpayer's Removal Declarations	"P-12.343" to "P-12.4,982"
	Shipping Memorandums	"P-18.1" to "P-18.5,254"
	Issue/Receipt Documents	"P-18.5,255" to "P-18.5,470"
San Fernando, Pampanga	Excise Tax Returns and related documents	"P-6.1" to "P-6.510"
	Excise Taxpayer's Removal Declarations and Daily and Monthly Sworn Statements of the Volume of Removals	"P-13.1" to "P-13.340"
	Shipping Memorandums	"P-19.1" to "P-19.8,961"
	Gate Passes and Claim Memorandums	"P-19.8,962" to "P-19.9,059"
Sta. Rosa, Laguna	Excise Tax Returns and related documents	"P-7.1" to "P-7.498"
	Excise Taxpayer's Removal Declarations and Daily and Monthly Official Register Books	"P-14.1" to "P-14.1,106"
	Shipping Memorandums and Stock Transfer Receipts	"P-20.1" to "P-20.1,381"

<sup>41</sup> Q14/A14, Judicial Affidavit of Ms. Noemi L. Ronquillo, Division Docket – Vol. I, p. 253.

<sup>42</sup> *Ibid.*

<sup>43</sup> Difference between ₱20.57 charged under RMC No. 90-2012 and ₱15.00 charged under RA No. 10351.

<sup>44</sup> Difference between ₱20.57 charged under RMC No. 90-2012 and ₱20.00 charged under RA No. 10351.

<sup>45</sup> Exhibit "P-4", Division Docket – Vol. I, pp. 406-490.

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<b>Brewery Plant</b>	<b>Documents</b>	<b>Exhibits</b>
Bacolod City, Negros Occidental	Excise Tax Returns and related documents	"P-8.1" to "P-8.490"
	Excise Taxpayer's Removal Declarations, Revenue Officer on Premise's Weekly Reports, and Official Register Books	"P-15.1" to "P-15.336"
	Shipping Memorandums and Delivery Receipts	"P-21.1" to "P-21.3,827"
Mandaue City, Cebu	Excise Tax Returns and related documents	"P-9.1" to "P-9.487"
	Official Delivery Invoices and Official Register Books	"P-16.1" to "P-16.336"
	Shipping Memorandums and Delivery Receipts	"P-22.1" to "P-22.2,993"
Davao City	Excise Tax Returns and related documents	"P-10.1" to "P-10.477"
	Official Delivery Invoices, Official Register Books and Reports on Excise Tax Payments and Applications	"P-17.1" to "P-17.315"
	Shipping Memorandums and Gate Passes	"P-23.1" to "P-23.2,059"

In addition, after the case was remanded to the Court in Division, respondent presented a *Sworn Declaration* dated June 18, 2013 with respect to SML in kegs.<sup>46</sup>

Accordingly, apart from a downward adjustment of ₱792.00 attributable to an understatement of excise tax due on 39.60 liters at ₱20.00 from the Sta. Rosa, Laguna plant, respondent's claim for a refund was properly granted by the Court in Division, *viz.*:

<b>2013</b>	<b>SML Removals (in Liters)</b>			<b>Excise Tax Due and Paid @ ₱20.57</b>
	<b>Bottles and Cans</b>	<b>Kegs</b>	<b>Total Liters</b>	
January	11,510,825.04	94,000.00	11,604,825.04	238,711,251.13
February	9,557,547.12	54,790.00	9,612,337.12	197,725,774.56
March	10,491,917.04	60,520.00	10,552,437.04	217,063,629.91
April	11,731,880.16	75,570.00	11,807,450.16	242,879,249.79
May	11,661,708.96	72,320.00	11,734,028.96	241,368,975.71
June	10,769,014.08	73,990.00	10,843,004.08	223,040,593.93
July	10,666,671.84	77,740.00	10,744,411.84	221,012,551.55
August	10,317,993.84	83,500.00	10,401,493.84	213,958,728.28
September	10,296,356.40	71,490.00	10,367,846.40	213,266,600.45
October	10,961,604.72	102,050.00	11,063,654.72	227,579,377.59
November	12,321,936.00	75,590.00	12,397,526.00	255,017,109.82
December	15,956,123.04	120,820.00	16,076,943.04	330,702,718.33
<b>Total per Petition</b>	<b>136,243,578.24</b>	<b>962,380.00</b>	<b>137,205,958.24</b>	<b>2,822,326,561.05</b>

<sup>46</sup> Exhibit "P-24", including submarkings, Division Docket – Vol. II, pp. 857-863.



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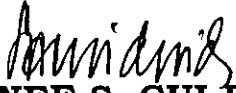
<b>SHOULD BE Excise Taxes for January 1, 2013 to December 31, 2013</b>				<b>Should-be Excise Taxes @ P20.00 and P15.00</b>
Excise Tax @ P20.00 for Bottles and Cans	136,243,578.24		136,243,578.24	2,724,871,564.80
Excise Tax @ P15.00 for Kegs		962,380.00	962,380.00	14,435,700.04
<b>Sub-total</b>	<b>136,243,578.24</b>	<b>962,380.00</b>	<b>137,205,958.24</b>	<b>2,739,307,264.84</b>
<b>Claim for Over-payment of Excise Taxes, per Petition</b>				<b>₱ 83,019,296.21</b>
Less: Downward adjustment				<b>792.00</b>
<b>Refundable amount</b>				<b>₱ 83,018,504.21</b>

In sum, respondent is entitled to a refund of erroneous excise tax payments in the amount of ₱83,018,504.21.

**WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **DENIED** for lack of merit.


Accordingly, the Assailed *Decision* dated September 14, 2023, and the Assailed *Resolution* dated February 22, 2024, in CTA Case No. 8955 are **AFFIRMED**.

**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

**DECISION**

CTA *EB* No. 2890 (CTA Case No. 8955)

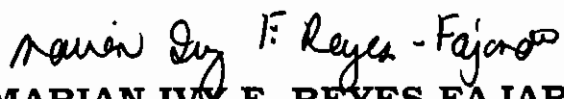
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**JEAN MARIE A. BACORRO-VILLENA**  
Associate Justice

  
**MARIA ROWENA MODESTO-SAN PEDRO**  
Associate Justice

  
**MARIAN IVY F. REYES-FAJARDO**  
Associate Justice

**ON LEAVE**  
**CORAZON G. FERRER-FLORES**  
Associate Justice

**ON LEAVE**  
**HENRY S. ANGELES**  
Associate Justice

*AW*

**DECISION**

CTA *EB* No. 2890 (CTA Case No. 8955)

Commissioner of Internal Revenue v. San Miguel Brewery Inc.

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**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

