REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN MIGUEL BREWERY, INC., A SUBSIDIARY OF SAN MIGUEL CORPORATION, Petitioner,	**CTA CASE NO. 8748**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA, ,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 06 2017 2:43 pm

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RESOLUTION

CASANOVA, *J*.:

For resolution is respondent's **Motion for Reconsideration (Re: Decision dated 9 June 2017)**, filed on June 28, 2017, with petitioner's **Opposition To Respondent's "Motion for Reconsideration (Re: Decision dated 9 June 2017)" Dated June 28, 2017,** filed on July 28, 2017.

Respondent seeks reconsideration of the Court's Decision promulgated on June 9, 2017 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of ₱761,063,826.70, representing

[1] Docket (Vol. IV), pp. 2069-2101.

overpayment of excise taxes on "San Mig Light" removals for the period January 1, 2012 to December 31, 2012.

SO ORDERED."[2]

Respondent moves for reconsideration of the assailed Decision on the following grounds:

1. The Court erred in ruling that San Mig Light Pale Pilsen is not a variant of an existing brand; and

2. The Court erred in ruling that petitioner is entitled to refund of excise tax.

According to respondent, the Court erred in ruling that San Mig Light Pale Pilsen is not a variant of an existing brand based on the following:

1. San Mig Light is a variant of an existing brand;

2. Petitioner in its 1999 Annual Report to its stockholders admitted that San Mig Light, is a premium, low calorie variant of San Miguel Beer;

3. On page 6 of San Miguel Corporation Kaunlaran Magazine, January 2000, Issue No. 1, Volume No. 33, Special Issue, petitioner admitted that San Mig Light, is a low calorie light beer with the same full-flavored taste and alcohol content as SMB (San Miguel Pale Pilsen); and

4. Petitioner admitted the correctness of the classification of SML as a variant of San Miguel Pale Pilsen in can when petitioner started paying on January 30, 2004 the excise tax under the highest tax classification of San Miguel Pale Pilsen (RPT in cans).

Petitioner opposes respondent's motion and argues that the Court of Tax Appeals *En Banc,* in six (6) cases, namely CTA EB No. 755 (CTA Case No. 7708), CTA EB No. 873 (CTA Cases Nos. 7052, 7053 and 7405), CTA EB No. 1279 (CTA Case No. 8400), and CTA EB

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[2] Docket (Vol. IV), p. 2101.

No. 1292 (CTA Case No. 8591), involving the same facts and issues as those involved in the instant case, has sustained the arguments of San Miguel Corporation (SMC)/San Miguel Brewery Inc. (SMB) which are the same as those raised in this case now before this Court and has accordingly decided the aforesaid cases (CTA Cases Nos. 7052, 7053, 7405, 7708, 8400 and 8591) in SMC's/SMB's favor, granting their claims for refund.

Moreover, petitioner points out that the Supreme Court has rendered a Decision affirming *in toto* the decisions and resolutions of the CTA *En Banc* cases CTA EB No. 755 and CTA EB No. 873. It contends that the decision of the Supreme Court operates as a binding judicial precedent in the instant case.

Furthermore, petitioner alleges that the arguments raised by respondent in his motion had already been raised and discussed in his Answer to the Petition for Review in this case, and had already been considered and resolved in the assailed Decision.

Respondent's Motion for Reconsideration is bereft of merit.

The Court notes that respondent's arguments are mere rehash of the arguments raised in his Answer[3] filed on April 1, 2014, which were already threshed out in the assailed Decision.

In the assailed Decision, the Court held that "San Mig Light" is a new brand and not a variant, thus, subject to excise tax rate of ₱15.49 per liter instead of ₱20.57 per liter imposed by respondent.

This is consistent with the ruling of the Supreme Court, in the case of *Commissioner of Internal Revenue vs. San Miguel Corporation*[4], wherein it affirmed the decision and resolution of the Court of Tax Appeals *En Banc* that **"San Mig Light" is a New Brand**, to wit:

> "Parenthetically, the Bureau of Internal Revenue's actions reflect its admission and confirmation that 'San Mig Light' is a new brand.

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[3] Docket (Vol. I), pp. 550-568.
[4] G.R. Nos. 205045 & 205723, January 25, 2017.

When respondent's October 19, 1999 letter requested the registration and authority to manufacture 'San Mig Light,' to be taxed at ₱12.15 per liter, the Bureau of Internal Revenue granted the request.

The response dated February 7, 2002 of the LTAD II Acting Chief confirmed that respondent was allowed to register, manufacture, and sell 'San Mig Light' as a new brand.

The Joint Stipulation of Facts, Documents and Issues in CTA Cases Nos. 7052 and 7053 dated July 29, 2005, signed by both parties, includes paragraph 1.08, which reads:

> 1.08. ***From the time of its registration as a new brand in October 1999*** and its production in November 1999, 'San Mig Light' products have been withdrawn and sold, and taxes have been paid on such removals, on the basis of its registration and tax rate as a new brand. (*CTA No. 7052: Petition, par. 5.06; Answer, par. 2[e]; CTA No. 7053: Petition, par. 5.06; Answer, par. 2[e]*). (Emphasis supplied)

The May 28, 2002 Notice of Discrepancy was effectively nullified by the subsequent issuance of Revenue Memorandum Order No. 6-2003, which included 'San Mig Light' as a new brand.

The Bureau of Internal Revenue issued Revenue Memorandum Order No. 6-2003 dated March 11, 2003 with the subject, Prescribing the Guidelines and Procedures in the Establishment of Current Net Retail Prices of New Brands of Cigarettes and Alcohol Products Pursuant to Revenue Regulations No. 9-2003. Annex 'A-3' is the Master List of Registered Brands of Locally Manufactured Alcohol Products as of February 28, 2003, and the list includes 'San Mig Light,' classified as 'NB' or 'new brand registered on or after January 1, 1997': xxx"

The Supreme Court further declared that the reclassification of fermented liquor products may only be made by an act of Congress, *viz*:

"IV

Any reclassification of fermented liquor products should be by act of Congress. Section 143 of the Tax Code, as amended by Rep. Act No. 9334, provides for this classification freeze referred to by the parties:

xxx xxx xxx

In any event, petitioner's letters and Notices of Discrepancy, which effectively changed San Mig Light's brand's classification from '*new brand* to *variant* of existing brand,' necessarily changes San Mig Light's tax bracket. Based on the legislative intent behind the classification freeze provision, petitioner has no power to do this.

A reclassification of a fermented liquor brand introduced between January 1, 1997 and December 31, 2003, such as 'San Mig Light,' must be by act of Congress. There was none in this case."

Finally, the Supreme Court discussed whether "San Mig Light" is a variant of the more popular brand, "San Miguel Pale Pilsen":

"The *variant* contemplated under the Tax Code has a technical meaning. A *variant* is determined by the brand (name) of the beer product, whether it was formed by prefixing or suffixing a modifier to the root name of the alleged parent brand, or whether it carries the same logo or design. The purpose behind the definition was to properly tax brands that were presumed to be riding on the popularity of previously registered brands by being marketed under an almost identical name with a prefix, suffix, or a variant. It seeks to address price differentials employed by a manufacturer on similar products differentiated only in brand or design. Specifically, the provision was meant to obviate any tax avoidance by manufacturing firms from the sale of lower priced variants of its existing beer brands, thus, falling in the lower tax bracket with lower excise tax rates. To favor government, a *variant* of a brand is taxed according to the highest rate of tax for that particular brand.

'San Mig Light' and 'Pale Pilsen' do not share a root word. Neither is there an existing brand in the list (Annexes C-1 and C-2 of the Tax Code) called 'San Mig' to conclude that 'Light' is a suffix rendering 'San Mig Light' as its 'variant.' As discussed in the Court of Tax Appeals Decision, 'San Mig Light' should be considered as one brand name.

Respondent's statements describing San Mig Light as a low-calorie variant is not conclusive of its classification as a *variant* for excise tax purposes. Burdens are not to be imposed nor presumed to be imposed beyond the plain and express terms of the law. 'The general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.'

Furthermore, respondent's payment of the higher taxes starting January 30, 2004 after deficiency assessments were made cannot be considered as an admission that its San Mig Light is a variant. Section 130(A)(2) of the Tax Code requires payment of excise tax 'before removal of domestic products from place of production.' These payments were made in protest as respondent subsequently filed refund claims."

The foregoing constitutes a binding precedent, having been declared by no less than the Supreme Court. The principle of *stare decisis et non quieta movere*, as embodied in Article 8 of the Civil Code of the Philippines, enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[5]

Finally, while claims for tax refund are strictly construed against the taxpayer and liberally in favor of the State, petitioner has overcome the burden of showing that it has strictly complied with the conditions for the grant of the tax refund.

[5] *Filinvest Development Corporation vs. Commissioner of Internal Revenue*, et al. G.R. No. 146941, August 9, 2007.

If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another.[6]

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision dated 9 June 2017)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

[6] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.