

FIRST DIVISION

[G.R. No. 184428, November 23, 2011]

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

DECISION

VILLARAMA, JR., J.:

Elevated before us via a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Decision^[1] of the Court of Tax Appeals (CTA) En Banc in C.T.A. EB No. 360 on a pure question of law, that is, whether the last paragraph of Section 1 of Bureau of Internal Revenue (BIR) Revenue Regulations No. 17-99 faithfully complies with the mandate of Section 143 of the Tax Reform Act of 1997.

The facts are undisputed:

Respondent San Miguel Corporation, a domestic corporation engaged in the manufacture and sale of fermented liquor, produces as one of its products "Red Horse" beer which is sold in 500-ml. and 1-liter bottle variants.

On January 1, 1998, Republic Act (R.A.) No. 8424 or the Tax Reform Act of 1997 took effect. It reproduced, as Section 143 thereof, the provisions of Section 140 of the old National Internal Revenue Code as amended by R.A. No. 8240^[2] which became effective on January 1, 1997. Section 143 of the Tax Reform Act of 1997 reads:

SEC. 143. *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 micro-breweries 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 (Emphasis and underscoring supplied.)

Thereafter, on December 16, 1999, the Secretary of Finance issued Revenue Regulations No. 17-99 increasing the applicable tax rates on fermented liquor by 12% as follows:

| SECTION OF ARTICLES | DESCRIPTION | PRESENT SPECIFIC TAX RATES (Prior to January 1, 2000) | NEW SPECIFIC TAX RATES (Effective January 1, 2000) |
|---------------------------|--|---|--|
| x x x x 143 | FERMENTED LIQUORS (a) Net Retail Price per liter (excluding VAT & Excise) is less than P14.50 | P6.15/liter | P6.89/liter |
| | (b) Net Retail Price per liter (excluding VAT & Excise) is P14.50 up to P22.00 | | |

P9.15/liter P10.25/liter

(c) Net Retail
Price per liter
(excluding VAT
& Excise) is
more than
P22.00

P12.15/liter P13.61/liter

X X X X

This increase, however, was qualified by the last paragraph of Section 1 of Revenue Regulations No. 17-99 which reads:

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.** (Emphasis and underscoring supplied.)

Now, for the period June 1, 2004 to December 31, 2004, respondent was assessed and paid excise taxes amounting to P2,286,488,861.58^[3] for the 323,407,194 liters of Red Horse beer products removed from its plants. Said amount was computed based on the tax rate of P7.07/liter or the tax rate which was being applied to its products prior to January 1, 2000, as the last paragraph of Section 1 of Revenue Regulations No. 17-99 provided that the new specific tax rate for fermented liquors "*shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.*"^[4] Respondent, however, later contended that the said qualification in the last paragraph of Section 1 of Revenue Regulations No. 17-99 has no basis in the plain wording of Section 143. Respondent argued that the applicable tax rate was only the P 6.89/liter tax rate stated in Revenue Regulations No. 17-99, and that accordingly, its excise taxes should have been only P2,228,275,566.66.

On May 22, 2006, respondent filed before the BIR a claim for refund or tax credit of the amount of P60,778,519.56^[5] as erroneously paid excise taxes for the period of May 22, 2004 to December 31, 2004. Later, said amount was reduced to P58,213,294.92 because of prescription. As the petitioner Commissioner of Internal Revenue (CIR) failed to act on the claim, respondent filed a petition for review with the CTA.^[6]

On September 26, 2007,^[7] the CTA Second Division granted the petition and ordered petitioner to refund P58,213,294.92 to respondent or to issue in the latter's favor a Tax Credit Certificate for the said amount for the erroneously paid excise taxes. The CTA held that Revenue Regulations No. 17-99 modified or altered the mandate of Section 143 of the Tax Reform Act of 1997. The CTA Second Division held,