REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE and OFFICER-IN-CHARGE, LARGE TAXPAYERS SERVICE, BUREAU OF INTERNAL REVENUE,
Respondent.

CTA Case Nos. 7052 and 7053

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SAN MIGUEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7405

Members:
ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:

OCT 18 2011 ; 2:30 pm

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D E C I S I O N

UY, *J*.:

Before the Court are consolidated Petitions for Review filed by San Miguel Corporation, praying for the following:

(a) in **CTA Case Nos. 7052 and 7053**:

(i) the reversal and setting aside of the denial of petitioner's Protests/Requests for Reconsideration dated May 12, 2004 and July 7, 2004, as contained in the letters dated August 17, 2004 and August 20, 2004 of respondent(s); and

(ii) the cancellation of Assessment Notice No. LTS TF 004-06-02 for alleged deficiency excise tax in the total amount of ₱ 876,098,898.83, inclusive of interest for the period covering November 1999 to January 7, 2004, and Assessment Notice No. LTS TF 129-05-04 for the alleged deficiency excise tax in the total amount of ₱ 30,763,133.68, inclusive of interest for the period covering January 8, 2004 to January 29, 2004, respectively; and

(b) in **CTA Case No. 7405**, a declaration that petitioner is entitled to a refund or tax credit in the amount of ₱ 782,238,161.47 paid by it to respondent Commissioner of Internal Revenue as excise taxes on "San Mig Light" for the period covering February 2, 2004 to November 30, 2005, with legal interest.

THE FACTS

Petitioner San Miguel Corporation is 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.[1] One of the beer products being manufactured by petitioner is "San Mig Light".[2]

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[1] Par. 1.01, Joint Stipulation of Facts, Documents and Issues (JSFDI), Docket-Vol. I (CTA Case No. 7052), p. 503. Par. 1.01, Stipulation of Facts, Documents and Issues (in CTA Case No. 7405) (SFDI), Docket-Vol. I (CTA Case No. 7052), pp. 2170 to 2171.

[2] Par. 1.04, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 505. Par. 1.03, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2171.

On the other hand, respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR), with office address at the BIR National Office Building, Diliman, Quezon City.[3] For CTA Case Nos. 7052 and 7053, respondent Officer-In-Charge (OIC) is in charge of the Large Taxpayers Service of the BIR.[4]

On October 19, 1999, Mr. Virgilio S. De Guzman, Assistant Vice President, SMBP Finance of petitioner, wrote Assistant Commissioner Leonardo B. Albar of the Excise Tax Services, BIR, requesting for the registration of, and authority to manufacture "San Mig Light", to be taxed at ₱ 12.15 per liter, submitting a sample bottle and other pertinent documents.[5] In a letter dated October 27, 1999, Assistant Commissioner Albar granted petitioner's request.[6]

On November 3, 1999, due to the change in the net retail price of "San Mig Light", Mr. De Guzman advised Assistant Commissioner Albar that "San Mig Light" will be sold at the suggested net retail price of ₱ 21.15 per liter, or ₱ 6.98 per bottle, less value-added tax and specific tax, to be taxed at ₱ 9.15 per liter.[7]

From the time of its registration as a new brand in October 1999 and its production in November 1999, "San Mig Light" products have been withdrawn and sold, and taxes have been paid on such removals, on the

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[3] Par. 1.02, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 504. Par. 1.02, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2171.
[4] Par. 1.03, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 504.
[5] Par. 1.05, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 505. Par. 1.04, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2171.
[6] Par. 1.06, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 505. Par. 1.05, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2172.
[7] Par. 1.07, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 506. Par. 1.06, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2171.

basis of its registration and tax rate as a new brand.[8] In connection with the aforesaid removals, the following reports are prepared by petitioner and submitted to the BIR:

1. *Daily Official Transcript Sheet* (OTS) – This is prepared daily by each SMC brewery. It contains, among others, information as to the tax rate per liter and amount of tax. The report is signed by the San Miguel Beer Division (SMBD) Plant Finance Officer or Plant Manager and signed/acknowledged by the BIR Revenue Officer on Premise (ROOP) and submitted to the Large Taxpayer-Field Operations Division of the BIR National Office.
2. *Monthly Official Transcript Sheet* – This is prepared monthly by each SMC brewery. It is a consolidation of the information contained in the Daily OTS, including that on tax rate and tax amount. It is also signed by the SMBD Plant Officer or Plant Manager, signed/acknowledged by the BIR ROOP, and submitted to the Large Taxpayer-Field Operations Division of the BIR National Office.
3. *Summary of Removals (Total Removals)* – This is prepared monthly by the SMBD-Division Office, signed by the Division Finance Manager of petitioner, and signed by Internal Revenue Officers. It contains information on the total removals from the five (5) plants and removals per plant for a three-month moving period. It shows, among others, data on the tax rate and tax amount. It is submitted to the Excise

[8] Par. 1.08, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 506.

Taxpayers Assistance Division of the BIR National Office on or before the fifth (5^{th}) day of the following month.[9]

On January 28, 2002, Mr. Alfredo R. Villacorte, Vice President and Manager, Group Tax Services, of petitioner, wrote to the Chief, Large Taxpayers Assistance Division II (LTAD II), of the BIR, requesting information on the tax rate and classification of "San Mig Light" and another beer product of the company, "Gold Eagle King".[10] The request was made because the previously-issued permits for said beer products failed to specify the excise tax rate and classification thereof. In the same request, Mr. Villacorte stated pertinent facts relating to the same products, to wit:

"1. Brand Name:	SAN MIG LIGHT
Excise Tax Rate:	P 9.15/liter
Basis:	Net Retail Price of P 21.15/liter at the time of introduction as new brand pursuant to Revenue Regulations 2-97;
2. Brand Name:	GOLD EAGLE KING
Excise Tax Rate:	P6.15/liter
Basis:	Taxed as bottle-size variant of Gold Eagle Beer pursuant to Revenue Regulation 2-97".[11]

Subsequently, on February 7, 2002, Mr. Conrado P. Item, Acting Chief of the LTAD II, BIR, replied to the request of Mr. Villacorte,[12] informing the latter that the tax classification and rates petitioner are currently using are in order.[13]

On May 28, 2002, the BIR, through Assistant Commissioner Edwin R. Abella of the BIR Large Taxpayers Service, issued a Notice of Discrepancy to

[9] Par. 1.09, JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 506 to 508.
[10] Par. 1.07, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2172.
[11] Annex "D" vis-à-vis Par. 2.04, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 2179 and 2201.
[12] Par. 1.08, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2172.
[13] Annex "E" vis-à-vis Par. 2.05, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 2179 and 2210.

petitioner, stating, among others, that: "San Mig Lights, a variant of your existing beer products, was subjected to excise tax rate of ₱ 10.76 for the year 1999 instead of ₱ 19.91 per liter", and that "[a]ccordingly, for the year 2000, the 12% increase should be based at the latter rate pursuant to Section 143(c)(2) of the (1997 Tax Code)." The said Notice further states that there was found due from petitioner, among others, an alleged deficiency excise tax in the amount of ₱ 824,750,204.97 for the period covering 1999 to April 2002, representing "[s]pecific tax due on removals of San Mig Pale Pilsen Light". Petitioner was then requested to send a representative to the BIR for a conference.[14]

In the letter-reply dated July 9, 2002 of Mr. Bienvenido N. Banas, Finance Manager, Beer Division of petitioner, to Assistant Commissioner Abella, petitioner requested for the withdrawal of the Notice of Discrepancy dated May 28, 2002, on the grounds stated in the aforesaid letter-reply. In support thereof, petitioner stated, *inter alia*, that "San Mig Light" is not a variant of its existing beer brand.[15]

On October 14, 2002, the BIR, through Assistant Commissioner Abella, sent its letter-rejoinder to petitioner, denying the latter's letter-reply dated July 9, 2002.[16] In the said letter-rejoinder, it was stated, among others, that "San Mig Light Pale Pilsen" is a variant of "San Miguel Pale Pilsen". In

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[14] Par. 1.10, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 508. Par. 1.09, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 2172 to 2173.
[15] Par. 1.11, JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 508 to 509. Par. 1.10, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2173.
[16] Par. 1.12, and Annex "I" vis-à-vis Par. 2.09, JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 509, 518, and 552 to 556.

support of this finding, the BIR cited certain statements made in "Kaunlaran", a publication of petitioner, and in the latter's Annual Report.[17]

On November 20, 2002, Alfredo R. Villacorte, Vice President and Manager of the Group Tax Services of petitioner replied to Assistant Commissioner Abella,[18] praying, among others, that "San Mig Light" be reconfirmed as a new brand and that the deficiency assessment be set aside and the demand for payment withdrawn on the grounds discussed in the letter.[19]

Subsequently, three (3) conferences were held on the "San Mig Light" tax classification issue between petitioner and the BIR's Management Committee headed by then Commissioner of Internal Revenue Guillermo Parayno, Jr. At the conference held on December 16, 2003, Commissioner Parayno announced that the final voting on this particular issue by the members of the said Committee was not unanimous: five (5) members voted that "San Mig Light" is a variant of "Pale Pilsen in can", and two (2) members voted that it is a variant of "Premium", a high-priced beer product of petitioner that was no longer being manufactured.[20]

Nevertheless, on January 6, 2004, respondent CIR sent a letter to petitioner, concluding that, based on the grounds stated therein, "San Mig Light" is a variant of "San Miguel Pale Pilsen in can", and stating that an assessment for deficiency excise tax against petitioner was forthcoming.[21] In the meantime, on February 4, 2004, the BIR, through Deputy Commissioner

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[17] Par. 1.11, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2173.
[18] Par. 1.13, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 509.
[19] Par. 1.12, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 2173 to 2174.
[20] Par. 1.13, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2174.
[21] Par. 1.14, JSFDI, Docket-Vol. I (CTA Case No. 7052), p. 509. Par. 1.14, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2174.

Aguirre, issued a Notice of Discrepancy to petitioner, stating, among others, that there was found due from petitioner an alleged deficiency excise tax in the amount of ₱ 28,876,108.84 for the period January 8, 2004 to January 29, 2004.[22]

Correspondingly, respondent OIC issued two (2) preliminary assessment notices against petitioner, one, dated January 28, 2004, and the other, dated March 24, 2004, stating that it is liable for deficiency excise tax on removals of "San Mig Light" for periods covering 1999 to January 7, 2004; and January 8, 2004 to January 29, 2004, respectively. The basis for the Preliminary Assessment Notice (PAN) dated January 28, 2004 is that "San Mig Light" is a "variant of [petitioner's] existing beer products", without specifying which particular brand "San Mig Light" is a variant of; while that of the PAN dated March 24, 2004 is that "San Mig Light" is "variant of RPT in can (San Miguel Beer Pale Pilsen)".[23]

On February 11, 2004, petitioner submitted a letter dated February 10, 2004 in response to the PAN dated January 28, 2004, alleging, among others, that based on the records of the BIR, from the time of its registration as a new brand in October 1999 and its launching in November 1999, "San Mig Light" products have been withdrawn and sold, and taxes have been paid on such removals, on the basis of its registration and tax rate as a new brand, with the knowledge and approval of the BIR. Petitioner then argued that every act of withdrawal of "San Mig Light" from the place of production is,

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[22] Par. 1.18, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2176.
[23] Pars. 1.16 and 1.23, JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 510 and 513. Pars. 1.15 and 1.19, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 2175 and 2176.

therefore, confirmatory of its classification as a new brand and of its excise tax rate of ₱ 9.15 per liter, later adjusted to ₱ 10.25 by operation of law.[24]

Thereafter, respondent OIC issued two (2) formal letters of demand with accompanying assessment notices, to wit: that which is dated April 12, 2004 (Assessment Notice No. LTS TF 004-06-02)[25], requesting petitioner to pay the total amount of ₱ 876,098,898.83, representing alleged deficiency excise tax due on removals of "San Mig Light" for the period from November to December 1999, and January 2000 to April 30, 2004, including alleged interest computed up to April 30, 2004; and that which is dated May 26, 2004 (Assessment Notice No. TF 129-05-04), requesting petitioner to pay the total amount of ₱ 30,763,133.68 representing deficiency excise tax, including 20% interest until June 30, 2004, on removals of "San Mig Light" for the period January 8, 2004 to January 29, 2004.[26]

On May 12, 2004 and July 7, 2004, petitioner respectively filed Protests/Requests for Reconsideration on the formal letters of demand with their respective accompanying assessment notices, requesting for the cancellation of the deficiency excise tax assessments.[27] However, the said protests/requests for reconsideration were respectively denied by respondent OIC on August 17, 2004 and August 20, 2004 on the grounds of "lack of legal

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[24] Par. 1.17, and Annex "M" vis-à-vis Par. 2.13, JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 510, 519, and 579 to 585.
[25] Annex "N" vis-à-vis Par. 2.14, JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 519 and 592.
[26] Pars. 1.18 and 1.25, JSFDI, and Pars. 1.16 and 1.20, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 510 to 514, 513 to 514, 2175, and 2176 to 2177.
[27] Pars. 1.19 and 1.25, JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 511 and 514.

and factual basis" and that San Mig Light is a "variant of RPT in can (San Miguel Beer Pale Pilsen in can)."[28]

Consequently, petitioner filed two (2) Petitions for Review on September 17, 2004 and on September 22, 2004, docketed as: (a) CTA Case No. 7052 and (b) CTA Case No. 7053.[29] Respondents filed their Answer on October 27, 2004 in CTA Case No. 7052,[30] stating the following special and affirmative defenses as follows:

> "5. The assessment was issued in accordance with the existing law and regulations.
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> The factual and legal bases for the issuance of assessment as required under Section 228 of the Tax Code and Revenue Regulations No. 12-99 are embodied in the Preliminary Assessment Notice ("PAN" for brevity) and Final Assessment Notice ("FAN" for brevity) as well as in the Formal Letter of Demand dated 28 January 2004 and 12 April 2004, respectively, hence, the validity of the assessment. It is clearly indicated therein that the assessment is for the collection of deficiency tax due on the withdrawals of a variant of petitioner's beer products.
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> The PAN dated 28 January was issued in substantial compliance with the requisites of Section 228 of the Tax Code, as amended. In the details of the computation of deficiency excise tax attached to and forming part of the PAN, the receipt of which was duly acknowledged by the petitioner's representative on January 29, 2004, the information that the Bureau of Internal Revenue ('BIR' for brevity) is considering San Mig Light ('SML' for brevity) as a variant of San Miguel Beer Pale Pilsen (SMB Pale Pilsen) is clearly indicated therein. Accordingly, the said PAN is valid because it was issued in substantial compliance with the requisites of Section 228 of the National Internal Revenue Code of 1997, as well as the provisions of Revenue Regulations No. 12-99. Furthermore, the primary consideration should be the intent and the substance of the PAN, and not merely the form used on the matter.
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> It is worthy of emphasis that even before the issuance of the PAN, the petitioner was officially informed, in a letter dated January 6, 2004 signed by the Commissioner of Internal Revenue, that SML is

[28] Pars. 1.22 and 1.26, JSFDI, and Pars. 1.17 and 1.21, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 512, 514 to 515, 2175 to 2176, and 2177.
[29] Par. 1.22, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 2177.
[30] Docket-Vol. I (CTA Case No. 7052), pp. 323 to 345.

a variant of SMB Pale Pilsen and all its removals of SML from the time of its introduction in the market should be taxed as a variant of SMB Pale Pilsen. In the said letter, petitioner was officially informed that 'removals of beer products bearing the trade name 'San Mig Light' a variant of 'San Miguel Pale Pilsen in can', is subject to the same excise tax rate of the latter, i.e., P13.61 per liter, in accordance with the provisions of Section 143 of the National Internal Revenue Code of 1997, as implemented by Revenue Regulations No. 2-97 and 17-99'. Petitioner was likewise informed in the said letter that an assessment for deficiency excise taxes due from past withdrawals of San Miguel Light is forthcoming. Hence, the principle of equity being invoked by the petitioner shall not apply.

Such being the case, the petitioner cannot claim that it was not duly informed of what specific existing beer product SML is a variant of.

Moreover, the issuance of the PAN did not run counter against the provision of Section 143 of the Tax Code that explicitly provides for the prohibition on the revision of the tax classification of existing brands as of October 1, 1996. The tax assessment merely corrected the erroneous classification of SML as a new brand rather than as a variant of an existing brand. Furthermore, the erroneous pricing by the petitioner due to underpayment of the correct excise tax is not a valid excuse for the BIR to set aside the excise tax assessment. Taxes are the lifeblood of the country. The Government should not be prevented from correcting the mistakes of its agents in order that the correct amount of taxes may be imposed. In addition, the Government should not be made to suffer for the petitioner's erroneous interpretation of the law.

As mentioned above, the letter of Mr. Conrado P. Item of the BIR is not a ruling. Hence, the argument on non-retroactivity of any revocation, modification or reversal of a ruling or circular promulgated by the BIR Commissioner, if the same will be prejudicial to the taxpayer, will not apply.

6. Under the existing procedures in the payment of taxes, taxpayers are required to pay their taxes based on self-assessment system with the Government, relying heavily on the honesty of taxpayers. Such being the case, any payment made, even made as a condition for the withdrawal of the product from the place of production, cannot be considered as a confirmation of the correctness of such payment. This is the very reason the BIR conducts post audits of declarations made by taxpayers, and which, more often than not, results to deficiency assessments. San Miguel Corporation, the petitioner in this case, is not an exception, hence, the issuance of PAN and FAN under Section 228 of the Tax Code and its implementing revenue regulations. Thus, the payments

made on every removal of SML as new brand cannot be taken as a confirmation on the correctness of such tax classification.

It is noteworthy that the petitioner has started paying on January 30, 2004 the excise tax under the highest tax classification of San Miguel Pale Pilsen (RPT in cans). This is a clear indication of the taxpayer's admission on the correctness of the SML's tax classification as a variant of an existing brand.

7. SML is a variant of an existing beer brand based on the following:

7.a) The complete brand name of SML is San Mig Light Pale Pilsen. In Annexes C-1 and C-2 of the law, the parent brands of SML are RPT in cans, Pale Pilsen, and Super Dry. As shown in the packages of the said brands, the registered RPT (or Ring-Pull Tab) in can 330 ml. (24) refers to San Miguel Beer Pale Pilsen (SMB Pale Pilsen), while Pale Pilsen refers to San Miguel Beer Pale Pilsen in bottles. Accordingly, the root name of the existing brand is 'Pale Pilsen'.

Out of these three (3) variants, RPT (Ring-Pull Tab) or San Miguel Pale Pilsen in can 330 ml. (24), has the highest tax classification at the time San Mig Light was introduced. Accordingly, pursuant to the provisions of Section 143 of the Tax Code, the proper tax classification of SML for excise tax purposes is that of a variant of RPT (SMB Pale Pilsen) in can.

7.b) SML falls squarely within the second part of the definition of a variant of brand under Section 143 of the Tax Code 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**. SML is really a variant of an existing brand which falls squarely within the second part of the definition provided under Section143 of the Tax Code. A comparison of the logos and designs of 'San Miguel Pale Pilsen' and 'San Mig Lights' have almost the same label font and design layout, bearing the striped diagonal lines. And as compared with the SMC's other existing brands, only the labels of San Mig Light and San Miguel Beer bear the word 'Pale Pilsen'. Except for their colors, the designs of the labels of these pale pilsen beer brands are almost identical. Accordingly, SML is a variant of an existing brand.

7.c) The publication of San Miguel Kaunlaran contains statements that SML is a variant of Pale Pilsen with the same full flavored taste and alcohol content or a low calorie variant. SMC also admits on the bottle itself that SML is a low calorie pale pilsen.

7.d) Revenue Memorandum Order ('RMO' for brevity) No. 6-2003 was issued in order to prescribe the guidelines and procedures in the establishments of current net retail prices of new brands of cigarettes and alcohol products pursuant to Revenue Regulations No. 9-2003. Its objectives are as follows:

(1) Provide uniform guidelines and procedures for establishing the current net retail prices of new brands of cigarettes, fermented liquors, wines and distilled spirits;

(2) Delineate the duties and responsibilities of all concerned revenue officials and personnel who are responsible in the determination of the current net retail prices of the aforementioned excisable products;

(3) Prescribe uniform reporting requirements for the effective determination of such current net retail prices as well as the creation of updated database containing relevant information on such excisable products.

Paragraph II (2) of the above-mentioned RMO states '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) shall be used as reference document for the conduct of the survey'. Considering that the subject, objectives and policies of RMO 6-2003 do not affirm any tax classification and rate but rather make use of the said master list for want of reference document for survey, said master list cannot be the petitioner's legal basis for treating SML as a new brand.

Moreover, the said master list was prepared on the basis of the available records of the BIR notwithstanding the proper classification of the registered brands. Likewise, granting that SML was erroneously included in the master list as one of the new brands, the government is not estopped from correcting such error.

7.e) Hence, all removals of the San Mig Light from the time it was introduced in the market should be subject to an excise tax rate of P12.52 and subsequently increased to P13.61 per liter after effecting a 12% increase starting January 1, 2000 pursuant to the provisions of Section 143 (c) of the Tax Code, as amended, and as implemented by Revenue Regulations Nos. 2-97 and 17-99.

8. It is well settled rule in taxation that the Government is not estopped by the mistakes or errors of its agents; an erroneous

application and enforcement of law by public officer do not prevent the subsequent correct application of statutes.

The letter-reply dated October 27, 1999 issued by ACIR Leonardo B. Albar merely granted the registration of San Miguel Corporation commercial label for beer bearing the trademark 'San Miguel Light' Pale Pilsen, for domestic sale or export, and to produce the same at their brewery plant in Polo, Valenzuela. The said letter did not categorically state that San Miguel Light is a new brand.

As justified in the Commissioner of Internal Revenue's letter dated January 6, 2004, the letter dated February 7, 2002 of Mr. Conrado Item is without any legal effect whatsoever, and cannot bind the BIR because the said letter is not considered as a ruling. It should be noted that the letter dated 07 February 2002 was written in response to a letter of the petitioner, thru Mr. Alfredo R. Villacorte, Vice President and Tax Manager, dated 28 January 2002. The latter letter of the petitioner merely requested for the issuance of a certification stating therein which tax classification and rate the BIR is subjecting the petitioner's San Mig Light and Gold Eagle King's brands, and not a request for a ruling as to whether or not in fact the classification of the San Mig Light and Gold Eagle King brands and the taxes they are paying for said brands are proper or not.

Assuming *arguendo* that Mr. Conrado Item's letter is a ruling on the matter, it must be noted that pursuant to Section 4 of the Tax Code, the power to interpret the provisions of the said Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner subject to review by the Secretary of Finance. Likewise, the provisions of Section 7 of the same Code states that the power to recommend the promulgation of rules and regulations by the Secretary of Finance, and to issue rulings of first impression or to reverse or revoke or modify any existing ruling of the BIR cannot be delegated. Accordingly, the said letter is considered null and void, hence, cannot bind the BIR.

Furthermore, the rule of estoppel cannot be invoked by any taxpayer in order to preclude collection of taxes that are rightfully due to the government, as in a case where the BIR agents made unauthorized pronouncement on a taxpayer's tax liabilities. The Supreme Court ruled that even if said agents were so authorized, their recommendation are always subject to review of their superiors who may countermand or affirm them. The government is never estopped to collect legitimate taxes because of errors committed by its agents (*Visayan Cebu Terminal Co., Inc. v. Commissioner of Internal Revenue, L-19530 and 19444, February 27, 1965*).

It is a settled rule of law that in the performance of its governmental functions, the State cannot be estopped by the neglect of its agents and officers. Nowhere is this more true than in the field of taxation. Estoppel does not apply to preclude the subsequent findings on taxability (*Commissioner of Internal Revenue v. Abad, et al., L-19627, June 27, 1968; Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation, G.R. No. 66838, April 15, 1988*).

9. The assessment was issued within the prescriptive period allowed by law.

The assessment notices sent to the petitioner are still valid even if the three (3) year-period had already lapsed because the applicable period of limitation within which to assess the petitioner is ten (10) years on the ground that it filed false returns for the period November 1999 up to January 28, 2004 (Sections 203 and 222 of the Tax Code). The Supreme Court has already ruled that in the case of false return, as in the subject case, the ten (10)-year period is applicable. The Court opined in the case of *Aznar* Case, *L-20569, August 23, 1974*, that Aznar's returns were false because the underdeclaration of income constituted a deviation from the truth, thus, the application of the ten (10)-year prescriptive period.

Furthermore, for the years 1999 up to 2001, the petitioner has executed waivers of the defense of prescription in connection with the investigations of its internal revenue tax liabilities by the concerned audit Division in the BIR National Office.

10. The legal basis for the imposition of interest in the above-entitled case is the provision of Section 249(A) and (B) of the Tax Code. This is an increment on any unpaid amount of tax, assessed at the rate of twenty (20%) per annum, or such higher rate as may be prescribed by rules and regulations from the date prescribed for payment until the amount is fully paid. The imposition of deficiency interest in cases of deficiency taxes under Section 249 of the Tax Code has been upheld in various cases, i.e., *DR v. Commissioner of Internal Revenue*, G.R. No. 138485, dated 10 September 2001; *Consolidated Bank and Trust Company v. Commissioner of Internal Revenue*, CA-G.R. SP No. 35050, dated 31 March 1995; Jose Y. *Feria v. Commissioner of Internal Revenue*, CTA Case No. 4956, dated 21 April 1994.

11. Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments. (*Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, 98 Phil. 290; Sy*

Po v. CTA, et al., GR No. 81446, August 18, 1988; Dayrit, et al. v. Cruz, et al, L-39910, September 26, 1988; Cagayan Robina Sugar Milling Company v. Court of Appeals, et al., G.R. No. 122451, October 12, 2000). Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. (*Delta Motors Co. v. Commissioner, CTA Case No. 3782, May 21, 1986; Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. Nos. 104151 and 105563, March 10, 1995*)."

Subsequently, on November 5, 2004, respondents filed their Answer in CTA Case No. 7053.[31] This Answer alleges almost all the same special and affirmative defenses as that stated in the Answer filed in CTA Case No. 7052. The following differences between the two (2) Answers are as follows: (1) the Answer filed in CTA Case No. 7052 does not have the second and third subparagraphs of Paragraph 5 thereof, instead, in the Answer filed in CTA Case No. 7053, the following allegations are found:

> "The factual and legal bases for the issuance of assessment as required under Section 228 of the Tax Code and Revenue Regulations No. 12-99 are embodied in the Preliminary Assessment Notice ("PAN" for brevity) and Final Assessment Notice ("FAN" for brevity) as well as in the Formal Letter of Demand dated 24 March 2004 and 26 May 2004, respectively, hence, the validity of the assessment. The BIR has ruled and communicated to the petitioner that San Miguel Light as a variant of RPT in can (San Miguel Beer Pale Pilsen) pursuant to par. 2 Section 143 (c) of the Tax Code of 1997, as implemented by Revenue Regulations No. 2-97. It is clearly indicated therein that the assessment is for the collection of deficiency tax due on the withdrawals of San Mig Light, a variant of RPT in can (San Miguel Beer Pale Pilsen), a brand that is existing as of the effectivity of Republic Act No. 8240. Accordingly, San Mig Light beer produced and removed in cans and bottles should be taxed at the highest classification of any variant of the said brand."

and (2) the Answer filed in CTA Case No. 7053 does not have the allegations contained in Paragraph 9 of the Answer filed in CTA Case No. 7052.

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[31] Docket (CTA Case No. 7053), pp. 310 to 329.

On January 25, 2005, petitioner filed a Motion for Consolidation[32] in CTA Case No. 7053 praying for the consolidation of said case with CTA Case No. 7052 on the ground that these cases involve common questions of fact and law, as in fact, the assessment involved in both cases were allegedly issued under substantially the same circumstances, with the exception of the period covered by the assessments therein. Said Motion was granted in the Resolution dated March 9, 2005.[33]

After the consolidation of CTA Cases Nos. 7052 and 7053, petitioner filed a "Motion for Leave to File, and for Admission of, Attached Supplemental Petition for Review" on February 17, 2006,[34] alleging that due to the enactment of Republic Act (RA) No. 9334, which amended the definition of "variant" in Section 143 of the National Internal Revenue Tax Code (NIRC), the basis of respondents' case has allegedly ceased to exist. The motion was granted in the Resolution dated July 21, 2006[35] as the Court found no variance in petitioner's cause of action. Respondents filed their Supplemental Answer[36] (to said Supplemental Petition for Review) on August 28, 2006, interposing the following special and affirmative defenses, *viz*:

> "4. R.A. No. 9334 does not apply to the instant cases. The registration of San Mig Light as a new brand has never been confirmed by respondents. The allegations of petitioner that San Mig Light have been registered with and classified by BIR as a new and medium-priced brand as early as October 1999 is false. San Mig Light is actually classified by the BIR as a variant of an existing brand subject to the rate of P12.52 per liter and subsequently increased to P13.61 per liter effective January 1, 2000 pursuant to the provision of Section 143 (c) of the Tax Code, as amended, and as

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[32] Docket (CTA Case No. 7053), pp. 334 to 338.
[33] Docket (CTA Case No. 7053), p. 393.
[34] Docket-Vol. I (CTA Case No. 7052), pp.1052 to 1070.
[35] Docket-Vol. I (CTA Case No. 7052), pp. 1155 to 1158.
[36] Docket-Vol. I (CTA Case No. 7052), pp. 1166 to 1171.

implemented by Revenue Regulations No. 2-97 and 17-99. Hence, the issuance of the subject assessments.

5. RA No. 9334 took effect on 01 January 2005. The Effectivity Clause of the said law provides that:

   'SEC. 11. Effectivity.— This Act shall take effect on 01 January 2005.' (Underscoring supplied)

   It is clear from the aforementioned Section that the law shall not be applied retroactively. The instant consolidated cases refer to the period from November 1999 up to 29 January 2004. Hence, the inapplicability of the said RA to the instant cases.

6. The principle of prospectivity of tax laws states that a tax bill must only be applicable and operative after becoming a law. Thus, the effectivity of the tax law commences upon its approval and its scope would only cover the present and future transactions (*page 34, Income Taxation 2005 Edition, Edwin G. Valencia & Gregorio F. Roxas*).

7. The retroactive application of tax laws shall not be applied unless there is a clear intent of the legislature that such law shall also be imposed on past transactions. It is a cardinal rule that laws shall have no retroactive effect, unless the contrary is provided (*Article 4, New Civil Code*)(*Hydro Resources v. Court of Appeals, 21 December 1990, 192 SCRA 604*). Likewise, in the case of *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, Commissioner of Internal Revenue and the Court of Tax Appeals, GR Nos. 106949 & 106950, 01 December 1995*, the High Court ruled that 'the applicable general principle is that tax laws are to be given only prospective application, in the absence of an explicit statutory command, that a particular provision be applied retroactively.' Tax laws are prospective in operation, unless there is a clear provision therein to the contrary [*Lorenzo v. Posadas, 64 Phil. 353; Castro v. Collector, 6 SCRA 886; Cebu Portland Cement Co. v. Collector of Internal Revenue, 25 SCRA 789; American Mahiney & Parts Manufacturing, Inc., et al. v. Ismael Mathay, Sr., et al., GR Nos. L-30998, 31021 & 31022, 28 October 1987*].

Meanwhile, in order to prevent the issuance of additional tax assessments and ensure the continuous removal of San Mig Light and avoid the disruption of its operation, petitioner paid the excise tax at the rate of ₱ 13.61 beginning February 1, 2004 onwards, while the issues raised in CTA Case Nos. 7052 and 7053 have not yet been resolved. As a result thereof, petitioner filed, on December 28, 2005, a claim for refund with the BIR in the amount of ₱ 782,238,161.47, representing excise taxes on "San Mig Light" collected from February 2, 2004 to November 30, 2005.[37]

Considering the alleged inaction of the BIR on its refund claim, petitioner filed a Petition for Review against respondent CIR on January 31, 2006, praying that judgment be rendered declaring petitioner entitled to a refund of the total amount of ₱ 782,238,161.47 paid to the BIR for excise taxes on "San Mig Light" for the period February 2, 2004 to November 30, 2005, and ordering respondent CIR to refund the aforesaid amount, with legal interest, or grant petitioner a tax credit for the said amount. The case was docketed as CTA Case No. 7405.[38] Respondent CIR filed her Answer[39] to the said Petition for Review on April 10, 2006, alleging the following special and affirmative defenses, to wit:

> "21. Petitioner is estopped from questioning the classification of San Mig Light as a variant of San Miguel Pale Pilsen due to the following grounds:
>
> a. Petitioner has already admitted the correctness of the classification of San Mig Light as a variant of San Miguel Pale Pilsen in can when Petitioner has started paying on January 30, 2004 the excise tax under the highest tax classification of San Miguel Pale Pilsen (RPT in cans). This is a clear indication of the taxpayer's admission of the correctness of the classification of San Miguel Light as variant of an existing brand.
>
> b. The publication of San Miguel, 'Kaunlaran' contains statements that SML is a variant of Pale Pilsen with the same full flavored taste and alcohol content or a low calorie variant.
>
> c. Petitioner admitted in their Annual Report to its stockholders that San Mig Light is a variant of San Miguel Pale Pilsen in can.

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[37] Par. 1.23, SFDI, Docket-Vol. I (CTA Case No. 7052), p. 2178.
[38] Docket (CTA Case No. 7405), pp. 1 to 73.
[39] Docket (CTA Case No. 7405), pp. 335 to 349.

d. Petitioner indicated in the bottle itself of San Mig Light that it is a low calorie pale pilsen.

23. It is a well settled rule in taxation that the Government is not stopped by the mistakes or errors of its agents; an erroneous application and enforcement of law by public officer do not prevent subsequent correct application of statutes. Furthermore, the rule of estoppels cannot be invoked by any taxpayer in order to produce collection of taxes that are rightfully due to the government, as in a case where the BIR agents made unauthorized pronouncement on a taxpayer's tax liabilities. The Supreme Court ruled that even if said agents were so authorized, their recommendation are always subject to the review of their superiors who may countermand or affirm them. The government is never estopped to collect legitimate taxes because of errors committed by its agents (*Visayan Terminal Co., Inc. v. Commissioner of Internal Revenue, L-19530 and 19444, February 27, 1965*).

24. The opinion contained in Mr. Conrado Item's letter dated February 7, 2002 has no force and effect. Under Section 4 of the NIRC of 1997, the power to interpret the provisions of the said Code and other tax laws is the exclusive and original jurisdiction of the Commissioner of Internal Revenue subject to review by the Secretary of Finance. Further, under the provisions of Section 7 of the same Code, the power to recommend the promulgation of rules and regulations by the Secretary of Finance, and to issue rulings of first impression or to reverse or revoke or modify any existing ruling of the BIR cannot be delegated. Accordingly, the opinion rendered in said letter is null and void, hence, cannot bind the BIR.

25. The alleged defects in the issuance of the assessments for deficiency excise taxes against petitioner has no bearing in this case. This case involves a claim for refund. It is well-settled that claims for refund partakes of the nature of claims for exemption, thus, it is incumbent upon the petitioner to prove that San Mig Light is not a variant of San Miguel Pale Pilsen in can."

In the meantime, on February 28, 2006, petitioner filed a Motion For Consolidation[40] in CTA Case No. 7405 seeking the consolidation of said case with CTA Cases Nos. 7052 and 7053, on the ground that CTA Case No. 7405 involve the same questions of fact and law. Respondent CIR interposed no

[40] Docket (CTA Case No. 7405), pp. 316 to 320.

objection to such consolidation.[41] Thus, pursuant to the Resolution dated December 19, 2006,[42] the three (3) cases were consolidated accordingly.

After the consolidation, the three (3) consolidated cases were set for consolidated pre-trial on January 11, 2007.[43]

On April 27, 2007, the parties submitted a Stipulation of Facts, Documents and Issues (in CTA Case No. 7405)[44] and was approved by the Court during the hearing held on May 3, 2007.[45] Earlier, the parties had already filed their Joint Stipulation of Facts, Documents and Issues in CTA Cases Nos. 7052 and 7053 on August 2, 2005[46] and was approved in the Resolution dated August 12, 2005.[47]

During trial, both parties presented their respective evidence. Thereafter, in the Resolution dated November 5, 2010[48], these consolidated cases were submitted for decision taking into consideration the "Joint Memorandum for Petitioner" filed on November 3, 2010, and respondent CIR's "Memorandum" filed on November 5, 2010 .

Hence, this Decision.

THE ISSUES

The parties presented the following issues for resolution of this Court, to wit:

<u>For CTA Case Nos. 7052 and 7053</u>

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[41] Manifestation filed on December 8, 2006, Docket (CTA Case No. 7405), pp. 352 to 353.
[42] Docket-Vol. I (CTA Case No. 7052), p. 2028.
[43] Resolution dated December 19, 2006, Docket-Vol. I (CTA Case No. 7052), p. 2028.
[44] Docket-Vol. I (CTA Case No. 7052), pp. 2170 to 2197.
[45] Minutes of the hearing held on May 3, 2007, Docket-Vol. I (CTA Case No. 7052), p. 2168.
[46] Docket-Vol. I (CTA Case No. 7052), pp. 503 to 528.
[47] Docket-Vol. I (CTA Case No. 7052), p. 839.
[48] Docket-Vol. II (CTA Case No. 7052), pp. 3007 to 3008.

"A.
AS TO BOTH CTA CASES NOS. 7052 & 7053

4.01. Whether 'San Mig Light' is not a new brand but a variant of an existing brand.

4.02. Assuming 'San Mig Light' is not a new brand but a variant of an existing brand, which existing brand is it a variant of.

4.03. Assuming it is a variant of an existing brand, whether or not the rate of P12.15 per liter and subsequently increased to P13.61 per liter effective January 1, 2000 applies to SML removals from November 1999 up to January 29, 2004.

4.04. Whether the rule that in the imposition of taxes any doubt should be resolved against the Government and in favor of the taxpayer, has application in this case.

4.05. Whether the deficiency excise tax assessments against petitioner complies with the requirement that the taxpayer shall be informed of the facts on which the assessment is made.

4.06. Assuming SMC is liable for deficiency excise tax, whether the imposition of interest thereon is valid.

B.
AS TO CTA CASE NO. 7052

In addition to the above:

4.07. Assuming again 'San Mig Light' is not a new brand but a variant of an existing brand, which excise tax rate may be applied to removals thereof during the period from November 1999 to January 7, 2004.

4.08. Whether the assessment in question was issued within the prescriptive period allowed by law as regard the removals of 'San Mig Light' from November 1999 to April 11, 2001.

C.
AS TO CTA CASE NO. 7053

In addition to the common issues:

4.09. Assuming 'San Mig Light' is not a new brand but a variant of an existing brand, which excise tax rate may be applied to removals thereof during the period from January 8, 2004 to January 29, 2004."[49]

[49] JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 526 to 527.

For CTA Case No. 7405

"5.01. Principal issue:

5.01.a. Whether petitioner SMC is entitled to a refund by the Bureau of Internal Revenue of the amount of P782,238,161.47 as having been illegally, erroneously and/or excessively collected from and overpaid by it as excise taxes on 'San Mig Light' for the period from February 2, 2004 to November 30, 2004 as a consequence of its re-classification by the Bureau of Internal Revenue as a variant.

5.02. Corollary issues:

5.02.a. Whether 'San Mig Light' is not a new brand but a variant of an existing brand.

5.02.b. Assuming 'San Mig Light' is not a new brand but a variant of an existing brand, which existing brand it is a variant of.

5.02.c. Assuming it is a variant of an existing brand, whether or not the tax rates of P13.61 per liter, effective January 1, 2000, and P16.33 per liter, effective January 1, 2005, apply to 'San Mig Light' removals from February 2, 2004 to November 30, 2005."[50]

The foregoing issues may be simplified as follows:

1) Whether "San Mig Light" is a "new brand" or a "variant of brand". Assuming that "San Mig Light" is a "variant of brand", which excise tax rate must be applied thereto upon its removal from November 1999 to November 30, 2005?
2) Assuming that "San Mig Light" was initially classified as a new brand, whether or not the BIR may validly reclassify the same as a "variant of brand", as defined in the law.
3) Whether or not petitioner is entitled to the refund being claimed. Assuming that petitioner is entitled thereto, whether or not legal interest may be imposed to the refundable amount.

[50] SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 2195 to 2196.

THE COURT'S RULING

San Mig Light is a new brand.

The core of the controversy centers on whether or not "San Mig Light" is a new brand or a variant of RPT[51] in can. The resolution of this issue will determine the validity or invalidity of the assessments and the propriety of the claim for refund filed by petitioner.

Respondent CIR's principal argument in assessing petitioner rests on the term "variant of a brand".

Prior to its amendment by RA No. 9334[52], a "variant of a brand" under Section 143 of the National Internal Revenue Code (NIRC) of 1997 is defined as:

> "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 a different brand which carries the same logo or design of the existing brand."

Based on the above-mentioned definition, a variant of a brand has two types, namely:

1. a brand on which a modifier is prefixed and/or suffixed to the root name of the brand; and
2. a different brand which carries the same logo or design of an existing brand.

Respondent CIR asserts that "San Mig Light" is a variant of RPT in can or San Miguel Pale Pilsen in can 330 ml., falling under the second part of the definition of "variant of a brand" under Section 143 of the NIRC of 1997. In support thereof, respondent CIR submits that "San Miguel Pale Pilsen" and

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[51] Ring Pull Tab.

[52] An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products Amending for the Purpose Sections 131,141,142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, As Amended. This law took effect on January 1, 2005.

"San Mig Light" have almost the same label font and design layout, bearing the same striped diagonal lines. According to respondent CIR, as compared with petitioner's other existing brands, only the labels of "San Mig Light" and SMB bear the same "Pale Pilsen". Except for their colors, the designs of the labels of these pale pilsen beer brands are allegedly almost identical.[53]

Section 143 of the NIRC of 1997 reads:

> "SEC. 143. *Fermented Liquor.* – 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 domestic fermented liquors in accordance with the following schedule:
>
> xxx xxx xxx
>
> Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240[54] shall be taxed under the highest classification of any variant of that brand.
>
> xxx xxx xxx
>
> New brands shall be classified according to their current net retail price.
>
> xxx xxx xxx
>
> 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 a different brand which carries the same logo or design of the existing brand."

In connection with the foregoing provisions, Section 2(10) and (18), and Section 4(C) of Revenue Regulations (RR) No. 2-97 provide as follows:

> "SECTION 2. *Definition of Terms.* - For purposes of these regulations the following words and phrases shall have the meaning indicated below:
>
> xxx xxx xxx
>
> 10. *New Brands* – shall mean brands registered after January 1, 1997 and shall include previously registered, but inactive brands of alcohol products.

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[53] Docket-Vol. II (CTA Case No. 7052), p. 2998.

[54] An Act Amending Sections 138, 139, 140 and 142 of the National Internal Revenue Code, As Amended, and For Other Purposes, which took effect on January 1, 1997

xxx xxx xxx

18. *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, such as the following:

a) Modifier is prefixed – Example: A registered existing 'ABC' Brand manufactured as 'Premium ABC' or 'Top ABC'.

b) Modifier is suffixed – Example: A registered existing 'ABC' brand manufactured as 'ABC Dry' or 'ABC Supreme'.

c) A different brand which carries the same logo or design of the existing brand – Example: A registered existing 'ABC' brand carrying the logo, badge, emblem, or mark in the shape of a horseshoe is manufactured as 'XYZ' brand carrying the same shape of a horseshoe logo, badge, emblem or mark; or a registered and existing 'XYZ' brand carrying two (2) horizontal stripes with red and white colors is manufactured as a new 'ABC' brand carrying the same set of stripes and colors.

xxx xxx xxx

SECTION 4. *Classification and Manner of Taxation of Existing Brands, New Brands and Variants of Existing Brands.*

xxx xxx xxx

C. *Variants of Existing Brands*

Variants of Existing Brands which are introduced in the domestic market after January 1, 1997 shall be taxed under the highest classification of any variant of that brand and shall remain in this classification until revised by Congress."

Based on the aforequoted law and Revenue Regulation, 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.

On the other hand, a **"variant of brand"** refers 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.

Having defined what a "new brand" and a "variant of brand" are, We now proceed to determine whether or not "San Mig Light" is a new brand or a variant of RPT in cans.

"San Mig Light" is a new brand. It neither falls under the first type, nor the second type, of variant of a brand as defined in the law.

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 ml.", "Super Dry 355 ml.", "Grande 1000 ml.", "RPT in cans 330 ml.", "Premium Bottles 355 ml." and "Premium Can 330 ml." 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 ml.", "Premium Bottles 355 ml.", and "Premium Bottle Can 330 ml.' for high priced brands; and "Super Dry 355 ml.", "Pale Pilsen 320 ml.", 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".

Anent the second type of "variant of 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", to wit:

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.

Not only should "San Mig Light" be deemed as a new brand, it was likewise registered as such by the BIR. Thus, it can only be validly reclassified in accordance with law.

Upon a close examination of the correspondences between the BIR and petitioner, "San Mig Light" has been indeed registered after January 1, 1997 as a new brand.

The letter dated October 19, 1999 of Mr. De Guzman[55] is plain that it is a request for the registration of a "new product", as stated in the first paragraph thereof, *viz*:

> "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 330 ml-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." *(Emphases supplied)*

This request has been **granted** by the BIR, through Assistant Commissioner Albar in his letter to petitioner dated October 27,1999,[56] in this wise:

> "**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 330 ml., **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.
>
> xxx xxx xxx." *(Emphases supplied)*

The fact of registration of "San Mig Light" with the BIR, as a new brand, is bolstered by the subsequent confirmation made by Mr. Item of the BIR, in his letter dated February 7, 2002 to petitioner,[57] to wit:

> "This has reference to your letter dated January 28, 2002 requesting that you may be informed of the proper tax classification of your beer products, 'San Mig Light' and 'Gold Eagle King' as similarly made by this Office on you new beer product 'Beer Texquila' per our letter dated August 14, 2001, since the permits issued previously on said two beer products had failed to specify their tax classification.

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[55] Annex "A" vis-à-vis Par. 2.01, JSFDI, and Annex "A" vis-à-vis Par. 2.01, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 529, 515, 2198, and2178.
[56] Annex "B" vis-à-vis Par. 2.02, JSFDI, and Annex "B" vis-à-vis Par. 2.02, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 530, 515, 2199 and 2178.
[57] Annex "E" vis-à-vis Par. 2.05, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 2179 and 2210.

> The documents that you have submitted show that **you were allowed to register**, manufacture and sell the two foregoing brands and you have been paying the excise tax for a considerable length of time, as follows:
>
> **San Mig Light** P9.15 (now P10.25) **as a new brand**; and
>
> Gold Eagle King – P6.15 (now P6.89) as a variant of the existing Gold Eagle brand.
>
> Based on the foregoing, **it appears that the tax classification and rates you are currently using are in order**. However, should it be found that the same are different from what you have submitted and represented in your letter of January 28, 2002, this finding shall be considered null and void." *(Emphases supplied)*

Moreover, the registration and classification of "San Mig Light" as a new brand in 1999 is even admitted by the parties in their Joint Stipulation of Facts, Documents and Issues in CTA Cases Nos. 7052 and 7053 filed on August 2, 2005, to wit:

> "1.08. **From the time of its registration <u>as a new brand</u> in October 1999 and its production in November 1999, 'San Mig Light' products have been withdrawn and sold, and taxes have been paid on such removals**, on the basis of its registration and tax rate **as a new brand** (CTA No. 7052: Petition, par. 5.06; Answer, par. 2[e]; CTA No. 7053: Petition, par. 5.06; Answer, par. 2[e])."[58] *(Emphases and underscoring supplied)*

Clearly, "San Mig Light" was registered with the BIR in the year 1999 as a new brand.

The pertinent question then is this: What is the legal implication, if any, of the Notice of Discrepancy dated May 28, 2002[59] and letter dated October 14, 2002,[60] both issued by then Assistant Commissioner Abella, who opined

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[58] Docket-Vol. I (CTA Case No. 7052), p. 506.
[59] Annex "G" vis-à-vis Par. 2.07, JSFDI, and Annex "F" vis-à-vis Par. 2.06, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 544 to 545, 517, 2211 to 2212, and 2179.
[60] Annex "I" vis-à-vis Par. 2.09, JSFDI, and Annex "H" vis-à-vis Par. 2.08, SFDI, Docket-Vol. I (CTA Case No. 7052), pp. 552 to 556, 518, 2219 to 2223, and 2179 to 2180.

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 on or after January 1, 1997**, shall be undertaken in the following instances:

xxx xxx xxx

b. For **reclassification of new brands** of said excisable products that were introduced in the market after January 1, 1997.

xxx xxx xxx." *(Emphases supplied)*

Logically, the phrase "reclassification of new brands" signifies that said "new brands", which are enumerated in the same RMO, have been previously classified as such. Parenthetically, it is herein noted that the above-quoted provision of RMO No. 6-2003, *inter alia*, has already been invalidated in the case of *British American Tobacco vs. Camacho, et al.*[64] It must be emphasized, however, that the same provision is being cited, only for the purpose of addressing respondent CIR's contention that the said RMO did not affirm any tax classification of "San Mig Light" as a new brand.

The next question then is: Does the subsequent issuance of respondent CIR's letter dated January 6, 2004[65], which is anchored on the notion that "San Mig Light" is a variant of petitioner's existing beer products, has the effect of validly reclassifying "San Mig Light"?

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[64] G.R. No. 163583, August 20, 2008. The said provision of RMO No. 6-2003 was invalidated by the High Court primarily because it was held that the BIR and the DOF do not have the authority to reclassify cigarette brands, once said brands have been classified. Thus, it was ruled:

"xxx. There is a dearth of discussion in the deliberations as to the applicability of the freezing mechanism to new brands after their classification is determined based on their current net retail price. But a plain reading of the text of RA 8240, even before its amendment by RA 9334, as well as the previously discussed deliberations would readily lead to the conclusion that the intent of Congress was to likewise apply the freezing mechanism to new brands. Precisely, Congress rejected the proposal to allow the DOF and BIR to periodically adjust the excise tax rate and tax brackets as well as to periodically resurvey and reclassify cigarettes brands which would have encompassed old *and* new brands alike. Thus, it would 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. xxx"

[65] Annex "K" vis-à-vis Par. 2.11, JSFDI, Docket-Vol. I (CTA Case No. 7052), pp. 565 to 570, and 518

that "San Mig Light" is a variant of San Miguel Pale Pilsen, on the previous registration and classification of "San Mig Light" as a new brand?

Apparently, said Notice of Discrepancy and letter of Assistant Commissioner Abella have the effect of "reclassifying" "San Mig Light" as a variant of petitioner's existing beer products.

However, as already discussed earlier, "San Mig Light" neither falls under the first type, nor of the second type, of a variant of brand, as defined in the law.

Nonetheless, such "reclassification" should not be given any legal effect because of the subsequent issuance of Revenue Memorandum Order (RMO) No. 6-2003 dated March 11, 2003 by then Commissioner Parayno. Annex A-3 thereof (MASTERLIST OF REGISTERED BRANDS OF LOCALLY MANUFACTURED ALCOHOL PRODUCTS - As of February 28, 2003) provides that "San Mig Light" is classified as "NB"[61], which means a "new brand registered on or after January 1, 1997"[62]. Said RMO effectively nullified the Notice and letter previously issued by Assistant Commissioner Abella, who is merely a subordinate officer.

Respondent CIR's contention that "the subject, objectives and policies of RMO No. 6-2003 do not affirm any tax classification… but rather make use of the said master list for want of reference document for survey"[63] is negated by the statements in the Policies and Guidelines of the said RMO, to wit:

"II. POLICIES AND GUIDELINES

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[61] At page 3, Annex A-3, RMO No. 6-2003.
[62] At page 5, Annex A-3, RMO No. 6-2003.
[63] Respondent's Memorandum, Docket-Vol. II (CTA Case No. 7052), pp. 3000 to 3001. Respondent's Answer in CTA Case No. 7052, Docket-Vol. I (CTA Case No. 7052), p. 338; and Respondent's Answer in CTA Case No. 7053, Docket (CTA Case No. 7053), p. 323.

The answer is in the negative.

Again, as already found by this Court, "San Mig Light" is a new brand.

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

> "**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**." *(Emphases supplied)*

Thus, when respondent CIR's letter dated January 6, 2004 has been issued, the operative law[66] then is to the effect that any "reclassification" of new brands shall be done only through the issuance of "an appropriate Revenue Regulations". 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.

In fine, the Court finds that there is sufficient basis to conclude that "San Mig Light" is a new brand, and not a variant of RPT in can or any of petitioner's existing beer products. Accordingly, the subject assessments must perforce be cancelled. In the same vein, it is no longer essential to

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[66] That is, before the effectivity of RA No. 9334 (January 1, 2005), which decrees that the "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." (Section 3 of RA 9334, amending Section 143 of the NIRC of 1997).

discuss or address all other issues dependent to, or connected with, the issue of whether or not "San Mig Light" is a new brand.

Petitioner's entitlement to the refund claim.

Prescinding from the finding that "San Mig Light" is a new brand, We shall proceed to determine whether petitioner is entitled to the amount being claimed for refund.

The taxpayer has two years from the payment of the tax to claim a refund of national taxes (such as excise taxes) erroneously or illegally assessed or collected. Section 229 of the National Internal Revenue Code provides:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Emphasis supplied*)

In case of excise taxes, the goods subject to such tax cannot leave the place where it was manufactured without paying the correct amount of tax. Section 130(A)(2) of the NIRC of 1997 states:

> "SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* -

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(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* -

xxx xxx xxx

(2) *Time for Filing of Return and Payment of the Tax.* - **Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production:** xxx." (*Emphasis supplied*)

The claim for refund covers the period starting February 2, 2004 to November 30, 2005. This means that the taxpayer has two years or until February 2, 2006 to file its claim for refund. The administrative claim was filed on December 28, 2005 and the judicial claim was filed on January 31, 2006. Clearly, the refund claim was filed within the two-year prescriptive period.

Records reveal that the claimed amount of ₱ 782,238,161.47 refers to excise taxes overpaid by petitioner on its removal of "San Mig Light" from its three plants located in Polo, Valenzuela, San Fernando, Pampanga, and Bacolod City, for the period covering February 2, 2004 to December 31, 2005, broken down as follows:[67]

Period	Volume of removals (in liters)	Excise Taxes Paid at ₱ 13.61 (2004) and ₱ 16.33 (2005)		Should be Excise Taxes Paid at ₱ 10.25 (2004) and ₱ 12.30 (2005)		Difference
		Per Liter	Amount	Per Liter	Amount	
2004						
February	₱ 9,169,166.16	₱ 13.61	124,792,351.44	₱ 10.25	₱ 93,983,953.14	₱ 30,808,398.30
March	10,255,346.64	13.61	139,575,267.77	10.25	105,117,303.06	34,457,964.71
April	8,679,139.92	13.61	118,123,094.31	10.25	88,961,184.18	29,161,910.13
May	7,869,573.36	13.61	107,104,893.43	10.25	80,663,126.94	26,441,766.49
June	5,994,077.77	13.61	81,579,398.45	10.25	61,439,297.14	20,140,101.31

[67] Annex "AAAA$_1$"of Exhibit "ZZZ".

July	7,630,421.04	13.61	103,850,030.35	10.25	78,211,815.66	25,638,214.69
August	7,468,314.48	13.61	101,643,760.07	10.25	76,550,223.42	25,093,536.65
September	9,851,619.84	13.61	134,080,546.02	10.25	100,979,103.36	33,101,442.66
October	11,285,417.04	13.61	153,594,525.91	10.25	115,675,524.66	37,919,001.25
November	11,980,364.40	13.61	163,052,759.48	10.25	122,798,735.10	40,254,024.38
December	13,441,022.40	13.61	182,932,314.86	10.25	137,770,479.60	45,161,835.26
	103,624,463.05		**1,410,328,942.11**		**1,062,150,746.26**	**348,178,195.85**
2005						
January	11,083,406.40	16.33	180,992,026.51	12.30	136,325,898.72	44,666,127.79
February	9,694,278.72	16.33	158,307,571.50	12.30	119,239,628.26	39,067,943.24
March	10,095,226.08	16.33	164,855,041.89	12.30	124,171,280.78	40,683,761.10
April	11,378,762.64	16.33	185,815,193.91	12.30	139,958,780.47	45,856,413.44
May	6,256,813.20	16.33	102,173,759.56	12.30	76,958,802.36	25,214,957.20
June	9,809,901.12	16.33	160,195,685.29	12.30	120,661,783.78	39,533,901.51
July	8,600,181.34	16.33	140,440,961.28	12.30	105,782,230.48	34,658,730.80
August	7,674,626.76	16.33	125,326,654.99	12.30	94,397,909.15	30,928,745.84
September	10,826,899.44	16.33	176,803,267.86	12.30	133,170,863.11	43,632,404.74
October	11,292,068.28	16.33	184,399,475.01	12.30	138,892,439.84	45,507,035.17
November	10,995,023.52	16.33	179,548,734.08	12.30	135,238,789.30	44,309,944.79
	107,707,187.50		**1,758,858,371.88**		**1,324,798,406.25**	**434,059,965.63**
TOTAL	**₱ 211,331,650.55**		**₱ 3,169,187,313.99**		**₱ 2,386,949,152.51**	**₱ 782,238,161.48**

After a thorough scrutiny of the evidence[68] presented, this Court agrees with the findings of Ms. Normita L. Villaruz, the Court-commissioned Independent Certified Public Accountant (CPA).

By tracing the volume of removals of "San Mig Light" and the amounts of corresponding excise taxes due and paid from the daily Official Delivery

[68] Exhibits "BBBB$_1$-1" to "BBBB$_1$-1429", "BBBB$_2$-1" to "BBBB$_2$-1,215", "BBBB$_3$-1" to "BBBB$_3$-1,177", "GGGG$_1$-1" to "GGGG$_1$-445", "GGGG$_2$-1" to "GGGG$_2$-20,453", "GGGG$_3$-1" to "GGGG$_3$-4,482", "EEEE$_1$-1" to "EEEE$_1$-513", "EEEE$_2$-1" to "EEEE$_2$-615", "EEEE$_3$ .1" to "EEEE$_3$-584", and "CCCC-1" to "CCCC-22".

Invoices and daily and monthly Sworn Statements of Removals, which were duly signed by the Internal Revenue Officer to the monthly Movement Report with Allocated Deposits as attached to the Total Removals Report and monthly Removals Schedule submitted to the BIR monthly, and by checking the excises taxes due and paid on "San Mig Light" removals computed using the excise tax rates of ₱ 13.61 and ₱ 16.33 per volume of liter as provided in Section 143 of the NIRC of 1997, for the years 2004 and 2005, respectively, the Independent CPA was able to ascertain that petitioner paid the corresponding excise taxes on total volume of liters of "San Mig Light", removed from the three plants during the period covered.

However, the total amount of ₱ 782,238,161.47 being claimed for refund as overpayments of excise taxes due on "San Mig Light" removals for the period from February 2, 2004 to November 30, 2005 should be adjusted by ₱ 723,388.91, representing the discrepancy between the taxes due on removals of "San Mig Light" as reported in the Excise Tax Returns as against the actual excise tax due, based on the checking of the daily Official Delivery Invoices, daily and monthly Sworn Statements of Removals, Shipping Memoranda and lists of Shipping Memoranda per SAP. Findings show that there were "San Mig Light" removals from the three plants as evidenced by daily Official Delivery Invoices and Shipping Memoranda, which were not included in the excise taxes due and paid per Excise Tax Returns of petitioner, to wit:

	In Liters	Excise Taxes Due at ₱ 13.61(2004) & ₱ 16.33 (2005)	Excise Taxes Due at ₱ 10.25 (2004) & ₱ 12.30 (2005)
Polo Plant (Annex FFFF$_{1.1}$)			
Excise taxes due on SML removals per ODI which were not paid per Excise Tax Returns			
April 14, 2004	997.92	₱ 13,581.69	₱ 10,228.68
April 9, 2005	25,019.28	408,564.84	307,737.14
August 27, 2005	8,316.00	135,800.28	102,286.80
Sub-total	**34,333.20**	**557,946.81**	**420,252.62**
Excise taxes due per Excise Tax Returns were lesser than the amounts per ODI			
November 30, 2004	**11,900.00**	**161,959.00**	**121,975.00**
San Fernando Plant (Annex GGGG$_{2.1}$ & $_{2.2}$)			
SML Removals per Shipping Memorandum were greater than ODIs			
Year 2004	(54,782.64)	(745,591.73)	(561,522.06)
Year 2005	60,374.16	985,910.03	742,602.17
Sub-total	**5,591.52**	**240,318.30**	**181,080.11**
Bacolod Plant (Annex GGGG$_{3.1}$)			
SML Removals per Shipping Memorandum were greater than ODIs			
Year 2004	**7.92**	**107.79**	**81.18**
TOTAL	**51,832.64**	**₱ 960,331.91**	**₱ 723,388.91**

Anent the payment of legal interest on the amount of the refund claim, it is already settled that the government cannot be required to pay interest on tax refunds in the absence of statutory provision clearly or expressly directing or authorizing such payment,[69] unless the collection of the tax was attended with arbitrariness.[70] Since there is no law directing or authorizing the payment of interest on refund claims, nor was it established that there was arbitrariness in the collection of the subject excise tax in this case, the award thereof cannot be granted.

WHEREFORE, in view of the foregoing considerations, the consolidated Petitions for Review in CTA Case Nos. 7052 and 7053 are

[69] *Commissioner of Customs vs. Borres, et al.*, G.R. No. L-12867, November 28, 1959;
[70] *Collector of Internal Revenue vs. Binalbagan Estate, Inc.*, G.R. No. L-12752, January 30, 1965.

hereby **GRANTED.** The (1) letters dated August 17, 2004 and August 20, 2004 of respondents, denying petitioner's Protests/Request for Reconsideration dated May 12, 2004 and July 7, 2004, respectively, and (2) Assessment Notice Nos. LTS TF 004-06-02 and LTS TF 129-05-04 issued by respondent against petitioner for the periods of November 1999 to January 7, 2004 and January 8, 2004 to January 29, 2004, respectively, are hereby **CANCELLED and SET ASIDE**.

Moreover, the Petition for Review in CTA Case No. 7405 is hereby **PARTIALLY GRANTED**. Respondent CIR is hereby **ORDERED** to **REFUND** petitioner, or to **ISSUE A TAX CREDIT CERTIFICATE** in its favor in, the amount of **SEVEN HUNDRED EIGHTY ONE MILLION FIVE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED SEVENTY TWO PESOS AND FIFTY-SIX CENTAVOUS (₱ 781,514,772.56)**, as determined below:

Claims for Over-Payment of Excise Taxes per Petition		₱ 782,238,161.47
Less: Deductions from claims:		
1. Excise taxes due on SML removals per ODI which were not paid per Returns Polo Plant	₱ 420,252.62	
2. Excise taxes due per Excise Tax Returns were lesser than The amounts per ODI Polo Plant	121,975.00	
3. SML Removals per Shipping Memorandum were greater than ODIs		
San Fernando Plant	181,080.11	
Bacolod Plant	81.18	723,388.91
Recomputed Excise Taxes for Refund/Issuance of Tax Credit Certificate		**₱ 781,514,772.56**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice