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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 180740**
- *versus* -	
SAN MIGUEL CORPORATION, Respondent.	
x - x	
SAN MIGUEL CORPORATION, Petitioner,	**G.R. No. 180910**
	Present:
- *versus* -	PERLAS-BERNABE, *J.*, Chairperson, REYES, A. JR., HERNANDO, INTING,* and ZALAMEDA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: 11 NOV 2019

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DECISION

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*

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* On official leave.
** Designated additional member per Special Order No. 2727 dated October 25, 2019.
[1] *Rollo* (G.R. No. 180910), pp. 49-74; penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, and Olga Palanca-Enriquez concurring and Presiding Justice Ernesto D. Acosta concurring and dissenting.
[2] *Id.* at 75-81.

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 (₱14.50), the tax shall be Six pesos and fifteen centavos (₱6.15) 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 (₱14.50) up to Twenty-two pesos (₱22.00), the tax shall be Nine pesos and fifteen centavos (₱9.15) 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 (₱22.00), the tax shall be Twelve pesos and fifteen centavos (₱12.15) per liter.

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[3] *Id.* at 211-237; penned by Associate Justice Lovell R. Bautista with Associate Justice Caesar A. Casanova concurring and Presiding Justice Ernesto D. Acosta dissenting.
[4] *Id.* at 238-241.
[5] *Id.* at 178.
[6] *Id.* at 178-179.
[7] *Rollo* (G.R. No. 180740), pp. 16-49.

> 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 ₱7.07 per liter.

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

On December 16, 1999, the 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 ₱14.50	₱6.15/liter	₱6.98/liter
	(b) Net Retail Price per liter (excluding VAT & Excise) is ₱14.50 up to ₱22.00	₱9.16/liter	₱10.25/liter
	(c) Net Retail Price per liter (excluding VAT & Excise) is more than ₱22.50	₱12.15/liter	₱13.61/liter

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 ₱94,494,801.96. Said amount represented the difference between applying the rates of ₱7.07 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 ₱6.89 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.

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[8] *Id.* at 20-23.
[9] *Id.* at 126-128; the letter was dated January 10, 2002, but this was most likely a typographical error and should actually be dated January 10, 2003.
[10] *Id.* at 129.
[11] *Id.* at 116-124.
[12] *Id.* at 118.

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 ₱95,074,832.16, but it was only claiming tax refund or credit of

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[13] *Rollo* (G.R. No. 180910), pp. 211-237.
[14] CTA Case Nos. 6365 and 6383, October 21, 2002.
[15] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, CA-G.R. SP Nos. 80675 and 83165, September 28, 2004.
[16] *Rollo* (G.R. No. 180740), pp. 218-219.

the excess excise taxes it had paid from January 11, 2001 to December 31, 2002 amounting to ₱94,494,801.96.[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 ₱6,404,270.40 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 ₱2,514,508.92 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 ₱3,889,761.48, 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 ₱88,090,531.56, computed thus:

Claimed Excise Tax Overpayment		₱ 94,494,801.96
Less : Prescribed claim		
January 11 to 31, 2001	₱ 2,514,508.92	
February 2001	3,889,761.48	6,404,270.40
Refundable Excise Tax Overpayment		₱ 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 ₱88,090,531.56. Accordingly, [the CIR] is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of [SMC] in the amount of

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[17] *Id.* at 225-227.
[18] *Id.* at 227.
[19] *Id.*
[20] The CTA First Division stated February 2002 in its Decision, which was an apparent typographical error as it would be more logical that the date be February 2001.
[21] *Rollo* (G.R. No. 180910), p. 227.
[22] *Id.*

₱88,090,531.56 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 payments 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] dated 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 were 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 ₱3,889,761.48 [pertained] to removals prior to February 24, 2001."[30]

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[23] *Id.* at 228.
[24] Records, pp. 416-441.
[25] *Id.* at 442-449.
[26] Section 11.1(2)(b) of RR No. 2-97, which governs excise taxation on distilled spirits, wines, and fermented liquors, provides:

SECTION 11. *Time, Manner and Place of Payment.*
11.1 *For Locally produced Alcohol Products.*
x x x x
2) *PAYMENT OF SPECIFIC TAX*
x x x x
b) *Advance Payment or Deposit* – Every person liable to pay specific tax who is authorized to avail of the advance payment scheme may be allowed to effect removals of exciseable articles from his place of production without prior filing of the prescribed excise tax return and supporting attachments provided he has sufficient balance of deposits with the BIR to cover full payment of the excise tax due on said removals. The prescribed excise tax return and all attachments may be filed with a duly accredited bank or duly authorized collection agents not later than the first working day of the calendar week immediately after the week of actual removals. Payment of excise tax deposits shall be made by filing in triplicate a Payment Form (BIR Form No. 0605).

[27] *Rollo* (G.R. No. 180910), pp. 238-241.
[28] *Id.* at 240.
[29] Exhibit "AA," Report on the Result of the Procedures Performed on the Verification of the Documents in Support of the Claim for Refund/Tax Credit Certificate (TCC) of San Miguel Corporation for the Over-remitted Excise Tax on the Removal of Red Horse Beer Brand.
[30] *Rollo* (G.R. No. 180910), p. 240.

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-à-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

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[31] *Id.* at 306-335.
[32] *Id.* at 368-391.
[33] *Id.* at 49-74.
[34] *Id.* at 435-445.
[35] *Id.* at 291-305.
[36] *Id.* at 75-81.
[37] *Rollo* (G.R. No. 180740), pp. 16-51.

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 ₱88,090,531.56 REPRESENTING EXCESS OF THE EXCISE TAX PAYMENTS MADE FOR THE PERIOD OF MARCH 1, 2001 TO DECEMBER 31, 2002.[38]

SMC similarly filed its Petition for 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

The Court denies both Petitions for lack of merit.

It is already settled that the qualifying provision under Section 1 of RR No. 17-99 that the new specific tax rate for the taxable products shall not be lower than the excise tax paid prior to January 1, 2000 was an unauthorized

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[38] *Id.* at 31.
[39] *Rollo* (G.R. No. 180910), pp. 16-48.
[40] *Id.* at 23-24.
[41] *Rollo* (G.R. No. 180740), pp. 326-329.

administrative legislation and was violative of the provisions of the Tax Reform Act of 1997.

Commissioner of Internal Revenue v. Fortune Tobacco Corporation[42] (*Fortune Tobacco*) already addressed and settled the issue of the validity of RR No. 17-99.

Section 1 of RR No. 17-99 imposed a twelve percent (12%) increase on specific tax rates on distilled spirits, wines, fermented liquors, and cigars and cigarettes packed by machine pursuant to RA 8240, with the qualification "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." The Court, in *Fortune Tobacco*, declared such qualification in Section 1 of RR No. 17-99 as "unauthorized administrative legislation,"[43] reasoning as follows:

> Parenthetically, Section 145 states that during the transition period, *i.e.*, within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, **Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date.**
>
> By adding **the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000**, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph[s] (1)-(4), as increased by 12% – a situation **not supported by the plain wording of Section 145 of the Tax Code**.
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> This is not the first time that national revenue officials had ventured [into] the area of **unauthorized administrative legislation.**[44] (Emphases supplied.)

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[42] 581 Phil. 146, 160-166 (2008).
[43] *Id.* at 161.
[44] *Id.*

Section 143 of the Tax Reform Act of 1997 on fermented liquor,[45] just like Section 145 of the same Act on cigars and cigarettes, provides that the specific tax rates on the taxable product shall be increased by twelve percent (12%) on January 1, 2000; and that the excise tax from any brand of the taxable product within the next three years of effectivity of RA 8240 shall not be lower than the tax due from each brand on October 1, 1996. As SMC correctly contended, the Decision in *Fortune Tobacco* applies to the present case, and the disputed provision of RR No. 17-99 – imposing the added qualification that the new specific tax rate for any existing brand of the taxable product shall not be lower than the excise tax that is actually being paid prior to January 1, 2000 – is similarly not supported by Section 143 of the Tax Reform Act of 1997.

In any case, the Court had already settled in *Commissioner of Internal Revenue v. San Miguel Corporation*,[46] which involved the same parties herein and the similar claim for refund of SMC for excess excise tax payments on its Red Horse beer product paid from May 22 to December 31, 2004, that:

> Section 143 of the Tax Reform Act of 1997 is clear and unambiguous. It provides for two periods: the first is the 3-year transition period beginning January 1, 1997, the date when R.A. No. 8240 took effect, until December 31, 1999; and the second is the period thereafter. During the 3-year transition period, Section 143 provides that "the excise tax from any brand of fermented liquor . . . shall not be lower than the tax which was due from each brand on October 1, 1996." After the transitory period, Section 143 provides that the excise tax rate shall be the figures provided under paragraphs (a), (b) and (c) of Section 143 but increased by 12%, without regard to whether such rate is lower or higher than the tax rate that is actually being paid prior to January 1, 2000 and therefore, without regard to whether the revenue collection starting January 1, 2000 may turn out to be lower than that collected prior to said date. Revenue Regulations No. 17-99, however, **created a new tax rate** when it added in the last

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[45] Section 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 (₱14.50), the tax shall be Six pesos and fifteen centavos (₱6.15) per liter;

(b) If the net retail price (excluding the excise tax and the value-added tax) x x x per liter of volume capacity is Fourteen pesos and fifty centavos (₱14.50) up to Twenty-two pesos (₱22.00), the tax shall be Nine pesos and fifteen centavos (₱9.15) 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 (₱22.00), the tax shall be Twelve pesos and fifteen centavos (₱12.15) 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.

New brands shall be classified according to their current net retail price.

[46] 677 Phil. 219, 227-228 (2011).

> paragraph of Section 1 thereof, the qualification that the tax due after the 12% increase becomes effective "shall not be lower than the tax actually paid prior to January 1, 2000." As there is nothing in Section 143 of the Tax Reform Act of 1997 which clothes the BIR with the power or authority to rule that the new specific tax rate should not be lower than the excise tax that is actually being paid prior to January 1, 2000, **such interpretation is clearly an invalid exercise of the power of the Secretary of Finance to interpret tax laws and to promulgate rules and regulations necessary for the effective enforcement of the Tax Reform Act of 1997. Said qualification must, perforce, be struck down as invalid and of no effect.**
>
> It bears reiterating that tax burdens are not to be imposed, nor presumed to be imposed beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government. **In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails as said rule or regulation cannot go beyond the terms and provisions of the basic law.** It must be stressed that the objective of issuing BIR Revenue Regulations is to establish parameters or guidelines within which our tax laws should be implemented, and not to amend or modify its substantive meaning and import. (Emphases supplied, citations omitted)

Irrefragably, SMC is entitled to its claim for the refund or credit of its excess excise tax payments collected by the BIR on the basis of the invalid provision under Section 1 of RR No. 17-99.

Now the next issue for determination is the amount to be refunded or credited to SMC.

The claim for refund/credit of excess excise tax payments of SMC from January 11 to February 28, 2001 is disallowed on the grounds of prescription and insufficient evidence.

The tax credit or refund of erroneously or illegally collected taxes by the BIR is governed by the following pertinent provisions in the Tax Reform Act of 1997:[47]

> Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> x x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue

[47] Presidential Decree No. 1158, as amended, up to Republic Act No. 9504, An Act Amending Sections 22, 24, 34, 35, 51, and 79 of Republic Act No. 8424, as Amended, Otherwise known as the National Internal Revenue Code of 1997, approved on June 17, 2008.

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

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is **mandatory and jurisdictional**, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[48] It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[49]

For excise tax on domestic products in general, the return is filed and the excise tax is paid by the manufacturer or producer before removal of the products from the place of production.[50] Hence, the date of payment of excise tax on domestic products depends on the date of actual removal of the taxable domestic products from the place of production.

SMC filed its administrative claim on January 10, 2003 through a letter to the BIR, and its judicial claim through a Petition for Review filed with the

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[48] *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636, 645 (2016).
[49] Tax Reform Act of 1997, Section 229.
[50] Tax Reform Act of 1997, Section 120(A)(2).

CTA First Division on February 24, 2003. Counting back from February 24, 2003, the CTA First Division determined that the reckoning date for the two (2)-year prescriptive period for this particular judicial claim of SMC was February 24, 2001 and accordingly declared that the claim of SMC for excess excise tax paid prior to said date had already prescribed. This conclusion of the CTA First Division, as affirmed by the CTA *En Banc*, is in full accord with the provisions of the Tax Reform Act of 1997 and so the Court will not disturb the same.

SMC posits, however, that the principle of *solutio indebiti* applies to the Government and that under Article 1145 of the Civil Code, actions upon a quasi-contract must be filed within six (6) years.

The argument of SMC is without merit.

At the outset, the Court notes that none of the cases[51] invoked by SMC in its Petition actually involved Section 229 of the Tax Reform Act of 1997 *vis-à-vis* Article 1145 of the Civil Code.

It is true that in *Fortune Tobacco*, the Court held that the principle of *solutio indebiti* applies to the Government in matters of tax refund or credit of erroneously paid taxes and penalties:

> Finally, the Commissioner's contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobacco's claim for refund is premised on its erroneous payment of the tax, or better still the government's exaction in the absence of a law.
>
> x x x x
>
> A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.
>
> Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.

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[51] *Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation*, 481 Phil. 31 (2004); *Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc.*, 140 Phil. 62 (1969); *Guagua Electric Light Plant Co., Inc. v. Collector of Internal Revenue*, 126 Phil. 85 (1967); *Gonzalo Puyat & Sons, Inc. v. City of Manila*, 117 Phil. 985 (1963); *Belman Compañia Incorporada v. Central Bank of the Philippines*, 108 Phil. 478 (1960).

> The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.[52] (Citations omitted)

Notably, the above discussion was limited to the issue of whether a tax refund partakes the nature of a tax exemption which shall be interpreted or applied strictly against the taxpayer. It did not address the issue of the applicable prescriptive period for a claim for tax refund/credit of erroneously paid taxes. Additionally, in *Fortune Tobacco*, the Court explicitly stated that the Tax Code itself had already recognized the principle of *solutio indebiti*, thus:

> Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.[53] (Citation omitted)

Meanwhile, in *Commissioner of Internal Revenue v. Manila Electric Co. (Meralco)*,[54] the Court squarely addressed the issue of which prescriptive period shall apply to a claim for tax refund of erroneously paid/remitted tax on interest income, whether the two (2)-year prescriptive period under Section 229 of the Tax Reform Act of 1997 or the six (6)-year prescriptive period for actions based on *solutio indebiti* under Article 1145 of the Civil Code. The Court therein applied the two (2)-year prescriptive period under the Tax Reform Act of 1997 which is mandatory regardless of any supervening cause that may arise after payment and categorically declared that *solutio indebiti* was inapplicable, ratiocinating as follows:

> In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi-contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the **first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides**

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[52] *Commissioner of Internal Revenue v. Fortune Tobacco Corp.*, *supra* note 42 at 166-167.
[53] *Id.* at 168.
[54] 735 Phil. 547 (2014).

> **for a mandatory period for claiming a refund for taxes erroneously paid.**[55] (Emphasis supplied, citation omitted).

Citing *Meralco*, the Court again, in *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue*[56] *(Metrobank)*, rejected the application to tax refund cases of the principle of *solutio indebiti* as well as the six (6)-year prescriptive period for claims based on quasi-contract. It reiterated that both administrative and judicial claims for tax refund or credit should be filed within the two (2)-year prescriptive period fixed under Section 229 of the Tax Reform Act of 1997.

Although the *Meralco* and *Metrobank* cases involved erroneously paid taxes on interest income, these may still constitute jurisprudential precedents for the present case concerning excise tax, as both types of national revenue taxes are imposed and collected by virtue of the Tax Reform Act of 1997. Given that the excise taxes on the *Red Horse* beer product of SMC is imposed and collected under the Tax Reform Act of 1997, then its claim for refund or credit of said taxes illegally or erroneously collected shall logically be governed by the same law, including the applicable prescriptive period for such claim. There is no need to refer to the Civil Code provisions on quasi-contract. As already pointed out by the Court in *Meralco*, the Tax Reform Act of 1997 is a special law, and it is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.*[57]

The assertion of SMC – that nothing in Section 229 of the Tax Reform Act of 1997 supports the contention that payments of taxes imposed under an invalid revenue law or regulation falls within its scope[58] – is specious and constitutes a very literal and superficial understanding of said provision. Necessarily, the declaration by this Court in *Fortune Tobacco* that RR No. 17-99 is invalid and of no effect rendered the collection of taxes thereunder baseless and, thus, illegal. This gives the taxpayer the right to request the return of such illegally collected taxes under Section 229 of the Tax Reform Act of 1997, provided it does so within the prescriptive period as prescribed in the same provision.

SMC's argument that its claims should be excepted from the two (2)-year prescriptive period based on equity considerations is untenable; the Court cannot resort to equity when there is clear statutory law governing the matter. Relevant herein are the following pronouncements of the Court in *Republic v. Provincial Government of Palawan*:[59]

> The Court finds the submission untenable. Our courts are basically courts of law, not courts of equity. Furthermore, for all its conceded merits,

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[55] *Id.* at 559-560.
[56] 808 Phil. 575, 584-585 (2017).
[57] *National Power Corporation v. Hon. Presiding Judge, Regional Trial Court, 10th Judicial Region, Branch XXV, Cagayan De Oro City*, 268 Phil. 507, 513 (1990).
[58] *Rollo* (G.R. No. 180910), p. 30.
[59] G.R. Nos. 170867 and 185941, December 4, 2018, citing *Tupas v. Court of Appeals*, 271 Phil. 628 (1991).

equity is available only in the absence of law and not as its replacement. As explained in the old case of *Tupas v. Court of Appeals*:

> Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which [preempt] and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists — and is now still reverently observed — is *"aequetas nunquam contravenit legis."* (Citations omitted)

SMC cites *Commissioner of Internal Revenue v. Philippine National Bank (PNB)*,[60] but the ruling of the Court in said case was based on unique factual considerations, to wit: (a) respondent PNB made advance income tax payment in 1981 in the amount of ₱180,000,000.00 in response to then President Corazon C. Aquino's call to generate more revenues for national development; (b) after applying said advance income tax payment against its tax liabilities at the end of 1991, PNB still had a credit balance of ₱73,298,892.60; (c) PNB carried-over its credit balance to the years 1992 to 1996 but was unable to apply the same as it incurred losses and was in a net loss position for the said four years; and (d) PNB applied for tax credit certificate for the ₱73,298,892.60 only in 1997. It is in consideration of the foregoing special circumstances that the Court, in *PNB*, suspended the application of the two (2)-year prescriptive period for reasons of equity and fairness and still granted the application of PNB for tax credit certificate in 1997. It further ruled therein that in the strict legal viewpoint, the claim for tax credit of PNB did not proceed from, or was a consequence of overpayment of tax erroneously or illegally collected in 1991. Clearly, the factual background in *PNB* is far different from that in the case at bar and the ruling in the former could not be simply applied or extended to the latter by analogy.

Finally, SMC avers that the CTA First Division and the CTA *En Banc* erred in (a) failing to consider that SMC availed itself of the Advance Payment Scheme under RR No. 2-97 for its excise taxes which allows it to remove the products from the place of production and file the prescribed returns and supporting attachments even a week after the actual removal, so that the date of removal may not always be the reckoning point for purposes of prescription; and (b) denying the full amount of its claim for tax refund or credit for the month of February when the CIR presented sufficient evidence to guide the tax court in making the necessary apportionment or allocation of the amounts that had already prescribed.

This contention fails to persuade.

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[60] 510 Phil. 798, 808-816 (2005).

"It is a basic rule of evidence that each party must prove its affirmative allegation."[61] The burden rests upon SMC to present evidence that its prescribed returns for the excise taxes on its Red Horse beer product for February 2001 were actually filed after the removal of the said products from the place of production or later than February 24, 2001. SMC insists that the needed information could be deduced from the evidence it submitted before the CTA. However, as the CTA First Division observed:

> [S]ince the removal reports presented by [SMC] were on a monthly and not on a daily basis, this Court cannot ascertain which portion of the entire claim for the month of February 200[1] in the amount of [Ph] 3,889,761.48 corresponds to the payment made by [SMC] on February 24, 2001 and falls within the two-year prescriptive period. x x x[62]

Interestingly, even in its Petition before this Court, SMC failed to present a definitive computation of the excise taxes on its Red Horse beer product which it had paid from February 24 to 28, 2001 and which would still have been within the two (2)-year prescriptive period; and to cite the corresponding evidence on record in support thereof. Instead, it unduly placed the burden of apportionment of its February 2001 claim upon the CTA by simply and conveniently asserting that the tax court "could have determined, based on the evidence presented, the portion which had [already] prescribed."[63]

Moreover, the Court had previously ruled that "the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are *questions of fact*, which are for the judicious determination by the CTA of the evidence on record."[64] It is already an established rule in this jurisdiction that only questions of law may be raised under Rule 45 of the Rules of Court. It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, as its jurisdiction under Section 1, Rule 45 is limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. The rule finds greater significance with respect to the findings of specialized courts such as the CTA because of the very nature of its functions, which is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject, and consequently, its conclusions are not lightly set aside unless there has been an abuse or improvident exercise of authority,[65] circumstances which this Court does not find extant herein.

WHEREFORE, the Petitions are **DENIED.** The assailed September 25, 2007 Decision and November 26, 2007 Resolution of the Court of Tax Appeals *En Banc* are hereby **AFFIRMED.**

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[61] *Commissioner of Internal Revenue v. Traders Royal Bank*, 756 Phil. 175, 197 (2015).
[62] *Rollo* (G.R. No. 180910), p. 352.
[63] *Id.* at 34.
[64] *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, 762 Phil. 450, 460 (2015).
[65] *Id.* at 459.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Associate Justice
Chairperson

ANDRES B. REYES, JR.
Associate Justice

On official leave
HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice