Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 28, 2022**, *which reads as follows:*

"G.R. No. 258121 (*The City Government of Makati and The City Treasurer of Makati v. South Luzon Tollway Corporation*). – This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated March 11, 2020, as well as the Resolution[3] dated October 20, 2021, rendered by the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1928. The CTA *En Banc* upheld the May 9, 2018 Decision[4] and August 15, 2018 Resolution of the CTA First Division in CTA AC No. 187 which, in turn, affirmed with modification the Decision dated January 6, 2017 of the Regional Trial Court (RTC) of Calamba City, Laguna, Branch 36, granting South Luzon Tollway Corporation's (respondent's) claim for tax refund in the amount of ₱20,585,603.19.

The undisputed facts are as follows:

The City of Makati is a Local Government Unit (LGU) with the capacity to sue and be sued under its Charter[5] and Section 22(a)(2) of the Local Government Code (LGC) of 1991. It is likewise empowered to levy taxes through its City Treasurer (collectively, petitioners).

Respondent South Luzon Tollway Corporation (now known as SMC SLEX Inc.) is a corporation organized and existing under the laws of the Philippines, engaged in the rehabilitation, construction, and expansion of the

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1 *Rollo*, pp. 3-17.
2 Id. at 27-38; penned by Associate Justice Esperanza R. Fabon-Victorino.
3 Id. at 40-44; penned by Associate Justice Maria Rowena Modesto-San Pedro, with Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena and Marian Ivy F. Reyes-Fajardo, concurring.
4 *The City Government of Makati and The City Treasurer of Makati v. South Luzon Tollway Corporation*, CTA AC No. 187, May 9, 2018 <https://cta.judiciary.gov.ph/decres_caseno#> (visited September 20, 2022).
5 Section 3(b), Article 1 of Republic Act No. 7854, approved on July 19, 1994.

South Luzon Expressway (SLEX).[6]

Respondent used to hold office at the 6/F 104 Rada Street, Legaspi Village, Makati City until sometime in 2011 when it transferred to Sitio Latian, Barangay Mapagong, Calamba City, Laguna. As a consequence, on August 3 of the same year, respondent applied for a Certificate of Business Retirement with petitioners. In the process, respondent was assessed local business tax for the period covering January 1 to September 30, 2011 in the sum of ₱20,585,603.19.[7]

On January 31, 2012, respondent paid the aforementioned amount, as evidenced by Official Receipt No. MKTCF 1501336 issued by petitioners.[8] On even date, respondent was accordingly issued a Certificate of Business Retirement.[9]

Subsequently, in a letter dated December 13, 2013, respondent requested from petitioners a refund of the local business tax it paid, asserting that it was registered as a pioneer enterprise with the Board of Investments (BOI) on March 3, 2010 and was therefore exempt from paying said tax for six (6) years, or from March 3, 2010 to March 3, 2016.[10] In support thereof, respondent attached a copy of its BOI Certificate of Registration.[11]

Receiving no reply on its claim for refund, respondent was constrained to file a petition with the RTC of Calamba City, Laguna on February 3, 2014. Respondent prayed to be declared exempt from local business tax imposition, starting from the date of its BOI registration until March 3, 2016, and that it be refunded of the amount previously collected by and paid to petitioners. The case was docketed as Civil Case No. 4749-2014-C and raffled to Branch 36.[12]

In a Decision dated January 6, 2017, the RTC confirmed the local business tax-exempt status of respondent as a BOI-registered pioneer enterprise for a period of six years from the date of its registration, *i.e.* on March 3, 2010. Thus, the RTC found petitioners to have erroneously or illegally collected from respondent local business tax covering January 1 to September 30, 2011, thereby making the latter eligible for a refund under

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6 SMC SLEX Inc. website, <https://smcslex.com.ph/> (visited September 20, 2022).
7 *Rollo*, p. 28.
8 See Decision dated May 9, 2018 of the CTA First Division in CTA AC No. 187, p. 4.
9 *Rollo*, p. 28.
10 Id. at 28-19.
11 See Decision dated May 9, 2018 of the CTA First Division in CTA AC No. 187, p. 14.
12 Id. at 3.

Section 196 of the LGC.[13]

Further, the RTC held that respondent complied with the requirements set forth under Section 196 when both the written claim for refund with the City Treasurer and the case for refund before the court were lodged within the two-year prescriptive period. The RTC explained that counting from the date of payment of the local business tax on January 31, 2012, respondent had until January 31, 2014 (Friday) to lodge a judicial claim for refund. Since January 31, 2014 was declared a special non-working holiday by Proclamation No. 655, series of 2013,[14] and February 1 and 2, 2014 fell on Saturday and Sunday, respectively, respondent timely filed its petition on February 3, 2014.[15]

The *fallo* of the RTC Decision states:

> **WHEREFORE**, in light of the foregoing, judgment is hereby rendered in favor of the [respondent] and against [petitioners] who are directed to refund the [respondent] of the total amount of Twenty Million Five Hundred Eighty-Five Thousand Six Hundred Three Pesos and Nineteen Centavos (P20,585,603.19), Attorney's Fees of P10,000.00; and Cost of suit represented by the docket fees.
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> SO ORDERED.[16]

Petitioners sought reconsideration, but the RTC denied the same in its Order dated May 11, 2017.[17]

Aggrieved, petitioners interposed an appeal to the CTA First Division on June 16, 2017.[18]

On May 9, 2018, the CTA First Division rendered a Decision, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated January 6, 2017 and the Order dated May 11, 2017 of the Regional Trial Court, Branch 36, Calamba City, Laguna in Civil Case No. 4749-2014-C entitled *"South Luzon Tollway Corporation vs. The City Government of Makati and Nelia A. Barlis in her capacity as City Treasurer"* are

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13 *Rollo*, p. 29.
14 "Declaring the Regular Holidays, Special (Non-Working) Days, and Special Holiday (For All Schools) for the Year 2014," signed on September 25, 2013.
15 See Decision dated May 9, 2018 of the CTA First Division in CTA AC No. 187, pp. 3-4.
16 *Rollo*, p. 29.
17 Id. at 30.
18 Id.

> **AFFIRMED** with **MODIFICATION**. The award of Attorney's Fees in the amount of Ten Thousand Pesos (₱10,000.00) is **DELETED**.
>
> **SO ORDERED.**[19]

Citing Section 133(g) of the LGC, the CTA First Division concurred with the RTC in ruling that petitioners erroneously collected ₱20,585,603.19 as local business tax from respondent at the time it was exempt from paying such, being a pioneer enterprise registered with the BOI.[20]

Moreover, the CTA First Division agreed with the RTC that respondent is entitled to a cash refund after having satisfied all the requirements in Section 196 of the LGC, especially with respect to the two-year prescriptive period.[21]

The CTA First Division also sustained the award of costs of suit in favor of respondent as it was forced to file a case due to petitioners' inaction on its claim for refund and emerged as the winning party,[22] but deleted the award of attorney's fees for lack of factual and legal basis.[23]

Petitioners moved for reconsideration, but to no avail. It was denied by the CTA First Division in its Resolution dated August 15, 2018.[24]

Thus, petitioners elevated the matter to the CTA *En Banc* by way of a Petition for Review.

In the assailed Decision[25] dated March 11, 2020, the CTA *En Banc* decreed:

> **WHEREFORE**, the Petition for Review dated September 11, 2018, filed by the City Government of Makati and the City Treasurer of Makati is **DENIED**. The challenged Decision and Resolution dated May 9, 2018 and August 15, 2018 respectively, both rendered by the Court in Division are **AFFIRMED**.
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> **SO ORDERED.**[26]

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19 See Decision dated May 9, 2018 of the CTA First Division in CTA AC No. 187, p. 18.
20 Id. at 11.
21 Id. at 8-11.
22 Id. at 18.
23 Id. at 17.
24 *Rollo*, p. 30.
25 Id. at 27-38.
26 Id. at 37.

The CTA *En Banc* affirmed the findings of the CTA First Division regarding the status of respondent as a BOI-registered pioneer enterprise exempt from paying local business tax for six years from date of its registration; the erroneous collection of local business tax amounting to ₱20,585,603.19 by petitioners for a period within the exemption coverage; and the entitlement of respondent to a refund thereof in cash.[27]

The CTA *En Banc* added that nowhere in Section 133(g) of the LGC does it require the presentation of a BOI Certificate of Registration during payment of local business tax for a pioneer or non-pioneer enterprise to reap the benefits of the provision.[28] Too, the CTA *En Banc* rejected petitioners' postulation that, in case the subject tax was found to be erroneously or illegally collected, respondent can only be granted tax credit, ratiocinating that Section 196 of the LGC and paragraph (d) of Section 7B.14 of the Revised Makati Revenue Code (RMRC) both confer upon the taxpayer the option to recover the amount erroneously or illegally collected through tax refund or tax credit.[29]

In the assailed Resolution[30] dated October 20, 2021, the CTA *En Banc* denied the Motion for Reconsideration filed by petitioners, finding the arguments raised therein as mere reiterations of those already considered, resolved, and passed upon in its earlier Decision.[31]

Hence, the instant petition.

Petitioners primarily argue that respondent was not able to discharge its burden of proving entitlement to a tax refund.[32] Petitioners insist that respondent failed to file its judicial claim for refund within two years from the date of payment of the local business tax.[33] Petitioners maintain that it was justified in assessing and collecting local business tax from respondent, as well as denying refund thereof, because it never presented its BOI Certificate of Registration at the time the said tax was paid.[34] Lastly, petitioners posit that assuming respondent is entitled to its claim, it may only be granted in the form of tax credit, by express provision of law.[35]

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27 Id. at 32-37.
28 Id. at 35.
29 Id. at 36-37.
30 Id. at 40-44.
31 Id. at 42.
32 Id. at 12.
33 Id. at 9.
34 Id. at 11.
35 Id. at 12.

The petition lacks merit.

At the outset, the Court recognizes that the CTA, which by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority.[36] In the absence of clear and convincing proof that the findings of the CTA are not supported by substantial evidence or that there is a showing that it committed a gross error or abuse, the Court must presume that the CTA rendered a decision which is valid in every respect.[37]

Here, the Court finds no cogent reason to disturb the findings of fact and conclusions of law contained in the CTA *En Banc*'s Decision and Resolution.

Enshrined in Section 5, Article X of the 1987 Constitution is the mandate granted to LGUs to impose taxes, albeit subject to limitations, *viz.*:

> SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

In consonance with the above provision, the Congress enacted Republic Act (R.A.) No. 7160,[38] otherwise known as the Local Government Code of 1991." Book II thereof governs local taxation and fiscal matters.

More particularly, Section 151 in relation to Section 143 of the LGC authorizes cities to levy taxes on businesses within its jurisdiction. One of the common limitations to this taxing power is laid down in Section 133(g) of the LGC which states:

> **Section 133.** *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
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> x x x x

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36 *Sea-Land Service, Inc. v. Court of Appeals*, 409 Phil. 508, 514 (2001).
37 *Commissioner of Internal Revenue v. T Shuttle Services, Inc.*, G.R. No. 240729, August 24, 2020.
38 Approved on October 10, 1991.

> (g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration[.]

It is on this ground that respondent anchors its claim for refund under Section 196 of the LGC:

> **Section 196.** *Claim for Refund or Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

To be entitled to a refund/credit of local taxes, the following procedural requirements must be fulfilled: *first*, the taxpayer concerned must file a written claim with the local treasurer; and *second*, the case or proceeding for refund has to be filed within two years from the date of payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[39]

As to the first requirement, there is no doubt, as it was even admitted,[40] that respondent filed a written claim for refund of the local business tax paid to petitioner City of Makati *via* a letter dated December 13, 2013 and addressed to petitioner City Treasurer of Makati.

Anent the second requirement, petitioners insist that respondent failed to file its judicial claim for refund within two years from the date of payment of the subject tax. Relying on Article 13 of the Civil Code, which provides that a year is equivalent to 365 days, petitioners aver that from respondent's payment on January 31, 2012, it had 730 days therefrom, or until January 30, 2014 (Thursday), within which to file the case.[41] Thus, when respondent filed the petition before the RTC on February 3, 2014 (Monday), petitioners contend that it went beyond the prescriptive period set by law.[42]

The Court begs to differ.

In ruling on the timeliness of the filing of respondent's petition, the lower courts referred to Section 31, Chapter VIII, Book I of the Administrative Code of 1987[43] wherein a year is understood to be 12 calendar months. The

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39 *Metro Manila Shopping Mecca Corp., v. Toledo*, 710 Phil. 375, 385 (2013).
40 *Rollo*, p. 9.
41 Id. at 9-10.
42 Id. at 10.
43 Executive Order No. 292, signed on July 25, 1987.

issue as to which provision should be used as basis for computing the prescriptive period is not novel. As early as 2007, in *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*,[44] the Court had already put the issue to rest, as thus:

> Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter — the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.
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> There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*[45]

Similar pronouncements were made by the Court in other subsequent cases, namely: *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*;[46] *Co v. New Prosperity Plastic* Products;[47] and *Philippine Health Insurance Corporation v. Commission on Audit.*[48]

Therefore, by application to the present case, the two-year period to file an action to claim refund expired on January 31, 2014, counting 24 calendar months from the date of payment of the local business tax on January 31, 2012. However, as noted by the lower courts, January 31, 2014 (Friday) was declared as a special non-working holiday (Chinese New Year) by Proclamation No. 655. Section 28, Chapter VII, Book I of the Administrative Code of 1987 is clear: "Where the day, or the last day, for doing any act required or permitted by law falls on a regular holiday or special day, the act may be done on the next succeeding business day." With February 1 and 2 falling on Saturday and Sunday, the next succeeding business day is February 3, 2014 (Monday). Hence, respondent's petition claiming refund was seasonably filed.

Since an action for a tax refund partakes of the nature of an exemption, which cannot be allowed unless granted in the most explicit and categorical language, it is strictly construed against the claimant who must discharge such

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44 558 Phil. 182 (2007).
45 Id. at 190-191.
46 646 Phil. 710 (2010).
47 737 Phil. 334 (2014).
48 G.R. No. 222838, September 4, 2018.

burden convincingly.[49] In the instant case, respondent had successfully discharged this burden, as found by the RTC, the CTA First Division, and the CTA *En Banc*. Respondent proved its actual payment of the local business tax subject to refund, as evidenced by the Official Receipt No. MKTCF 1501336 issued by petitioners. Likewise, respondent submitted its BOI Certificate of Registration to show that it is a pioneer enterprise exempt from paying said tax when petitioners collected the same. Petitioners never questioned nor contested any of the evidence proffered by respondent.

Instead, petitioners harp on respondent's failure to present its BOI Certificate of Registration when the local business tax was paid. Because of which, petitioners assert that they should not be faulted for assessing and collecting the tax, and denying the refund thereof. Petitioners seem to intimate that respondent must bear the consequences of having committed such a blunder.

The Court is not persuaded.

The non-presentation of the BOI Certificate of Registration at the time of payment of the local business tax is not fatal to respondent's case. It does not constitute a waiver to recover the tax erroneously collected and paid. The Court quotes with approval the disquisition of the CTA First Division on the matter:

> The Court notes, that at the time of the filing of the claim for refund on December 13, 2013, respondent submitted, among others, a copy of its BOI Certificate of Registration which was issued by the BOI on March 3, 2010, in support of its claim that it is exempt from local business tax for the period of six (6) years from **March 3, 2010 to March 3, 2016**. Petitioners failed, however, to act on respondent's claim for refund, notwithstanding that based on the documents submitted by respondent in support of its claim, it should not have been made to pay local business tax for the period **January 1 to September 30, 2011**.
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> Contrary to petitioners' stance, the non-presentation of the BOI Certificate of Registration upon assessment and at the time of payment of the subject local business tax does not negate respondent's entitlement to the refund.
>
> Section 19[6] of the LGC gives respondent the right to claim a refund of erroneously or illegally collected local business tax. The right to file a claim for refund necessarily includes the right to submit documents in support thereof. Petitioners may be justified in assessing and collecting the local business tax from respondent at the time of the filing of its application

[49] *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, 545 Phil. 1, 12 (2007).

> for retirement of business, for failure to present documents to prove its exemption from local business tax. But it is patently erroneous for petitioners to insist on respondent's non-entitlement to the claim for refund of respondent, notwithstanding the submission of its BOI Certificate of Registration which proves its entitlement thereto, merely on the ground that the BOI Certificate of Registration was not submitted at the time of the application for retirement of business or payment of the assessed local business tax.[50] (Emphasis in the original; underscoring supplied)

That said, respondent is entitled to be refunded of the P20,585,603.19 it paid to petitioners, in cash, contrary to petitioners' asseveration that respondent may only avail of a tax credit. In arguing so, petitioners invoke paragraph (d) of Section 7B.14 of the Revised Makati Revenue Code (RMRC)[51] reproduced below:

> SECTION 7B.14. *Taxpayer's Remedies.* –
>
> x x x x
>
> (d) *Claim for Refund or Tax Credit.* – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim of **refund or credit** has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
>
> The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year. (Emphasis supplied)

The first paragraph has been omitted by petitioners' counsel. From the foregoing, it is evident that a taxpayer is given the option to choose between tax refund or tax credit. As correctly pointed out by the CTA *En Banc*, the use of the disjunctive "or" expresses an alternative or choice; it signifies dissociation and independence of one thing from other things enumerated.[52]

In this connection, the Court reminds petitioners' counsel that a lawyer's duty, is not to his client but primarily to the administration of justice.[53] Any means, not honorable, fair and honest which is resorted by the lawyer, even in the pursuit of his devotion to his client's cause, is

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50 See Decision dated May 9, 2018 of the CTA First Division in CTA AC No. 187, p. 14.
51 Makati City Ordinance No. 2004-A-025, which took effect on January 1, 2006.
52 *Rollo*, p. 36.
53 *Ret. Judge Alpajora v. Atty. Calayan*, 823 Phil. 93, 115 (2018).

condemnable and unethical.[54] In championing the cause of its client, petitioners' counsel should not have misled the Court by lifting only a part of a provision of law invoked as to make it appear suitable to the situation, but altogether changing its correct interpretation.

As aptly put by the Court in *Heirs of the Late Herman Rey Romero v. Atty. Reyes, Jr.*:[55]

> Lawyers are indispensable instruments of justice and peace. Upon taking their professional oath, they become guardians of truth and the rule of law. Verily, when they appear before a tribunal, they act not merely as representatives of a party but, first and foremost, as officers of the court. Thus, their duty to protect their clients' interests is secondary to their obligation to assist in the speedy and efficient administration of justice. While they are obliged to present every available legal remedy or defense; their fidelity to their clients must always be made within the parameters of law and ethics, never at the expense of truth, the law, and the fair administration of justice.[56] (Citations omitted)

Tax refunds are based on the principle of quasi-contract or *solutio indebiti*, as embodied in the provisions of the Civil Code, *viz.*:

> Art. 2142. Certain lawful, voluntary, and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.
>
> Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

In order to establish the application of *solutio indebiti* in a given situation, **two conditions must concur**: (1) a 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. The Court finds the presence of both conditions in this case.[57]

It goes without saying that the Government, more so the LGUs like petitioner City of Makati, is not exempted from the application of this doctrine.[58] 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

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54 Id.
55 499 Phil. 624 (2005).
56 Id. at 626.
57 *Domestic Petroleum Retailer Corporation v. Manila International Airport Authority*, March 27, 2019.
58 *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation*, supra note 49 at 12.

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.[59]

WHEREFORE, premises considered, the Decision dated March 11, 2020 and the Resolution dated October 20, 2021 of the Court of Tax Appeals *En Banc* in CTA EB No. 1928 are **AFFIRMED**.

SO ORDERED."

By authority of the Court:

Misael DC Batt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court JB 12/5/22

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59 *Commissioner of Internal Revenue v. San Miguel Corporation*, G.R. No. 180740, November 11, 2019.