Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. Nos. 167274-75**
- versus -	Present:
FORTUNE TOBACCO CORPORATION, Respondent.	VELASCO, JR., *J.*, Chairperson, PERALTA, ABAD, MENDOZA, LEONEN, *JJ.*
x----------x	
FORTUNE TOBACCO CORPORATION, Petitioner,	**G.R. No. 192576**
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 11 2013

x----------x

D E C I S I O N

VELASCO, JR., *J.*:

Fortune Tobacco Corporation (FTC), as petitioner in G.R. No. 192576,[1] assails and seeks the reversal of the Decision of the Court of Tax Appeals (CTA) En Banc dated March 12, 2010, as effectively reiterated in a Resolution of June 11, 2010, both rendered in C.T.A. EB No. 530 entitled *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*. The assailed issuances affirmed the Resolution of the CTA First Division dated June 4, 2009, denying the Motion for Issuance of Additional Writ of Execution filed by herein petitioner in CTA Case Nos. 6365, 6383 & 6612, and the Resolution dated August 10, 2009 which denied its Motion for Reconsideration.

The present appellate proceeding traces its origin from and finds context in the July 21, 2008 Decision[2] of the Court in G.R. Nos. 167274-75, an appeal thereto interposed by the Commissioner of Internal Revenue (BIR Commissioner) from the consolidated Decision and Resolution issued by the Court of Appeals on September 28, 2004 and March 1, 2005, respectively, in

[1] A petition for review on certiorari under Rule 45 of the Rules of Court.
[2] Penned by Associate Justice Dante Tinga, now retired, for the then Second Division of the Court.

CA-G.R. SP Nos. 80675 and 83165. The decretal part of the July 21, 2008 Decision reads:

> WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals **in CA G.R. SP No. 80675**, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[3] (Emphasis supplied.)

The antecedent facts, as summarized by the CTA in its adverted March 12, 2010 Decision, are as follows:

> FTC (herein petitioner Fortune Tobacco Corporation) is engaged in manufacturing or producing cigarette brands with tax rate classification based on net retail price prescribed as follows:
>
> | Brand | Tax Rate |
> |---|---|
> | Champion M 100 | P1.00 |
> | Salem M 100 | P1.00 |
> | Salem M King | P1.00 |
> | Camel F King | P1.00 |
> | Camel Lights Box 20's | P1.00 |
> | Camel Filters Box 20's | P1.00 |
> | Winston F King | P5.00 |
> | Winston Lights | P5.00 |
>
> Prior to January 1, 1997, the aforesaid cigarette brands were subject to ad-valorem tax under Section 142 of the 1977 Tax Code, as amended. However, upon the effectivity of Republic Act (R.A.) No. 8240 on January 1, 1997, a shift from ad valorem tax system to the specific tax system was adopted imposing excise taxes on cigarette brands under Section 142 thereof, now renumbered as Section 145 of the 1997 Tax Code, stating the following pertinent provision:
>
> > The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996. x x x The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.
>
> Upon the Commissioner's recommendation, the Secretary of Finance, issued Revenue Regulations (RR) No. 17-99 dated December 16, 1999 for the purpose of implementing the provision for a 12% increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000. RR No. 17-99 provides that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine x x x shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.
>
> FTC paid excise taxes on all its cigarettes manufactured and removed from its place of production for the following period:

[3] *Rollo* (G.R. Nos. 167274-75), p. 522.

PERIOD	PAYMENT
January 1, 2000 to January 31, 2000	P585,705,250.00
February 1, 2000 to December 31, 2001	P19,366,783,535.00
January 1, 2002 to December 31, 2002	P11,359,578,560.00

FTC subsequently sought administrative redress for refund before the Commissioner on the following dates:

PERIOD	ADMINISTRATIVE FILING OF CLAIM	AMOUNT CLAIMED
January 1, 2000 to January 31, 2000	February 7, 2000	P35,651,410.00
February 1, 2000 to December 31, 2001	Various claims filed from March 21, 2000 – January 28, 2002	P644,735,615.00
January 1, 2002 to December 31, 2002	February 3, 2003	P355,385,920.00

(CTA En Banc Decision, Annex "A," Petition, pp. 2-4)

2. Since the claim for refund was not acted upon, petitioner filed on December 11, 2001 and January 30, 2002, respectively, Petitions for Review before the Court of Tax Appeals (CTA) docketed as CTA Case Nos. 6365 and 6383 questioning the validity of Revenue Regulations No. 17-99 with claims for refund in the amounts P35,651,410.00 and P644,735,615.00, respectively.

These amounts represented overpaid excise taxes for the periods from January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001, respectively (*Ibid*., pp. 4-5).

3. In [separate] Decision dated October 21, 2002, the CTA in Division ordered the Commissioner of Internal Revenue (respondent herein) to refund to petitioner the erroneously paid excise taxes in the amounts of P35,651,410.00 for the period covering January 1, 2000 to January 31, 2000 (CTA Case No. 6365) and P644,735,615.00 for the period February 1, 2000 to December 31, 2001 (CTA Case No. 6383)(*Ibid.*).

4. Respondent filed a motion for reconsideration of the Decision dated October 21, 2002 covering CTA Case Nos. 6365 and 6383 which was granted in the Resolution dated July 15, 2003.

5. Subsequently, petitioner filed another petition docketed as CTA Case No. 6612 questioning the validity of Revenue Regulations No. 17-99 with a prayer for the refund of overpaid excise tax amounting to P355,385,920.00, covering the period from January 1, 2002 to December 31, 2002 (*Ibid., p. 5*).

6. Petitioner thereafter filed a consolidated Motion for Reconsideration of the Resolution dated July 15, 2003 (*Ibid., pp. 5-6*).

7. The CTA in Division issued Resolution dated November 4, 2003 which reversed the Resolution dated July 15, 2003 and ordered respondent to refund to petitioner the amounts of P35,651,410.00 for the period covering January 1 to January 31, 2000 and P644,735,615.00 for the period covering February 1, 2000 to December 31, 2001, or in the aggregate amount of P680,387,025.00, representing erroneously paid excise taxes (*Ibid., p. 6*).

8. In its Decision dated December 4, 2003, the CTA in Division in Case No. 6612 declared RR No. 17-99 invalid and contrary to Section 145 of the 1997 National Internal Revenue Code (NIRC). The Court ordered respondent to refund to petitioner the amount of P355,385,920.00 representing overpaid excise taxes for the period covering January 1, 2002 to December 21, 2002 (*Ibid.*)

9. Respondent filed a motion for reconsideration of the Decision dated December 4, 2003 but this was denied in the Resolution dated March 17, 2004 (*Ibid*.)

10. On December 10, 2003, respondent [Commissioner**] filed a Petition for Review with the Court of Appeals (CA) questioning the CTA Resolution dated November 4, 2003 which was issued in CTA Case Nos. 6365 and 6383. The case was docketed as CA-G.R. SP No. 80675 (*Ibid.*).**

11. On April 28, 2004, respondent [Commissioner**] filed another appeal before the CA questioning the CTA Decision dated December 4, 2003 issued in CTA Case No. 6612. The case was docketed as CA-G.R. SP No. 83165 (*Ibid.*, p. 7).**

12. Thereafter, petitioner filed a Consolidated Motion for Execution Pending Appeal before the CTA for CTA Case Nos. 6365 and 6383 and an Amended Motion for Execution Pending Appeal for CTA Case No. 6612 (*Ibid*.).

13. The motions were denied in the CTA Resolutions dated August 2, 2004 and August 3, 2004, respectively.

The CTA in Division pointed out that Section 12, Rule 43 of the 1997 Rules of Civil Procedure should be interpreted with Section 18 of R.A. 1125 which provides that CTA rulings become final and conclusive only where there is no perfected appeal. Considering that respondent filed an appeal with the CA, the CTA in Division's rulings granting the amounts of P355,385,920.00 and P680,387,025.00 were not yet final and executory (*Ibid.*).

14. In the consolidated CA Decision dated September 28, 2004 issued in CA-G.R. SP Nos. 80675 (CTA Case Nos. 6365 and 6383) and 83165 (CTA Case No. 6612), the appellate court denied respondent's petitions and affirmed petitioner's refund claims in the amounts of P680,387,025.00 (CTA Case Nos. 6365 and 6383) and P355,385,920.00 (CTA Case No. 6612), respectively (*Ibid.*, p. 8).

15. Respondent filed a motion for reconsideration of the CA Decision dated September 28, 2004 but this was denied in the CA's Resolution dated March 1, 2005 (*Ibid*.).

16. Respondent, filed a Petition for Review on Certiorari [docketed as G.R. Nos. 167274-75 on May 4, 2005] before the Honorable Court. On June 22, 2005, a Supplemental Petition for Review was filed and the petitions were consolidated (*Ibid*.).

17. In its Decision dated July 21, 2008 [in G.R. Nos. 167274-75], the Honorable Court affirmed the findings of the CA granting petitioner's claim for refund. The dispositive portion of said Decision reads:

> WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 80675, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.
>
> [*Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, 559 SCRA 160 (2008)]*

18. On January 23, 2009, petitioner filed a motion for execution praying for the issuance of a writ of execution of the Decision of the Honorable Court in G.R. Nos. 167274-75 dated July 21, 2008 which was recorded in the Book of Entries of Judgments on November 6, 2008 (*Ibid*., p. 10).

Petitioner's prayer was for the CTA to order the BIR to pay/refund the amounts adjudged by the CTA, as follows:

a) CTA Case No. 6612 under the Decision 04 December 2003 – the amount of Three Hundred Fifty Five Million Three Hundred Eighty Five Thousand Nine Hundred Twenty Pesos (P355,385,920.00).

b) CTA Case Nos. 6365 and 6383 under the Decisions dated 21 October 2002 and Resolution dated 04 November 2003 – the amount of Six Hundred Eighty Million Three Hundred Eighty Seven Thousand Twenty Five Pesos (P680,387,025.00).

(Petition, p. 11)

19. On April 14, 2009, the CTA issued a Writ of Execution, which reads:

You are hereby **ORDERED TO REFUND** in favor of the petitioner **FORTUNE TOBACCO CORPORATION**, pursuant to the Supreme Court Decision in the above-entitled case (SC G.R. 167274-75), dated July 21, 2008, which has become final and executory on November 6, 2008, by virtue of the **Entry of Judgment** by the Supreme Court on said dated, which reads as follows:

x x x x

the amounts of P35,651,410.00 (**C.T.A Case No. 6365**) and P644,735,615.00 (**C.T.A Case No. 6383**) or a total of **P680,387,025.00** representing petitioners' erroneously paid excise taxes for the periods January 1-31, 2000 and February 1, 2000 to December 31, 2001, respectively under CA G.R. SP No. 80675 (C.T.A. Case No. 6365 and C.T.A. Case No. 6383).

(CTA – *1st Division* Resolution dated June 04, 2009, pp. 2-3)

20. On April 21, 2009, petitioner filed a motion for the issuance of an additional writ of execution praying that the CTA order the Commissioner of Internal Revenue to pay petitioner the amount of Three Hundred Fifty-Five Million Three Hundred Eighty Five Thousand Nine Hundred Twenty Pesos (P355,385,920.00) representing the amount of tax to be refunded in C.T.A. Case No. 6612 under its Decision dated December 4, 2003 and affirmed by the Honorable Court in its Decision dated July 21, 2008 (**Petition, p. 12, CTA Decision dated March 12, 2010, *supra*, p. 10**).

21. In the CTA Resolution dated June 4, 2009, the CTA denied petitioner's Motion for the Issuance of Additional Writ of Execution (*Ibid*., p. 11).

22. Petitioner filed a motion for reconsideration of the Resolution dated June 4, 2009, but this was denied in the CTA Resolution dated August 10, 2009 (*Ibid*.).

The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the instant "Motion for Reconsideration" is hereby DENIED for lack of merit.

23. Aggrieved by the Decision, petitioner filed a petition for review before the CTA *En Banc* docketed as CTA EB Case No. 530, raising the following arguments, to wit:

> The Honorable Court of Tax Appeals seriously erred contrary to law and jurisprudence when it held in the assailed decision and resolution that petitioner Fortune Tobacco Corporation is not entitled to the writ of execution covering the decision in CTA Case No. 6612.
>
> The Decision of the Court of Tax Appeals in CTA Case Nos. 6365, 6383 and 6612 has become final and executory.
>
> The Decision of the Honorable Supreme Court in GR Nos. 167274-75 covers both CA GR SP No. 80675 and 83165.

(*Ibid*., p. 12)

24. The CTA En Banc, in the Decision dated March 12, 2010, dismissed said petition for review. The dispositive portion of said Decision reads:

> **WHEREFORE,** premises considered, the Petition for Review is **DISMISSED**. The Resolutions dated June 4, 2009 and August 10, 2009 are **AFFIRMED**.
>
> **SO ORDERED**.
>
> (Annex "A," Petition, p. 16)

25. Petitioner filed a Motion for Leave to file Motion for Reconsideration with attached Motion for Reconsideration but this was denied in the CTA En Banc's Resolution dated June 11, 2010. The dispositive portion of said Resolution reads:

> **WHEREFORE,** premises considered, petitioner's Motion for Leave to file attached Motion for Reconsideration and its Motion for Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[4] (Emphasis supplied.)

Undeterred by the rebuff from the CTA, petitioner FTC has come to this Court via a petition for review, the recourse docketed as G.R. 192576, thereat praying in essence that an order issue (a) directing the CTA to issue an additional writ of execution directing the Bureau of Internal Revenue (BIR) to pay FTC the amount of tax refund (P355,385,920.00) as adjudged in CTA Case No. 6612 and (b) clarifying that the Court's Decision in G.R. Nos. 167274-75 applies to the affirmatory ruling of the CA in CA G.R. SP 80675 and CA G.R. SP No. 83165. FTC predicates its instant petition on two (2) stated grounds, viz.:

> I
>
> The Decision of the Honorable Supreme Court in S.C. GR Nos. 167274-75, which has become final and executory, affirmed the Decision of the Court of Tax Appeals in CTA Case Nos. 6365, 6383 and 6612 and to the Decision of the Court of Appeals in CA G.R. SP No. 80675 and CA G.R. SP No. 83165.
>
> II
>
> The writ of execution prayed for and pertaining to CTA Case No. 6612 and CA G.R. SP No. 83165 is consistent with the decision of the Supreme Court in GR Nos. 167274-75.

The petition is meritorious. But before delving on the merits of this recourse, certain undisputed predicates have to be laid and basic premises restated to explain the consolidation of G.R. Nos. 167274-75 and G.R. No. 192576, thus:

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[4] *Rollo* (G.R. No. 192576), pp. 83-92.

1. As may be recalled, FTC filed before the CTA three (3) separate petitions for refund covering three different periods involving varying amounts as hereunder indicated:

a) **CTA Case No. 6365** (Jan. 1 to Jan. 31, 2000) for P35,651,410.00;
b) **CTA Case No. 6383** (Feb. 1, 2000 to Dec. 31, 2001) for P644,735,615.00; and
c) **CTA Case No. 6612** (Jan. 1 to Dec. 31, 2002) for 355,385,920.00.

In three (3) separate decisions/resolutions, the CTA found the claims for refund for the amounts aforestated valid and thus ordered the payment thereof.

2. From the adverse ruling of the CTA in the three (3) cases, the BIR Commissioner went to the CA on a petition for review assailing in CA-G.R. SP No. 80675 the CTA decision/resolution pertaining to consolidated CTA Case Nos. 6365 & 6383. A similar petition, docketed as CA G.R. SP No. 83165, was subsequently filed assailing the CTA decision/resolution on CTA Case No. 6612.

3. Eventually, the CA, by Decision dated September 4, 2004, denied the Commissioner's consolidated petition for review. The appellate Court also denied the Commissioner's motion for reconsideration on March 1, 2005.

4. It is upon the foregoing state of things that the Commissioner came to this Court in G.R. Nos. 167274-75 to defeat FTC's claim for refund thus granted initially by the CTA and then by the CA in CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165.

By Decision dated July 21, 2008, the Court found against the Commissioner, disposing as follows:

> WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals **in CA G.R. SP No. 80675**, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[5] (Emphasis supplied.)

From the foregoing narration, two critical facts are at once apparent. *First*, the BIR Commissioner came to this Court on a petition for review in G.R. Nos. 167274-75 to set aside the consolidated decision of the CA in CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165. *Second*, while the Court's Decision dated July 21, 2008 in G.R. Nos. 167274-75 **denied** the Commissioner's petition for review, necessarily implying that the CA's appealed consolidated decision is **affirmed *in toto***, the *fallo* of that decision

[5] *Rollo* (G.R. Nos. 167274-75), p. 522.

makes no mention or even alludes to the appealed CA decision in CA-G.R. No. 83165, albeit the main decision's recital of facts made particular reference to that appealed CA decision. In fine, there exists an apparent inconsistency between the dispositive portion and the body of the main decision, which ideally should have been addressed before the finality of the said decision.

Owing to the foregoing aberration, but cognizant of the fact that the process of clarifying the dispositive portion in G.R. Nos. 167274-75 should be acted upon in the main case, the Court, by Resolution[6] dated February 25, 2013 ordered the consolidation of this petition (G.R. No. l92576) with G.R. Nos. 167274-75, to be assigned to any of the members of the Division who participated in the rendition of the decision.

Now to the crux of the controversy.

Petitioner FTC posits that the CTA should have issued the desired additional writ of execution in CTA Case No. 6612 since the body of the Decision of this Court in G.R. Nos. 167274-75 encompasses both CA G.R. Case No. 80675 which covers CTA Case Nos. 6365 and 6383 and CA G.R. Case No. 83165 which embraces CTA Case No. 6612. While the *fallo* of the Decision dated July 21, 2008 in G.R. Case Nos. 167274-75 did not indeed specifically mention CA G.R. SP No. 83165, petitioner FTC would nonetheless maintain that such a slip is but an inadvertent omission in the *fallo.* For the text of the July 21, 2008 Decision, FTC adds, clearly reveals that said CA case was intended to be included in the disposition of the case.

Respondent Commissioner, on the other hand, argues that per the CTA, no reversible error may be attributed to the tax court in rejecting, without more, the prayer for the additional writ of execution pertaining to CTA Case No. 6612, subject of CA G.R. SP No. 83165. For the purpose, the Commissioner cited a catena of cases on the limits of a writ of execution. It is pointed out that such writ must conform to the judgment to be executed; its enforcement may not vary the terms of the judgment it seeks to enforce, nor go beyond its terms. As further asseverated, "whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the court and while they may serve as guide or enlightenment to determine the *ratio decidendi*, what is controlling is what appears in the dispositive part of the decision."[7]

Respondent Commissioner's posture on the tenability of the CTA's assailed denial action is correct. As it were, CTA did no more than simply apply established jurisprudence that a writ of execution issued by the court of origin tasked to implement the final decision in the case handled by it cannot go beyond the contents of the dispositive portion of the decision sought to be implemented. The execution of a judgment is purely a ministerial phase of adjudication. The executing court is without power, on

[6] *Rollo* (G.R. No. 192576), pp. 121-127.
[7] *Tropical Homes, Inc. v. Fortun*, G.R. No. 51554, January 13, 1989, 169 SCRA 81, 91.

its own, to tinker let alone vary the explicit wordings of the dispositive portion, as couched.

But the state of things under the premises ought not to remain uncorrected. And the BIR cannot plausibly raise a valid objection for such approach. That bureau knew where it was coming from when it appealed, first before the CA then to this Court, the award of refund to FTC and the rationale underpinning the award. It cannot plausibly, in all good faith, seek refuge on the basis of slip on the formulation of the *fallo* of a decision to evade a duty. On the other hand, FTC has discharged its burden of establishing its entitlement to the tax refund in the total amount indicated in its underlying petitions for refund filed with the CTA. The successive favorable rulings of the tax court, the appellate court and finally this Court in G.R. Nos. 167274-75 say as much. Accordingly, the Court, in the higher interest of justice and orderly proceedings should make the corresponding clarification on the *fallo* of its July 21, 2008 Decision in G.R. Case Nos. 162274-75. It is an established rule that when the dispositive portion of a judgment, which has meanwhile become final and executory, contains a clerical error or an ambiguity arising from a inadvertent omission, such error or ambiguity may be clarified by reference to the body of the decision itself.[8]

After a scrutiny of the body of the aforesaid July 21, 2008 Decision, the Court finds it necessary to render a judgment *nunc pro tunc* and address an error in the *fallo* of said decision. The office of a judgment *nunc pro tunc* is to record some act of the court done at a former time which was not then carried into the record, and the power of a court to make such entries is restricted to placing upon the record evidence of judicial action which has actually been taken.[9] The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, that has been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, not to supply non-action by the court, however erroneous the judgment may have been.[10] The Court would thus have the record reflect the deliberations and discussions had on the issue. In this particular case it is a correction of a clerical, not a judicial error. The body of the decision in question is clear proof that the fallo must be corrected, to properly convey the ruling of this Court.

We thus declare that the dispositive portion of said decision should be clarified to include CA G.R. SP No. 83165 which affirmed the December 4, 2003 Decision of the Court of Tax Appeals in CTA Case No. 6612, for the following reasons, heretofore summarized:

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[8] *Philippine Health Insurance Corporation v. Court of Appeals*, G.R. No. 176276, November 28, 2008, 572 SCRA 720.

[9] *Briones-Vasquez v. Court of Appeals*, G.R. No. 144882, February 4, 2005, 450 SCRA 482, 491.

[10] *Manning International Corporation v. NLRC*, G.R. No. 83018, March 13, 1991, 195 SCRA 155, 161-162.

1. The petition for review on certiorari in G.R. Nos. 167274-75 filed by respondent CIR sought the reversal of the September 28, 2004 Decision of the Court of Appeals rendered in the consolidated cases of CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165, thus:

> Hence, this petition for review on certiorari under Rule 45 of the Rules of Court which seeks the nullification of the Court of Appeals' (1) Decision promulgated on September 28, 2004 in CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165, both entitled "Commissioner of Internal Revenue vs. Fortune Tobacco Corporation," denying the CIR's petition and affirming the assailed decisions and resolutions of the Court of Tax Appeals (CTA) in CTA Cases Nos. 6365, 6383 and 6612; and (2) Resolution dated March 1, 2005 denying petitioner's motion for reconsideration of the said decision."[11]

Earlier on, it was made clear that respondent CIR questioned the Decision of the CTA dated October 21, 2002 in CTA Case Nos. 6365 and 6383 in CA G.R. SP No. 80675 before the Court of Appeals. In CA G.R. SP No. 83165, the Commissioner also assailed the Decision of the CTA dated December 4, 2003 in CTA Case No. 66l2 also before the same appellate court. The two CA cases were later consolidated. Since the appellate court rendered its September 28, 2004 Decision in the consolidated cases of CA G.R. SP Nos. 80675 and 83165, what reached and was challenged before this Court in G.R. Nos. 167274-75 is the ruling of the Court of Appeals in both cases. When this Court rendered its July 21, 2008 Decision, the ruling necessarily embraced both CA G.R. SP Case Nos. 80675 and 83165 and adjudicated the respective rights of the parties. Clearly then, there was indeed an inadvertence in not specifying in the *fallo* of our July 21, 2008 Decision that the September 28, 2004 CA Decision included not only CA G.R. SP No. 80675 but also CA G.R. SP No. 83165 since the two cases were merged prior to the issuance of the September 28, 2004 Decision.

Given the above perspective, the inclusion of CA G.R. SP Case No. 83165 in the *fallo* of the Decision dated July 21, 2008 is very much in order and is in keeping with the imperatives of fairness.

2. The very contents of the body of the Decision dated July 21, 2008 rendered by this Court in G.R. Nos. 167274-75 undoubtedly reveal that both CA G.R. SP No. 80675 and CA G.R. SP No. 83165 were the subject matter of the petition therein. And as FTC would point out at every turn, the Court's Decision passed upon and decided the merits of the September 28, 2004 Decision of the Court of Appeals in the consolidated cases of CA G.R. SP Case Nos. 80675 and 83165 and necessarily CA G.R. SP No. 83165 was included in our disposition of G.R. Nos. 167274-75. We quote the pertinent portions of the said decision:

> The following undisputed facts, summarized by the Court of Appeals, are quoted in the assailed Decision dated 28 September 2004:

[11] *Rollo* (G.R. Nos. 167274-75), p. 10.

CAG.R. SP No. 80675

x x x x

Petitioner [FTC] is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to R.A. No. 4280, to wit:

Brand	Tax Rate
Champion M 100	₱1.00
Salem M 100	₱1.00
Salem M King	₱1.00
Camel F King	₱1.00
Camel Lights Box 20's	₱1.00
Camel Filters Box 20's	₱1.00
Winston F Kings	₱5.00
Winston Lights	₱5.00

Immediately prior to January 1, 1997, the above-mentioned cigarette brands were subject to ad *valorem tax* pursuant to then Section 142 of the Tax Code of 1977, as amended. However, on January 1, 1997, R.A. No. 8240 took effect whereby a shift from the ad *valorem* tax (AVT) system to the specific tax system was made and subjecting the aforesaid cigarette brands to specific tax under [S]ection 142 thereof, now renumbered as Sec. 145 of the Tax Code of 1997, pertinent provisions of which are quoted thus:

x x x x

The rates of excise tax on cigars and cigarettes under paragraphs (1), (2) (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000. (Emphasis supplied.)

x x x x

To implement the provisions for a twelve percent (12%) increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, xxx issued Revenue Regulations [RR] No. 17-99, dated December 16, 1999, which provides the increase on the applicable tax rates on cigar and cigarettes x x x.

[tax rates deleted]

Revenue Regulations No. 17-99 likewise provides in the last paragraph of Section 1 thereof, "(**t)hat the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."**

For the period covering January 1-31, 2000, petitioner allegedly paid specific taxes on all brands manufactured and removed in the total amounts of ₱585,705,250.00.

On February 7, 2000, petitioner filed with respondent's Appellate Division a claim for refund or tax credit of its purportedly overpaid excise tax for the month of January 2000 in the amount of ₱35,651,410.00.

On June 21, 2001, petitioner filed with respondent's Legal Service a letter dated June 20, 2001 reiterating all the claims for refund/tax credit of its overpaid excise taxes filed on various dates, including the present claim for the month of January 2000 in the amount of ₱35,651,410.00.

As there was no action on the part of the respondent, petitioner filed the instant petition for review with this Court on December 11, 2001, in order to comply with the two-year period for filing a claim for refund.

x x x x

CA G.R. SP No. 83165

The petition contains essentially similar facts, except that the said case questions the CTA's December 4, 2003 decision in CTA Case No. 6612 granting respondent's claim for refund of the amount of ₱355,385,920.00 representing erroneously or illegally collected specific taxes covering the period January 1, 2002 to December 31, 2002, as well as its March 17, 2004 Resolution denying a reconsideration thereof.

x x x x

However, on consolidated motions for reconsideration filed by the respondent in CTA Case Nos. 6363 and 6383, the July 15, 2002 resolution was set aside, and the Tax Court ruled, this time with a semblance of finality, that the respondent is entitled to the refund claimed. Hence, in a resolution dated November 4, 2003, the tax court reinstated its December 21, 2002 Decision and disposed as follows:

> **WHEREFORE,** our Decisions in CTA Case Nos. 6365 and 6383 are hereby REINSTATED. Accordingly, respondent is hereby ORDERED to REFUND petitioner the total amount of ₱680,387,025.00 representing erroneously paid excise taxes for the period January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001.
>
> **SO ORDERED**.

Meanwhile, on December 4, 2003, the [CTA] rendered a decision in CTA Case No. 6612 granting the prayer for the refund of the amount of ₱355,385,920.00 representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002. The tax court disposed of the case as follows:

> **IN VIEW OF THE FOREGOING**, the Petition for Review is GRANTED. Accordingly, respondent is hereby ORDERED to REFUND to petitioner the amount of ₱355,385,920.00 representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002.
>
> SO ORDERED.

Petitioner sought reconsideration of the decision, but the same was denied in a Resolution dated March 17, 2004. (Emphasis supplied; citations omitted.)

The Commissioner appealed the aforesaid decisions of the CTA. The petition questioning the grant of refund in the amount of ₱680,387,025.00 was docketed as CA-G.R. SP No. 80675, whereas that assailing the grant of refund in the amount of ₱355,385,920.00 was docketed as CA-G.R. SP No. 83165. The petitions were consolidated and eventually denied by the [CA]. The appellate court also denied reconsideration in its Resolution dated 1 March 2005.

In its Memorandum 22 dated November 2006, filed on behalf of the Commissioner, the Office of the Solicitor General (OSG) seeks to convince the Court that the literal interpretation given by the CTA and the [CA] of Section 145 of the Tax Code of 1997 (Tax Code) would lead to a lower tax imposable on 1 January 2000 than that imposable during the transition period. Instead of an increase of 12% in the tax rate effective on 1 January 2000 as allegedly mandated by the Tax Code, the appellate court's ruling would result in a significant decrease in the tax rate by as much as 66%.

x x x x

Finally, the OSG asserts that a tax refund is in the nature of a tax exemption and must, therefore, be construed strictly against the taxpayer, such as Fortune Tobacco.

In its Memorandum dated 10 November 2006, Fortune Tobacco argues that the CTA and the [CA] merely followed the letter of the law when they ruled that the basis for the 12% increase in the tax rate should be the net retail price of the cigarettes in the market as outlined in paragraph C, sub [par.] (1)-(4), Section 145 of the Tax Code. The Commissioner allegedly has gone beyond his delegated rule-making power when he promulgated, enforced and implemented [RR] No. 17-99, which effectively created a separate classification for cigarettes based on the excise tax "actually being paid prior to January 1, 2000."

x x x x

This entire controversy revolves around the interplay between Section 145 of the Tax Code and [RR] 17-99. The main issue is an inquiry into whether the revenue regulation has exceeded the allowable limits of legislative delegation.

x x x x

Revenue Regulation 17-99, which was issued pursuant to the unquestioned authority of the Secretary of Finance to promulgate rules and regulations for the effective implementation of the Tax Code, interprets the above-quoted provision and reflects the 12% increase in excise taxes in the following manner:

[table on tax rates deleted]

This table reflects Section 145 of the Tax Code insofar as it mandates a 12% increase effective on 1 January 2000 based on the taxes indicated under paragraph C, sub-paragraph (1)-(4). However, [RR]No. 17-99 went further and added that "[T]he new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits,

wines and fermented liquor *shall not be lower than the excise tax that is actually being paid prior to January 1, 2000*."

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, [RR] 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 (1)-(4), as increased by 12%—a situation not supported by the plain wording of Section 145 of the Tax Code.

This is not the first time that national revenue officials had ventured in the area of unauthorized administrative legislation.

In *Commissioner of Internal Revenue v. Reyes*, respondent was not informed in writing of the law and the facts on which the assessment of estate taxes was made pursuant to Section 228 of the 1997 Tax Code, as amended by Republic Act (R.A.) No. 8424. She was merely notified of the findings by the Commissioner, who had simply relied upon the old provisions of the law and [RR] No. 12-85 which was based on the old provision of the law. The Court held that in case of discrepancy between the law as amended and the implementing regulation based on the old law, the former necessarily prevails. The law must still be followed, even though the existing tax regulation at that time provided for a different procedure.

x x x x

In the case at bar, the OSG's argument that by 1 January 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the *ad valorem* tax system plus the 12% increase imposed by paragraph 5, Section 145 of the Tax Code, is an unsuccessful attempt to justify what is clearly an impermissible incursion into the limits of administrative legislation. Such an interpretation is not supported by the clear language of the law and is obviously only meant to validate the OSG's thesis that Section 145 of the Tax Code is ambiguous and admits of several interpretations.

The contention that the increase of 12% starting on 1 January 2000 does not apply to the brands of cigarettes listed under Annex "D" is likewise unmeritorious, absurd even. Paragraph 8, Section 145 of the Tax Code simply states that, "[T]he classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D', shall remain in force until revised by Congress." This declaration certainly does not lend itself to the interpretation given to it by

> the OSG. As plainly worded, the average net retail prices of the listed brands under Annex "D," which classify cigarettes according to their net retail price into low, medium or high, obviously remain the bases for the application of the increase in excise tax rates effective on 1 January 2000.
>
> The foregoing leads us to conclude that [RR] No. 17-99 is indeed indefensibly flawed. The Commissioner cannot seek refuge in his claim that the purpose behind the passage of the Tax Code is to generate additional revenues for the government. Revenue generation has undoubtedly been a major consideration in the passage of the Tax Code. However, as borne by the legislative record, the shift from the *ad valorem* system to the specific tax system is likewise meant to promote fair competition among the players in the industries concerned, to ensure an equitable distribution of the tax burden and to simplify tax administration by classifying cigarettes x x x into high, medium and low-priced based on their net retail price and accordingly graduating tax rates.
>
> x x x x
>
> WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA G.R. SP No. 80675, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[12]

The July 21, 2008 Decision in G.R. Nos. 167274-75 brings into sharp focus the following facts and proceedings:

1. It specifically mentioned CA G.R. SP No. 80675 and CA G.R. SP No. 83165 as the subject matter of the decision on p. 2 and p. 7, respectively.

2. It traced the history of CTA Case Nos. 6365 and 6383 from the time the CTA peremptorily resolved the twin refund suits to the appeal of the decisions thereat to the Court of Appeals via a petition docketed as CA-G.R. SP No. 80675 and eventually to this Court in G.R. Nos. 167274-75. It likewise narrated the events connected with CTA Case No. 6612 to the time the decision in said case was appealed to the Court of Appeals in CA-G.R. SP No. 83165, consolidated with CA G.R. SP No. 80675 and later decided by the appellate court. It cited the appeal from the CA decision by the BIR Commissioner to this Court in G.R. Nos. 167274-75.

3. It resolved in the negative the main issue presented in both CA-G.R. SP No. 80675 and CA-G.R. SP No. 83165 as to whether or not the last paragraph of Section 1 of Revenue Regulation No. 17-99 is in accordance with the pertinent provisions of Republic Act No. 8240, now incorporated in Section 145 of the Tax Code of 1997.

4. The very disposition in the *fallo* in G.R. Case Nos. 167274-75 that "the petition is denied" and that the "Decision of the Court of Appeals x

[12] *Rollo* (G.R. Nos. 167274-75), pp. 500-522.

x x dated 28 September 2004 and its Resolution dated 1 March 2005 are affirmed" reflects an intention that CA G.R. SP No. 83165 should have been stated therein, being one of the cases subject of the September 28, 2004 CA Decision.

The legality of Revenue Regulation No. 17-99 is the only determinative issue resolved by the July 21, 2008 Decision which was the very same issue resolved by the CA in the consolidated CA-G.R. SP Nos. 80675 and 83165 and exactly the same issue in CTA Nos. 6365, 6383 and 6612.

From the foregoing cogent reasons, We conclude that CA-G.R. SP No. 83165 should be included in the *fallo* of the July 21, 2008 decision.

It is established jurisprudence that "the only portion of the decision which becomes the subject of execution and determines what is ordained is the dispositive part, the body of the decision being considered as the reasons or conclusions of the Court, rather than its adjudication."[13]

In the case of *Ong Ching Kian Chung v. China National Cereals Oil and Foodstuffs Import and Export Corporation*, the Court noted two (2) exceptions to the rule that the *fallo* prevails over the body of the opinion, viz:

> (a) where there is ambiguity or uncertainty, the body of the opinion may be referred to for purposes of construing the judgment because the dispositive part of a decision must find support from the decision's *ratio decidendi*;
>
> (b) where extensive and explicit discussion and settlement of the issue is found in the body of the decision.[14]

Both exceptions obtain in the present case. We find that there is an ambiguity in the *fallo* of Our July 21, 2008 Decision in G.R. Nos. 167274-75 considering that the propriety of the CA holding in CA-G.R. SP No. 83165 formed part of the core issues raised in G.R. Case Nos. 167274-75, but unfortunately was left out in the all-important decretal portion of the judgment. The *fallo* of Our July 21, 2008 Decision should, therefore, be correspondingly corrected.

For sure, the CTA cannot, as the Commissioner argues, be faulted for denying petitioner FTC's Motion for Additional Writ of Execution filed in CTA Case Nos. 6365, 6383 and 6612 and for denying petitioner's Motion for Reconsideration for it has no power nor authority to deviate from the wording of the dispositive portion of Our July 21, 2008 Decision in G.R. Nos. 167274-75. To reiterate, the CTA simply followed the all too familiar doctrine that "when there is a conflict between the dispositive portion of the decision and the body thereof, the dispositive portion controls irrespective of

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[13] *Edward v. Arce*, No. L-6932, March 26, 1956.
[14] G.R. No. 131502. June 8, 2000, 333 SCRA 390, 401.

what appears in the body of the decision."[15] Veering away from the *fallo* might even be viewed as irregular and may give rise to a charge of breach of the Code of Judicial Conduct. Nevertheless, it behooves this Court for reasons articulated earlier to grant relief to petitioner FTC by way of clarifying Our July 21, 2008 Decision. This corrective step constitutes, in the final analysis, a continuation of the proceedings in G.R. Case Nos. 167274-75. And it is the right thing to do under the premises. If the BIR, or other government taxing agencies for that matter, expects taxpayers to observe fairness, honesty, transparency and accountability in paying their taxes, it must, to borrow from *BPI Family Savings Bank, Inc. v Court of Appeals*[16] hold itself against the same standard in refunding excess payments or illegal exactions. As a necessary corollary, when the taxpayer's entitlement to a refund stands undisputed, the State should not misuse technicalities and legalisms, however exalted, to keep money not belonging to it.[17] As we stressed in G.R. Nos. 167274-75, the government is not exempt from the application of *solutio indebiti*, a basic postulate proscribing one, including the State, from enriching himself or herself at the expense of another.[18] So it must be here.

WHEREFORE, the petition is **GRANTED**. The dispositive portion of the Court's July 21, 2008 Decision in G.R. Nos. 167274-75 is corrected to reflect the inclusion of CA G.R. SP No. 83165 therein. As amended, the *fallo* of the aforesaid decision shall read:

> WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in the consolidated cases of CA- G.R. SP No. 80675 and 83165 dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.

The Decision of the Court of Tax Appeals (CTA) En Banc dated March 12, 2010 and the Resolution dated June 11, 2010 in CTA EB No. 530 entitled "Fortune Tobacco Corporation vs. Commissioner of Internal Revenue" as well as the Resolutions dated June 4, 2009 and August 10, 2009 which denied the Motion for Issuance of Additional Writ of Execution of the CTA First Division in CTA Cases Nos. 6365, 6383 and 6612 are SET ASIDE. The CTA is ORDERED to issue a writ of execution directing the respondent CIR to pay petitioner Fortune Tobacco Corporation the amount of tax refund of P355,385,920.00 as adjudged in CTA Case No. 6612.

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[15] *Aguirre v. Aguirre*, No. L-33080, August 15, 1974, 58 SCRA 461.
[16] G.R. No. 122480, April 12, 2000, 330 SCRA 507.
[17] Id.; see also *State Land Investment Corporation v. Commissioner of Internal Revenue*, G.R. No. 171956, January 18, 2008, 542 SCRA 114.
[18] Id.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

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

PRESBITERO J. VELASCO, JR.
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 case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice