

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GINEBRA SAN MIGUEL, INC.,

Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

CTA EB NO. 2308
(CTA Case No. 9059)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO, *and*
REYES-FAJARDO, JJ.

Promulgated:

NOV 10 2021

x- ----- x
JH 2:30 p.m.

DECISION

RINGPIS-LIBAN, J.:

The Case

Before the Court is a Petition for Review seeking the reversal of the Decision¹ (“Assailed Decision”) dated February 06, 2020 and Resolution² (“Assailed Resolution”) dated June 09, 2020 of the Court of Tax Appeals Second Division (“Second Division”), denying for insufficiency of evidence Petitioner’s claim for refund or issuance of a Tax Credit Certificate (“TCC”) amounting to Twenty-Six Million Two Hundred Forty-Three Thousand Two Hundred Seventy-Four Pesos (Php26,243,274.00), allegedly representing excise taxes erroneously, excessively, illegally and/or wrongfully assessed on, and collected from Petitioner by the Bureau of Internal Revenue (“BIR”) on removals of its distilled spirits or finished products for the period June 01, 2013 to July 31, 2013. ✓

¹ Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Jean Marie A. Bacorro-Villena concurring. Docket, pp. 765-793.

² *Id.*, pp. 817-821.

In lieu thereof, Petitioner prays that judgment be rendered:

- 1) Declaring that it is entitled to a refund of the total amount of Php9,927,074.34, as recommended by the Independent Certified Public Accountant (“ICPA”); and
- 2) Ordering Respondent to refund the aforesaid amount to Petitioner, with legal interest, or issue to Petitioner a TCC for said amount.

The Parties

Petitioner Ginebra San Miguel, Inc. (GSMI) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 3rd and 6th floors, San Miguel Properties Centre, St. Francis Street, Mandaluyong City, Metro Manila and may be served with processes in this case through its counsel at 4th Floor, Dynavision Building, 108 Rada Street, Legaspi Village, Makati City, Metro Manila.³

Respondent Commissioner of Internal Revenue (CIR) is the head of the BIR, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.⁴

The Facts

The facts as found by the Second Division are as follows:

“GSMI is a domestic manufacturer of distilled spirits such as gin, rum, vodka and mixed drinks which include the brand ‘Ginebra San Miguel’.

The raw material or main ingredient utilized by GSMI is ethyl alcohol, which is rectified/compounded to produce the aforesaid distilled spirits or its various liquor or alcoholic products.

GSMI sources its alcohol from local registered distillers that process the same from molasses supplied by GSMI under tolling arrangements, from local importers, and/or directly through importation. ✓

³ *Id.*, Decision, p. 766.

⁴ *Id.*

In the case of alcohol acquired from local distillers, the distilleries pay the proper excise taxes due thereon in accordance with Section 141 of the National Internal Revenue Code (NIRC) of 1997, as amended, which imposes an excise tax on distilled spirits, upon removal or withdrawal of the said alcohol from the registered distilleries for delivery to the manufacturing plants of GSMI for rectification and compounding.

GSMI's finished products are subject to excise tax under Section 141 of the NIRC.

Section 170 of the NIRC, which partly provides: 'Provided, that where a rectifier makes use of spirits upon which the excise tax has been paid, no further tax shall be collected on any rectified spirits produced exclusively therefrom: xxx' Pursuant to this, removals of finished products produced by GSMI exclusively from its inventory of ethyl alcohol, on which excise taxes had already been paid, are not subject to any excise tax.

However, in accordance with Section 12(c) of Revenue Regulation (R.R.) No. 17-2012, with respect to the inventory of ethyl alcohol in its possession at the end of 2012, GSMI shall not be entitled to tax credit or refund of any excise tax that had been paid on such ethyl alcohol nor shall such excise tax be deducted from any excise tax that shall be paid on the finished products processed and produced exclusively from the ethyl alcohol. Thus, GSMI had to pay excise taxes on both the ethyl alcohol and the finished products.

Petitioner GSMI filed on October 8, 2013 with the BIR a Claim for Refund dated October 7, 2013, in the total amount of P26,243,274.00 for the period June 1, 2013 to July 31, [2013].

Claiming inaction, [Petitioner GSMI] filed on May 28, 2015 [a] Petition for Review..."⁵

The Ruling of the Second Division

On February 06, 2021, the Second Division promulgated the Assailed Decision denying the Petition for Review, the dispositive portion of which reads:

⁵ *Id.*, pp. 766-768.

“**WHEREFORE**, premises considered, the Petition for Review filed by Ginebra San Miguel, Inc. is **DENIED** for insufficiency of evidence.

SO ORDERED.”⁶

According to the court *a quo*, the further imposition of excise taxes on the finished liquor products of Petitioner produced exclusively from its inventory of ethyl alcohol on which excise taxes had already been paid is contrary to the mandate of Section 170 of the National Internal Revenue Code (“NIRC”) of 1997, as amended, and constitutes double taxation. However, its claim for refund must be disallowed because Petitioner failed to convince the court that the amount being claimed is composed entirely of finished goods produced from tax-paid raw materials. Petitioner was not able to show how it computes for the usage of raw alcohol in the process of converting it into finished products. Without the same, the Second Division cannot ascertain the exact portion of tax-paid raw materials that went into each finished good for purposes of the claim for refund.

Aggrieved, Petitioner filed a “Motion for Reconsideration”⁷ on February 20, 2020, which the Second Division denied in the Assailed Resolution on June 09, 2020, to wit:

“**WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.”⁸

The Proceedings in the Court of Tax Appeals En Banc

On July 28, 2020, Petitioner filed a “Motion for Extension of Time to File Petition for Review”⁹, praying for an extension of fifteen (15) days from August 04, 2020 or until August 19, 2020 within which to file its petition.

On July 29, 2020, a Minute Resolution¹⁰ was issued granting the same.

On August 28, 2020, Petitioner filed the present “Petition for Review”¹¹.

⁶ *Id.*, pp. 792-793.

⁷ *Id.*, pp. 794-807.

⁸ *Id.*, p. 820.

⁹ Rollo, pp. 1-6. Record shows that Petitioner received the Assailed Resolution on July 20, 2020; Docket, Registry Return Receipt, p. 816.

¹⁰ *Id.*, p. 7.

¹¹ *Id.*, pp. 8-56.

On November 04, 2020, the Court issued a Resolution¹² which ordered Respondent to comment on the Petition for Review within ten (10) days from receipt.

On November 26, 2020, Respondent filed his "Comment (Re: Petition for Review)"¹³. Thus, on January 05, 2021, a Resolution¹⁴ was issued submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

- 1) The honorable Second Division erred in rejecting the findings of the ICPA commissioned by the court, as contained in his report, and his testimony thereon, as well as the other documentary and testimonial evidence adduced by the Petitioner in this case;
- 2) The honorable Second Division erred in denying the Petition for Review below for alleged insufficiency of evidence;
- 3) The honorable Second Division erred in not applying the presumptions in the revised rules of evidence that are relevant in the instant case;
- 4) The honorable Second Division erred in not declaring that Petitioner is entitled to a refund of the total amount of Php9,927,074.34, as recommended by the ICPA, representing erroneous, excessive, illegal and/or wrongful collection from, and overpayment by, the Petitioner to the BIR of excise taxes on its finished products during the period from June 01, 2013 up to July 31, 2013;
- 5) The honorable Second Division erred in ruling that the amount of Php3,528,237.16 recommended by the ICPA, which is part of the total amount of Php9,927,074.34, cannot be included in the claim of Petitioner; and ✓

¹² *Id.*, pp. 103-104.

¹³ *Id.*, pp. 105-110.

¹⁴ *Id.*, pp. 112-113.

- 6) The honorable Second Division erred in applying the rule of strict construction against Petitioner in this case.¹⁵

The Arguments of Parties

Petitioner alleges that the testimony of the ICPA, based on the report he submitted, is in the nature of expert testimony, and as such is entitled to great weight. The usage of the ethyl alcohol inventory as of December 31, 2012 on the finished goods from June 1, 2013 to July 31, 2013 was fully accounted for by the ICPA, using the "First-In, First-Out" ("FIFO") method of accounting. Hence, it is inequitable for the court *a quo* to deny the entire claim of Petitioner notwithstanding that the ICPA had already deducted from the said claim huge amounts which he believed should not be included therein.

Moreover, Petitioner contends that in order to be entitled to the refund of excise taxes paid on the finished products under Section 170 of the NIRC of 1997, as amended, the taxpayer must simply show that the finished goods were produced exclusively from ethyl alcohol on which excise taxes had already been paid. Petitioner's evidence was more than sufficient. Adding to that fact is Respondent's failure to present evidence controverting the same. Thus, the presumptions in the Revised Rules of Evidence support Petitioner's claims.

Petitioner also points out that Respondent did not object to the ICPA's procedure and report when offered and admitted by the Court, thus, the same should be conclusive upon this Court.

Additionally, Petitioner avers that the amount of Php3,528,237.16 which was not included in the claim for refund but which the ICPA recommended to be refunded, should have been allowed by the court *a quo*, since a prayer may not limit the amount of refund to which Petitioner may be entitled.

Lastly, Petitioner maintains that its claim for refund is not a claim for tax exemption, nor is it an ordinary and simple claim for refund based on a tax exemption. It is a claim that arose from the erroneous, excessive, illegal and/or wrongful assessment and collection of excise taxes. For this reason, the rule of strict construction should not apply.

On the other hand, Respondent declares that Petitioner must prove its entitlement to the refund sought. He asserts that claims for refund partake the nature of exemptions and are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language. ✓

¹⁵ *Id.*, Petition for Review, Grounds Relied upon for Review, p. 33.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration", on June 09, 2020. Petitioner received said Resolution on July 20, 2020.¹⁶ Pursuant to Rule 4, Section 2(a)(1)¹⁷ in relation to Rule 8, Section 3(b)¹⁸ of the Revised Rules of the Court of Tax Appeals¹⁹ ("RRCTA"), Petitioner had fifteen (15) days from date of receipt of the resolution or until August 04, 2020 within which to file its petition for review.

On July 28, 2020, Petitioner filed a “Motion for Extension of Time to File Petition for Review”, praying for an extension of fifteen (15) days from August 04, 2020 or until August 19, 2020 within which to file its petition. On July 29, 2020, a Minute Resolution was issued granting the same.

On August 03, 2020, the Supreme Court issued Administrative Circular No. 43A-2020 suspending the reglementary periods for the filings of petitions, appeals, complaints, motions, pleadings and other court submissions before the courts from August 04 to 18, 2020, which shall resume on August 19, 2020, in view of the imposition of Modified Enhance Community Quarantine (MECQ) in Metro Manila, Cavite, Rizal, Bulacan and Laguna during the said period.

On August 28, 2020, Petitioner timely filed the present “Petition for Review”.²⁰ Hence, the Court *En Banc* validly acquired jurisdiction. ✓

¹⁶ Docket, Registry Return Receipt, p. 816.

¹⁷ **Sec. 2. Cases within the jurisdiction of the Court en banc.** — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx

xxx

xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

¹⁸ **Sec. 3. Who may appeal; period to file petition.** — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

¹⁹ A.M. No. 05-11-07-CTA, November 22, 2005.

²⁰ Since the reglementary period for the filings of pleadings was suspended during August 04 to 18, 2020, Petitioner had fifteen (15) days from August 19, 2020 or until September 03, 2020 within which to file its Petition for Review.

We now proceed to the merits of the case.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the grounds relied upon by Petitioner in the instant Petition for Review are the same contentions in Petitioner's "Motion for Partial Reconsideration" filed on February 20, 2020 before the Second Division. They were already passed upon, addressed and resolved in the Assailed Decision and Assailed Resolution.

Petitioner is not entitled to the excise tax refund amounting to Php9,927,074.34, due to its failure to sufficiently prove that the finished goods removed were produced from the very same raw materials that were already excise tax-paid

Indeed, the imposition of excise taxes on the finished liquor products produced from tax-paid ethyl alcohol is contrary to the mandate of Section 170 of the NIRC of 1997, as amended. Furthermore, Petitioner's instant refund claim was timely filed pursuant to the periods provided for under Sections 204(C) and 229 of the Code. And yet, the same must be disallowed for Petitioner did not convince the court of the factual aspect of its claim for refund.

In order to grant Petitioner's claim, the court needs to ascertain that the proof liters attributable to the claimed amount of Php9,927,074.34 were part of the actual amount of the raw materials that went into production and converted into finished goods which were erroneously subjected to excise tax on June 01, 2013 to July 31, 2013.

This Petitioner failed to do so.

The Court *En Banc* echoes the Second Division's declaration on the matter:

"...the Court discovered that at some point before June 1, 2013, the beginning balance of raw alcohol gets used up, so additional raw alcohol is being added to the balance to be used for further tolling or for production of finished goods. However, the supporting ETRDs for these additional raw alcohols are dated in 2013. ✓

Moreover, after careful consideration, it became questionable to the Court whether the proof liters indicated under the Finished Goods Produced column pertains to the proof liters of raw alcohol contained by the finished products, or the actual proof liters of the finished goods removed.

xxx xxx xxx

The Court finds that while [Petitioner] was able to present adequate documents supporting the transfer of the raw alcohol from one place to another, supposedly for each process such as compounding and packaging, it failed to support the actual utilization of the raw alcohol into the production.

Petitioner failed to present supporting documents that categorically show the formulation of its finished product to clearly establish how much raw alcohol material is used for each class or type of product, per size or container...”

Though the ICPA mentioned using FIFO, We are at a loss how to employ said method in order to trace the finished goods produced from the tax-paid raw alcohol.

Lastly, Petitioner cannot insist that the findings by the ICPA in his report should be conclusive upon this Court. Time and again, We have stressed that the court is not bound by the finding of the ICPA. The ICPA is commissioned merely to assist the Court in the determination of merit of taxpayer’s claim for refund or tax credit. The Court may adopt totally or partially the ICPA’s Report depending on its own appreciation of the documents upon which the ICPA’s Report is based. In other words, the Court will examine and verify the documents audited or examined by the ICPA. Precisely the requirements to present to the Court and formally offer each and every document in support of taxpayer’s claim for refund/tax credit. In fact, on the basis of its own finding, the Court may render judgment without considering the ICPA Report. The ICPA Report is only persuasive in nature and not conclusive upon the Court. On the matter, Section 3, Rule 13 of the RRCTA provides:

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

part, adopt such findings and conclusions subject to verification.”²¹

Again, We see no reason to deviate from the Second Division’s findings, which is a result of a thorough examination of the ICPA Report and the documents submitted by Petitioner.

The Second Division did not err in disallowing the amount of Php3,528,237.16 as part of the amount being claimed for refund

One of Petitioner’s assertion is that the court consider the ICPA’s recommendation to include the additional amount of Php3,528,237.16 in its claim for refund (pertaining to excise taxes on finished goods, with a total proof liters of 818,448 apparently not included in the claim for refund in the Petition for Review but which should have been part thereof) as the finished goods were produced exclusively from the 2012 year-end inventories and alcohol purchases from period June 01, 2013 to July 31, 2013.

Such relief cannot be granted by this court.

It is well-settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case.²² This is especially true in refund cases where the taxpayer indicates in its petition the amount being claimed.

The well entrenched rule is that a court acquires jurisdiction over a case only upon the payment of the prescribed filing and docket fees. This is consistent with Section 1, Rule 141 of the Revised Rules of Court which provides that the prescribed fees shall be paid in full “upon the filing of the pleading or other application which initiates an action or proceeding”.

In the case at bar, Petitioner paid a docket fee based on the amount being claimed in the prayer of its “Petition for Review”²³ with the court *a quo* (*i.e.*, the refund of Php26,243,274.00 or issuance of a TCC). To allow Petitioner to add Php3,528,237.16 from its original refund claim is problematic, for the court did not acquire jurisdiction in excess of the amount initially claimed. We agree with the Second Division that without payment of docket fee on the said additional amount, the court cannot delve on it as an issue. ✓

²¹ *Emphasis supplied.*

²² Leticia Diona v. Romeo A. Balangue, Et. Al., G.R. No. 173559, January 17, 2013.

²³ Docket, Petition for Review dated May 25, 2015, Prayer, pp. 35-36.

**Rules of strict construction
apply in the instant case**

Finally, Petitioner is mistaken in its contention that the rules on strict construction (*i.e.*, construed strictly against the taxpayer) only apply to refunds based on a tax exemption, and not to allegedly erroneously paid taxes.

There is no need to differentiate. Tax refunds of any kind are a derogation of the state's taxing power. Along with police power and eminent domain, taxation is one of the three (3) basic and necessary attributes of sovereignty. The state cannot be deprived of this most essential power and attribute of sovereignty by vague implications of law. Hence, like tax exemptions, tax refunds are construed strictly against the taxpayer and liberally in favor of the state.²⁴

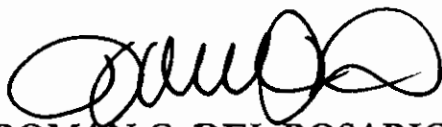
Considering all these pronouncements, We find no cogent reason to reverse or modify the Assailed Decision and Assailed Resolution of the court *a quo*.

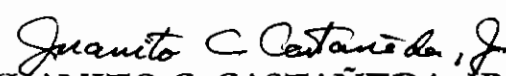
WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Decision dated February 06, 2020 and the Resolution dated June 09, 2020 of the Second Division in the case docketed as CTA Case No. 9059 are **AFFIRMED**.

SO ORDERED.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

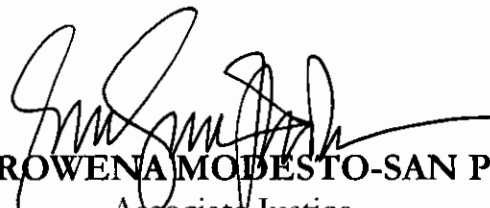

JUANITO C. CASTAÑEDA, JR.
Associate Justice

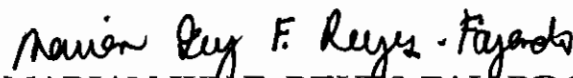
²⁴ See *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006.


ERLINDA P. UY
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice