REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1274** (CTA Case Nos. 7953 & 7973)
- versus -	Present: **DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** *and* **RINGPIS-LIBAN,** *JJ*.
SAN MIGUEL CORPORATION and SAN MIGUEL BREWERY INC., A Subsidiary of San Miguel Corporation, Respondents.	Promulgated: NOV 28 2016 4:07p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review[1] seeking the nullification of the Decision[2] dated November 26, 2014 and the Resolution[3] dated February 6, 2015

[1] Under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals.

promulgated by the Court of Tax Appeals Second Division (Second Division) in the consolidated cases of CTA Case No. 7953, entitled *San Miguel Corporation v. Commissioner of Internal Revenue*, and CTA Case No. 7973, entitled *San Miguel Brewery Inc., A Subsidiary of San Miguel Corporation v. Commissioner of Internal Revenue.*

The Facts

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with power to decide disputed assessments, grant tax refunds and issue tax credit certificates, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other laws, rules and regulations.

Respondents San Miguel Corporation (SMC) and San Miguel Brewery, Inc. (SMBI) are corporations duly organized and existing under the laws of the Republic of the Philippines.

The facts are summarized by the Second Division as follows:

> On October 19, 1999, Mr. Virgilio S. De Guzman, then Assistant Vice President, SMBP Finance, of SMC, wrote Assistant Commissioner Leonardo B. Albar, Excise Tax Services, of the BIR, requesting for the registration of, and authority to manufacture "San Mig Light", as a new brand, to be taxed at P12.15 per liter.
>
> On October 27, 1999, Assistant Commissioner Leonardo B. Albar granted the above request of petitioner SMC to register "San Mig Light" as a new and medium-priced brand pursuant to Section 143 of the 1997 NIRC, as amended.
>
> On May 28, 2002, the BIR through Assistant Commissioner Edwin R. Abella of the Large Taxpayers Service, issued a notice declaring "San Mig Light" as a variant; thus, it was subjected to higher excise tax rate which commenced in the year 2000.
>
> From the time of San Mig Light's registration, several BIR issuances have classified "San Mig Light" as a new brand, and lately as a variant.
>
> Effective October 1, 2007, petitioner SMC assigned, transferred and conveyed its rights, title and interest over its beer assets to petitioner SMBI. Consequently, petitioner SMBI

Petitioner SMC paid excise taxes on "San Mig Light" at the increased rate of P17.64 per liter or the total amount of P105,632,376.64 for the period August 1, 2007 to September 30, 2007; while petitioner SMBI paid P828,487,561.71 for the period October 1, 2007 to December 31, 2008.

On June 17, 2009 and September 10, 2009, petitioners SMC and SMBI separately filed with the BIR its refund claims of P105,632,376.64 and P828,487,561.71, respectively, allegedly representing overpayments of excise taxes assessed on removals of "San Mig Light" products on the ground that the correct tax rate is P13.28 per liter, and not P17.64 per liter for a new and medium-priced brand.

Respondent's inaction on petitioners' refund claims prompted them to file before the Court of Tax Appeals ("CTA") Petitions for Review docketed as CTA Case Nos. 7953 and 7373 on July 24, 2009 and September 28, 2009, respectively.

x x x

On May 12, 2010, the Court granted petitioner's SMBI's Motion to Consolidate CTA Case No. 7973 with CTA Case No. 7953.

x x x

The parties jointly stipulated on the following issues:

I. Whether petitioners are entitled to the refund claims in overpayment of excise tax on removals of "San Mig Light" for the period from August 1, 2007 to September 30, 2007 and October 1, 2007 to December 31, 2008.

II. Whether "San Mig Light" is not a new brand but a variant of an existing brand.

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

IV. Assuming it is a variant of an existing brand, whether or

The Rulings of the Second Division

The Second Division granted respondents' Petitions for Review in the Decision[5] dated November 26, 2014, thus:

> **WHEREFORE**, premises considered, the instant Petitions for Review are hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner[s] in the amount of ₱934,119,938.35, representing overpayment of excise taxes on "San Mig Light" removals from the period August 1, 2007 to December 31, 2008.[6]

The Second Division found that: (1) "San Mig Light" is a new brand and not a variant;[7] (2) the reclassification of "San Mig Light" as a variant is prohibited by law;[8] (3) the Court has, in a number of cases, consistently ruled that "San Mig Light" is a new brand;[9] (4) the refund claims at the administrative and judicial levels were timely filed;[10] and (5) the claimed amounts were duly substantiated.[11]

Aggrieved, petitioner filed a Motion for Reconsideration, which the Second Division denied in a Resolution[12] dated February 6, 2015, thus:

> **WHEREFORE**, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.[13]

Hence, this petition.

Petitioner filed a Motion for Additional Time (to file Petition for Review) on February 20, 2015,[14] which the Court granted in a Resolution dated February 25, 2015.[15] Within the period granted, petitioner filed the instant Petition for Review on March 13, 2015,[16] praying that the Decision dated November 26, 2014 and the Resolution dated February 6, 2015 be reconsidered and set aside.

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5 Supra, note 2.
6 Docket, p. 148.
7 Docket, pp. 131-132.
8 Docket, pp. 133-136.
9 Docket, pp. 136-137.
10 Docket, pp. 137-139.

The Court ordered respondent to comment on the petition in a Resolution dated June 9, 2015. On August 4, 2015, within the extension period granted, respondents filed their Comment on the Petition for Review.[17]

On September 2, 2015, the Court gave due course to the petition and ordered the parties to submit their respective memoranda within thirty days from notice.[18]

On October 12, 2015, respondents filed a Manifestation[19] stating that they are adopting the arguments/discussion raised in their Comment filed on August 4, 2015 as their Memorandum. On the other hand, petitioner failed to file his Memorandum within the period granted.[20] Hence, the Court submitted the case for decision in a Resolution dated December 9, 2015. [21]

The Issues

Petitioner reiterated the issues raised in the parties' Joint Stipulation of Facts and Issues presented before the Second Division, thus:

1. Whether respondents are entitled to the refund claims in overpayment of excise tax on removals of "San Mig Light" from August 1, 2007 to September 30, 2007 and October 1, 2007 to December 31, 2008.

2. Whether "San Mig Light" is not a new brand but a variant of an existing brand.

3. 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. Assuming it is a variant of an existing brand, whether or not the tax rate of P17.64 per liter applies to "San Mig Light".[22]

The Ruling of the Court

We deny the petition.

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[17] Id. at pp. 180-255.

"San Mig Light" is a New Brand

The crux of the controversy is whether or not "San Mig Light" is a new brand or a variant.

Petitioner argues as follows:

> There was no erroneous payment of excise taxes. There was no erroneous reclassification of San Mig Light Pale Pilsen (SML) because it has always been classified as a variant of an existing brand. The truth of this matter is apparent based on the following:
>
> 1. The complete name of SML is San Mig Light Pale Pilsen. In Annexes C-1 and C-2 of the NIRC of 1997, 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 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 (sic) the existing brand "Pale Pilsen".
>
> 2. Out of these three variants, RPT or San Miguel Pale Pilsen in can 330 ml. (24), has the highest tax classification at the time SML was introduced. Accordingly, pursuant to Section 143 of the NIRC of 1997, the proper tax classification of SML for excise tax purposes is that of a variant of RPT in can.
>
> 3. "San Miguel Pale Pilsen" and "San Mig Light" have almost the same label font and design layout, bearing the same striped diagonal lines. As compared with respondent's other existing brands, only the labels of SML and SMB bear the same "Pale Pilsen". Except for their colors, the designs of the labels of these pale pilsen beer brands are almost identical.
>
> 4. SML falls within the second part of the definition of a variant brand under Section 143 of the NIRC of 1997 which states that a "variant of brand" shall refer to a brand on which a modifier is prefixed and/or suffixed to

> which carries the same logo or design of the existing brand.[23]

Petitioner's arguments are untenable.

"San Mig Light" is not a variant of any existing brand

Under Section 143 of the 1997 NIRC, as amended by R.A. 9334, a new brand is a brand registered after the date of effectivity of R.A. 8240 on January 1, 1997. It is distinguished from a variant as follows:

> SEC. 143. Fermented Liquors. – x x x
>
> 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. x x x
>
> "New brand" shall mean a brand registered after the date of the effectivity of R.A. 8240.

R.A. 8240 provides a list of existing brands as of its effectivity. In Annexes "C-1" and "C-2", the following were enumerated as existing brands of fermented liquor manufactured by respondent San Miguel Corporation:

MFTR	BRAND
	xxx
	High Priced Brands
San Miguel Corp.	RPT in cans 330 ml.(24)
San Miguel Corp.	Premium Bottles 355 ml. (24)
San Miguel Corp.	Premium Can 330 ml. (24)
xxx	
Medium Priced Brands	
San Miguel Corp.	Super Dry 355 ml. (24)
San Miguel Corp.	Keg 30 liters
San Miguel Corp.	Keg 50 liters
San Miguel Corp.	Pale Pilsen 320 ml. (24)

San Miguel Corp.	Blue Ice

xxx

Low Priced Brands

San Miguel Corp.	Gold Eagle 320 ml. (24)
San Miguel Corp.	Mucho 750 ml. (6)
San Miguel Corp.	Red Horse 500 ml. (12)
San Miguel Corp.	RH Stallion 330 ml. (24)
San Miguel Corp.	Texas

Based on the above enumeration, "San Mig Light" is not among the existing fermented liquor brands existing as of the effectivity of R.A. 8240. Annexes "C-1" and "C-2" also show that "San Mig Light" is not a variant of any existing brand. There were no existing brands to which a modifier is prefixed/suffixed to arrive at the brand "San Mig Light". As discussed in the assailed Decision:

> x x x "San Miguel" or "San Mig" is not registered nor is it an existing classified brand under R.A. 8240. At that time, the brand "Pale Pilsen" was registered and classified as a brand name of [respondent] SMC. [Petitioner] erred in treating the wordings "San Miguel" or "San Mig" as a root word and "Light" as a modifier. The term "Light" cannot be separated from the word "San Mig" or "San Miguel" but should be considered as one brand name. If the modifier "Light" be suffixed to the root word "San Miguel Pale Pilsen", the effect should be "San Miguel Pale Pilsen Light" and not as "San Mig Light". The root name "Pale Pilsen" cannot be seen in the brand "San Mig Light".

The BIR granted the application for "San Mig Light" as a new brand

The Court in Division found that the BIR, as early as 1999, had already classified "San Mig Light" as a new brand. It was held that –

> x x x [Respondent] SMC through its Assistant Vice President for Finance, Mr. Virgilio S. de Guzman requested the BIR for registration of, and authority to manufacture "San Mig Light" as a new brand on October 19, 1999 which was granted and reconfirmed in the letter dated October 27, 1999 issued by Assistant Commissioner Leonardo B. Albar and the letter dated February 7, 2002 issued by Acting Chief for Large Taxpayers

The Law Prohibits the Reclassification of "San Mig Light"

Having been registered as a new brand in 1999, it is prohibited for the BIR to reclassify "San Mig Light" as a variant. The law provides a freezing mechanism to avoid exactly the situation in this case.

R.A. 9334, which amends the 1997 NIRC provides, in Section 3:

> SECTION 3. Section 143 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> x x x
>
> Sec. 143. Fermented Liquors. – x x x
>
> x x x
>
> Provided, however, That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.

"San Mig Light" was registered in October 1999, which falls within the period of January 1, 1997 to December 31, 2003. Any subsequent reclassification of "San Mig Light" by the BIR violates the law; this can only be done by an act of Congress.

In *Hon. Secretary of Finance v. La Suerte Cigar and Cigarette Factory*,[24] the Supreme Court explained the one-time classification of sin products as follows:

> Hence, the instant petition raising the issue of whether the BIR has the power to periodically review or re-determine the current net retail prices of new brands for the purpose of updating their tax classification pursuant to Revenue Regulation Nos. 9-2003 and 22-2003.

This issue has been settled in the recent case of *British American Tobacco v. Camacho* where the Court held, among others, that Revenue Regulation Nos. 9-2003 and 22-2003 and Revenue Memorandum Order No. 6-2003, as pertinent to cigarettes packed by machine are invalid insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier x x x.

x x x

In order to implement RA 8240 following its effectivity on January 1, 1997, the BIR issued Revenue Regulations No. 1-97, dated December 13, 1996, which mandates a one-time classification only. Upon their launch, new brands shall be initially taxed based on their suggested net retail price. Thereafter, a survey shall be conducted within three (3) months to determine their current net retail prices and, thus, fix their official tax classifications. However, the BIR made a turnaround by issuing Revenue Regulations No. 9-2003, dated February 17, 2003, which partly amended Revenue Regulations 1-97, by authorizing the BIR to periodically reclassify new brands (*i.e.*, every two years or earlier) based on their current net retail prices. Thereafter, the BIR issued Revenue Memorandum Order No. 6-2003, dated March 11, 2003, prescribing the guidelines on the implementation of Revenue Regulations No. 9-2003. This was patent error on the part of the BIR for being contrary to the plain text and legislative intent of RA 8240.

It is clear that the afore-quoted portions of Revenue Regulations No. 1-97, as amended by Section 2 of Revenue Regulations No. 9-2003, and Revenue Memorandum Order No. 6-2003 unjustifiably emasculate the operation of Section 145 of the NIRC because they authorize the Commissioner of Internal Revenue to update the tax classification of new brands every two years or earlier subject only to its issuance of the appropriate Revenue Regulations, when nowhere in Section 145 is such authority granted to the Bureau. Unless

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

> Senator Recto: Because, like I said, when Congress agreed to adopt a specific tax system [under RA 8240], when Congress did not index the brackets, and Congress did not index the rates but only provided for a one rate increase in the year 2000, we shifted from *ad valorem* which was based on value to a system of specific which is based on volume. Congress then, in effect, determined the classification based on the prices at that particular period of time and classified these products accordingly.
>
> Of course, Congress then decided on what will happen to the new brands or variants of existing brands. To favor government, a variant would be classified as the highest rate of tax for that particular brand. In case of a new brand, Mr. President, then the BIR should classify them. **But I do not think it was the intention of Congress then to give the BIR the authority to reclassify them so often. I do not think it was the intention of Congress to allow the BIR to classify a new brand every two years, for example,**

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

x x x

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

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

x x x

In sum, the trial court correctly ruled that Revenue Regulations Nos. 9-2003 and 22-2003 are void insofar as they empower the BIR to periodically review and determine the current

> Consequently, the upward reclassification of Astro and Memphis in Annex "A" of Revenue Regulations No. 22-2003 is invalid. (Emphasis supplied)

In the present case, "San Mig Light" was classified in 1999 as a new brand, and taxed as a medium-priced fermented liquor. Similar to *La Suerte*, the reclassification by the BIR of "San Mig Light" as a variant, subject to a higher excise tax rate was a prohibited reclassification.

When it was classified as a new brand in 1999, it has since been beyond the authority of the BIR to reclassify "San Mig Light" as a variant. Only Congress has the power to do so. Hence, the original classification of "San Mig Light" as a new brand must be upheld as the correct classification.

The Court has Consistently Ruled that "San Mig Light" is a New Brand

The Court, sitting *en banc* and in Division, has consistently confirmed the classification of "San Mig Light" as a new brand and not a variant, in the following cases:

1. *Commissioner of Internal Revenue v. San Miguel Brewery, Inc., a Subsidiary of San Miguel Corporation*, CTA EB No. 1292, September 28, 2016;

2. *Commissioner of Internal Revenue v. San Miguel Brewery, Inc., A Subsidiary of San Miguel Corporation*, CTA EB No. 1279, November 26, 2015;

3. *Commissioner of Internal Revenue v. San Miguel Corporation*, CTA EB No. 873, October 24, 2012;

4. *Commissioner of Internal Revenue v. San Miguel Corporation*, CTA EB No. 755, September 20, 2012;

5. *San Miguel Brewery Inc., a subsidiary of San Miguel Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8209, September 12, 2014;

6. *San Miguel Corporation v. Commissioner of Internal Revenue,* CTA Case No. 7708, January 7, 2011; and

We find no reason to deviate from the consistent ruling that "San Mig Light" is a new brand and not a variant.

The Claims were Timely Filed and Duly Substantiated

Finally, considering that petitioner did not question the findings of the Second Division that the administrative and judicial claims were timely filed and that the claimed amounts were duly substantiated, they are deemed final and no longer appealable.

WHEREFORE, premises considered, the Court hereby **DENIES** the instant Petition. The Decision dated November 26, 2014 and the Resolution dated February 6, 2015 of the Second Division are hereby **AFFIRMED**.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO

Cielito N. Mindaro-Grulla
(See Dissenting Opinion)
CIELITO N. MINDARO-GRULLA

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1274** (CTA Case Nos. 7953 & 7973)
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SAN MIGUEL CORPORATION and SAN MIGUEL BREWERY, A Subsidiary of San Miguel Corporation, *Respondents.*	Promulgated: NOV 28 2016 4:07 p.m.

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CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the ponencia in denying the Petition for Review and in affirming the assailed Decision and Resolution of the Court in Division which sustains the grant of respondent's claim for refund in the amount of ₱934,119,938.35 representing overpayment of excise taxes on "San Mig Light" removals for the perid from August 1, 2007 to December 31, 2008.

Truth be told, the issue involved in this case is not novel. In a line of cases, We have consistently ruled that "San Mig Light" is a new brand and not a variant, considering that the **freeze classification provision** in Section 143 of the National Internal

Revenue, [1] involving the same parties herein but pertaining to a different taxable period, We elucidated in this wise:

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

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

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

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

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

Respondent is also of the position that the fact that "San Mig Light" is described as a low calorie light beer

The Court does not agree.

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

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

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

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

> "New brand' shall mean a brand registered after the date of effectivity of R.A. No. 8240.
>
> "Suggested net retail price' shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported fermented liquor are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket to which a particular new brand of fermented liquor, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Interns Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket which a particular new brand of fermented liquors shall he classified: Provided, however, **That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. <u>Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress</u>.**

Relatedly, RR No. 03-2006 amplifies the prohibition

> SECTION 4. Prohibition Against Reclassification of Certain Brands of Alcohol and Tobacco Products. — **The tax classification of the following brands of alcohol and tobacco products shall remain in force until revised by Congress**:
>
> (a) **Brands enumerated in Annexes "A," "B," "C" and "D" of R.A. No. 8240**;
>
> (b) **Brands listed in RR Nos. 1-97 and 2-97**; and
>
> (c) **New brands introduced in the domestic market between January 1, 1997 and December 31, 2003**.
>
> With respect to any of the brands listed in Annexes "A," "B," "C" and "D" of R.A. No. 8240, the owner of the brand may file with the BIR a notarized request for the delisting thereof from the said Annexes. The filing of such request shall be deemed a waiver of the statutory protection against reclassification of such brand; Provided, further, that in the event that the same brand shall be manufactured or imported by another entity subsequent to the filing of such request, such brand shall be considered a new brand subject to the prohibition on downward reclassification prescribed under Section 5 of these Regulations.'

As oft-repeated, "San Mig Light" is not a variant of any of the brands enumerated in Annexes "C-1" and "C-2". It is a "new brand" introduced in the domestic market between January 1, 1997 and December 31, 2003. Its classification as a "new brand" was confirmed by the BIR as early as October 27, 1999, through Assistant Commissioner Albar, and again on February 27, 2002, through Mr. Item, the then Acting Chief of the BIR Large base, would infringe upon the basic legal maxim that *what cannot be done directly cannot be done indirectly.* Indeed, only Congress can lawfully make such re-classification.

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

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

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

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

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

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

> In order to implement RA 8240 following

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

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

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

> Senator Recto: Because, like I said, when Congress agreed to adopt a specific tax system [under R.A. 8240], when Congress did not index the brackets, and Congress did not index the rates but only provided for a one rate increase in the year 2000, we shifted from ad valorem which was based on value to a system of specific which is based on volume. Congress then, in effect, determined the classification based on the prices at that particular period of time and classified these products accordingly.
>
> Of course, Congress then decided on what will happen to the new brands or variants of existing brands. To favor government, a variant would be classified as the highest rate of tax for that particular brand. In case of a new brand, Mr. President, then the BIR should classify them. <u>But I do not think it was the intention of Congress then to give the BIR the authority to reclassify them every so often. I do not think it was the intention of Congress to allow the BIR to classify a new brand every two years, for example, because it will be arbitrary</u>

the freezing mechanism is concerned, must be seen merely as underscoring the legislative intent already in place then, i.e. new brands as being covered by the freezing mechanism after their classification based on their current net retail prices.

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

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

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

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

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

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

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

All told, this Court concludes that "San Mig Light" is a new brand and not a variant of any of SMC's or petitioner SMB's existing beer products. Being a new brand that is being sold at the net retail price of ₱21.15 per liter, or bottle, less VAT and specific tax, the same should only be taxed at the rate of ₱12.30 per liter.

(Citations omitted)

To be sure, the freeze classification provision in Section 143 of the NIRC of 1997, as amended, safeguards against potential abuse and corruption form both the tax payer and the government.[2]

In fine, I VOTE to DENY the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1274 (CTA CASE Nos. 7953&7973)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and RINGPIS-LIBAN, *JJ.*
SAN MIGUEL CORPORATION and SAN MIGUEL BREWERY INC., A subsidiary of San Miguel Corporation, *Respondents.*	Promulgated: NOV 28 2016 4:07 p.m.

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DISSENTING OPINION

MINDARO-GRULLA, J.:

With due respect, I dissent from the majority opinion. I vote to deny the claim for refund in the amount of P934, 119, 938.35, representing overpayment of excise taxes on "San Mig Light" removals for the period August 1, 2007 to December 31, 2008.

I maintain my position in the earlier cases of *Commissioner of Internal Revenue vs. San Miguel Brewery Inc., a subsidiary of San Miguel Corporation,*[1] *San Miguel Brewery Inc., a subsidiary of San Miguel Corporation vs. Commissioner of Internal Revenue,* [2] *and Commissioner of Internal Revenue vs. San Miguel Brewery Inc., a subsidiary* *of San Miguel Corporation,*[3] that a brand merely registered and introduced in the market after the effectivity of RA 8240 necessarily means that it is a "New Brand". Distinction must still be made if the product being introduced to the market is indeed a "new brand" or a "variant of the brand" to determine the applicable tax rate thereon.

The definition of "Variant of a Brand", refers to brand on which a modifier is prefixed and/or suffixed to the root name of the brand[4], emanates from RA No. 8240. In formulating said definition the legislature purposely intended to tax those "variant of a brand" to the highest classification, specifically those brands who ride on the popularity of previously registered brand, in order to generate tax revenue. Thus, it is noteworthy to cite the intent and purpose of the legislature in defining a variant of a brand specifically the integration of prefix or suffix in the definition. Further, a variant of a brand, presupposes the existence of an "Existing Brand" which pertains to a brand of alcohol or tobacco products which is included in Annexes A, B, C and D of RA No. 8240 and Revenue Regulations (RR) Nos. 1-97 and 2-972[5].

Clearly, when the legislature defines a "variant of a brand", the legislature refers to the word "brand" as those brand marketed to the consumers and that it intended to tax those brands marketed under almost an identical name with a prefix or suffix of brands that are already well known in the market. Moreover, the omission in the law of the other definition of a variant of a brand such as- "a different brand which carries the same logo or design of the existing brand"[6] in fact reveals the legislative intent to adopt the purpose to tax those brands who ride on the popularity of previously registered brand marketed under almost an identical name with a prefix, suffix or a variant.

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[3] CTA Case No. 1279 (CTA Case No. 8400), promulgated on November 26, 2015.

In *Asia Brewery Inc. vs. The Honorable Court of Appeals and San Miguel Corporation*,[7] the Supreme Court held that the word "pale pilsen" is a mere generic word, non-registerable and not appropriable by any beer manufacturer. Even if mere "pale pilsen" or "RPT" (ring pull tab) were registered as SMC's brand we shall consider the name of the product as it appears on the product itself. The word "San Miguel Pale Pilsen" describes as "expertly brewed original full-flavored" and not mere "Pale Pilsen" which is non-registerable and not appropriable by any beer manufacturer, against "San Mig Light" describe as a "low calorie pale pilsen".

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

As regards to the reclassification prohibition, RA 9334 provides as follows:

> "That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and

> December 31, 2003 shall not be revised except by an act of Congress.
>
> xxx xxx xxx
>
> The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex 'C', including the classification of brands for the same products which, although not set forth in said Annex 'C', were registered and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress.
>
> xxx xxx xxx

Furthermore, Section 4 of Revenue Regulation No. 03-06 provides as follows:

> SECTION 4. Prohibition Against Reclassification of Certain Brands of Alcohol and Tobacco Products. - The tax classification of the following brands of alcohol and tobacco products shall remain in force until revised by Congress:
>
> (a) Brands enumerated in Annexes "A", "B", "C" and "D" of R. A. No. 8240;
>
> (b) Brands listed in RR Nos. 1-97 and 2-97; and
>
> (c) New brands introduced in the domestic market between January 1, 1997 and December 31, 2003.

The above-mentioned classification freeze provision pertains not to the determination of whether a brand is indeed a new brand or variant of a brand but rather to the

It also bears stressing that the primary consideration is to ascertain and give effect to the intention of the legislature. [8] We ought to impute to the lawmaking body the intent to obey the constitutional mandate, as long as its enactments fairly admit of such construction. In fact, no tax can be levied without express authority of law, but the statutes are to receive a reasonable construction with a view to carrying out their purpose and intent.

A perusal of the provisions pertaining to fermented liquor, as provided for in RA8240 and RA 9334, would reveal that the legislature intended to tax a "variant of a brand" under the highest classification of any variant of that brand. Lastly, the definition of "variant of a brand" emanates from RA8240 and in crafting the said definition, the legislature intended to tax those brands marketed under almost an identical name with a prefix or suffix of brands that are already well-known in the market in order to ride on the popularity of previously registered brand.

Under these premises, it can be concluded that "San Mig Light" described as low calorie pale pilsen is a "variant of a brand" of "San Miguel Pale Pilsen".

Respectfully submitted.

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