SECOND DIVISION

[G.R. No. 180740, November 11, 2019]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. SAN MIGUEL CORPORATION, RESPONDENT.

[G.R. No. 180910]

SAN MIGUEL CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

HERNANDO, J.:

Before this Court are Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court challenging the September 25, 2007 Decision[1] and November 26, 2007 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. Nos. 190 and 192 affirming the March 15, 2006 Decision[3] and June 6, 2006 Resolution[4] of the CTA First Division in C.T.A. Case No. 6607.

San Miguel Corporation (SMC) is a domestic corporation engaged in the manufacture of "fermented liquors for sale in the domestic and export markets. One of its products is the beer brand 'Red Horse' that comes in [one] liter and 325 ml. bottles."[5] Meanwhile, the Commissioner of Internal Revenue (CIR) is tasked with the "duty of assessing and collecting national internal revenue taxes."[6]

The Antecedents

The pertinent facts, as culled from the Petition for Review[7] of the CIR in G.R. No. 180740, are as follows:

> On January 1, 1997, Republic Act (RA) No. 8240 took effect, adopting a specific tax system instead of the *ad valorem* tax system imposed on, among others, fermented liquor. As a result, fermented liquors were specifically subjected to excise taxes in accordance with the following schedules stated in Section 140 of RA No. 8240, *viz*[.]:
>
> > SEC. 140. Fermented Liquor. - There shall be levied, assessed and collected an excise tax on beer, [lager beer], ale, porter and other fermented liquors except *tuba, basi, tapuy* and similar domestic fermented liquors in accordance with the following schedule:
> >
> > > (a) If the net retail price (excluding the excise tax and value-added tax) per liter of volume capacity is less than Fourteen pesos and fifty centavos (P14.50), the tax shall be Six pesos and fifteen centavos (P6.15) per liter;
> > >
> > > (b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fourteen pesos and fifty centavos (P14.50) up to Twenty-two pesos (P22.00), the tax shall be Nine pesos and fifteen centavos (P9.15) per liter;
> > >
> > > (c) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Twenty-two pesos (P22.00), the tax shall be Twelve pesos and fifteen centavos (P12.15) per liter.
> >
> > Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.
> >
> > Fermented liquor which are brewed and sold at microbreweries or small establishments such as pubs and restaurants shall be subject to the rate in paragraph (c) hereof.

> The excise tax from any brand of fermented liquor within the next three (3) years from the effectivity of Republic Act No. 8240 shall not be lower than the tax which was due from each brand on October 1, 1996.
>
> The rates of excise tax on fermented liquor under paragraphs (a), (b) and (c) hereof shall be increased by twelve percent (12%) on January 1, 2000.

x x x x

Prior to January 1, 1997 or the effectivity of RA No. 8240, [SMC] has been paying ad valorem tax on Red Horse at the rate of P7.07 per liter.

Under [RA] No. [8424], the Tax Reform Act of 1997, Section 140 was renumbered as Section 143.

On December 16, 1999, he Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99 to implement the 12% increase on excise tax on, among others, fermented liquors by January 1, 2000. Revenue Regulations No. 17-99 provides, in part:

> Section 1. New Rates of Specific Tax - The specific tax rates imposed under the following sections are hereby increased by twelve percent (12%) and the new rates to be levied, assessed, and collected, are as follows:
>
> x x x x

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO JANUARY 1, 2000	NEW SPECIFIC TAX RATES EFFECTIVE JANUARY 1, 2000
143	FERMENTED LIQUORS		
	(a) Net Retail Price per liter (excluding VAT & Excise) is less than P14.50	6.15/liter	P6.98/liter
	(b) Net Retail Price per liter (excluding VAT & Excise) is P14.50 up to P22.00	9.16/liter	P10.25/liter
	(c) Net Retail Price per liter (excluding VAT & Excise) is more than P22.50	P12.15/liter	P13.61/1iter

> x x x x
>
> **Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.**[8] (Emphasis supplied, citations omitted)

Contending that Revenue Regulation (RR) No. 17-99 did not conform to the letter and intent of Republic Act (RA) No. 8240, SMC filed on January 10, 2003 a letter[9] with the Bureau of Internal Revenue (BIR) to claim tax refund or credit of the alleged excess excise taxes it paid on its Red Horse beer product from January 11, 2001 to December 31, 2002 in the amount of P94,494,801.96. Said amount represented the difference between applying the rates of P7.07 per liter (the rate of specific tax SMC was paying beginning January 1, 1997, which was equal to the rate of *ad valorem* tax rate it had been paying prior to the effectivity of RA 8240 on January 1, 1997), and P6.89 per liter (the new specific tax rate imposed under Section 145 of RA 8424, otherwise known as the Tax Reform Act of 1997, which took effect on January 1, 2000). SMC attached to its letter the following table[10] summarizing its claim:

PERIOD	TOTAL REMOVAL GL (Liters)	TAX RATE USED	TAX PAID	CORRECT TAX RATE	CORRECT TAX	OVERPAYMENT
2001 Jan. 11 to Dec. 31	234,014,850.00	7.07	1,654,484,989.50	6.89	1,612,362,316.50	42,122,673.00
2002 Jan. to Dec.	290,956,272.00	7.07	2,057,060,843.04	6.89	2,004,688,714.08	52,372,128.96
TOTAL	**524,971,122.00**		**3,711,545,832.54**		**3,617,051,030.58**	**94,494,801.96**

Without waiting for the CIR to act on its administrative claim for tax refund or credit, SMC filed a Petition for Review[11] on February 24, 2003 before the CTA, docketed as C.T.A. Case No. 6607 and raffled to its First Division.

Essentially, SMC challenged Section 1 of RR No. 17-99, which provided that "the new specific tax rate for any x x x fermented liquors **shall not be lower** than the excise tax that is actually being paid **prior to January 1, 2000**."[12] According to SMC, Section 1 of RR No. 17-99 extended without basis the three (3)-year transitory period under RA 8240; and the specific tax rates on fermented liquors prescribed by Section 143, paragraphs (a) to (c) of the Tax Reform Act of 1997 should already apply beginning January 1, 2000.

The Ruling of the CTA First Division

The CTA First Division rendered its Decision[13] on March 15, 2006, emphasizing that the CTA First Division had already declared RR No. 17-99 invalid in *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*,[14] which ruling was subsequently affirmed by the Court of Appeals.[15] The CTA First Division further held that:

> Without a doubt, the provision of R.A. No. 8240 in controversy merely mandates that the three-year transition period within which it is to be operative, starting from January 1, 1997, the date when the law took effect, expired on December 31, 1999. During the said period, the tax shall not be lower than the tax imposed for each brand on October 1, 1996. In other words, the increase adverted to in R.A. No. 8240 should not use the rate imposed at the end of the transition period as tax base. Rather, the provision should be interpreted as to mean that at the end of the transition period, an increase in the excise tax rate should have reached 12% than that imposed under the ad valorem tax scheme.
>
> Applying the foregoing jurisprudence, we rule that the disputed provision of RR No. 17-99 is not consistent with the situation contemplated under the provisions of Section 143 of the 1997 NIRC, x x x.
>
> x x x x
>
> It is clear from the above-quoted provision of the 1997 NIRC that the objective of the government at the end of the three-year transition period is to effect a 12% tax rate increase using as tax base the figures provided in paragraphs (a), (b) and (c) of Section 143 of the 1997 NIRC, in lieu of the tax rate being imposed prior to January 1, 2000, which is the rate imposed during the transition period of three years. At most, Section 143 of the 1997 NIRC imports that the excise tax shall not be lower than the tax which is due from each brand on October 1, 1996, but which qualification is not present as to the increase by 12% on January 1, 2000 under paragraphs (a), (b) and (c) of the said section. Therefore, as correctly pointed out by petitioner, it shall be entitled to its claim for refund or issuance of a tax credit certificate for the erroneously paid excise taxes covering the period of January 11, 2001 to December 31, 2002, considering that its payment was based on the provisions of the last paragraph of Section 1 of RR No. 17-99 which was already ruled as an invalid regulation.[16]

The CTA First Division noted that per its computation, SMC paid excess excise taxes on the volume of removals of its Red Horse beer from its production plants from January 1, 2001 to December 31, 2002 in the total amount of P95,074,832.16, but it was only claiming tax refund or credit of the excess excise taxes it had paid from January 11, 2001 to December 31, 2002 amounting to P94,494,801.96.[17]

Although SMC was able to present evidence in support of its total claim for tax refund or credit, without the CIR presenting any controverting evidence, the CTA First Division disallowed the claim of SMC for

P6,404,270.40 because it was already barred by prescription.[18] The CTA First Division explained that based on Section 229, in relation to Section 130(A)(2), of the Tax Reform Act of 1997, the reckoning point for computing the two (2)-year prescriptive period for the refund of erroneously paid taxes shall be from the date of payment of the tax or prior to the removal of the subject products from the place of production; and "[s]ince the Petition for Review was filed on February 24, 2003, the two-year prescriptive period started to run on February 24, 2001 and any [claim for tax refund or credit of] excise tax payment made before February 24, 2001 had already prescribed. Evidently, the claimed excise tax overpayment for the period January 11 to 31, 2001 in the amount of P2,514,508.92 is barred by prescription x x x."[19]

The CTA First Division further adjudged that because the removal reports of SMC were on a monthly basis, there would be no clear way of determining which portion of the claim for the month of February 2001, amounting to P3,889,761.48, actually corresponded to the excess excise tax payments made from February 24, 2001 until the end of the month and would still fall within the prescriptive period of two years. Consequently, the CTA First Division simply considered the entire claim for February 2001[20] as time-barred.[21]

In sum, the CTA First Division approved SMC's claim for tax refund or credit for its excess excise tax payments from March 1, 2001 to December 31, 2002 in the amount of P88,090,531.56, computed thus:

Claimed Excise Tax Overpayment		P 94,494,801.96
Less: Prescribed claim		
January 11 to 31, 2001	P 2,514,508.92	
February 2001	3,889,761.48	6,404,270.40
Refundable Excise Tax Overpayment		P 88,090,531.56[22]

Hence, the CTA First Division decreed:

> **IN VIEW OF ALL THE FOREGOING**, [SMC's] claim is hereby **GRANTED** but in a reduced amount of P88,090,531.56. Accordingly, [the CIR] is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of [SMC] in the amount of P88,090,531.56 representing erroneously paid excise taxes for the period March 1, 2001 to December 31, 2002.[23]

The CIR filed a Motion for Reconsideration.[24] SMC also filed a Motion for Partial Reconsideration[25] questioning the denial of its claim for tax refund or credit of excess excise tax payment from January 11 to February 28, 2001 on the ground of prescription, arguing that under the Advance Payment or Deposit scheme authorized by Section 11.1(2)(b) of RR No. 2-97,[26] the filing of the returns and supporting documents may be submitted even a week after the actual removals.

However, in a Resolution[27] date June 6, 2006, the CTA First Division denied the motions for reconsideration of both parties. While it agreed with the assertion of SMC that "the due date of tax payment is not always the reckoning point for purposes of prescription[,]"[28] the CTA First Division noted that SMC did not present its excise tax returns for January 1, 2001 to February 28, 2001 to prove the dates when they ere actually filed. Thus, the CTA First Division had to reckon the prescriptive period from the due date of payment of the excise tax which was before the removal of the subject products from the place of production. The CTA First Division likewise found that even though Annex 1 of Exhibit AA[29] of SMC showed a detailed schedule of its advance excise tax deposits from January 1, 2001 to December 31, 2002, the actual payments of excise tax for the months of January and February 2001 could not be ascertained from the said schedule. It added that "[n]either an apportionment of the excise tax deposits made by [SMC] for February 2001 is proper for determining how much of the total claimed excise tax payment of P3,889,761.48 [pertained] to removals prior to February 24, 2001."[30]

The CIR[31] and SMC[32] filed their respective Petitions for Review before the CTA *En Banc*.

The Ruling of the CTA En Banc

The CTA *En Banc*, in its assailed September 25, 2007 Decision,[33] denied the Petitions of both the CIR and SMC for lack of merit. The CTA *En Banc* affirmed the ruling of the CTA First Division that the claim of SMC for overpayment made on January 11 to 31, 2001 and February 1 to 23, 2001 was already barred by

prescription based on Section 229 and Section 130(A)(2) of the Tax Reform Act of 1997. Since SMC failed to present proof of the exact amount it paid for the period February 1 to 23, 2001, the tribunal has no basis on how to apportion the amount of the excise tax payment corresponding to said period *vis-a-vis* the total amount of excise tax paid for February 2001, especially when SMC only presented monthly removal reports. Resultantly, the CTA *En Banc* affirmed the ruling of the CTA First Division declaring the full amount of SMC's claim for the month of February 2001 as time-barred.

The CTA *En Banc* also held that although the principle of *solutio indebiti* under Articles 2142 and 2143 of the New Civil Code applies even to the Government, nevertheless, the applicable prescriptive period is not the six (6) years provided under the New Civil Code, but the two (2) years prescribed by Section 229 of the Tax Reform Act of 1997, the latter being a special law which prevails over the New Civil Code, which is a general law.

Moreover, the CTA *En Banc* affirmed the ruling of the CTA First Division that RR No. 17-99 is invalid as Section 1 thereof increases the tax rate fixed by RA 8240, which is already beyond the authority of the BIR to issue interpretative rules; and that SMC is entitled to a refund of the overpaid excise taxes which have not yet prescribed.

Once more, the CIR filed a Motion for Reconsideration[34] while SMC filed a Motion for Partial Reconsideration[35] of the foregoing judgment which were both denied by the CTA *En Banc* in its assailed November 26, 2007 Resolution.[36]

Hence, the CIR filed a Petition for Review (on *Certiorari*)[37] before the Court, docketed as G.R. No. 180740; raising the following issues:

I

WHETHER OR NOT THE CTA *En Banc* CORRECTLY CONSTRUED AND APPLIED THE PROVISO IN SECTION 1 OF REVENUE REGULATIONS 17-99 WHEN IT RULED THAT IT IS ILLEGAL AND CONTRARY TO SECTION 143 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997.

II

WHETHER OR NOT THE CTA *En Banc* CORRECTLY GRANTED [SMC'S] APPLICATION FOR REFUND OF THE AMOUNT OF P88,090,531.56 PRESENTING EXCESS OF THE EXCISE TAX PAYMENTS MADE FOR THE PERIOD OF MARCH 1, 2001 TO DECEMBER 31, 2002.[38]

SMC similarly filed its Petition or Review (on *Certiorari*)[39] before the Court, docketed as G.R. No. 180910, assigning several errors on the part of the CTA *En Banc*, *viz*.:

A

The CTA *En Banc* committed an error of law in not applying the six-year prescriptive period under the principle of *solutio indebiti*.

B

The CTA *En Banc* committed an error of law in finding that prescription has set in under Section 229, Tax Code, considering that petitioner paid excise taxes under the Advance Payment or Deposit Scheme.

C

The CTA *En Banc* committed an error of law in failing to consider that prescription is not jurisdictional and may be suspended based on equity considerations.[40]

These two Petitions were consolidated as both involved the same parties and subject matter, and raised interrelated issues.[41]

The fundamental issue for resolution is whether or not SMC is entitled to the full amount of its claim for tax refund/credit of excess excise taxes paid from January 11, 2001 to December 31, 2002.

The Ruling of the Court