REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1292** (CTA Case No. 8591)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, *and* RINGPIS-LIBAN, *JJ.*
SAN MIGUEL BREWERY INC., a Subsidiary of SAN MIGUEL CORPORATION, *Respondent.*	Promulgated: SEP 28 2016 11:20 a.m.

x- x

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court is a Petition for Review filed on May 4, 2015 against the Resolution of this Court's Second Division in CTA Case No. 8591 denying on March 26, 2015 the petitioner's Motion for Reconsideration of the Second Division's Decision of December 23, 2014 which partially granted the Petition for Review.

The assailed Decision's dispositive portion reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱740,294,926.62** representing

overpayment of its excise taxes for the period covering January 1, 2011 to December 31, 2011.

SO ORDERED."

The Petition for Review in CTA Case No. 8591 was filed pursuant to Section 7(a)(1) of Republic Act No. (RA) 1125, as amended[1], as well as Rule 4, Section 3(a)(1)[2] in relation to Section 4(a) of Rule 8[3] and Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking a refund or tax credit certificate in the amount of Seven Hundred Forty Million Three Hundred Thousand Seven Hundred Seventeen and 82/100 Pesos (₱740,300,717.82) allegedly representing San Miguel Brewery, Inc.'s erroneously, excessively and/or illegally collected and overpaid excise taxes on "San Mig Light" during the period from January 1, 2011 up to December 31, 2011.

THE PARTIES

The petitioner, Commissioner of Internal Revenue (CIR), is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to, *inter alia*, decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) and other laws administered by the BIR, and holding office at the BIR National Office Building, Diliman, Quezon City.

---

[1] Sec. 7. Jurisdiction. –The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

[2] Rule 4. Sec. 3. Cases within the jurisdiction of the Court in Division. – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

x x x x x x

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

[3] Rule 8. Sec. 4. Where to appeal; mode of appeal. –

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

The respondent is San Miguel Brewery, Inc. (SMB), a subsidiary of San Miguel Corporation (SMC), and a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila. SMB continued SMC's domestic beer business operations of manufacturing, selling and distributing fermented and malt-based beverages, including "San Mig Light".

THE COURT'S JURISDICTION

On April 1, 2015, petitioner received a copy of the Second Division's Resolution dated March 26, 2015. Under Section 3(b), Rule 8 of the Revised Rules of the CTA (A.M. No. 05-11-07-CTA),[4] petitioner had fifteen (15) days from receipt of the said Resolution, or until April 16, 2015, within which to appeal to the Court *en banc* by way of a petition for review.

On April 13, 2015, petitioner filed a "Motion for Extension of Time to File Petitioner for Review" asking for fifteen (15) days from April 16, 2015 or until May 1, 2015 within which to file the petition. Considering that May 1, 2015 which fell on a Friday was a regular holiday, petitioner had until May 4, 2015 within which to file the petition.

As the Petition for Review was filed on May 4, 2015, the Petition was timely filed.

THE FACTS[5]

On October 19, 1999, Mr. Virgilio S. de Guzman, then Assistant Vice President-SMBP Finance of San Miguel Corporation, wrote a letter to Assistant Commissioner Leonardo B. Albar of BIR Excise Tax Services, requesting registration of and authority to manufacture San Mig Light.[6] In response, Assistant Commissioner Albar sent a reply-letter dated October 27, 1999 to SMC, granting the request for registration of San Mig Light.[7]

Subsequently, on November 3, 1999, due to the change in the net retail price of San Mig Light, Mr. de Guzman wrote a letter advising Assistant Commissioner Albar that San Mig Light will be sold at the suggested net retail price of ₱21.15 per liter, less VAT and specific tax, to be taxed at ₱9.15 per liter.[8]

---

[4] Dated November 22, 2005, and which took effect starting December 15, 2005.
[5] The facts of this case were culled from the Decision of the Second Division in CTA Case No. 8591 dated December 23, 2014.
[6] Par. 2.01, SFDIOM, docket, p. 906; Exhibit "A".
[7] Par. 2.02, SFDIOM, docket, p. 906; Exhibit "B".
[8] Par. 2.03, SFDIOM, docket, p. 906; Exhibit "C".

In a letter dated January 28, 2002, Mr. Alfredo R. Villacorte, then Vice President and Manager of SMC Group Tax Services, wrote to the Chief of the BIR Large Taxpayers Assistance Division II, requesting information on the tax rate and classification of San Mig Light.[9]

On February 7, 2002, Mr. Conrado P. Item, then Acting Chief of the BIR Large Taxpayers Assistance Division II, sent a letter in reply to the January 28, 2002 letter of SMC, confirming that based on the documents submitted, SMC is using the correct classification and rates for San Mig Light as a new brand.[10] Meanwhile, in the Master List of Registered Brands of Locally Manufactured Alcohol Products, as stated in Revenue Memorandum Order (RMO) No. 6-2003 dated March 11, 2003, San Mig Light is listed as a new brand.[11]

On May 28, 2002, the BIR, through Assistant Commissioner Edwin R. Abella of the Large Taxpayers Service, issued a Notice of Discrepancy to SMC, stating, among others, that San Mig Light is a variant of SMC's existing beer products; hence, it should be subjected to a higher excise tax rate.[12]

In the letter-reply dated July 9, 2002, Mr. Bienvenido N. Banas, then Finance Manager of SMC Beer Division, requested Assistant Commissioner Abella to withdraw said Notice of Discrepancy.[13]

On October 14, 2002, Assistant Commissioner Abella sent his letter-rejoinder to SMC, stating that "San Mig Light Pale Pilsen" is truly a variant of "San Miguel Pale Pilsen".[14] On November 20, 2002, Mr. Alfredo R. Villacorte, then Vice-President and Manager of SMC Group Tax Services, replied to Assistant Commissioner Abella requesting, among others, that San Mig Light be reconfirmed as a new brand and that the Notice of Deficiency and the demand for payment against SMC be withdrawn.[15]

Subsequently, three (3) conferences were held on the San Mig Light tax classification issue between SMC and the SIR's Management Committee headed by then BIR Commisioner Guillermo Parayno, Jr. At the conference held on December 16, 2003, Commissioner Parayno announced that the final voting by the members of the BIR Management Committee was not unanimous: five (5) members voted that San Mig Light is a variant of "Pale

---

[9] Par. 2.04, SFDIOM, docket, p. 907; Exhibits "D" and "D-1" to "D-8".
[10] Par. 2.05, SFDIOM, docket, p. 907; Exhibit "E".
[11] Par. 2.06, SFDIOM, docket, p. 907; Exhibit "F".
[12] Par. 2.08, SFDIOM, docket, p. 907.
[13] Par. 2.09, SFDIOM, docket, p. 908.
[14] Par. 2.10, SFDIOM, docket, p. 908.
[15] Par. 2.11, SFDIOM, docket, p. 908.

Pilsen in can", and two (2) members voted that it is a variant of "Premium", then a high-priced beer product of SMC that was no longer being manufactured.[16]

On January 6, 2004, Commissioner Guillermo Parayno, Jr. issued a letter to SMC, concluding, based on the grounds stated therein, that San Mig Light is a variant of "San Miguel Pale Pilsen in can".[17]

On January 28, 2004, Deputy Commissioner Estelita C. Aguirre, then Officer-in-Charge of the BIR Large Taxpayers Service, issued a Preliminary Assessment Notice (PAN) against SMC for the amount of ₱852,039,418.15, allegedly representing deficiency excise tax, inclusive of increments, on the removals of "San Mig Pale Pilsen Light" for the period covering 1999 to January 7, 2004; citing as basis thereof that San Mig Light is a variant of SMC's existing beer products.[18] Consequently, SMC responded to the said PAN.[19]

On April 12, 2004, Deputy Commissioner Aguirre issued a Formal Letter of Demand (FLD) against SMC, with an accompanying Assessment Notice also dated April 12, 2004, requesting SMC to pay the deficiency excise tax assessment in the total amount of ₱876,098,898.83, including interest until April 30, 2004, for the period of November to December 1999 at ₱12.52 per liter, and January 2000 to January 7, 2004 at ₱13.61 per liter. In the Details of Discrepancy accompanying the FLD, it was stated that "the Management Committee of the Bureau of Internal Revenue confirmed the classification of the aforementioned beer product (San Mig Light) as variant of RPT in cans" (San Miguel Pale Pilsen).[20]

SMC then filed a Protest/Request for Reconsideration on the aforesaid FLD with accompanying Assessment Notice.[21]

On August 17, 2004, Deputy Commissioner Kim S. Jacinto-Henares, the then Officer-in-Charge of the BIR Large Taxpayers Service, issued a Final Decision on Disputed Assessment (FDDA) informing SMC that its Protest/Request for Reconsideration has been denied for lack of legal and factual bases. She stated that San Mig Light is "a variant of RPT in can (San Miguel Beer Pale Pilsen in can)".[22]

---

[16] Par. 2.12, SFDIOM, docket, p. 908.
[17] Par. 2.13, SFDIOM, docket, p. 908.
[18] Par. 2.14, SFDIOM, docket, p. 909.
[19] Par. 2.15, SFDIOM, docket, p. 909.
[20] Par. 2.16, SFDIOM, docket, p. 909.
[21] Par. 2.17, SFDIOM, docket, p. 909.
[22] Par. 2.18, SFDIOM, docket, pp. 909-910.

Similarly, on February 4, 2004, then Deputy Commissioner Aguirre issued a Notice of Discrepancy to SMC, stating, among others, that San Mig Light "is a variant of your existing beer products", but that "the said brand was treated by your company as a new brand and subjected to excise tax rate of ₱1 0.25 per liter, instead of ₱13.61, and that in view thereof, there was found due from SMC an alleged deficiency excise tax in the amount of ₱28,876,108.84, this time representing deficiency tax due on removals of San Mig Light for the period covering January 8, 2004 to January 29, 2004.[23]

On March 24, 2004, Deputy Commissioner Aguirre issued a PAN against SMC, citing as basis that San Mig Light is a "variant of RPT in can" (San Miguel Beer Pale Pilsen).[24]

On May 26, 2004, an FLD was issued against SMC, with accompanying Assessment Notice No. TF 129-05-04 also dated May 26, 2004. Among other things, the FLD reiterated that "San Mig Light is a variant of RPT in can". The BIR requested SMC to pay the deficiency excise tax assessment in the total amount of ₱30,763,133.68, including interest up to June 30, 2004.[25] Thus, SMC also filed with the BIR a Protest/Request for Reconsideration dated July 5, 2004 on the aforesaid FLD dated May 26, 2004.[26]

On August 20, 2004, then Deputy Commissioner Kim S. Jacinto-Henares issued an FDDA to inform SMC that its Protest/Request for Reconsideration dated July 5, 2004 has been denied for "lack of legal and factual basis". It was also stated that San Mig Light is "a variant of RPT in can" (San Miguel Beer Pale Pilsen in can).[27]

Subsequently, on September 17, 2004 and September 22, 2004, SMC filed Petitions for Review with this Court by way of appeal from the above-mentioned rulings of the BIR on SMC's Protests/Requests for Reconsideration on the deficiency excise tax assessments issued against it. The Petitions for Review were respectively docketed as CTA Case No. 7052 (April 12, 2004 assessment) and CTA Case No. 7053 (May 26, 2004 assessment). These cases were decided on October 18, 2011 by the CTA First Division in favor of SMC, cancelling and setting aside the aforesaid assessments, which decision has been affirmed by the Court *en banc*. The Decision of the Court *en banc* has been appealed by respondent to the Supreme Court by way of a Petition for Review, which has been docketed as G.R. No. 205723.[28]

---

[23] Par. 2.19, SFDIOM, docket, p. 910.
[24] Par. 2.20, SFDIOM, docket, p. 910.
[25] Par. 2.21, SFDIOM, docket, p. 910.
[26] Par. 2.22, SFDIOM, docket, p. 911.
[27] Par. 2.23, SFDIOM, docket, p. 911.
[28] Par. 2.24, SFDIOM, docket, p. 911.

In view of the January 28, 2004 PAN, SMC was made to pay a higher excise tax on San Mig Light at the rate of ₱13.61 per liter from February 1, 2004 to December 31, 2004; ₱16.33 per liter from January 1, 2005 to December 31, 2006; and ₱17.64 from January 1, 2007 to September 30, 2007.[29]

As a consequence, SMC filed with the BIR three claims for refund representing excise taxes collected from SMC by the BIR with respect to San Mig Light, namely: (1) an amount of ₱782,238, 161.47 for the period covering February 1, 2004 up to November 30, 2005 filed on December 28, 2005; (2) an amount of ₱926,389, 172.02 for the period covering December 1, 2005 up to July 31, 2007 filed on August 30, 2007; and (3) an amount of P105,632,376.64 for the period covering August 1, 2007 up to September 30,2007 filed on June 17,2009.[30]

No action having been taken on these claims for refund, SMC filed with the Court Petitions for Review thereon, docketed as CTA Case No. 7405, which was decided on October 18, 2011 by the First Division in favor of SMC, which decision has been affirmed by the Court *en banc*; CTA Case No. 7708, which was decided on January 7, 2011 in favor of SMC by the Third Division, which decision was also affirmed by the Court *en banc*; and CTA Case No. 7953, which is pending trial in the Third Division. With respect to the decision of the Court *en banc* affirming the decision of the First Division in CTA Case No. 7405, the same is included in the Petition for Review filed by respondent with the Supreme Court, docketed as G.R. No. 205723; while the decision of the Court *en banc* affirming the decision of the Third Division in CTA Case No. 7708 was likewise appealed by respondent to the Supreme Court by way of a Petition for Review docketed as G.R. No. 205045.[31]

In the meantime, effective October 1, 2007, SMC spun off its domestic beer business into a new company, herein respondent SMB.[32]

The spin off was implemented by way of a "Master Deed of Assignment of Domestic Beer Assets," which was executed by SMC and SMB on August 23, 2007. In the said Master Deed, SMC assigned, transferred and conveyed in favor of SMB all of its rights, title and interest over its beer assets used in its domestic beer business, effective October 1, 2007.[33] As a consequence, SMB continued SMC's business operations of manufacturing, selling and distribution of fermented and malt-based beverages, including San Mig Light.[34]

[29] Par. 2.25, SFDIOM, docket, p. 911.
[30] Par. 2.27, SFDIOM, docket, p. 912.
[31] Par. 2.28, SFDIOM, docket, pp. 912-913.
[32] Par. 2.29, SFDIOM, docket, p. 913.
[33] Par. 2.30, SFDIOM, docket, p. 913.
[34] Par. 2.31, SFDIOM, docket, p. 913.

During the period from October 1, 2007 up to December 31, 2008, SMB was obliged to pay excise taxes on its removals of San Mig Light at the increased tax rate of ₱17.64 per liter; and from January 1, 2009 up to December 31, 2009, and from January 1, 2010 up to December 31, 2010, SMB was made to pay excise taxes on its removals of San Mig Light at the increased tax rate of ₱19.05 per liter.[35]

On September 10, 2009, SMB filed with the BIR three successive claims for refund of its overpaid excise taxes: first, on September 10, 2009 in the amount of ₱828,487,561.71 covering the period October 1, 2007 to December 31, 2008; second, on November 4, 2010 in the amount of ₱730,602,083.97 covering the period January 1, 2009 to December 31, 2009; and third, on October 14, 2011 in the amount of ₱699,584,314.54 covering the period January 1, 2010 to December 31, 2010.[36]

As no action had been taken by the CIR on SMB's claims for refund, SMB filed Petitions for Review thereon, which were docketed as CTA Case No. 7973, pending trial in the Second Division; CTA Case No. 8209, pending trial in the First Division; and CTA Case No. 8400, pending trial in the Third Division.[37]

In the meantime, during the period from January 1, 2011 up to December 31, 2011, SMB was obliged to pay excise taxes on its removals of San Mig Light at the increased tax rate of ₱20.57 per liter.[38] As a result, on July 30, 2012, SMB filed with the BIR its fourth claim for refund dated July 27, 2012 in the amount of ₱740,300,717.82 for the period January 1 to December 31, 2011.[39]

Claiming inaction by the CIR on the above claim for refund, SMB filed its Petition for Review[40] on December 21, 2012 with the Court of Tax Appeals.

The CIR, respondent in CTA Case No. 8591, filed her Answer[41] on March 21, 2013, advocating that there was no erroneous payment of excise taxes as there was no reclassification of "San Mig Light Pale Pilsen" because it has always been classified as a variant of an existing brand; and that this is evident in the following:

---

[35] Par. 2.32, SFDIOM, docket, p. 913.
[36] Par. 2.33, SFDIOM, docket, p. 914.
[37] Par. 2.34, SFDIOM, docket, p. 914.
[38] Par. 2.35, SFDIOM, docket, p. 914.
[39] Par. 2.36, SFDIOM, docket, pp. 914-915.
[40] Docket, pp. 8-83.
[41] Docket, pp. 346-361.

a) the complete name of the product is "San Mig Light Pale Pilsen". In Annexes C-1 and C-2 of the NIRC of 1997, the parent brands of "San Mig Light" are RPT in cans, Pale Pilsen and Super Dry. As shown in the packages of the said brands, the registered RPT in can 330 mi. (24) refers to "San Miguel Beer Pale Pilsen", while "Pale Pilsen" refers to San Miguel Beer Pale Pilsen in bottles. Accordingly, the root name of the existing brand 'Pale Pilsen';

b) out of these three variants, RPT or San Miguel Pale Pilsen in can 330 mi. (24) has the highest tax classification at the time San Mig Light was introduced. Accordingly, pursuant to Section 143 of the NIRC of 1997, the proper tax classification of San Mig Light for excise tax purposes is that of a variant of RPT in can; and

c) San Mig Light falls within the second part of the definition of a variant brand under Section 143 of the NIRC of 1997 which states that a 'variant of brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

The CIR also argued that SMB is estopped from questioning the classification of San Mig Light as a variant of San Miguel Pale Pilsen; that the removal of the second part of the definition of the term 'variant brand' under paragraph 9 of the NIRC of 1997 did not alter the fact that San Mig Light is a variant of San Miguel Beer Pale Pilsen; and that SMB did not prove its entitlement to the refund claim by concrete evidence which merits a denial thereof -- all as part of the CIR's special and affirmative defenses.

On June 21, 2013, the parties submitted their Stipulation of Facts, Documents, Issues and Other Matters.[42] Thereafter, the Court *a quo* issued a Pre-Trial Order[43] on July 9, 2013, which, among others, terminated the pre-trial.

During trial, the parties presented their respective pieces of evidence.

SMB presented Atty. Pedro Clinton L. Laudencia, Jr.,[44] Mr. Virgilio S. De Guzman,[45] Mr. Bienvenido N. Banas,[46] Mr. Marciano Requilme, Jr.,[47] Ms. Minerva Lourdes B. Bibonia,[48] Ms. Noemi L. Ronquillo,[49] and Atty.

[42] Docket, pp. 905-913.
[43] Docket, pp. 918-925.
[44] Minutes of the Hearing dated July 10, 2013, docket, p. 926.
[45] Minutes of the Hearing dated July 31, 2013, docket, p. 943.
[46] Minutes of the Hearing dated July 31, 2013, docket, p. 943.
[47] Minutes of the Hearing dated August 5, 2013, docket, p. 944.
[48] Minutes of the Hearing dated August 5, 2013, docket, p. 944.
[49] Minutes of the Hearing dated August 14, 2013, docket, p. 948.

Rosabel Socorro T. Balan[50] as its witnesses. SMB then formally offered its documentary evidence consisting of Exhibits "A" to "TT-12", "V" to "W5-320", and "XX1-1" to "XX5-2,344", which the Court admitted as evidence via a Resolution[51] dated December 11, 2013.

On the other hand, during the hearing on January 29, 2014,[52] the CIR orally offered as evidence Exhibits "R-1", "R-2" and "R-3", which were all admitted by the Court.

The case was submitted for decision on April 8, 2014,[53] considering the Memorandum for SMB[54] filed on March 5, 2014 and the CIR's Memorandum[55] filed on March 26, 2014.

On December 23, 2014, the Second Division of this Court rendered the Assailed Decision which partially granted the Petition for Review. The CIR filed her Motion for Reconsideration thereof on January 20, 2015 which the Court *a quo* denied in a Resolution promulgated on March 26, 2015.

After having been granted an extension of time to file a Petition for Review[56], the CIR filed the petition on May 4, 2015.[57] On May 27, 2015, SMB, respondent in the instant case, was ordered to file its Comment[58] which it filed on July 3, 2015[59], after having been granted an extension of time[60] to do so.

The Court *en banc* gave due course to the Petition for Review in a Resolution dated August 17, 2015.[61] In the same resolution, the Court *en banc* required the parties to submit their memoranda. On September 22, 2015, respondent filed its Compliance/Manifestation[62], stating that it is adopting its Comment as its memorandum. On the other hand, petitioner filed her Manifestation on September 24, 2015, stating that she is adopting the arguments raised in her Petition for Review as her memorandum.[63] Thus, on October 15, 2015, the case was deemed submitted for decision.

Hence, this Decision.

---

[50] Minutes of the Hearing dated September 4, 2013, docket, p. 949.
[51] Docket, p. 1204.
[52] Minutes of the Hearing dated January 29, 2014, docket, p. 1212.
[53] Docket, p. 1421.
[54] Docket, pp. 1224-1309.
[55] Docket, pp. 1369-1391.
[56] *Rollo*, p. 5.
[57] *Id.*, pp. 6-79.
[58] *Id.*, pp. 81-81.
[59] *Id.*, pp. 87-171.
[60] *Id.*, p. 86.
[61] *Id.*, p. 173-174.
[62] *Id.*, pp. 175-177.
[63] *Id.*, pp. 180-183.

THE ASSIGNMENTS OF ERROR

The petition raises six assignments of errors of this Court's Second Division in the assailed Decision, as follows:

First, the Court in Division erred in partially granting SMB's petition on the ground that the letter of SMC dated October 19, 1999 did not specifically request for the registration of a new brand;

Second, the Court in Division erred in partially granting SMB's petition on the ground that the letter dated February 7, 2002 bears a caveat with regard to the tax classification and rates used by SMC;

Third, the Court in Division erred in partially granting SMB's petition on the ground that the subsequent issuance of Revenue Memorandum Order (RMO) No. 6-2003 dated March 11, 2003 is not conclusive as to the classification of San Miguel Light;

Fourth, the Court in Division erred in partially granting SMB's petition on the ground that the surrogate ads of SML readily reveal that it is indeed a variant of San Miguel Pale Pilsen;

Fifth, the Court in Division erred in partially granting SMB's petition on the ground that no benefit should be given to the obviously improper registration of a descriptive and generic name; and

Sixth, the Court in Division erred in partially granting SMB's petition on the ground that it did not recognize the intent of the legislature in determining the variant of a brand.

THE RULING OF THE COURT

We deny the Petition.

SMC Requested Registration of San Miguel Light as a "New Brand"

Petitioner asserts that the letter dated 19 October 1999 issued and signed by Mr. Virgilio S. de Guzman requesting for the registration of San Mig Light did not explicitly state that SMC was requesting for the registration of a new brand, and that the term used was a *'new product'* and not a 'new brand'.

This ground has been previously raised by petitioner in its Motion for Reconsideration of the Assailed Decision before the Court *a quo* where it ruled that petitioner (respondent in the Division case) was bound by its judicial admissions. As discussed by the Court *a quo*, petitioner already stipulated to the fact that respondent requested for the registration of San Mig Light as a "new brand" in paragraph 2.01 of the Stipulation of Facts, Documents, Issues, and Other Matters[64], to wit:

> "2.01 On October 19, 1999, Mr. Virgilio S. de Guzman, then Assistant Vice President, SMBP Finance, of San Miguel Corporation, wrote Assistant Commissioner Leonardo B. Albar, Excise Tax Services, of the BIR, **requesting for the registration of, and authority to manufacture 'San Mig Light', as a <u>new brand</u>**, to be taxed at P12.15 per liter (Petition par. 4.01)." *(Emphasis supplied)*

We find no reason to overturn the finding of the Court *a quo* that the above-quoted judicial admission binds the respondent and that such can no longer be controverted.

As the Assailed Resolution discussed:

> "The Supreme Court, in the case of *Oscar Constantino, Maxima Constantino and Casimira Maturingan vs. Heirs of Pedro Constantino, Jr., Represented by Asuncion Laquindanum*[65], ruled that:
>
> > 'Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. In *Bayas et. al. v. Sandiganbayan et. al.*, this Court emphasized that:

[64] Docket (Vol. II), pp. 905-913.
[65] G.R. No. 181508, October 2, 2013, 706 SCRA 580.

> Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally, it must assume the consequences of the disadvantage.
>
> Moreover, in *Alfelor v. Halasan*, this Court declared that:
>
> > A party who judicially admits a fact cannot later challenge the fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. <u>Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party</u>, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. <u>A party cannot subsequently take a position contrary of or inconsistent with what was pleaded</u>. (Citations omitted)"[66] (Underscoring ours)

Furthermore, a perusal of this particular letter and the subsequent correspondence that ensued indubitably shows that the letter sought the registration of San Mig Light as a "new brand" and that it was understood by Assistant Commissioner Albar as such, **especially since it is only with respect to new brands that a net retail price is suggested in accordance with Sec. 5[B] of BIR Revenue Regulations No. 2-97.**

[66] *Ibid.*

The relevant text of the letter of Mr. Virgilio S. de Guzman dated **October 19, 1999**, AVP-SMBP Finance, of SMC to then Assistant Commissioner Leonardo B. Albar, Excise Tax Service, of the BIR[67] is quoted below:

> "xxx xxx xxx
>
> This is to request for the registration and authority to manufacture fermented liquor bearing the trademark "SAN MIG LIGHT". This new product will be packaged in 330ml-flint bottle of 24 bottles a case and will be manufactured at our Polo, Valenzuela plant. Sample bottle and other pertinent documents accompany this request.
>
> Consistent with Section 143 of the Tax Reform Act of 1997, as amended, and with the Revenue Regulations No. 2-97 entitled "Revenue Regulations Governing Excise Taxation on Distilled Spirits, Wines and fermented Liquors", San Mig Light **shall be taxed at P12.15 per liter.**
>
> Thank you and hoping for your favorable action." *(Emphasis supplied)*

On the other hand, the letter-reply dated **October 27, 1999** of Assistant Commissioner Albar to SMC[68] states:

> "xxx xxx xxx
>
> Your request dated October 19, 1999, for the registration of San Miguel Corporation commercial label for beer bearing the trade mark 'San Mig Light' Pale Pilsen, for domestic sale or export, 24 bottles in a case, each flint bottle with contents of 330ml, is hereby **granted.**
>
> The sample of the said commercial label duly approved and registered in this Office is hereby enclosed for your file and hereafter no changes or alterations of the color scheme and inscription thereof should be made without prior approval of this Office.

---

[67] *Id.* at Note 6.
[68] *Id.* at Note 7.

Please follow strictly the requirements of internal revenue laws, rules and regulations relative to the marks to be placed on each case, cartons or box used as secondary containers. It is understood that the said brand be brewed and bottled in the breweries at Polo, Valenzuela (A-2-21).

You are hereby informed that the **registration of commercial labels in this Office is for internal revenue purposes only** and does not give you protection against any person or entity whose rights may be prejudiced by infringement or unfair competition resulting from your use of the above indicated trademark." *(Emphasis supplied)*

The succeeding letter of Mr. De Guzman dated **November 3, 1999** to Assistant Commissioner Albar[69] states:

"xxx xxx xxx

This is to advise your office that SAN MIG LIGHT which will be packaged in 330-ml flint bottle of 24 bottles a case, will be sold at a **suggested net retail price of P21.25 per liter.** The P21.15/liter net retail price is computed as follows:

	Per Liter	Per 330 ml Bottle
Suggested retail price	P33.33	P11.00
Less:		
Value Added Tax	3.03	1.00
Specific Tax	9.15	3.02
Net Retail Price	P21.15	P6.98

Having a net retail price of P21.15 per liter, San Mig Light is classified as "Medium Priced Brand". As such, the product **will be taxed at P9.15 per liter**, consistent with Section 143 of the Tax Reform Act of 1997, as amended, and with the Revenue Regulations No. 2-97 entitled "Revenue Regulations Governing Excise Taxation on Distilled Spirits, Wines, and Fermented Liquors".

[69] *Id.* at Note 8.

Again, since it is only with respect to **new brands** that a net retail price is suggested in accordance with Sec. 5[B] of BIR Revenue Regulations No. 2-97, it is clear that this is what both corresponding parties understood this to mean. The testimony of Mr. De Guzman in his Judicial Affidavit[70] confirms this when he expounded on his reference to "San Mig Light" as a "new product" only because it was never manufactured before by SMC[71].

That the letter was understood by petitioner as an application for registration of San Mig Light as a "new brand" as well is tellingly confirmed by the fact that taxation thereof as a "new brand" was **implemented by the BIR** after these spate of correspondences **for nearly two and a half years**. It was only on May 28, 2002, through the sending of a Notice of Discrepancy, that petitioner decided to tax San Mig Light as a "variant", instead of a "new brand".

The aforequoted correspondences also show that there is no merit to petitioner's contention that **what was granted** was **merely** "SMC's protection pertaining to Intellectual Property specifically the registration of SMC's commercial label which has nothing to do with registration of a new brand"[72]. In fact, the opposite is true, as can be seen in the quoted relevant portion:

> "You are hereby informed that the **registration of commercial labels in this Office is for internal revenue purposes only** and **<u>does not give you protection</u>** against any person or entity whose rights may be prejudiced by infringement or unfair competition resulting from your use of the above indicated trademark." *(Emphasis supplied)*

Petitioner is cautioned from making such irresponsible and misleading arguments in the future as it simply does not serve the ends of justice.

Caveat Irrelevant Sans Misrepresentation

Petitioner contends that, as the letter dated February 7, 2002 of Mr. Conrado P. Item[73], then Acting Chief of LTAD II, BIR, bears a "caveat" that the tax classification of San Mig Light as a "new brand" as well as the tax rate used of P9.15 (now P10.25) "shall be null and void in case of misrepresentation[74]", petitioner's "continuing repudiation on the classification

[70] Docket, Vol. II, pp. 452-462.
[71] *Id.*
[72] *Rollo*, p. 12.
[73] Par. 2.05, SFDIOM, docket, p. 907; Exhibit "E". (Note 10)
[74] *Rollo*, p. 13.

of San Mig Light as a new brand"[75] makes the grant of "new brand" tax classification null and void.

The caveat states:

> "However, should it be found that the same are different from what you have submitted and represented in your letter of January 29, 2002, this finding shall be considered null and void."[76]

Aside from the bare assertions of petitioner that there was misrepresentation on the part of respondent, no evidence was adduced to support it. The record instead shows that Mr. Item's letter was in response to the January 28, 2002 letter of SMC's Mr. Villacorte, Jr.[77] requesting information on the tax rate and classification of San Mig Light, complete with attachments. No reference to respondent's misrepresentation in the attached documents were made either. As "continuing repudiation" does not equal misrepresentation, petitioner's assertion deserves scant consideration.

Petitioner also contends the letter of Mr. Item "is a mere letter of a subordinate" and "is not binding".[78] Moreover, petitioner also argues that the letter of Mr. Item cannot estop the BIR from assessing and collecting the correct amount of excise taxes due as "errors of tax officers or officials of the Government do not bind the Government or prejudice its right to the taxes or dues collectible by it from its citizens"[79]

First, the Court notes that Mr. Item signed the letter of February 7, 2002 in his capacity as then Acting Chief of Large Taxpayers Assistance Division II, BIR. In that same letter, Mr. Item comes to the conclusion that "the tax classification and rate of 'San Mig Light' as a new brand were in order".

Second, as earlier observed by the Court, this conclusion was not questioned by petitioner until two and a half years later, after the deficiency excise tax assessments were issued against SMC. In fact, not only has petitioner stipulated to this conclusion in Par. 2.05 of the parties' "Stipulation of Facts, Documents, Issues and Other Matters"[80], but also, petitioner includes this in his recital of facts in the present Petition as well.

---

[75] *Id.* at Note 74.
[76] *Id.*
[77] *Id.* at Note 9.
[78] *Id.* at Note 74.
[79] *Id.*
[80] *Id.* at Note 42.

Third, the principle that the government is not estopped by the errors or neglect of its agents and officers admits of exceptions. In *ABS-CBN Broadcasting Corp. vs. Court of Appeals*[81], the Supreme Court held that "exceptions in the interest of justice and fair play" exist, and these include instances when **the Commissioner is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom.**[82] This exception applies to the case at bar.

RMO No. 6-2003 Classifies San Mig Light as a "New Brand"

Petitioner's third assignment of error lacks merit as well. Petitioner argues that "the objectives and policies of RMO No. 6-2003 do not affirm any tax classification and rate but rather make use of the said master list for want of reference document in the conduct of survey. Hence, it cannot be a basis for treating SML as a new brand."[83]

A perusal of RMO No. 6-2003 shows that the expressed purpose of the aforesaid issuance was to prescribe "the Guidelines and Procedures in the Establishment of Current Net Retail Prices of New Brands of Cigarettes and Alcohol Products" as indicated in its "Subject".[84] Furthermore, under its "Policies and Guidelines", it says:

> "1. The conduct of survey covered by this Order, for purposes of determining the current retail prices of new brands of cigarettes and alcohol products introduced in the market on or after January 1, 1997, shall be undertaken in the following instances:
>
> a. For **validation** of the suggested net retail price of brands registered and introduced in the market after the prescribed three-month period; and
>
> b. For **reclassification of new brands** of said exciseable products that were introduced in the market after January 1, 1997 x x x
>
> x x x x x x x x x

---

[81] G.R. No. L-52306, October 12, 1981, 108 SCRA 142 (1981).
[82] *Id.* citing *Ford Motor Co. vs. U.S.*, 9 F. Supp. 590(1935).
[83] *Rollo*, p. 14.
[84] Docket, Vol. I, pp. 117-121, Exhibit "F".

> 2. A master list of all registered brands for locally manufactured and imported cigarettes, fermented liquors, wines and distilled spirits (Annexes "A-1", "A-2", "A-3", and "A-4") as prepared by the Large Taxpayers Assistance Division II (LTAD II), National Office **shall be used as reference document for the conduct of the survey**. x x x " *(Emphasis supplied)*

Annex "A-3" of RMO No. 6-2003[85] which is entitled "MASTERLIST OF REGISTERED BRANDS OF LOCALLY MANUFACTURED ALCOHOL PRODUCTS", also shows that "San Mig Light" is listed as "NB"[86]. A "Legend" at the end of said Annex explains the abbreviations used in the document, to wit: "VOB - variant of an old brand", "NB - new brand registered on or after January 1, 1997", and "VNB - variant of a new brand".

While the entry in RMO No. 6-2003, including the entry pertaining to "San Mig Light" indeed states that it is an "NB" or "new brand", the conduct of survey covered by the Order for purposes of **reclassification of new brands,** in particular, reclassifying "San Mig Light" as a "variant", cannot be done as it is **prohibited by law.**

We have previously elaborated on this in *Commissioner of Internal Revenue vs. San Miguel Corporation*[87], thus:

> "Therefore, based on the said revenue regulations and law, -- *referring to RR No. 2-97 and Sec. 143 of the NIRC prior to its amendment by RA 9334* -- the term "new brands" refers to brands registered after January 1, 1997 and shall include previously registered, but inactive brands of alcohol products. This definition provides the criteria for the classification of brands introduced in the market after January 1, 1997, which are not variants of an existing brand.
>
> Conversely, a "variant of brand" pertains to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.
>
> On January 1, 2005, Republic Act (RA) No. 9334, also known as *"An act increasing the excise tax rates imposed on alcohol and tobacco products amending for the purpose sections 131,141, 142, 143,*

[85] Docket, Vol. I, pp. 117-121.
[86] *Id.*
[87] CTA EB No. 755 (CTA Case No. 7708), September 20, 2012.

144, 145 and 288 of the National Internal Revenue Code of 1997, as amended"; took effect which introduced the following:

> 'SEC. 143. *Fermented Liquors.* - There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except *tuba, basi, tupuy* and similar fermented liquors in accordance with the following schedule:
>
> xxx xxx xxx
>
> 'Variants of existing brands and variants of new brands which are introduced in the domestic market after the effectivity of this Act shall be taxed under the proper classification thereof based on their suggested net retail price: *Provided, however*, That such classification shall not, in any case, be lower than the highest classification of any variant of that brand.
>
> 'A "variant of a brand" shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.
>
> xxx xxx xxx
>
> '"New brand" shall mean a brand registered after the date of effectivity of R.A. No. 8240."

On January 3, 2006, Revenue Regulations No. 3-2006, *Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto*, was issued which provides:

> SECTION 2. Definition of Terms. - For purposes of these Regulations, the following words and phrases shall have the meaning indicated below:
>
> xxx xxx xxx

(d) VARIANT OF A BRAND -shall refer to a brand of alcohol or tobacco products on which a modifier is prefixed and/or suffixed to the root name of the brand.

For this purpose, the term "root name" shall refer to a letter, word, number, symbol, or character; or a combination of letters, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: Provid~ That the root name has been originally registered as such with the Bureau of Internal Revenue (BIR).

xxx xxx xxx

(e) EXISTING BRAND- shall refer to a brand of alcohol or tobacco products which is included in Annexes A, B, C and D of RA No. 8240 and Revenue Regulations (RR) Nos. 1-97 and 2-97;

(f) NEW BRAND - shall refer to a brand that is registered and introduced in the market after the date of effectivity of RA No. 8240;

A *'new brand'* is now defined as brand registered after the date of effectivity of RA No. 8240 which is January 1, 1997; while a *'variant of a brand'* shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.

Hence, the definition of a *'new brand'* has remained the same after RA 9334, while the definition of a *'variant of a brand'* has been amended since the second portion which defines it as a different brand which carries the same logo or design of the existing brand under RR No. 2-97 has been deleted.

xxx xxx xxx

Furthermore, Section 4(B)(e)(c), second paragraph of Revenue Regulations (RR) No. 2-97, as amended by RR No. 9-2003, provides:

> 'For the purpose of establishing or updating the classification of new brands and variant(s) thereof, their current net retail price shall be reviewed periodically through the conduct of survey or any other appropriate activity, as mentioned above, every two (2) years unless earlier ordered by the Commissioner. However, notwithstanding any increase in the current net retail price, ***the tax classification of such new brands shall remain in force until the same is altered or changed through the issuance of an appropriate Revenue Regulations***.' (Emphasis supplied)

Likewise, Section 143 of the 1997 NIRC, as amended, provides:

> xxx xxx xxx
>
> .... brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 ***shall not be revised except by an act of Congress.*** (Emphasis supplied)

Moreover, RR No. 3-2006, provides:

> SECTION 4. Prohibition Against Reclassification of Certain Brands of Alcohol and Tobacco Products. - The tax classification of the following brands of alcohol and tobacco products ***shall remain in force until revised by Congress.*** (Emphasis supplied)

(a) Brands enumerated in Annexes "A", "B", "C" and "D" of RA No. 8240;

(b) Brands listed in RR Nos. 1-97 and 2-97; and

(c) New brands introduced in the domestic market between January 1, 1997 and December 31, 2003.

With respect to any of the brands listed in Annexes "A", "B", "C" and "D" of RA No. 8240, the owner of the brand may file with the BIR a notarized request for the delisting thereof from the said Annexes. The filing of such request shall be deemed a waiver of the statutory protection against reclassification of such brand; *Provided, further,* that in the event that the same brand shall be manufactured or imported by another entity subsequent to the filing of such request, such brand shall be considered a new brand subject to the prohibition on downward classification prescribed under Section 5 of these Regulations.

Therefore, **prior to the effectivity of RA 9334 and RR No. 3-2006, any 'reclassification' of new brands shall be done <u>only through the issuance of 'an appropriate Revenue Regulations'</u>** in accordance with RR 9-2003. **After the effectivity of RA 9334 and RR 3-2006, said 'reclassification' <u>may only be done through 'an act of Congress'</u>.** There being none, the classification of 'San Mig Light' as a new brand remained in force, notwithstanding the subsequent issuance of the subject preliminary assessment notices, formal letters of demand with accompanying assessment notices, and the denial of petitioner's request for reconsideration of the said assessment notices." *(Emphasis supplied)*

The factual milieu of the above-referenced case, CTA EB No. 755, is similar to the case at bar. Since the instant claim for refund involves overpayment of excise taxes erroneously, illegally and/or excessively assessed on San Mig Light for the period of January 1, 2011 to December 31, 2011, which period is **after the effectivity of RA 9334 and RR 3-2006**, any reclassification of San Mig Light **must be done through an act of Congress.** Whether or not RMO No. 6-2003 is inconclusive on petitioner's continued recognition of San Mig Light as a new brand is irrelevant at this point.

Surrogate Ads Use the Term "Variant" in Their Primary and General Acceptation

For his fifth assignment of error, petitioner argues that respondent made admissions in its 1999 Annual Report[88] to its stockholders, in page 6 of San Miguel Corporation Kaunlaran Magazine, January 2000, Issue No. 1, Volume No. 33, Special[89], and in its TV commercials that, respectively, "San Mig Light, is a premium, low calorie **variant** of San Miguel Beer" and that that San Mig Light, is a low calorie light beer with the same full-flavored taste and alcohol content as San Miguel Pale Pilsen.[90] Petitioner further argues that these admissions are proof that San Mig Light is a variant of an existing brand, San Miguel Pale Pilsen.

Petitioner fails to persuade this Court. In interpreting the particular signification of the term "variant" in the various media presented by the petitioner, the Court is guided by Section 14, Rule 130 of the Revised Rules of Court which provides:

> "**SEC. 14.** *Peculiar signification of terms.* - The terms of a writing are **presumed to have been used in their primary and general acceptation**, but evidence is admissible to show that they have a local, technical or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly." *(Emphasis supplied)*

In accordance with the afore-quoted section, the term "variant" is presumed to have been used by respondent in their primary and general acceptation. This presumption may be rebutted, however, with evidence showing that **not only** was the term used in its "local, technical or otherwise peculiar signification", **but also** that the term "variant" was **intended to be used** by petitioner as such, and that its intended audience **understood** that the term "variant" was being used in its its "local, technical or otherwise peculiar signification".

---
[88] Exhibit "R-1".
[89] Exhibit "R-2".
[90] *Id.* at Note 83.

The term "variant" has a particular the legal definition as stated in Section 143 of the NIRC. Whether before or after the amendment of Section 143 of the NIRC by RA 9334, what is crucial is the brand of the alleged variant, 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 as the alleged parent brand.

The question before this Court is whether or not the term "variant" was used by the petitioner in that particular legal signification and whether or not its intended audience understood it to be such.

A perusal of the statements in SMC's 1999 Annual Report and "Kaunlaran" magazine show that the taste, calories and alcohol content of San Mig Light is emphasized. The legal definition of "variant", however, makes no reference to the similarities in the content and formulation of the product, but merely the brand.

As regards the statement in petitioner's Annual Report to its stockholders[91] that "San Mig Light", is a premium, low calorie variant of San Miguel Beer", there is no showing that the term "variant" was used in the context of its legal definition. Instead, taking the entire Report into context, it is evident that the term was used from a marketing standpoint and that its ordinary signification or meaning as "referring to a product that varies or exhibits variations from another"[92] was used, and more importantly, similarly understood.

In the Kaunlaran article[93], the term "variant" does not appear at all. The article merely speaks of differences in brands, of "various brands in the beer market aimed at specific target groups".[94] With respect to the TV commercial[95], there is even no mention of "Pale Pilsen" at all. What is evident is that the various media containing alleged admissions were intended for respondent's stockholders and its end consumers and that the term "variant" was used in its ordinary sense.

Having presented no evidence that the term "variant" was **<u>used and understood</u>** in its legal and technical sense under the NIRC of 1997, the presumption has not been sufficiently disputed.

[91] Exhibit "R-1".
[92] Webster's New International Dictionary, at p. 2533.
[93] Exhibit "R-2".
[94] *Id.* at p. 6.
[95] Exhibit "R-3".

Furthermore, with respect to admissions, the Supreme Court held in *Republic vs. Sandiganbayan (First Division)*[96] that ambiguousness may disqualify statements from being relied upon as admissions. It is fundamental that any statement, to be considered as an admission for purposes of judicial proceedings, should be definite, certain and unequivocal[97]; otherwise, the disputed fact will not get settled. A statement is not competent as an admission where it does not, under a reasonable construction, appear to admit or acknowledge the fact which is sought to be proved by it. An admission or declaration to be competent must have been expressed in definite, certain and unequivocal language.[98]

Considering the circumstances and the context in which the use of the term "variant" was used by respondent in the various media presented by petitioner, they cannot be considered judicial admissions.

Asia Brewery Case Does Not Preclude Registration of "Pale Pilsen" as a Brand Name for Tax Purposes

Petitioner contends that respondent's registration of "Pale Pilsen" was erroneous since it is a generic or descriptive word, arguing that the Supreme Court already categorically ruled that the words "Pale Pilsen" may not be appropriated", and invoking *Asia Brewery, Inc. vs. Honorable Court of Appeals, et al.*[99].

In the *Asia Brewery* case, the Supreme Court indeed held, among other things, that the words "pale pilsen" are generic words that are descriptive of the color ("pale") of a type of beer ("pilsen"), which is a light bohemian beer with a strong hops flavor that originated in the City of Pilsen in Czechoslovakia.[100]

Despite the foregoing, the Court finds that the aforementioned ruling and the registration of "Pale Pilsen" with the BIR as a commercial label or brand are not mutually exclusive propositions.

The *Asia Brewery* case held that "Pale Pilsen" may not be registrable and appropriable **as a trademark** under the Intellectual Property Code. This, however, does not constitute a legal obstacle to its registration **as a brand for tax purposes** under the 1997 NIRC.

[96] G.R. No. 166859, April 12, 2011, 648 SCRA 47.
[97] *Id.* citing *CMS Logging, Inc. v. Court of Appeals*, G.R. No. 41420, July 10, 1992, 211 SCRA 374, 380-381.
[98] *Id.* citing *Bank of the Philippine Islands v. Fidelity & Surety Co.*, 51 Phil. 57, 64.
[99] G.R. No. 103543, July 5, 1993, 224 SCRA 437.
[100] *Id.* at p. 448.

This is recognized in the law itself, as Annexes "C-1" and "C-2" of RA 8424, also known as the Tax Reform Act of 1997, revising the NIRC, specifically lists "Pale Pilsen" as an official brand for tax purposes. These annexes are considered integral parts of the law.

Moreover, petitioner himself recognized "Pale Pilsen" as a registered brand name for tax purposes in his own issuance as Annex "A-3" of RMO No. 6-2003[101] which is entitled "MASTERLIST OF REGISTERED BRANDS OF LOCALLY MANUFACTURED ALCOHOL PRODUCTS", lists "Pale Pilsen" under the column "Brand Name" belonging to SMC. Not only that, the letter-reply dated October 27, 1999 of Assistant Commissioner Albar to SMC specifically states that **"the registration of commercial labels in this Office is for <u>internal revenue purposes only</u>"**[102]

Legislative Intent Determined by Language of the Law Lawmakers Voted on

Petitioner's last assignment of error is that the Court *a quo* disregarded the intent of the legislature in determining the variant of a brand, citing quotes from the exchange of remarks between Senator Juan Ponce Enrile and Senator Miriam Defensor-Santiago and claiming that such is determinative of legislative intent.

This issue has been thoroughly passed upon in the Assailed Resolution[103], to wit:

> "x x x While legislative intent is part and parcel of the law, the intent of the law is determined by the language of the law that the lawmakers voted on.
>
> The opinion of one member of the assembly does not necessarily reflect the genuine legislative intent of the entire body. As held in *Diaz vs. Secretary of Finance*,[104] 'statements made by individual members of Congress in the consideration of a bill do not necessarily reflect the sense of that body and are, consequently, not controlling in the interpretation of law.' **The**

[101] Docket, Vol. I, pp. 117-121.
[102] *Id.* at Note 10.
[103] *Rollo*, p. 79.
[104] G.R. No. 193007, July 19, 2011, 654 SCRA 96 citing *South African Airways vs. Commissioner of Internal Revenue*, G.R. No. 180356, February 16, 2010, 612 SCRA 665.

> **congressional will is ultimately determined by the language of the law that the lawmakers voted on.** Consequently, the meaning and intention of the law must first be sought 'in the words of the statute itself, read and considered in their natural, ordinary, commonly accepted and most obvious significations, according to good and approved usage and without resorting to forced or subtle construction.'[105]
>
> 'Where the statute is clear and free from ambiguity, courts will not inquire into the motives which influence the legislature, or individual members, in voting for its passage; nor indeed as to the intention of the draftsman, or the legislators, so far as it has not been expressed in the act.[106] To read into law the supposed intention of the legislators, where there is no ambiguity in it, would be to supply something that does not appear in the act.'"[107] *(Emphasis in original)*
>
> We see no cogent reason to disturb this finding.

San Mig Light is a New Brand, not a Variant of an Existing Brand

As all assignments of errors of the Assailed Decision and Resolution have been found by this Court to be without merit, We find no compelling justification to set aside and/or modify both the Assailed Decision and Resolution.

In several en banc cases of *Commissioner of Internal Revenue v. San Miguel Corporation*[108], a majority of the members of the Court confirmed the classification of San Mig Light as a new brand and not a variant.

This Court upheld similar findings of the Court in Division in, most recently, *San Miguel Brewery Inc., a subsidiary of San Miguel Corporation v. Commissioner of Internal Revenue*[109]; and in the earlier Division cases of *San Miguel Corporation v. Commissioner of Internal Revenue*[110], *San Miguel Corporation v. Commissioner of Internal Revenue and Officer-in-Charge/ Large Taxpayers Service/*

---

[105] *Ibid.*
[106] *Manila Jockey Club, Inc. vs. Games and Amusement Board*, 107 Phil. 151 (1960); *Guzman vs. Municipality of Taytay*, 65 Phil. 340 (1938).
[107] *Ibid.*
[108] CTA EB Case No. 873, October 24, 2012, CTA EB Case No.755, September 20, 2012 & CTA EB Case No. 1279, November 26, 2015.
[109] CTA Case No. 8400, December 1, 2014 & CTA Case No. 8209, September 12, 2014.
[110] CTA Case No. 7708, January 7, 2011, CTA Case Nos. 7953 & 7973, Nov. 26, 2014.

Bureau of Internal Revenue and San Miguel Corporation v. Commissioner of Internal Revenue[111].

As cited in the Assailed Decision and Resolution, We reiterate Our rationale for concluding that San Mig Light is a new brand in the case of *Commissioner of Internal Revenue v. San Miguel Corporation*,[112] thus:

> "In addition, in a similar case promulgated by the First Division involving the same parties and the same issue, it was ruled that 'San Mig Light' is a new brand. The pertinent portion of the said decision provides:
>
> The fact that 'San Mig Light' is a 'new brand' and not merely a variant of an existing brand is bolstered by the fact that Annexes 'C-1' and 'C-2' of RA No. 8240, which enumerated the fermented liquors registered with the BIR do not include the brand name 'San Mig Light'. Instead, what were listed, as existing brands of petitioner, as of the effectivity of RA No. 8240, were as follows: 'Pale Pilsen 320 mi.', 'Super Dry 355 mi.', 'Grande 1000 mi.', 'RPT in cans 330 mi.', 'Premium Bottles 355 mi.' and 'Premium Can 330 mi.' Even in Section 4 of RR No. 2-97 which provides for the classification and manner of taxation of existing brands, new brands and variants of existing brands, the list of existing brands of fermented liquors of petitioner does not include the brand 'San Mig Light', but merely 'RPT in cans 330 mi.', 'Premium Bottles 355 mi.', and 'Premium Bottle Can 330 mi.' for high priced brands; and 'Super Dry 355 mi.', 'Pale Pilsen 320 mi.', and 'Grande' for medium-priced brands.
>
> Thus, it is clear that when the product 'San Mig Light' was introduced in 1999, it was considered as an entirely new product and a 'new brand' of petitioner's fermented liquor, there being no root name of 'San Miguel' or 'San Mig' in its existing brand names. The existing registered and classified brand name of petitioner at that time was 'Pale Pilsen'. Therefore, the word 'Light' cannot be considered as a mere suffix to the word 'San Miguel', but it is part and parcel of an entirely new brand name, 'San Mig Light'. Evidently, as correctly pointed out by petitioner, 'San Mig Light' is not merely a variant of an existing brand, but an entirely 'new brand'.

---

[111] CTA Case Nos. 7052, 7053 & 7405, October 18, 2011.
[112] CTA EB No. 755, September 20, 2012.

Anent the second type of 'variant brand', i.e., when a different brand carries the same logo or design of an existing brand, records show that there are marked differences in the designs of the existing brand 'Pale Pilsen' and the new brand 'San Mig Light':

a) as to 'Pale Pilsen' and 'San Mig Light' in bottles:

1. the size, shape and color of the respective bottles are different. Each brand has a distinct design in its packaging. 'Pale Pilsen' is in a steiny bottle, while 'San Mig Light' is packed in a tall and slim transparent bottle;

2. the design and color of the inscription on the bottles are different from each other. 'Pale Pilsen' has its label encrypted or embossed on the bottle itself, while 'San Mig Light' has a silver and blue label of distinctive design that is printed on paper pasted on the bottle; and

3. the color of the letters in the 'Pale Pilsen' brand is white against the color of the bottle, while that of the words 'San Mig' is white against a blue background and the word 'light' is blue against a silver background.

b) as to 'Pale Pilsen' and 'San Mig Light' in cans:

1. the words 'Pale Pilsen' are in ordinary font printed horizontally in black on the can against a diagonally striped light yellow gold background, while the words 'San Mig' are in Gothic font printed diagonally on the can against a blue background and the word 'Light' in ordinary font printed diagonally against a diagonally striped silver background; and

2. the general color scheme of 'Pale Pilsen' is light yellow gold, while that of 'San Mig Light' is silver.

Though the 'escudo' logo appears on both 'Pale Pilsen' bottle and can, and 'San Mig Light' bottle and can, the same cannot be considered as an indication that 'San Mig Light' is merely a variant of the brand 'Pale Pilsen', since the said 'escudo' insignia is the corporate logo of petitioner. It merely identifies the products as having been manufactured by petitioner, but does not form part of its brand. In fact, it appears not only in petitioner's beer products, but even in its non-beer products.

Thus, 'San Mig Light' is a new brand and not a variant of any of SMC's existing beer products."

Additionally, in the case of *Commissioner of Internal Revenue v. San Miguel Corporation*,[113] We have also ruled that:

"Effective January 1, 1998, Republic Act ('R.A.') No. 8424 explained the tax treatment of fermented liquors as a new brand in contrast with a variant as follows:

'CHAPTER III- EXCISE TAX ON ALCOHOL PRODUCTS

SEC. 143. Fermented Liquor.- xxx

Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.

'New brands shall be classified according to their current net retail price. xxx

The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex C, shall remain in force until revised by Congress.

A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or different brand which carries the same logo or design of the existing brand.

Beginning January 1, 2005, R.A. 9334 amended Section 143 of the 1997 NIRC making reference to fermented liquors either as a new brand or variant. R.A. 9334 restricted the meaning of a variant in the following manner:

'A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand. xxx

[113] CTA EB No. 873, October 24, 2012.

> 'New brand' shall mean a brand registered after the date of the effectivity of R.A. 8240.

Clearly, a new brand is one that is registered after the effectivity of R.A. 8240 on January 1, 1997. Pursuant to R.A. 8424, a variant is defined as either a brand with a modifier prefixed and/or suffixed to the root name of the brand or a different brand which carries the same logo or design of the existing brand. The first type of variant is retained in R.A. 9334.

In the instant case, San Mig Light, a fermented liquor is a new brand due to the fact that on October 27, 1999, Assistant Commissioner Leonardo B. Albar of the Excise Tax Division granted respondent's request for the product's registration. To prove that San Mig Light is a new brand is supported by the fact that it was not among the brands registered after the effectivity of R.A. 8240. Nowhere is San Mig Light recognized as among the existing fermented liquor brands as shown in Annexes 'C-1' and 'C-2' of R.A. 8240 as aptly observed by the Court in Division as follows:

> The fact that 'San Mig Light' is a 'new brand' and not merely a variant of an existing brand is bolstered by the fact that Annexes 'C-1' and 'C-2' of RA No. 8240, which enumerated the fermented liquors registered with the BIR do not include the brand name 'San Mig Light'. Instead, what were listed, as existing brands of petitioner, as of the effectivity of RA No. 8240, were as follows: 'Pale Pilsen 320 mi.', 'Super Dry 355 mi.', 'Grande 1000 mi.', 'RPT in cans 330 mi.', 'Premium Bottles 355 mi.' and 'Premium Can 330 mi.' Even in Section 4 of RR No. 2-97, which provides for the classification and manner of taxation of existing brands, new brands and variants of existing brands, the list of existing brands of fermented liquors of petitioner does not include the brand 'San Mig Light', but merely 'RPT in cans 330 mi.', 'Premium Bottles 355 mi.', and 'Premium Bottle Can 330 mi.' for high priced brands; and 'Super Dry 355 mi.', 'Pale Pilsen 320 mi.', and 'Grande' for medium-priced brands.

> San Mig Light is not a variant of an existing brand. The petitioner erred in treating the wordings 'San Miguel' or 'San Mig' as a root word and 'Light' as a suffix. 'San Miguel' or 'San Mig' is not registered nor is it an existing classified brand under R.A. 8240. The brand 'Pale Pilsen' was registered and classified as a brand name at that time. The term 'Light' cannot be separated from the word 'San Mig' or 'San Miguel' but should be considered as one brand name. xxx"

It is in the light of the above cases decided by the Court *en banc* that the Court *a quo* comes to this conclusion in the Assailed Decision:

"[I]t has been aptly ruled by the Court *en banc* that San Mig Light is a new brand which, under R.A. No. 8424 amending Section 143 of the NIRC of 1997, should be classified according to its current net retail price. Considering the factual similarities involved in the afore-quoted cases and in the instant case, the Court sees no cogent reason to deviate from the foregoing findings and hence, the Court rules that San Mig Light is a new brand and not a variant."

We uphold this finding.

A Final Point

In respondent's Comment to the instant Petition for Review, respondent points out that petitioner has not challenged the finding of the Court *a quo* as to the amount of excess excise tax payments to which respondent is entitled, which finding stands uncontradicted and deemed conclusive.

In the Assailed Decision, the Court *a quo* found that respondent (petitioner therein) is entitled to a refund in the amount of ₱740,294,926.62, as validated by the Independent Certified Public Accountant duly commissioned by the Court, representing erroneous, excessive and/or illegal collection from, and overpayment by SMB of excise taxes on San Mig Light for the period from January 1, 2011 up to December 31, 2011.

Neither the amount nor the basis for the refund was questioned by petitioner in its Motion for Reconsideration dated January 20, 2015 of the Assailed Decision. Similarly, no assignment of error was attributed to this finding in the present Petition as well. Hence, it remains uncontradicted and is, consequently, upheld.

Considering the foregoing, We see no compelling ground to reverse the assailed Decision and Resolution.

WHEREFORE, premises considered, the assailed Decision of the Second Division dated December 23, 2014, and its Resolution dated March 26, 2015, are hereby **AFFIRMED** *in toto*, and the instant petition for review is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

See Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
With all due respect, I maintain my Dissenting Opinion
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1292** (CTA Case No. 8591)
	Present:
- versus -	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, *and* Ringpis-Liban, *JJ.*
SAN MIGUEL BREWERY INC., a Subsidiary of SAN MIGUEL CORPORATION, *Respondent.*	Promulgated: SEP 28 2016 11:20 a.m.

x- -x

CONCURRING OPINION

DEL ROSARIO, PJ:

I concur with the ponencia in denying the Petition for Review and in affirming the assailed Decision and Resolution of the Court in Division which thereby sustains the grant of respondent's claim for refund in the reduced amount of P740,294,926.62 representing overpayment of excise taxes on *"San Mig Light"* covering the period from January 1, 2011 to December 31, 2011.

Nevertheless, I find it imperative to expound on the bases as to why *San Mig Light* should be classified as a new brand for excise tax purposes, and to emphasize the mandatory nature of the *freeze classification provision* in Section 143 of the National Internal Revenue Code (NIRC) of 1997, as amended. Truth to tell, the issue involved in this case is not of first impression. In the earlier case of *San Miguel Inc., a subsidiary of San Miguel Corporation vs.*

om

Commissioner of Internal Revenue,[1] involving the same parties herein but pertaining to a different taxable year, We expounded thusly:

> Before a product can be classified as a variant of a brand, it is imperative to establish the existence and registration of a brand to which it is considered a variant of. While the BIR insists that "San Mig Light" is a variant of an existing brand, it fails, however, to specify with utmost certainty as to which existing brand "San Mig Light" is actually a variant of.
>
> The registered brands of fermented liquors as of the date of the enactment of the 1997 NIRC are listed in its Annexes C-1 and C-2. Until the law is modified, its Annexes, which are integral parts of the law, remain valid, binding and conclusive upon the BIR.
>
> Notably, "Pale Pilsen" is one of the existing registered brands of SMC listed in Annexes C-1 and C-2 of the 1997 NIRC. "San Mig Light" could not, however, be considered a variant of the existing brand "Pale Pilsen". Illustratively, by adding the word "Light" as a prefix or suffix to "Pale Pilsen", the result would either be "Light Pale Pilsen" or "Pale Pilsen Light", and certainly not "San Mig Light". This patently demonstrates that "San Mig Light" was not formed by adding a prefix and/or suffix to the root name of the existing brand "Pale Pilsen".
>
> Of course, respondent also claims that "San Mig Light" is a variant of "San Miguel Pale Pilsen". Although "San Miguel Pale Pilsen" is not among the brand names listed in Annexes C-1 and C-2 of the 1997 NIRC, respondent is of the position that the registered brand name "Pale Pilsen" actually pertains to "San Miguel Pale Pilsen". To support its position, respondent points out that on page 6 of SMC's 1999 Annual Report,[2] "San Miguel Pale Pilsen" was specifically recognized as one of SMC's existing brands; that on page 6 of SMC's Kaunlaran Magazine (January 2000, Issue No. 1, Volume No. 33,

---

[1] CTA Case No. 8209, September 12, 2014; penned by Honorable Presiding Justice Roman G. Del Rosario and concurred by Honorable Associate Justice Erlinda P. Uy.
[2] Exhibit "1", CTA Docket, p. 1122.

OM

Special),[3] "San Miguel Pale Pilsen" was particularly referred to as one of SMC's various brands.

It is a basic legal truism that a law may not be modified by mere public statements, nor by commercial advertisements, however persuasive they may be. Until the 1997 NIRC and its Annexes C-1 and C-2 are modified, "Pale Pilsen" (and not "San Miguel Pale Pilsen") remains the registered brand of SMC for purposes of the imposition of excise tax. Since Annexes C-1 and C-2 of the 1997 NIRC do not include the names "San Mig" or "San Miguel" or "San Miguel Pale Pilsen" as registered brands of SMC, there is no basis to hold that the word "Light" is actually a prefix or a suffix to the words "San Mig" or "San Miguel" or "San Miguel Pale Pilsen". Instead, the logical conclusion is that when "San Mig Light" was registered with the BIR and introduced in the market in 1999, it was regarded as an entirely new brand or new product of SMC.

Besides, even assuming *arguendo* that "San Miguel Pale Pilsen" is an existing brand of SMC as enumerated in Annexes C-1 and C-2 of the 1997 NIRC, there is still no basis to conclude that "San Mig Light" is a variant of "San Miguel Pale Pilsen". As defined under Section 143 of the 1997 NIRC, as amended by RA No. 9334, a variant of a brand shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand. If the word "Light" is considered a modifier suffixed to the root name "San Miguel Pale Pilsen", then the resulting brand name should be "San Miguel Pale Pilsen Light" and not "San Mig Light" as it is currently registered.

Since there is no existing brand to which "San Mig Light" can be a variant of, "San Mig Light" cannot, by any stretch of the statutory definition, be considered as a mere variant of an existing brand.

Respondent is also of the position that the fact that "San Mig Light" is described as a low calorie light beer with the same full-flavored taste and alcohol content as SMB (San Miguel Pale Pilsen)[4] proves that "San Mig Light" is a variant of "San Miguel Pale Pilsen".

---

[3] Exhibit "3", CTA Docket, p. 1172.
[4] Respondent's Memorandum, CTA Docket, p. 1316.

ɱ

The Court does not agree.

To be sure, neither taste nor alcohol content is relevant in determining whether "San Mig Light" is a variant of "Pale Pilsen" or "San Miguel Pale Pilsen", assuming the latter is an existing brand. In defining "variant of a brand", Section 143 of the 1997 NIRC, as amended by RA No. 9334, does not make any reference to the beer's calorie contents. In truth, to constitute a "variant of a brand", the law clearly requires that the brand was formed by prefixing or affixing a modifier to the root name of the existing, registered brand. As discussed above, the brand name "San Mig Light" was not formed by adding a prefix or suffix to the registered brand "Pale Pilsen".

More importantly, Sections 2 (10) and 4 (C) of RR No. 2-97 as earlier cited, provide that "new brands" shall refer to brands registered after January 1, 1997. There is no denying that "San Mig Light" was introduced in the market only in October 1999, or between January 1, 1997 and December 1, 2003; thus, it must necessarily fall within the classification of a "new brand". Not only that, the 1997 NIRC, as amended by RA No. 9334, provides that brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the BIR has determined them to belong and such classification shall not be revised except by an act of Congress.

Section 143 of the 1997 NIRC, as amended by RA No. 9334, states:

> "SEC. 143. Fermented Liquors. — There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except tuba, basi, tapuy and similar fermented liquors in accordance with the following schedule:
>
> xxx xxx xxx

OM

'New brand' shall mean a brand registered after the date of effectivity of R.A. No. 8240.

'Suggested net retail price' shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported fermented liquor are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket to which a particular new brand of fermented liquor, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket which a particular new brand of fermented liquors shall be classified: Provided, however, **That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. <u>Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress</u>.** *(Emphasis supplied)*

Relatedly, RR No. 03-2006 amplifies the prohibition against any reclassification of certain brands of alcoholic products, thus:

OM

SEC. 4. Prohibition Against Reclassification of Certain Brands of Alcohol and Tobacco Products. — **The tax classification of the following brands of alcohol and tobacco products shall remain in force until revised by Congress**:

(a) **Brands enumerated in Annexes "A," "B," "C" and "D" of R.A. No. 8240**;

(b) **Brands listed in RR Nos. 1-97 and 2-97**; and

(c) **New brands introduced in the domestic market between January 1, 1997 and December 31, 2003**.

With respect to any of the brands listed in Annexes "A," "B," "C" and "D" of R.A. No. 8240, the owner of the brand may file with the BIR a notarized request for the delisting thereof from the said Annexes. The filing of such request shall be deemed a waiver of the statutory protection against reclassification of such brand; Provided, further, that in the event that the same brand shall be manufactured or imported by another entity subsequent to the filing of such request, such brand shall be considered a new brand subject to the prohibition on downward reclassification prescribed under Section 5 of these Regulations." (Emphases supplied)

As oft-repeated, "San Mig Light" is not a variant of any of the brands enumerated in Annexes "C-1" and "C-2". It is a "new brand" introduced in the domestic market between January 1, 1997 and December 31, 2003. Its classification as a "new brand" was confirmed by the BIR as early as October 27, 1999, through Assistant Commissioner Albar,[5] and again on February 27, 2002, through Mr. Item,[6] the then Acting Chief of the BIR Large Taxpayers Assistance Division II. To now allow the BIR to re-classify "San Mig Light" from new brand to variant of an

[5] Exhibit "F", CTA Docket, p. 83.
[6] Exhibit "I", CTA Docket, p. 94.

existing brand, thereby increasing the product's tax base, would infringe upon the basic legal maxim that *what cannot be done directly cannot be done indirectly.*[7] Indeed, only Congress can lawfully make such re-classification.

In *British Tobacco vs. Commissioner of Internal Revenue*,[8] the Supreme Court discussed the purpose of the classification freeze provision and the danger that ensues without it, *viz.*:

> To our mind, the classification freeze provision was in the main the result of Congress's earnest efforts to improve the efficiency and effectivity of the tax administration over sin products while trying to balance the same with other State interests. **In particular, the questioned provision addressed Congress's administrative concerns regarding delegating too much authority to the DOF and BIR as this will open the tax system to potential areas for abuse and corruption. Congress may have reasonably conceived that a tax system which would give the least amount of discretion to the tax implementers would address the problems of tax avoidance and tax evasion.**
>
> To elaborate a little, Congress could have reasonably foreseen that, under the DOF proposal and the Senate Version, **the periodic reclassification of brands would tempt the cigarette manufacturers to manipulate their price levels or bribe the tax implementers in order to allow their brands to be classified at a lower tax bracket even if their net retail prices have already migrated to a higher tax bracket after the adjustment of the tax brackets to the increase in the consumer price index. Presumably, this could be done when a resurvey and reclassification is**

---
[7] Sps. Bulaong vs. Gonzales, G.R. No. 156318, September 5, 2011.
[8] G.R. No. 163583, April 15, 2009.

forthcoming. As briefly touched upon in the Congressional deliberations, the difference of the excise tax rate between the medium-priced and the high-priced tax brackets under RA 8240, prior to its amendment, was P3.36. For a moderately popular brand which sells around 100 million packs per year, this easily translates to P336,000,000. The incentive for tax avoidance, if not outright tax evasion, would clearly be present. Then again, the tax implementers may use the power to periodically adjust the tax rate and reclassify the brands as a tool to unduly oppress the taxpayer in order for the government to achieve its revenue targets for a given year.

Thus, Congress sought to, among others, simplify the whole tax system for sin products **to remove these potential areas of abuse and corruption from both the side of the taxpayer and the government**. Without doubt, the classification freeze provision was an integral part of this overall plan. This is in line with one of the avowed objectives of the assailed law "to simplify the tax administration and compliance with the tax laws that are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion." RA 9334 did not alter this classification freeze provision of RA 8240. On the contrary, Congress affirmed this freezing mechanism by clarifying the wording of the law. We can thus reasonably conclude, as the deliberations on RA 9334 readily show, that the administrative concerns in tax administration, which moved Congress to enact the classification freeze provision in RA 8240, were merely continued by RA 9334. Indeed, administrative concerns may provide a legitimate, rational basis for legislative classification. In the case at bar, these administrative concerns in the measurement and collection of excise taxes on sin products are readily apparent as afore-discussed.

om

> **Aside from the major concern regarding the elimination of potential areas for abuse and corruption from the tax administration of sin products, the legislative deliberations also show that the classification freeze provision was intended to generate buoyant and stable revenues for government**. With the frozen tax classifications, the revenue inflow would remain stable and the government would be able to predict with a greater degree of certainty the amount of taxes that a cigarette manufacturer would pay given the trend in its sales volume over time. The reason for this is that the previously classified cigarette brands would be prevented from moving either upward or downward their tax brackets despite the changes in their net retail prices in the future and, as a result, the amount of taxes due from them would remain predictable. The classification freeze provision would, thus, aid in the revenue planning of the government.
>
> All in all, the classification freeze provision addressed Congress's administrative concerns in the simplification of tax administration of sin products, **elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues**. Consequently, there can be no denial of the equal protection of the laws since the rational-basis test is amply satisfied. (Emphases supplied)

The discussion in the case of *Secretary of Finance vs. La Suerte Cigar and Cigarette Factory*[9] is also enlightening with regard to the rationale behind the one time classification of sin products:

> In order to implement RA 8240 following its effectivity on January 1, 1997, the BIR

[9] G.R. No. 166498, June 11, 2009.

OM

issued Revenue Regulations No. 1-97, dated December 13, 1996, **which mandates a <u>one-time classification</u> only. Upon their launch, new brands shall be initially taxed based on their suggested net retail price. Thereafter, a survey shall be conducted within three (3) months to determine their current net retail prices and, thus, fix their official tax classifications**. However, the BIR made a turnaround by issuing Revenue Regulations No. 9-2003, dated February 17, 2003, which partly amended Revenue Regulations No. 1-97, by authorizing the BIR to periodically reclassify new brands (i.e., every two years or earlier) based on their current net retail prices. Thereafter, the BIR issued Revenue Memorandum Order No. 6-2003, dated March 11, 2003, prescribing the guidelines on the implementation of Revenue Regulations No. 9-2003. This was patent error on the part of the BIR for being contrary to the plain text and legislative intent of RA 8240.

It is clear that the afore-quoted portions of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations 9-2003, and Revenue Memorandum Order No. 6-2003 unjustifiably emasculate the operation of Section 145 of the NIRC because they authorize the Commissioner of Internal Revenue to update the tax classification of new brands every two years or earlier subject only to its issuance of the appropriate Revenue Regulations, when nowhere in Section 145 is such authority granted to the Bureau. Unless expressly granted to the BIR, the power to reclassify cigarette brands remains a prerogative of the legislature which cannot be usurped by the former.

More importantly, as previously discussed, the clear legislative intent was for new brands to benefit from the same freezing mechanism accorded to Annex "D" brands. To

01

reiterate, in enacting RA 8240, Congress categorically rejected the DOF proposal and Senate Version which would have empowered the DOF and BIR to periodically adjust the excise tax rate and tax brackets, and to periodically resurvey and reclassify cigarette brands. (This resurvey and reclassification would have naturally encompassed both old and new brands.) It would thus, be absurd for us to conclude that Congress intended to allow the periodic reclassification of new brands by the BIR after their classification is determined based on their current net retail price while limiting the freezing of the classification to Annex "D" brands. Incidentally, Senator Ralph G. Recto expressed the following views during the deliberations on RA 9334, which later amended RA 8240:

Senator Recto: Because, like I said, when Congress agreed to adopt a specific tax system [under R.A. 8240], when Congress did not index the brackets, and Congress did not index the rates but only provided for a one rate increase in the year 2000, we shifted from ad valorem which was based on value to a system of specific which is based on volume. Congress then, in effect, determined the classification based on the prices at that particular period of time and classified these products accordingly.

Of course, Congress then decided on what will happen to the new brands or variants of existing brands. To favor government, a variant would be classified as the highest rate of tax for that particular brand. In case of a new brand, Mr. President, then the BIR should classify them. <u>But I do not think it was the intention of Congress then to give the BIR the authority to reclassify them every so often. I do not think it was the intention of Congress to allow the BIR to classify a new brand every two years, for example, because it will be</u>

cm

<u>arbitrary for the BIR to do so.</u> x x x (Emphasis supplied)

For these reasons, the amendments introduced by RA 9334 to RA 8240, insofar as the freezing mechanism is concerned, must be seen merely as underscoring the legislative intent already in place then, i.e. new brands as being covered by the freezing mechanism after their classification based on their current net retail prices.

xxx xxx xxx

It should be noted though that on August 8, 2003, the BIR issued Revenue Regulations No. 22-2003 which implemented the revised tax classifications of new brands based on their current net retail prices through the market survey conducted pursuant to Revenue Regulations No. 9-2003. Annex "A" of Revenue Regulations No. 22-2003 lists the result of the market survey and the corresponding recommended tax classification of the new brands therein aside from Lucky Strike. However, whether these other brands were illegally reclassified based on their actual current net retail prices by the BIR must be determined on a case-to-case basis because it is possible that these brands were classified based on their actual current net retail price for the first time in the year 2003 just like Lucky Strike. Thus, we shall not make any pronouncement as to the validity of the tax classifications of the other brands listed therein.

The reclassification of Astro and Memphis pursuant to Revenue Regulations Nos. 9-2003 and 22-2003 constitutes the prohibited reclassification contemplated in British American Tobacco v. Camacho. **It will be recalled that these brands were already classified by the BIR based on their current net retail prices in 1999 through a**

cm

> **market survey. Consequently, their upward reclassification in 2003 by the BIR through another market survey is a prohibited reclassification.**
>
> xxx xxx xxx
>
> In sum, the trial court correctly ruled that Revenue Regulations Nos. 9-2003 and 22-2003 are void insofar as they empower the BIR to periodically review or re-determine the current net retail prices of cigarettes for purposes of updating their tax classification every two years or earlier consistent with the Court's pronouncements in British American Tobacco v. Camacho. Consequently, the upward reclassification of Astro and Memphis in Annex "A" of Revenue Regulations No. 22-2003 is invalid. (Emphases supplied and Citations omitted)

The foregoing pronouncements of the Supreme Court emphasize the mandatory nature of the classification freeze mechanism. As applied to the present controversy, the notices and letters issued by the BIR, which *re-classifies* "San Mig Light" as a variant of an existing brand, is violative of such freeze mechanism.

Otherwise stated, the re-classification of a product from new brand to a variant of an existing brand, after a previous classification has already been made, necessarily engenders the same evil the law seeks to prevent -- the existence of uncertainty (and flexibility in a way of speaking) -- on the tax applicable to beer. Parenthetically, in the absence of a classification freeze provision, both the government and the taxpayers would be exposed to the undesirable scheme of changing the classification of the product to fall within the category that could either result in an increased tax rate or reduced tax rate, depending on the identity of the taxpayer as well as of the implementing officials. Precisely, the classification freeze provision seeks to address and prevent either the possible abuse of discretion by the BIR or any unfair business practice on the part of the taxpayer that thread on tax evasion. Incidentally, in fixing the selling price of

m

their products, manufacturers take into consideration the tax component thereof. To alter the classification of a product that results in higher tax bracket, after it has been previously classified under a lower tax bracket, is anathema to a fair and just taxation.

There is no denying that "San Mig Light" is identifiable with SMC as its manufacturer. But distinction should be made between the attribution of a product to a manufacturer and the attribution of a brand to an existing brand of the manufacturer. In the first instance, the goodwill of a manufacturer is entirely irrelevant in determining whether a brand is a variant of an existing brand; but not so with respect to the second instance. To state that SMC -- capitalizing on the goodwill of its business name -- cannot introduce a "new brand", as long as it is attributable to it as a manufacturer is absurd, to say the least. The law never intends the absurd.

The Court is not unaware of the *1993* case of **Asia Brewery, Inc. vs. The Honorable Court of Appeals and San Miguel Corporation**[10] where the Supreme Court held that the word *"pale pilsen"* are generic words descriptive of the color (pale) and of a type of beer (pilsen) and that the word "pale pilsen' may not be appropriated by SMC for its exclusive use. Suffice it to say that notwithstanding afore-stated 1993 pronouncement, the legislature passed RA No. 8240 in 1996 and RA No. 8424 in 1997 which recognized the registration of "Pale Pilsen" as one of SMC's beer products. Unless and until RA No. 8240 and RA No. 8424 *vis-à-vis* their Annexes are rendered void or unconstitutional, "Pale Pilsen" remains petitioner SMB's brand for purposes of classification of beer products and the imposition of excise tax thereon.

All told, this Court concludes that "San Mig Light" is a new brand and not a variant of any of SMC's or petitioner SMB's existing beer products. Being a new brand that is being sold at the net retail price of P21.15 per liter, or bottle, less VAT and specific tax, the same should only be taxed at the rate of P12.30 per liter.

---

[10] G.R. No. 103543, July 5, 1993.

To be sure, the freeze classification provision in Section 143 of the NIRC of 1997, as amended, safeguards against potential abuse and corruption from both the taxpayer and the government.

All told, I VOTE to **DENY** the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1292 (CTA CASE Nos. 8591)
	Present: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and RINGPIS-LIBAN, *JJ.*
-versus-	
SAN MIGUEL BREWERY INC., A Subsidiary of San Miguel Corporation, *Respondent*	Promulgated: SEP 28 2016 11:20 a.m.

x---x

DISSENTING OPINION

MINDARO-GRULLA, J.:

With all due respect, I dissent and maintain my position in the earlier cases of *Commissioner of Internal Revenue vs. San Miguel Brewery Inc., a subsidiary of San Miguel Corporation,*[1] *San Miguel Brewery Inc., a subsidiary of San Miguel Corporation vs. Commissioner of Internal Revenue,*[2] and *Commissioner of Internal Revenue vs. San Miguel Brewery Inc., a subsidiary of San Miguel Corporation,*[3] that the product, "San Mig Light" marketed as a "low calorie pale pilsen", is a variant of "San Miguel Pale Pilsen" described as "expertly brewed beer". It is likewise my opinion that the CIR is precluded from reclassifying the net retail prices of existing and those brands introduced between January 1, 1997 and December 31, 2003 but not in properly

---

[1] CTA EB No. 755 (CTA Case No. 7708), promulgated on September 20, 2012.
[2] CTA Case No. 8209, promulgated on September 12, 2014.
[3] CTA EB No. 1279 (CTA Case No. 8400), promulgated on November 26, 2015.

determining a brand as variant of a brand erroneously determined as new brand. The classification freeze provision pertains not to the determination of whether a brand is indeed a new brand or variant of a brand but rather to the specific range of net retail prices[4] of brand upon which is levied, assessed and collected a rate of excise tax.[5]

Thus, as elucidated in my dissenting opinion in CTA EB No. 755 (CTA Case No. 7708), involving the same issues and parties but pertaining to a different taxable year, *viz*:

> "xxx [I]t is noteworthy to cite the intent and purpose of the legislature in defining a variant of a brand specifically the integration of prefix or suffix in the definition. In Senate's deliberation on House Bill No. 7198 (the precursor of RA 8240), the interpellations between Senator Juan Ponce Enrile and Senators Miriam Santiago would be relevant.
>
> > "Senator Santiago:
> >
> > Mr. President, allow me to begin with the elementary observation that when we institute tax reforms, we should consider certain factors including ease of administering the tax, simplicity of the tax system, the capability of the tax machinery to implement the tax laws and the avoidance of the tax leaks that encourage tax evasion.
> >
> > xxx, [I] still need to raise certain questions even only for clarification of those who will later be tasked with the implementation of this law.
> >
> > xxx. I am talking about variants of existing brands.

---

[4] *British American Tobacco vs. Camacho,* et al., G.R. No. 162583, August 20, 2008.

[5] Revenue Regulations No. 03-06

(k) CLASSIFICATION - shall refer to the specific range of net retail prices of brands of alcohol or tobacco products upon which is levied, assessed and collected a rate of excise tax specified by the Act, inclusive of the tax rates imposed on certain brands under Annexes A, B, C and D of R.A. No. 8240, as implemented by Revenue Regulations No. 17-99.

I would like to lay the basis for my question. I find it confusing that the taxation of variants is defined in this manner. The definition of a variant "is made to depend on the prefix or the suffix. It is based on the name although referring to the same product.

The bill provides that the tax shall be based on the highest value. Tax wise, it would be unfair for manufacturer who would wish to introduce cheaper and more affordable versions of their products. It defeats the purpose of coming out with lower-priced products.

For example, let us assume that a beer product is well-known in the market. In order to make it available to more consumers, the manufacturer, let us assume, comes out with the cheaper version of the original and attaches the name of the original to this new product in order to assure consumers that the new one is backed by the same quality guarantee as the original one. It seems to be absurd for the new product to be taxed as much as the original product in this light.

My question then is: Should the variant not be that, which is nearest in value and not which is highest in value? (Emphasis supplied)

Senator Enrile:

Mr. President, to answer the question briefly, I would like to state here that from a purely business viewpoint, probably I will concede that there is some merit to the argument just stated by the distinguished Senator from Iloilo. But on the other hand, from a purely fiscal taxation position, to discard the provision that we have

> suggested would open a very wide door for tax avoidance, if not tax evasion because a beer is beer. It is just a question of brands.
>
> What is the composition of beer? Water and some fermenting elements- malt and some other fermenting elements. But if we not put this, those brands that are already well-known in the market could be marketed under almost an identical name with a prefix, suffix or a variant and put in a lower category in order to enjoy a lower tax level, in which case, the government will be losing. That is the purpose of this measure." (Emphasis supplied)

Evidently, **when the legislature defines a "variant of a brand", the legislature refers to the word "brand" as those brand marketed to the consumers and that it intended to tax those brands marketed under almost an identical name with a prefix or suffix of brands that are already well-known in the market.** Moreover, the omission in the law of the other definition of a variant of a brand such as - "a different brand which carries the same logo or design of the existing brand" in fact reveals the legislative intent to adopt the purpose to tax those brands who ride on the popularity of previously registered brand marketed under almost an identical name with a prefix, suffix or a variant.

While in Annexes C1 and C2 of RA 8240, the list contained San Miguel Corporation as manufacturer and brand "RPT in Cans 330 ml (24)" and "pale pilsen 320 ml (24)", as high priced brands and medium priced brands respectively, it is not the brand contemplated by the legislature as being marketed to the consumer. **RPT is hardly a brand name marketed by SMC or mere "pale pilsen"; rather, it is "San Miguel Pale Pilsen". "RPT in Cans" (Ring Pull Tab) refers to San Miguel Pale Pilsen in can and "Pale Pilsen 320 ml" to San Miguel Pale Pilsen in bottles. Visibly, SMC incorporated its tradename in the product name "San Miguel Pale Pilsen" and trademark thereon. Moreover, in *Asia Brewery, Inc. vs. The Honorable Court of Appeals and San Miguel Corporation*** [G.R. No. ∠

103543, July 5, 1993], **the Supreme Court held that the word "pale pilsen" is mere generic words, non-registerable and not appropriable by any beer manufacturer**, to wit:

> 'There is hardly any dispute that the dominant feature of SMC's trademark is the name of the product: SAN MIGUEL PALE PILSEN, written in white Gothic letters with elaborate serifs at the beginning and end of the letters "S" and "M" on an amber background across the upper portion of the rectangular design.
>
> XXX XXX XXX
>
> *The fact that the words pale pilsen are part of ABI's trademark does not constitute an infringement of SMC's trademark: SAN MIGUEL PALE PILSEN, for "pale pilsen" are generic words descriptive of the color ("pale"), of a type of beer ("pilsen"), which is a light bohemian beer with a strong hops flavor that originated in the City of Pilsen in Czechoslovakia and became famous in the Middle Ages. (Webster's Third New International Dictionary of the English Language, Unabridged. Edited by Philip Babcock Gave. Springfield, Mass.: G & C Merriam Co., [c] 1976, page 1716.) "Pi/sen" is a "primarily geographically descriptive word," (Sec. 4, subpar. [e] Republic Act No. 166, as inserted by Sec. 2 of R.A. No. 638) hence, nonregisterable and not appropriable by any beer manufacturer. xxx.'*

Even if mere "pale pilsen" or "RPT" (ring pull tab) were registered as SMC's brand we shall consider the name of the product as it appears on the product itself. The word "San Miguel Pale Pilsen" describes as "expertly brewed original full-flavored" and not mere "Pale Pilsen" which is non-registerable and not appropriable by any beer manufacturer, against "San Mig Light" describe as a "low calorie pale pilsen".

XXX

Unless erroneous, courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce. Moreover, the need for certainty and predictability in the implementation of tax laws is crucial in the scheme of judicial tax administration. Applying Revenue Regulations No. 03-06 implementing RA 9334 which took effect on January 1, 2005, "San Mig Light" described as a "low calorie pale pilsen" is a variant of "San Miguel Pale Pilsen" described as "expertly brewed original full-flavored". Said revenue regulations, in general have the force and effect, or partake of the nature, of a statute.

XXX

Likewise, Revenue Regulations No. 03-06, clarifies that any variation in the color and/or design of the label (such as logo, font, picturegram, and the like), manner and/or form of packaging or size of container of the brand originally registered with the BIR shall not, by itself, be deemed an introduction of a new brand or a variant of a brand. Thus, the differences or similarity in the packaging of San Miguel Pale Pilsen and San Mig Light, is not by itself deemed an introduction of a new brand or a variant of a brand. From the definition of "variant of a brand" in RA 9334 which took effect on January 1, 2005, the revenue regulation implementing the said provision, as well as the legislative deliberation clarifying the purpose and intent behind the law, as well as the findings of CIR that of the existing beer products of SMC only "San Mig Light" and "San Miguel Pale Pilsen" has the word "pale pilsen" in its label. Thus, it can be concluded that "San Mig Light" described as low calorie pale pilsen is a "variant of a brand" of "San Miguel Pale Pilsen".

In view of the foregoing, I vote to grant the petition docketed as CTA EB No. 1292.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice