REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1730** (CTA Case No. 8748)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
SAN MIGUEL BREWERY, INC., A SUBSIDIARY OF SAN MIGUEL CORPORATION, Respondent.	***Promulgated:*** OCT 11 2018 4:20 p.m.

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DECISION

UY, *J.*:

Before the Court *En Banc* is a *Petition for Review* filed by the Commissioner of Internal Revenue on November 10, 2017 against San Miguel Brewery, Inc.,[1] praying for the reversal and setting aside of the Decision dated June 9, 2017[2] and the Resolution dated October 6, 2017[3], both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 8748, entitled *"San Miguel Brewery, Inc., A Subsidiary of San Miguel Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read as follows:

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[1] EB Docket, pp. 6 to 31.

[2] Penned by Associate Justice Caesar A. Casanova, concurred by Associate Justices Juanito C. Castañeda and Catherine T. Manahan; EB Docket, pp. 33 to 65.

[3] *Ibid*; EB Docket, pp. 66 to 72.

<u>Decision dated June 9, 2017</u>:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of ₱761,063,826.70, representing overpayment of excise taxes on 'San Mig Light' removals for the period January 1, 2012 to December 31, 2012.
>
> **SO ORDERED.**"

<u>Resolution dated October 6, 2017</u>:

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

THE FACTS

Petitioner Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the Commissioner of Internal Revenue, BIR, National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.

On the other hand, respondent San Miguel Brewery, Inc., a subsidiary of San Miguel Corporation (SMC), 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. One of the beer products being manufactured by respondent, and previously by its parent company, SMC, is "San Mig Light".

On October 19, 1999, Virgilio S. de Guzman, then Assistant Vice President, SMBP Finance, of SMC, wrote a letter to Assistant Commissioner (ACIR) Leonardo B. Albar, of the BIR Excise Tax Services, requesting for the registration of, and authority to manufacture "San Mig Light", as a new brand, to be taxed at ₱12.15 per liter.

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In response, ACIR Albar sent the letter dated October 27, 1999 to SMC, granting the request for registration of "San Mig Light".

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 ACIR 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.

On January 28, 2002, 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".

Conrado P. Item, then Acting Chief of the BIR Large Taxpayers Assistance Division II, sent a letter, on February 7, 2002, in reply to the SMC letter dated January 28, 2002, confirming that based on the documents submitted, SMC was allowed to register, manufacture and sell "San Mig Light" as a new brand and is using the correct classification and rates for "San Mig Light" as a new brand.

Meanwhile, in the "Master List of Registered Brands of Locally Manufactured Alcohol Products" attached as Annex "A-3" of Revenue Memorandum Order (RMO) No. 6-2003 dated March 11, 2003, "San Mig Light" was listed as a new brand.

On May 28, 2002, petitioner, through ACIR Edwin R. Abella of the Large Taxpayers Service, issued a Notice of Discrepancy to SMC, stating, among others, that "San Mig Light" is variant of SMC's existing beer products; hence, starting year 2000, it should be subjected to a higher excise tax rate.

From the time of its registration, several BIR issuances have classified "San Mig Light" as a new brand, and lately as a variant.

On August 23, 2007, SMC and respondent executed a *"Master Deed of Assignment of Domestic Beer Assets"*, wherein effective October 1, 2007, SMC spun off its domestic beer business into a new company, herein respondent. In the said *Master Deed of Assignment*, SMC assigned, transferred and conveyed in favor of respondent all of its rights, title and interest over its beer assets used in its domestic beer business. As a consequence, respondent

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continued SMC's business operations of manufacturing, selling and distribution of fermented and malt-based beverages, including "San Mig Light".

During the period from January 1, 2012 up to December 31, 2012, respondent was obliged to pay excise taxes on its removals of "San Mig Light" at the increased tax rate of ₱20.57 per liter. Respondent alleges that it should have paid only ₱15.49 per liter. Thus, it claims that there was an erroneous, excessive and/or illegal assessment and collection in the amount of ₱5.08 per liter, amounting to ₱761,067,629.80.

As a result, on August 23, 2013, respondent filed with petitioner its claim for refund dated August 16, 2013 in the amount of ₱761,067,629.80, representing overpayments of excise taxes erroneously, excessively and/or illegally collected for the period January 1, 2012 to December 31, 2012.

Considering that no action had been taken by petitioner on respondent's claim for refund, respondent filed a *Petition for Review* before the Court in Division on December 19, 2013 entitled *"San Miguel Brewery, Inc., A Subsidiary of San Miguel Corporation, Petitioner, versus Commissioner of Internal Revenue, Respondent".* The case was docketed as CTA Case No. 8748.

Upon motion of respondent in said case, the Court in Division commissioned Normita L. Villaruz on March 27, 2014, to act as an Independent Certified Public Accountant (ICPA) in said case.

On April 1, 2014, petitioner filed his *Answer* in CTA Case No. 8748, interposing, among others, certain special and affirmative defenses, to wit: (1) the Court in Division does not have jurisdiction over respondent's claim for tax refund; (2) respondent committed a fatal error when it failed to submit the supporting documents necessary to substantiate its administrative claim for tax refund; (3) such failure rendered respondent as to have not thoroughly applied the administrative remedy which was available to it; (4) respondent's failure to exhaust its administrative remedies renders the Court in Division without jurisdiction over this particular claim; (5) respondent is not entitled to a tax refund because there was no erroneous or illegal collection of excise taxes; (6) the burden of proof to establish entitlement to a tax refund rests upon respondent, and its failure to discharge such burden is fatal to its claim; and (7) claims for tax exemption must be justified by the clearest grant of law.

After the pre-trial conference held on May 8, 2014, the parties filed their *Joint Stipulation of Facts, Documents, Issues and Other Matters* on June 20, 2014. This was approved and adopted by the Court in Division in the Pre-Trial Order dated June 27, 2014, which also terminated the pre-trial.

In support of its claim, respondent presented the following witnesses: Virgilio S. de Guzman, SMC's Finance Manager, Infrastructure Group; Bienvenido N. Banas, Consultant of SMC; Minerva Lourdes B. Bibonia, respondent's Senior Vice President and Marketing Manager; Atty. Rosabel Socorro T. Balan, respondent's General Counsel and Corporate Secretary; Marciano B. Requilme, Jr., respondent's Assistant Vice President and Quality Assurance Manager, Brewing Technical Group; Atty. Lorenzo G. Timbol, an Associate in the Law Office of Estelito P. Mendoza and Associates, respondent's counsel; Noemi L. Ronquillo, respondent's Manager, Accounting and Financial Services; and Normita L. Villaruz, the court-commissioned ICPA.

Thereafter, respondent filed its *Formal Offer of Evidence* on April 10, 2015. In the Resolution dated June 25, 2015, the Court in Division admitted respondent's exhibits, except Exhibit "P-51.1831", which was denied for not being found in the records.

Thus, on July 14, 2015, respondent filed a *Motion for Partial Reconsideration* of the denial of Exhibit "P-51.1831" which was granted by the Court in Division in the Resolution dated December 9, 2015.

On February 22, 2016, petitioner filed a *Motion for Leave to File Supplemental Stipulation of Facts*, which was granted by the Court in Division on February 24, 2016. Thereafter, petitioner filed the *Supplemental Stipulation of Facts* on March 21, 2016. On April 4, 2016, petitioner filed a *Manifestation*, stating that he would no longer file a *Formal Offer of Evidence* on the ground that his documents were already stipulated.

In the Resolution dated April 25, 2016, the Court in Division noted petitioner's *Manifestation* as well as the *Supplemental Stipulation of Facts*.

Thereafter, respondent's *Memorandum* was filed on June 27, 2016. Petitioner, however, failed to file his memorandum. CTA Case

No. 8748 was then considered submitted for decision in the Resolution dated July 7, 2016.

Subsequently however, petitioner filed his *Motion for Leave to File and Admit Attached Memorandum* on February 21, 2017, which was denied by the Court in Division, in the Resolution dated March 7, 2017.

In the assailed Decision,[4] the Court in Division granted respondent's *Petition for Review* in CTA Case No. 8748, and ordered petitioner to refund or to issue a tax credit certificate in favor of respondent in the amount of ₱761,063,826.70, representing overpayment of excise taxes on "San Mig Light" removals for the period January 1, 2012 to December 31, 2012.

Undaunted, petitioner filed his *Motion for Reconsideration (Re: Decision dated 9 June 2017)* on June 28, 2017.[5] Respondent, on the other hand, filed its *Opposition* to the said *Motion for Reconsideration* on July 28, 2017.[6]

Thereafter, the Court in Division issued the assailed Resolution dated October 6, 2017,[7] denying petitioner's *Motion for Reconsideration* for lack of merit.

Petitioner then filed a *Motion For An Extension of Time To File Petition for Review* on October 25, 2017 before this Court *En Banc*,[8] praying for an additional period of fifteen (15) days from October 26, 2017 or until November 10, 2017, within which to file his *Petition for Review*. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from October 26, 2017 or until November 10, 2017, within which to file the said *Petition for Review*.[9]

On November 10, 2017, petitioner filed the instant *Petition for Review*.[10]

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[4] EB Docket, pp. 33 to 65; Division Docket (CTA Case No. 8748) – Vol. IV, pp. 2069 to 2101.
[5] Division Docket (CTA Case No. 8748) – Vol. IV, pp. 2105 to 2123.
[6] Division Docket (CTA Case No. 8748) – Vol. IV, pp. 2130 to 2148.
[7] EB Docket, pp. 66 to 72; Division Docket (CTA Case No. 8748) – Vol. IV, pp. 2192 to 2197.
[8] EB Docket, pp. 1 to 3.
[9] Minute Resolution dated October 30, 2017, EB Docket, p. 5.
[10] EB Docket, pp. 6 to 31.

In the Resolution dated November 28, 2017,[11] the Court *En Banc* ordered respondent to file its *Comment* on the *Petition for Review*, within ten (10) days from receipt thereof.

However, respondent filed a *Motion for Extension of Time To File Respondent's Comment* on December 20, 2017,[12] praying for an extension of twenty (20) days from December 25, 2017 or until January 14, 2018, within which to file the required *Comment*. The Court *En Banc* granted the period prayed for, but was qualified as being "final and non-extendible".[13] Thus, on January 15, 2018, respondent filed its *Comment on the Petition*.[14]

On January 31, 2018, the instant case was submitted for decision.[15] Hence, this Decision.

ASSIGNMENT OF ERRORS

Petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

> "-I-
>
> THE HONORABLE COURT OF TAX APPEALS SECOND DIVISION HAS NO JURISDICTION OVER RESPONDENT'S PETITION FOR REVIEW FILED ON 19 DECEMBER 2013.
>
> -II-
>
> THE HONORABLE CTA SECOND DIVISION ERRED IN RULING THAT SAN MIG LIGHT PALE PILSEN IS NOT A VARIANT OF AN EXISTING BRAND;
>
> -III-
>
> THE HONORABLE CTA SECOND DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OF EXCISE TAX."

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[11] EB Docket, pp. 77 to 78.
[12] EB Docket, pp. 79 to 81.
[13] Minute Resolution dated January 3, 2018, EB Docket, p. 82.
[14] EB Docket, pp. 83 to 158.
[15] Resolution dated January 31, 2018, 2018, EB Docket, pp. 202 to 203.

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Petitioner's arguments:

Petitioner argues that the nullification of the ₱20.57 per liter excise tax rate specified in Revenue Memorandum Circular (RMC) No. 90-2012 does not fall under the special jurisdiction granted by the statute to this Court.

Moreover, according to petitioner, San Mig Light Pale Pilsen is a variant of an existing brand; and respondent is not entitled to the refund of excise tax.

Respondent's counter-arguments:

Respondent counter-argues that in several cases, this Court *En Banc* has rendered decisions holding that "San Mig Light" as a new brand and not a variant, and consequently, granted the claims for refund of SMC/respondent, some of which decisions have already been affirmed by the Supreme Court.

Moreover, respondent points out that under the amendments introduced in Section 143 of the National Internal Revenue Code (NIRC) by Republic Act (RA) No. 9334, the classification of "San Mig Light" as a new brand, and therefore, not a variant, may not be revised, except by an act of Congress.

Respondent likewise contends that as correctly held by the Court in Division, and contrary to petitioner's argument, "San Mig Light" is a new and medium-priced brand, and not a variant of "Pale Pilsen" or any other SMC/respondent brand.

Allegedly, there is no merit in the grounds raised by petitioner in support of his *Petition for Review*; and that petitioner did not present any evidence in the case below.

Moreover, petitioner has not challenged the finding of the Decision of the Court in Division as to the amount of excess excise tax payments to which respondent is entitled, and which finding stands uncontradicted and deemed conclusive.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

The Court in Division has jurisdiction.

In arguing that the Court in Division has no jurisdiction over respondent's *Petition for Review* in CTA Case No. 8748, petitioner argues the following:

> "The nullification of the P20.57 per liter excise tax rate specified in Revenue Memorandum Circular (RMC) No. 90-2012 does not fall under the special jurisdiction granted by the statute to the Court of Tax Appeals (CTA).
>
> It can be gleaned from the Petition for Review filed by respondent on 19 December 2013 before the Honorable CTA Second Division that it is **primarily** seeking the nullification of a provision from RMC 90-2012 under the guise of an alleged claim for refund. The claim for refund being merely consequential, and absent the nullification of the said circular, respondent's cause of action would have no leg to stand on."

Petitioner's conclusion and reasoning is specious.

We do not agree that respondent's *Petition for Review* in CTA Case No. 8748 *"primarily"* sought the nullification of Revenue Memorandum Circular (RMC) No. 90-2012 *"under the guise of an alleged claim for refund"*. This is so because apart from the fact that there is no evidence of such allegation, the prayer in the said *Petition for Review* is wanting of any indication thereon, to wit:

> "WHEREFORE, based on all the above, it is most respectfully prayed that judgment be rendered –
>
> (1) declaring that petitioner San Miguel Brewery, Inc. is entitled to a refund of the amount of P761,067,629.80, representing erroneous, excessive and/or illegal collection from, and overpayment by, petitioner to the Bureau of Internal Revenue of excise

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> taxes on 'San Mig Light' during the period from January 1, 2012 up to December 31, 2012; and
>
> (2) ordering respondent to refund the aforesaid amount of P761,067,629.80 to petitioner, with legal interest, or issue to petitioner a Tax Credit Certificate for said amount.
>
> Petitioner prays for such other and further relief as may be just and equitable."[16]

Furthermore, as correctly pointed out by respondent,[17] what is involved in this case is the claim for refund by the latter for the period from January 1, 2012 up to December 31, 2012. Thus, since the BIR issuance cited by petitioner was issued only on December 27, 2012, the said RMC has nothing to do with this case.

Nevertheless, it must be noted that this Court can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or RMC on which the said assessment is based.[18]

Correspondingly, the Court in Division is clothed with jurisdiction to entertain respondent's *Petition for Review* in CTA Case No. 8748.

It is already settled that "San Mig Light" is a new brand.

Petitioner further argues that San Mig Light Pale Pilsen is a variant of an existing brand; and that respondent is not entitled to the refund of excise tax in this case. According to petitioner, this Court should have been guided by the very purpose of the law in addressing the issue of whether or not "San Mig Light" is a new brand or a variant of an existing brand.

We do not agree with petitioner.

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[16] Division Docket (CTA Case No. 8748) – Vol. I, pp. 52 to 53.
[17] Par. 9.01, *Comment on the Petition*, EB Docket, p. 138.
[18] *The Philippine American Life and General Insurance Company vs. The Secretary of Finance, et al.*, G.R. No. 210987, November 24, 2014.

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The Supreme Court, in *Commissioner of Internal Revenue vs. San Miguel Corporation*,[19] has already ruled that "San Mig Light" is a new brand, and not a variant of an existing brand. It said as follows:

> "A *variant* under the Tax Code has a technical meaning. It is determined by the brand (name) or logo of the beer product.
>
> To be sure, all beers are composed of four (4) raw materials: barley, hops, yeast, and water. Barley grain has always been used and associated with brewing beer, while hops act as the bittering substance. Yeast plays a role in alcoholic fermentation, with bottom-fermenting yeasts resulting in light lager and top-fermenting ones producing the heavy and rich ale. With only four (4) ingredients combined and processed in varying quantities, all beer are essentially related variants of these mixtures.
>
> A manufacturer of beer may produce different versions of its products, distinguished by features such as flavor, quality, or calorie content, to suit the tastes and needs of specific segments of the domestic market. It can also leverage on the popularity of its existing brand and sell a lower priced version to make it affordable for the low-income consumers. These strategies are employed to gain a higher overall level of share or profit from the market.
>
> In intellectual property law, a registered trademark owner has the right to prevent others from the use of same mark (brand) for identical goods or services. The use of an identical or colorable imitation of a registered trademark by a person for the same goods or services or closely related goods or services of another party constitutes infringement. It is a form of unfair competition because there is an attempt to get a free ride on the reputation and selling power of another manufacturer by passing of one's goods as identical or produced by the same manufacturer as those carrying the other mark (brand).

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[19] G.R. Nos. 205045 and 205723, January 25, 2017.

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

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

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

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

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respondent subsequently filed refund claims." *(Emphases and underscoring supplied)*

Plainly stated, "San Mig Light" cannot be treated as a variant of "Pale Pilsen" because they do not share a root word; and neither is there an existing brand called "San Mig" to arrive at the conclusion that the suffix "Light" renders "San Mig Light" as its variant. Thus, there can be no doubt now that "San Mig Light" is a new brand.

Thus, based on the aforequoted jurisprudential pronouncement, the instant *Petition for Review* must perforce fail.

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated June 9, 2017 and the Resolution dated October 6, 2017, both rendered by the Court in Division in CTA Case No. 8748 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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