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BIR ISSUANCES

REVENUE REGULATIONS (RR)

RR No. 22-2021 issued on December 31, 2021

- This Regulations extends the deadlines for the (i) filing of tax returns and the payment of the corresponding taxes due thereon, including submission of required documents; (ii) filing of application for tax refund, including claim for Value-Added Tax (VAT) refund; (iii) processing of VAT refund; and (iv) the statutory period for the issuance of Assessment Notices and Warrants of Distraint and Levy for taxpayers within the jurisdiction of Revenue Regional (RR) and Revenue District Offices (RDO) of the Bureau of Internal Revenue (BIR) of Regions IV-B, VI, VII, VIII, X and XIII that were adversely affected by Typhoon Odette.
- The extension of the due dates shall be made applicable throughout the areas (RRs and RDOs) affected by Typhoon Odette. If the extended due dates fall on a holiday or non-working day, the submission and/or filing contemplated herein shall be made on the next working day.
- Affected taxpayers within the RRs and RDOs may file their returns and pay their corresponding taxes due thereon to the nearest Authorized Agent Banks (AABs) or to the BIR Revenue Collection Officer (RCO), notwithstanding RDO jurisdiction. Payments can also be made thru a RCO with the issuance of manual receipt.

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 125-2021 issued on December 16, 2021

- This Circular informs taxpayers that electronically filed One-Time Transactions (ONETT) may now be paid through any of the following online payment facilities:
    a) Land Bank of the Philippines' (LBP) Link.Biz Portal - for taxpayers who have ATM account with LBP and/or for holders of Bancnet ATM/Debit/Prepaid Card and taxpayer utilizing PesoNet facility (depositors of RCBC, Robinsons Bank and Union Bank);
    b) Development Bank of the Philippines' (DBP) Pay Tax Online - for holders of Visa/Mastercard Credit Card and/or Bancnet ATM/Debit Card; and
    c) Union Bank Online Web and Mobile Payment Facility - for taxpayers who have account with Union Bank of the Philippines.

RMC No. 126-2021 issued on December 21, 2021

- This Circular informs the taxpayers and others concerned of the availability of InstaPay via UPAY facility of the UnionBank of the Philippines (UBP) for the payment of internal revenue taxes. To pay taxes using InstaPay via UPAY, taxpayers shall access the BIR Website (www.bir.gov.ph) and click the ePay icon. The list of ePayment facilities icons will be displayed - click UPAY (Instapay) under the UnionBank icon. Click the instructional video link for the steps on how to pay taxes via UPAY. Taxpayers are required to file their corresponding tax returns using the electronic filing facilities of eBIRForms System.

COURT DECISIONS

SUPREME COURT DECISIONS

Hedcor Sibulan, Inc. vs. CIR
G.R. No. 202093 promulgated on September 15, 2021 (Uploaded on November 29, 2021)

(Taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.)

Facts:

On July 21, 2008, Hedcor filed its Original Quarterly VAT Return for the 2nd quarter of 2008 with the BIR. Two years later or on June 23, 2010, it filed an Amended Quarterly VAT Return for the same period. Afterward, on June 25, 2010, Hedcor filed with the BIR a written application for the refund or issuance of a tax credit certificate (TCC), and an administrative claim for tax credit/refund as to the unutilized input VAT on purchases of goods and services attributable to zero-rated sales for the 2nd quarter of 2008.

On June 29, 2010, pending resolution of its administrative claim, Hedcor filed a petition for review before the Court of Tax Appeals (CTA) in Division. Hedcor sought the refund, or in the alternative, the issuance of a TCC in its favor for the unutilized input VAT. It further averred that it was constrained to file the petition in order to suspend the running of the two-year prescriptive period for filing of claims for refunds as prescribed under the Tax Code and RR No. 16-2005, as amended.

In its answer, the CIR sought the dismissal of the petition on the ground of prematurity since only four days had lapsed from the time Hedcor filed its administrative claim. Hence, Hedcor did not observe the prescribed period of 120 days for the CIR to rule on its claim.

The CTA Division ruled that the petition for review was prematurely filed. The CTA *En Banc* rendered affirmed the decision of the CTA in Division.

Issue:

Was Hedcor's judicial claim prematurely filed?

Ruling:

No. As a rule, the CIR has 120 days from the date of submission of complete documents to rule on an administrative claim of a taxpayer. In case of denial of the claim for tax refund or tax credit, either in whole or in part, or if the CIR failed to act on an application within the prescribed period, the taxpayer shall file a judicial claim by filing an appeal before the CTA within 30 days from the receipt of the decision denying the claim or after the expiration the 120-day period. The 120-day period is mandatory and jurisdictional. It should therefore be strictly observed in order for a claim for tax credit refund to prosper. Otherwise, non-observance of the period would warrant the dismissal of a petition filed before the CTA as it would not acquire jurisdiction over the claim.

However, there are two recognized exceptions to the mandatory and jurisdictional nature of the period.

First, if the CIR, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA.

Second, if the CIR issued a general interpretative rule in accordance which misleads all the taxpayers into prematurely filing judicial claims with the CTA.

The CIR, in such case, is not allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code. BIR Ruling No. DA-489~03 falls under the second exception, which provides that a taxpayer-claimant may seek judicial relief with the CTA by filing a petition for review without waiting for the 120-day period to lapse. The Supreme Court has previously held that taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal on 6 October 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

Hence, the petition for review for judicial claim filed by Hedcor before the CTA was not prematurely filed. The administrative claim was filed on June 25, 2010. Four days later, or on June 29, 2010, Hedcor filed its judicial claim. It is evident that the judicial claim was filed well within the issuance of BIR Ruling No. DA-489-03. Thus, Hedcor's immediate filing of its petition for review before the CTA without waiting for the prescribed period of 120 days to lapse is thus permissible.

CTA EN BANC DECISION

Medicard Philippines, Inc. v. CIR
CTA En Banc Case No. 2158 promulgated on November 17, 2021

(When a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, the Supreme Court provided an exception to this general rule, following the equitable principles of in pari delicto and estoppel.)

Facts:

Medicard Philippines, Inc. (Medicard) filed its Quarterly VAT Returns for taxable year 2007. Medicard, through Ms. Elizabeth B. Laqui, Medicard's VP Controller, was made to execute a "Waiver of the Defense of Prescription under the Statute of Limitations of the Tax Code" (the "First Waiver") dated August 13, 2010, supposedly seeking the CIR's approval of Medicard's request for more time to submit documents required in connection with the investigation of its internal revenue tax liabilities for the period January 1 to December 31, 2017. Thereafter, Medicard was made to execute two other undated waivers (the "Second Waiver" and "Third Waiver", respectively), purportedly to afford the BIR more time to assess and collect taxes beyond the prescriptive period under the Tax Code. On November 21, 2011,

Medicard received a Preliminary Assessment Notice (PAN) assessing Medicard for deficiency taxes. Medicard was thereafter made to execute other waivers. On November 22, 2013, Medicard received the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) reiterating the alleged deficiency taxes and, subsequently, the BIR issued the Final Decision on Disputed Assessment (FDDA) against Medicard.

In the instant case, Medicard argues that since the waivers were not accompanied by notarized written authority establishing the authority of the signatory Ms. Laqui, they are all invalid. Medicard argues that the acts of a person without the proper delegation by the board of directors are generally not binding on the corporation. However, the BIR argues that Ms. Laqui executed seven (7) waivers on behalf of Medicard. In a Supreme Court case, the Supreme Court held that if a corporation knowingly permits one of its officers, or any of its agents, to act within the scope of an apparent authority, it holds him/her out to the public

as possessing the power to do those acts, thus, the corporation will be estopped from denying the agent's authority, against anyone who has dealt in good faith with it through such agent.

Issue:

Were the waivers executed without the requisite written and notarized authority of the signatory are defective, hence, invalid?

Ruling:

No. A waiver of the statute of limitations under the Tax Code, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. Thus, the general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes.

However, the Supreme Court provided an exception to this general rule, following the equitable principles of in pari delicto and estoppel.

In the instant case, it is very significant that Ms. Laqui, Medicard's VP Controller, signed the seven (7) consecutive waivers, without presenting any notarized written authority to do so for each of the waivers.

The BIR, on the other hand, failed to demand the submission of such notarized written authority for the seven waivers that were executed.

This mutual failure on the part of both parties to fulfill their obligations renders them in pari delicto. Thus, the parties cannot be allowed to raise the defects in the waivers to their own benefit.

Pursuant to the *Next Mobile* case, the validity of the waivers shall be upheld consistent with the public policy embodied in the principle that taxes are the lifeblood of the government. Thus, the Court finds that the waivers are valid by reason of the mutual fault of the parties.

CIR vs. Universal Robina Corporation
CTA EB No. 2280 promulgated on December 7, 2021

(Pursuant to Section 1, Rule 14 of the RRCTA, the Court is not limited to the issues raised by the parties and may rule upon related issues necessary to achieve an orderly disposition of the case.)

Facts:

URC filed a Petition for Review with the CTA. The CTA in Division granted URC's Petition and declared the FLD void for lack of definite amount of tax liabilities and due date.

The CIR argues that since URC never questioned the validity of the FLD in its Petition for Review nor during the trial, the CTA in Division erred in ruling upon an issue that was never raised. The CIR claims that he was denied procedural and substantive due process as he was neither heard nor given the opportunity to be heard on the issue. The CIR also contends that the FLD has fixed and definitely set the deficiency tax liabilities of URC, including the basic tax deficiency as well as the surcharge and interest. However, as provided for in Section 249 of the Tax Code, if URC still fails to pay the stated tax liability on or before the date up to where the interests were computed, the deficiency interest will have to be adjusted accordingly. As the CIR has no control over when URC will pay its deficiency tax

assessment, the phrase "be adjusted if paid beyond the date specified therein" is merely a safeguard should URC pay beyond the period provided.

On the other hand, URC claims that the CIR's right to due process was not violated as it raised the issue on the validity of the FLD and the defects in the assessment notices in its pleadings and Formal Offer of Evidence (FOE) which became part of the Court's records. URC likewise argues that the subject tax assessment is void because it lacks a definite amount payable and due date in violation of Section 228 of the Tax Code.

Issue:

Can the CTA in Division rule upon issues not stipulated by the parties to the case?

Ruling:

Yes. Pursuant to Section 1, Rule 14 of the RRCTA, the Court is not limited to the issues raised by the parties and may rule upon related issues necessary to achieve an orderly disposition of the case. In this case, though the issues on the lack of definite amount of tax liabilities and due date on the subject tax assessment were not stipulated by the parties, these matters are related to the issue on the validity of the assessments issued against URC. As correctly observed by the CTA in Division, the Court can delve on other issues or matters related to the *lis mota* of the case which will help in its complete resolution.

In the instant case, the issue on the absence of a definite amount and due date in the assessment notice is inextricably intertwined with the validity of the assessment itself. This becomes more important in view of the doctrine that a void assessment bears no valid fruit. As such, the CTA in Division was well within its authority to solve the said related matters. Moreover, the case records show that, indeed, the validity of the FLD and the assessment notices were taken up during trial.

The CIR asserts, however, that the FLD has fixed and definitely set the deficiency tax liabilities of URC, including the basic tax deficiency as well as the surcharge and interest. However, if URC still fails to pay its deficiency tax liabilities on or before the date up to where the interests were computed, the deficiency interest will have to be adjusted, especially since the CIR has no control over when URC will pay. Since the tax deficiency is already definite, subject to adjustment as the interest is running, the taxpayer is cognizant of the amount to be paid on its tax liabilities.

In the present case, however, a perusal of the FLD shows that it does not state a due date for the payment of the assessed taxes. In fact, the space in the Assessment Notice where the due date is to be indicated "remained unaccomplished". Consequently, the failure of the CIR to state the due date for payment invalidates the assessment.

CIR vs. S & Woo Construction Philippines, Inc.
CTA EB No. 2340 promulgated on December 10, 2021

(Neither the Court nor the CIR has a right to interfere with how SCP bills its sales of services to its lone client, SEMPHIL. This is the very essence of the business judgment rule. As long as a business decision or policy was made by a corporation or its corporate officers in good faith, neither this Court nor any other unrelated person is at liberty to question its appropriateness.)

Facts:

S & Woo Construction Philippines, Inc. (SCP) filed an Application for Tax Credits/Refunds before CIR, requesting a refund allegedly representing excess and/or unutilized input tax credits attributable to its zero-rated sales of services for the 2nd to the 4th quarters of Calendar Year (CY) 2016. Due to CIR's inaction on the administrative input VAT refund

claim, SCP filed a Petition for Review before the Court in Division on 11 December 2017. The CTA in Division partially granted SCP's judicial claim for input VAT refund.

The CIR argues that, from the cross-examination conducted upon SCP's witness, it is clear that the entire bill for the contracting works for its lone client, Samsung Electro-Mechanics Philippines Corporation (SEMPHIL), also includes the fees that SCP paid to its sub-contractors, as well as the goods and services which it purchased. These fees paid to the sub-contractors as well as the purchases of goods and services (which were included in the bill sent to SEMPHIL) include the input VAT component in the cost of the goods and services which SCP purchased and also in the fees to its sub-contractors. In totality, the entire cost, including the input VAT component on the purchases, were billed to SEMPHIL. To allow SCP to claim input VAT is tantamount to double recovery and unjust enrichment. Moreover, the CIR argues that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded and that no attributability was established between the input tax on purchases vis-a-vis the zero-rated sales of SCP. Moreover, the CIR claims that under Section 112 (A) of the Tax Code, what is refundable are only "creditable input taxes". As shown by Section 110 of the Tax Code, what are "creditable" are those that are factors to the chain of production. To be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.

On the other hand, SCP argues the computation of the service fees that is being charged by SCP to SEMPHIL is a business decision that must be left to the sound judgment of the SCP. It is noteworthy to mention that the service fees being charged were previously agreed upon by SCP and SEMPHIL, as embodied in their Construction Contract Agreement. If there are questions as to the propriety of the service fees, it is SEMPHIL which is the proper party to raise them and not CIR. More importantly, all charges and fees paid by SEMPHIL to SCP are properly reported in its tax returns, particularly its quarterly VAT returns. Moreover, SCP only had VAT zero-rated sales transactions, and in the VAT system, all input VAT will necessarily be attributable to such VAT zero-rated sales transactions. All of SCP's purchases are directly related to its export sales to SEMPHIL, a Philippine Economic Zone Authority (PEZA) registered entity and SCP's sole client.

Issue:

Does the CIR have standing to question the propriety of the service fees being charged by SCP to SEMPHIL?

Ruling:

No, the CIR has no standing to question the propriety of the service fees being charged by SCP to SEMPHIL. In the Petition, CIR claims that to allow SCP to claim input VAT is tantamount to double recovery and unjust enrichment. Neither the Court nor the CIR has a right to interfere with how SCP bills its sales of services to its lone client, SEMPHIL. This is the very essence of the business judgment rule. As long as a business decision or policy was made by a corporation or its corporate officers in good faith, neither this Court nor any other unrelated person is at liberty to question its appropriateness.

The determination of the amount to be billed as a service fee for the services rendered by SCP to SEMPHIL rests solely with SCP. Accordingly, SCP was acting within its authority in including in the bill to SEMPHIL an amount corresponding to the input VAT it paid for its purchases of goods and services which were necessary to render services to SEMPHIL. To stress, neither the Court nor any other person not related to the transaction can question such business discretion employed by SCP regardless of SCP's reason for including such input VAT in the billed amount to SEMPHIL (which may be solely for the purpose of increasing its profit margin and/or to ensure reimbursement of the input VAT it paid on its

purchases), provided, of course, that such business judgment was employed without bad faith. Here, we find no bad faith on the part of SCP in adding the input VAT component in the amount billed as service fees to SEMPHIL. In fact, SEMPHIL consented to such manner of billing when it entered into a Construction Contract Agreement with SCP. If at all, it should be SEMPHIL which should be questioning SCP's manner of billing service fees because it is the one directly affected by the propriety and amount of such fees.

Moreover, Section 112 of the Tax Code does not require absolute direct attribution of the purchases (the input VAT of which is subject of a refund/TCC claim) to zero-rated sales. In fact, the said provision allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales (i.e., zero-rated sales, taxable sales or exempt sales). Clearly, then, it is not necessary for input taxes to be directly attributable to zero-rated sales so that it can be validly refunded.

CIR vs. MSCI Hong Kong Limited
CTA EB No. 2558 promulgated on December 15, 2021

(An ROHQ refers to "a mere administrative arm of the mother company, and through the establishment of an ROHQ, the mother company may now do business and derive income in the Philippines from the qualifying services rendered by the ROHQ to its affiliates, subsidiaries or branches;" hence, "the ROHQ and its mother company may not be treated as a separate entity.")

Facts:

For the four (4) quarters of CY 2015, MSCI filed with the BIR, through the Electronic BIR Forms (eBIR) and its Electronic Filing and Payment System (eFPS), its original and amended quarterly VAT returns. During the same period, MSCI claimed to have paid and incurred excess input on its purchases of goods and services. The CIR alleges that MSCI failed to prove its entitlement to a tax refund. In the case at bar, MSCI failed to prove that that the recipient of its services must be a non-resident foreign corporation not engaged in trade or business in the Philippines. In fact, it appears that MSCI rendered services to its parent company (i.e., MSCI, Inc.). In addition to this, MSCI also failed to prove that it is not wholly-owned by MSCI, Inc. No evidence was adduced showing that MSCI, Inc. is not a parent company of MSCI. On the other hand, MSCI counter argues that the CIR's argument that the parent company of MSCI is MSCI, Inc., which is based in Delaware, USA, and not MSCI Hong Kong Limited, which is based in Hong Kong, is baseless. It was clearly established during trial that MSCI is the "Philippine Branch of MSCI Hong Kong Limited, a multinational company, organized and existing under the laws of Hong Kong.

Issue:

Did MSCI render service to a foreign entity not doing business within the Philippines?

Ruling:

Yes, MSCI rendered service to a foreign entity not doing business within the Philippines. The CIR's main argument is that MSCI failed to satisfy one of the requisites for entitlement to refund, i.e., that the recipient of its services must be a non-resident foreign corporation not engaged in trade or business in the Philippines. According to petitioner, MSCI failed to prove that it is not wholly-owned by MSCI, Inc. It claims that nowhere in the records has it been shown that MSCI, Inc. is not a parent company of the MSCI.

However, in this case, records reveal that MSCI is the Philippine Branch of MSCI Hong Kong Limited, a multinational company, organized and existing under the laws of Hong Kong. Second, MSCI presented pieces of evidence establishing that it is indeed the Philippine Branch of MSCI Hong Kong Limited, a Hong Kong based entity, and not a subsidiary of MSCI, Inc., a company organized and existing under the laws of Delaware, USA.

Therefore, since MSCI is a mere Philippine Branch, or an ROHQ, of MSCI Hong Kong Limited, it is without any separate corporate personality from the latter. An ROHQ refers to "a mere administrative arm of the mother company, and through the establishment of an ROHQ, the mother company may now do business and derive income in the Philippines from the qualifying services rendered by the ROHQ to its affiliates, subsidiaries or branches;" hence, "the ROHQ and its mother company may not be treated as a separate entity." How, then, can a Philippine Branch or an ROHQ, which is a mere extension of a foreign corporation in the Philippines, be considered a subsidiary of another foreign corporation if its constitution is that it does not and cannot possess a separate corporate personality from its mother company? It is noteworthy that a "subsidiary" is a company wholly controlled by another that owns more than half of its voting stocks. The ownership of MSCI is by no means represented by voting stocks as it is merely a representation of its mother company, MSCI Hong Kong Limited, in the Philippines. Thus, the CIR's contention that MSCI is MSCI, Inc.'s subsidiary is entirely illogical.

Moreover, the evidence on record, clearly provides that MSCI, Inc. and MSCI Hong Kong Limited are separate and distinct entities organized in different countries. The former was incorporated in Delaware, USA while the latter was organized and formed in Hong Kong. Consequently, MSCI, Inc. and MSCI Hong Kong Limited have their own respective separate and distinct corporate personalities. Hence, MSCI is certainly entitled to an input VAT refund attributable to its zero-rated sales for the four (4) quarters of CY 2015.

Deutsche Knowledge Services, Pte., Ltd. vs. CIR
CTA EB No. 2249 promulgated on December 14, 2021

(It is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "nonresident foreign corporation", and that such recipient must also be not doing business in the Philippines to be entitled to the Input VAT Refund under the Tax Code.)

Facts:

Petitioner Deutsche Knowledge Services, Pte., Ltd. is a Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore. It is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines.

On October 18, 2013, petitioner filed its Quarterly VAT Return for the 3rd quarter of CY 2013 with the BIR, through the electronic filing and payment system. Thereafter, on June 1, 2015, petitioner filed with the BIR an Application for Tax Credits/Refunds of its excess and unutilized input VAT for the 3rd quarter of CY 2013. Due to alleged inaction, petitioner filed its Petition for Review with the CTA. After trial, the CTA 3rd Division rendered its decision, which denied the claim for refund for failure of petitioner to show its sales of services for the 3rd quarter of 2013 qualify for VAT zero-rating.

Petitioner states that its sales were made to non-resident corporations doing business outside the Philippines and that credence should be given to the business foreign registration documents retrieved from the AMINET database. On the other hand, the CIR contends that the petitioner failed to prove that the entities to whom it rendered its services are NRFCs doing business outside the Philippines.

Issue:

Did the petitioner fail to prove that it provides service to a foreign entity not doing business within the Philippines to be entitled to the refund?

Ruling:

Yes. It is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "nonresident foreign corporation", and that such recipient must also be not doing business in the Philippines to be entitled to the Input VAT Refund under the Tax Code.

To be considered as a non-resident foreign corporation doing business outside the Philippines, each service-recipient must be supported, at the very least, by both a certificate of non-registration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) and certificate/ articles of foreign incorporation/ association. As a corollary, notwithstanding the presentation of the said documents, there must be no indication that any of the recipients of petitioner's services are doing business in the Philippines.

There can be no credence nor probative value to the business registration documents retrieved from the AMINET database. The AMINET database is a database set up by Deutsche Bank Group, the print-outs from which are self-serving, lack credibility, and which can "be easily manipulated to favor petitioner in view of its affinity with the entity that maintains or keeps the database. The alleged good faith in the preparation and maintenance of the integrity of the database, and that the same were prepared *ante litem motam* are not sufficient considering that cases filed before the Court are litigated de novo. Party litigants should prove every minute aspect of their cases, and thus cannot be based on a mere presumption of good faith as claimed by petitioner. Bare allegations as regards the alleged integrity of the AMINET database, unsubstantiated by adequate evidence, are not equivalent to proof.

CTA DIVISION DECISION

PMFTC, Inc., v. CIR
CTA Case No. 10110 promulgated on November 25, 2021

(Under the Tax Code, where the tax sought to be refunded was collected legally, the running of the two-year prescriptive period should commence, "regardless of any supervening cause that may arise after payment". Hence, it simply means that the legislature intended that despite the presence of a "supervening cause'; the two (2)-year prescriptive period continues to run.)

Facts:

On December 20, 2012, Republic Act (RA) No. 103516 was enacted, otherwise known as the Sin Tax Reform Law. Section 5 of RA No. 10351, which amended Section 145(C) of the Tax Code, increased the excise tax rate of cigars and cigarettes and allowed cigarettes packed by machine to be packed in other packaging combinations of not more than 20. Thereafter, RR No. 17-2012 was issued, imposing an excise tax on individual cigarette pouches of 5's and 10's even if they are bundled or packed in packaging combinations not exceeding 20 cigarettes. Pursuant to RR No. 17-2012, the BIR issued RMC No. 90-2012 that provides for the initial classifications in tabular form, effective January 1, 2013, of locally-manufactured cigarette brands packed by machine according to the tax rates prescribed under RA No. 10351 based on the (1) 2010 BIR price survey of these products, and (2) suggested net retail price declared in the latest sworn statement filed by the local manufacturer or importer.

On January 16, 2013, prior to the payment of excise tax on its cigarette packs of l0's, PMFTC wrote the BIR stating · that the payment was being made under protest and without prejudice to its right to question the issuances through remedies available under the law.

Petitioner then paid excise taxes on the 20's cigarette packs and 2x10's cigarette packaging combinations from February 20, 2014 until December 17, 2015.

On February 26, 2013, PTI filed a petition for declaratory relief with an application for writ of preliminary injunction with the Regional Trial Court (RTC). PTI sought to have RR No. 17-2012 and RMC No. 90-2012 declared null and void for allegedly violating the Constitution and imposing tax rates not authorized by RA No. 10351. The RTC granted the petition for declaratory relief.

On June 13, 2019, PMFTC filed with the BIR, an Application for Tax Credits/Refunds requesting for the refund and/or issuance of a tax credit certificate, representing alleged erroneous excise tax payments for calendar years 2014 and 2015. PMFTC argues that it is settled that the excise tax collected by respondent pursuant to RR No. 17-2012 and RMC No. 90-2012 was excessive and violative of the provisions of the Tax Code. However, the CIR contends that PMFTC is not entitled to the claim for refund or issuance of tax credit for alleged erroneously/excessively paid excise taxes.

Issue:

Is PMFTC is entitled to a refund or issuance of a tax credit certificate representing overpaid excise tax on cigarette?

Ruling:

No. The two (2)-year prescriptive period runs from the date of payment of the tax, regardless of any supervening cause that may arise thereafter. Under the Tax Code, where the tax sought to be refunded was collected legally, the running of the two-year prescriptive period should commence, "regardless of any supervening cause that may arise after payment". Hence, it simply means that the legislature intended that despite the presence of a "supervening cause'; the two (2)-year prescriptive period continues to run.

Based on the foregoing jurisprudential pronouncements, it is clear that the administrative and judicial claims for refund or credit of internal revenue taxes must be filed within the two (2)-year prescriptive period, which commences from the payment of the tax; that such period is mandatory and jurisdictional regardless of any supervening cause that may arise after payment; The declaration that an RR is invalid and of no effect gives the taxpayer the right to request the return of illegally collected taxes under Section 229, provided it does so within the prescriptive period as prescribed therein.

In this case, the two (2)-year prescriptive period under Section 229 of the Tax Code had already elapsed before PMFTC filed its administrative and judicial claims, and since such prescriptive period continues to run regardless of any supervening cause that may arise after payment, the present Petition for Review must already fail. Hence, PMFTC is not entitled to a refund.