REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SAN MIGUEL BREWERY, INC., A subsidiary of SAN MIGUEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8400

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 01 2014 11:39 a.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review, petitioner San Miguel Brewery, Inc. (SMB) prays for refund or issuance of tax credit certificate in the amount of Six Hundred Ninety-Nine Million Five Hundred Eighty-Four Thousand Three Hundred Fourteen and 54/100 Pesos (₱699,584,314.54) allegedly representing erroneously, excessively and/or illegally collected and overpaid excise taxes on San Mig Light during the period beginning January 1, 2010 up to December 31, 2010.

Petitioner, a subsidiary of San Miguel Corporation, (SMC), is a domestic corporation, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[1]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with authority to decide, approve and grant refunds or tax credits of

[1] Par. 1.01, Stipulation of Facts, Documents and Issues, docket, pp. 535-536

erroneously or excessively paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

One of the beer products manufactured by petitioner and previously by its parent company, SMC, is San Mig Light.[2]

On October 19, 1999, SMC wrote[3] the BIR Excise Tax Services, requesting for the registration of and authority to manufacture San Mig Light. The said request was granted in a reply-letter[4] dated October 27, 1999.

On November 3, 1999, SMC again wrote[5] the same office informing it about the change in the net retail price of San Mig Light which would 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.

In a letter dated January 28, 2002,[6] SMC Group Tax Services requested the BIR Large Taxpayers Assistance Division II for information on the tax rate and classification of San Mig Light and Gold Eagle King,[7] another beer product of the company. In response thereto, the BIR Large Taxpayers Assistance Division II confirmed[8] on February 7, 2002, that based on the documents submitted, SMC was using the correct classification and rates for San Mig Light and Gold Eagle King. Subsequently, or on May 28, 2002, the same BIR office issued to SMC a Notice of Discrepancy[9] stating that from the year 2000, petitioner should be subjected to a higher excise tax rate.

In a letter-reply[10] dated July 9, 2002, the SMC requested for the withdrawal of the said Notice of Discrepancy. This was rejected by the BIR via the letter-

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[2] Par. 2.01, Stipulation of Facts, Documents and Issues, docket, p. 536
[3] Exhibit "A"
[4] Exhibit "B"
[5] Exhibit "C"
[6] Exhibits "D" and "D-1" to "D-8"
[7] Par. 2.05, Stipulation of Facts, Documents and Issues, docket, p. 537
[8] Exhibit "E"
[9] Exhibit "U"
[10] Exhibits "EE" and "EE-1" to "EE-4"

rejoinder[11] issued on October 14, 2002 reiterating that San Mig Light Pale Pilsen was a variant of San Miguel Pale Pilsen.[12]

On November 20, 2002, the SMC requested the BIR to reconfirm its previous issuance that San Mig Light was a new brand and that the notice of deficiency and demand for payment against SMC be withdrawn.[13] In a letter issued to SMC[14] on January 6, 2004, the BIR maintained its position that San Mig Light was a variant of San Miguel Pale Pilsen in can.[15]

On January 28, 2004, the BIR issued a Preliminary Assessment Notice[16] (PAN) against SMC for ₱852,039,418.15, allegedly representing deficiency excise tax, inclusive of increments, on the removals of San Mig Pale Pilsen Light for the period covering 1999 to January 7, 2004.[17]

Subsequently or on April 12, 2004, the BIR issued Formal Letter of Demand (FLD) against SMC, with Assessment Notice for the payment of deficiency excise tax in the total amount of ₱876,098,898.83, inclusive of interest until April 30, 2004, for the period of November to December 1999 at ₱12.52 per liter, and January 2000 to January 7, 2004 at ₱13.61 per liter. In the Details of Discrepancy, the BIR confirmed the classification of San Mig Light as variant of RPT in cans.[18]

Aggrieved, SMC filed a Protest/Request for Reconsideration of the FLD with Assessment Notice.[19] It was however denied on August 17, 2004 in a Final Decision on Disputed Assessment[20] (FDDA), for lack of factual and legal bases. Once again, the BIR stated that San Mig Light was a variant of RPT in can.

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[11] Par. 2.10, Stipulation of Facts, Documents and Issues, docket, p. 539
[12] Exhibits "V" and "V-1"
[13] Exhibits "FF" and "FF-1" to "FF-7"
[14] Exhibit "W"
[15] Par. 2.12, Stipulation of Facts, Documents and Issues, docket, p. 539
[16] Exhibit "X"
[17] Par. 2.13, Stipulation of Facts, Documents and Issues, docket, p. 539
[18] Exhibit "Y"; Par. 2.15, Stipulation of Facts, Documents and Issues, docket, p. 540
[19] Par. 2.16, Stipulation of Facts, Documents and Issues, docket, p. 540
[20] Exhibit "Z"

On February 4, 2004, the BIR issued a Notice of Discrepancy[21] in the amount of ₱28,876,108.84, this time representing SMC's deficiency excise tax due on removals of San Mig Light for the period covering January 8, 2004 to January 29, 2004.

On March 24, 2004, the BIR issued a Preliminary Assessment Notice (PAN)[22] against SMC, noting that San Mig Light was a variant of RPT in can or San Miguel Beer Pale Pilsen. This was followed by a Formal Letter of Demand (FLD) on May 26, 2004 with Assessment Notice No. TF 129-05-04 of even date. In the FLD, the BIR demanded payment of the deficiency excise tax assessment in the total amount of ₱30,763,133.68, including interest up to June 30, 2004 maintaining that San Mig Light was a variant of RPT in can.

SMC filed a Protest/Request for Reconsideration dated July 5, 2004 assailing the FLD of May 26, 2004[23] which was denied for lack of factual and legal bases in the Final Decision on Disputed Assessment (FDDA)[24] issued on August 20, 2004. The BIR pointed out the same ground that San Mig Light was "a variant of RPT in can" or San Miguel Beer Pale Pilsen in can.

In view thereof, SMC elevated the matter before this Court for the cancellation of the deficiency excise tax assessments issued against it through two Petitions for Review. The first was filed on September 17, 2004 and docketed as CTA Case No. 7052 for the April 12, 2004 assessment, while the second was filed on September 22, 2004 and docketed as CTA Case No. 7053 for the May 26, 2004 assessment.[25]

In accordance with the January 28, 2004 PAN, SMC paid a higher excise tax on San Mig Light at the rate of ₱13.61 per liter from February 1, 2004 to December 31,

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[21] Exhibit "AA"
[22] Exhibit "BB"
[23] Par. 2.21, Stipulation of Facts, Documents and Issues, docket, p. 542
[24] Exhibit "DD"
[25] Par. 2.23, Stipulation of Facts, Documents and Issues, docket, p. 542

2006; and ₱17.64 from January 1, 2007 to September 30, 2007.[26]

On different dates, SMC filed with the BIR three (3) applications for refund of the amounts allegedly representing excise taxes erroneously, excessively and/or illegally collected on the removals of San Mig Light beer product, as follows: [27]

Amount	Period Covered	Filed On
₱782,238,161.47	February 1, 2004 up to November 30, 2005	December 28, 2005
₱926,389,172.02	December 1, 2005 up to July 31, 2007	August 30, 2007
₱105,632,376.64	August 1, 2007 up to September 30, 2007	June 17, 2009

Meanwhile, by virtue of the "Master Deed of Assignment of Domestic Beer Assets"[28] dated August 23, 2007, SMC assigned, transferred and conveyed in favor of petitioner SMB all of its rights, title and interest over its beer assets used in its domestic beer business,[29] effective October 1, 2007.[30] Petitioner continued SMC's business operations of manufacturing, selling and distribution of fermented and malt-based beverages, including San Mig Light.[31]

From October 1, 2007 to December 31, 2008, petitioner paid excise taxes on its removals of San Mig Light at the increased tax rate of ₱17.64 per liter; and from

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[26] Par. 2.24, Stipulation of Facts, Documents and Issues, docket, p. 543
[27] Par. 2.25, Stipulation of Facts, Documents and Issues, docket, pp. 543-544
[28] Exhibit "HH"
[29] Par. 2.27, Stipulation of Facts, Documents and Issues, docket, p. 544
[30] Par. 2.28, Stipulation of Facts, Documents and Issues, docket, p. 544
[31] Par. 2.29, Stipulation of Facts, Documents and Issues, docket, p. 545

January 1, 2009 to December 31, 2010, at the increased tax rate of ₱19.05 per liter.[32]

On October 14, 2011, petitioner filed an administrative claim for refund with the BIR[33] in the amount of ₱699,584,314.54, claiming that the amount as excise taxes erroneously and/or excessively collected on its removals of San Mig Light for the period beginning January 1, 2010 up to December 31, 2010. The amount sought for refund arose from BIR's re-classification of San Mig Light as a variant of RPT in can" or San Miguel Beer Pale Pilsen in can.[34]

On December 23, 2011, petitioner filed the instant Petition for Review[35] with the Court citing as ground respondent's inaction on its application for refund.

In her Answer[36] filed on February 24, 2012, respondent counters that petitioner is not entitled to the refund sought. Petitioner is estopped from questioning the classification of San Mig Light as a variant of San Miguel Pale Pilsen on the following grounds: (1) it has admitted the correctness of the said classification when it started paying on the excise tax under the highest tax classification of San Miguel Pale Pilsen (RPT in cans); (2) its publication – "Kaunlaran" – contains statements that San Mig Light is a variant of Pale Pilsen with the same full flavored taste and alcohol content or a low calorie variant; (3) the bottle of San Mig Light itself indicates that it is a low calorie pale Pilsen; and (4) in its 1999 Annual Report to its stockholders, petitioner admitted that San Mig Light is a low-calorie variant of San Miguel Beer.

Respondent further claims that the government is not estopped from collecting legitimate taxes because of the errors committed by its agent (*Visayan Terminal Co., Inc. v. Commissioner of Internal Revenue*, L-19530 and 19444, February 27, 1965).

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[32] Pars. 2.30 and 2.33, Stipulation of Facts, Documents and Issues, docket, pp. 545-546
[33] Exhibit "II"
[34] Par. 2.35, Stipulation of Facts, Documents and Issues, docket, p. 546
[35] Docket, pp. 6-87
[36] Docket, pp. 400-413

Besides, the objectives and policies of RMO No. 6-2003 do not affirm any tax classification and rate of San Mig Light as a new brand. The master list was used for want of reference document in the conduct of survey. That being the case, the said master list cannot be SMC's legal basis for treating San Mig Light as a new brand.

Moreover, "the removal of the second part of the definition of the term 'variant of a brand' under paragraph 9 of the NIRC of 1997 does not alter the fact that SML is a variant of SMB". Also when San Mig Light was introduced in the market in 1999, Section 143 of the NIRC of 1997 still applied. Thus, the use of the same logo or design as a device to advertise the San Miguel Beer variant is adequate justification to classify San Mig Light as a variant of San Miguel Beer Pale Pilsen. Also the word "Light" in the brand name San Mig Light is a modifier suffixed to the root name that is contemplated by the definition of a variant under Section 143 of the NIRC of 1997.

During the trial, petitioner presented the following witnesses (a) Virgilio S. De Guzman; (b) Alfredo R. Villacorte, Jr.; (c) Bienvenido N. Banas; (d) Minerva Lourdes B. Bibonia; (e)Marciano B. Requilme, Jr.; (f) Noemi L. Ronquillo; and (g) Normita L. Villaruz.

Petitioner's Executive Assistant to the Chief Finance Officer **Virgilio S. De Guzman**, by way of Judicial Affidavit,[37] testified that he was involved in the filing with the BIR of the application for the registration of San Mig Light as a new brand under the 1997 NIRC which was granted through the letter dated October 27, 1999 of Assistant Commissioner Leonardo B. Albar of the BIR Excise Tax Service. Due to the change in the suggested retail price of San Mig Light, he again wrote Assistant Commissioner Albar on November 3, 1999 advising him that San Mig Light would be sold at the suggested retail price of ₱21.15 per liter, to be taxed at ₱9.15 per liter as a medium-priced brand. In a letter dated February 7, 2002, Conrado P. Itern, Acting Chief of the BIR Large Taxpayers Assistance Division II confirmed the tax classification of San Mig Light as a new

[37] Docket, pp. 565-576.

brand taxed at the rate of ₱9.15 per liter (later adjusted to ₱10.25, ₱12.30, ₱13.28, ₱14.34 and ₱15.49 per liter).

In 2007, SMC spun off its domestic beer business into a new company - San Miguel Brewery, Inc. - which continued SMC's business operations of manufacturing, selling and distribution of fermented and malt-based beverages, including San Mig Light.

Witness **Alfredo R. Villacorte, Jr.**, declared by way of Judicial Affidavit[38] that as former SMC's Vice President and Manager, Group Tax Services from 2000 to April 30, 2008, he ensured compliance of the various SMC Groups with the requirements pertinent to the filing of tax returns and payment of corresponding taxes. He not only attended tax examinations conducted by the BIR on petitioner but also monitored their developments and status.

In his letter of January 28, 2002, he requested the Large Taxpayers Assistance Division II of the BIR for information about the tax rate and classification of San Mig Light and Gold Eagle King, another beer product of the company. On February 7, 2002, the said office, through its Acting Chief Conrado P. Item, confirmed the tax classification of San Mig Light as a new brand with a tax rate of ₱9.15 per liter (later adjusted to ₱10.25, ₱12.30, ₱13.28, ₱14.34 and ₱15.49).

On November 20, 2002, he again wrote the BIR requesting that San Mig Light be reconfirmed as a new brand and that the Notice of Discrepancy issued against SMC be set aside and the demand for payment withdrawn in view of the letter dated October 14, 2002 of BIR Assistant Commissioner Edwin R. Abella finding San Mig Light Pale Pilsen as a variant of San Miguel Pale Pilsen,.

On March 11, 2003, the BIR issued Revenue Memorandum Order (RMO) No. 6-2003 prescribing the guidelines and procedures in the establishment of current net retail prices of new brands of alcohol products. Attached

[38] Docket, pp. 617-635.

thereto as Annex A-3 was a Master list of Registered Brands of Locally Manufactured Alcohol Products in which San Mig Light was listed as a new brand.

He continued to declare that on January 29, 2004, the BIR served upon SMC a PAN dated January 28, 2004 for an alleged deficiency excise tax of ₱852,039,418.15, applying the higher tax rates of ₱12.52 and ₱13.61 per liter on removals of San Mig Light during the period from 1999 up to January 7, 2004. Since the BIR would not allow removal of San Mig Light unless the payment of prescribed rate was made, SMC started paying the higher rate of tax on February 1, 2004 but at the same time registered its objection. Finally, on October 14, 2011, SMB filed its claim for refund with the BIR in the amount of ₱699,584,314.54, covering the period January 1, 2010 to December 31, 2010.

Witness **Bienvenido N. Banas** also executed a Judicial Affidavit[39] in which he declared that during his incumbency as Finance Manager, Beer Division of SMC from 1998 to December 2003, SMC regularly submitted reports to the BIR indicating that San Mig Light, one of the beer products of SMC, now SMB, was taxed as a new and medium-priced brand at ₱9.15 per liter which was subsequently adjusted to ₱10.25 per liter. The BIR never interposed any objection to the said reports.

However, in a Notice of Discrepancy dated May 28, 2002, the BIR informed SMC that San Mig Light was a variant of its existing beer products hence should be subjected to a higher excise tax rate. In his letter reply, he attached a copy of BIR letter dated February 7, 2002, confirming the tax classification of San Mig Light as a new brand.

The former Senior Vice President, Corporate Marketing but currently the Senior Vice President and Marketing Manager of SMB, **Minerva Lourdes B. Bibonia** indicated in her Judicial Affidavit[40] which she identified in open court that she is familiar with the brands, taste and formulation of SMB

[39] Docket, pp. 677-695.
[40] Docket, pp. 716-726.

products. She claimed that San Mig Light does not have the same design as Pale Pilsen or any other beer brand of petitioner. Further, the Escudo insignia is the corporate logo of both SMC and SMB which does not form part of the San Mig Light and Pale Pilsen beer brands or any other beer brands of petitioner. Lastly, San Mig Light has a different formulation giving it a distinctive taste. San Mig Light is lower in calories compared to Pale Pilsen which also has a different alcohol formulation. Significantly, San Mig Light has performed well in the market and has developed a market of its own separate from Pale Pilsen.

Also by way of a Judicial Affidavit,[41] **Marciano B. Requilme, Jr.** testified that as Assistant Vice President and Quality Assurance Manager, Brewing Technical Group, of SMB, he ensures that all SMB beer products meet the quality standards. He issues Certificates of Analysis based on the logbooks in which the results of various laboratory tests or analyses conducted under his supervision are regularly entered.

In the Certificate of Analysis he issued on August 28, 2012 or after the tests or analyses of the contents of a newly manufactured San Mig Light and Pale Pilsen were conducted on August 2, 2012 and August 17, 2012, respectively, he concluded that San Mig Light and Pale Pilsen are two (2) entirely different products.

As Manager of Accounting and Financial Services of SMB, **Noemi L. Ronquillo** testified[42] that she is responsible for the preparation of the financial statements of the company, payment processing, including the computation of all taxes and their payment, insurance requirements of the company, cash planning and financial systems. She also assists the Chief Finance Officer of SMB, Mercy Marie J. L. Amador, in the submission and filing of documents with the BIR, including claims for refund of taxes illegally, excessively and/or erroneously paid by SMB to the BIR.

[41] Docket, pp. 730-742.
[42] Docket, pp. 762-771.

On October 14, 2011, SMB filed with the BIR a claim for refund in the amount of ₱699,584,314.54, representing overpayment of excise taxes erroneously, illegally and/or excessively assessed and collected on its removal of San Mig Light from January 1, 2010 to December 31, 2010. She participated in the preparation of the Letter/Claim for Refund filed with the BIR with all the attachments.

Finally, Independent Certified Public Accountant (ICPA) **Normita L. Villaruz** testified[43] that as the court-commissioned ICPA, she examined and verified the voluminous documents pertaining to petitioner's Claim for Refund dated October 14, 2011, in the total amount of ₱699,584,314.54, allegedly representing overpayment of excise taxes erroneously, illegally and/or excessively assessed on its removal of San Mig Light from January 1, 2010 to December 31, 2010. Her audit revealed that the amount of ₱699,584,314.54 subject of the instant claim for refund is properly substantiated. However, when the adjustment indicated in her Report was considered, the amount was reduced from ₱699,584,314.54 to ₱699,583,941.50.

After petitioner rested, respondent moved for issuance of *Subpoena Duces Tecum and Subpoena Ad Testificandum*[44] to Minerva Lourdes Bibonia, Head of the Beer Marketing Division of SMC and its corporate secretary. Over petitioner's Opposition,[45] the Court granted respondent's motion in the Resolution[46] dated September 6, 2013.

During respondent's initial presentation of evidence, the subpoenaed witnesses, **Atty. Mary Rose S. Tan** – SMC's Assistant Corporate Secretary, and **Ms. Minerva Lourdes Bibonia,** SMC's Senior Vice President and Marketing Manager, appeared and testified in full. Atty. Tan identified the originals of the 1999 SMC Annual Report, Kaunlaran Magazine Issue 9 Vol 12 Oct 1999 and Kaunlaran Magazine Special Issue Jan 2000, while Ms. Bibonia identified a Data Disk for Laptop/Computer containing video

[43] Docket, pp. 1135-1166.
[44] Docket, pp. 1277-1280
[45] Docket, pp. 1285-1291
[46] Docket, pp. 1311-1314

footages of two (2) TV commercials of San Mig Light and a VCD containing as well video footages of two (2) TV commercials of San Mig Light. Thereafter, respondent formally offered her exhibits[47] then rested.[48]

After the parties filed their respective memoranda, the case was deemed submitted for decision.[49]

THE ISSUES

The parties submitted the following issues[50] for the resolution of the Court, to wit:

> "4.01. The main issue for resolution of this Honorable Court is:
>
> > 4.01.a. Whether petitioner SMB is entitled to a refund by the Bureau of Internal Revenue of the amount of ₱699,584,314.54 as having been erroneously, excessively and/or illegally collected from and overpaid by it as excise taxes on 'San Mig Light' for the period from January 1, 2010 up to December 31, 2010 as a consequence of its re-classification by the Bureau of Internal Revenue as a variant.
> >
> > 4.02. The following are the corollary issues:
> >
> > 4.02.a. Whether the amendments introduced by Republic Act No. 9334 on Section 143 of the National Internal Revenue Code of 1997 have an adverse effect on the respondent's case.

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[47] Docket, pp. 1318-1321
[48] Docket, pp. 1319-1320.
[49] Docket, p. 1622
[50] Docket, pp. 554-555

> 4.02.b. Whether 'San Mig Light' is not a new brand but a variant of an existing brand.
>
> 4.02.c. Assuming 'San Mig Light' is not a new brand but a variant of an existing brand, which existing brand is it a variant of.
>
> 4.02.d. Assuming it is a variant of an existing brand, whether or not the higher tax rate of ₱19.05 per liter, effective January 1, 2009, applies to 'San Mig Light' removals from January 1, 2010 up to December 31, 2010."

The foregoing issues can be summarized as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT OF ₱699,584,314.54, ALLEGEDLY REPRESENTING ERRONEOUSLY, EXCESSIVELY AND/OR ILLEGALLY COLLECTED AND OVERPAID EXCISE TAXES ON THE REMOVALS OF SAN MIG LIGHT DURING THE PERIOD COVERING JANUARY 1, 2010 TO DECEMBER 31, 2010."

THE COURT'S RULING

The petition is partly meritorious.

It is significant to note that in several cases, the Court *En Banc*,[51] has already ruled that San Mig Light manufactured by petitioner is classified as a new brand. In the recently decided case of *Commissioner of Internal*

[51] *Commissioner of Internal Revenue vs. San Miguel Corporation*, CTA EB No. 873 (CTA Case Nos. 7052, 7053, and 7405), October 24, 2012; *Commissioner of Internal Revenue vs. San Miguel Corporation*, CTA EB No. 755 (CTA Case No. 7708), September 20, 2012

Revenue vs. San Miguel Corporation,[52] the Court *En Banc* eloquently explained the reason behind its ruling in this wise:

> **"SAN MIG LIGHT IS A NEW BRAND AND NOT A VARIANT.**
>
> Effective January 1, 1998, Republic Act ("R.A.") No. 8424 explained the tax treatment of fermented liquors as a new brand in contrast with a variant as follows:
>
>> CHAPTER III — EXCISE TAX ON ALCOHOL PRODUCTS
>>
>> SEC. 143. Fermented Liquor. — . . .
>>
>> Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.
>>
>> New brands shall be classified according to their current net retail price. . .
>>
>> The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex C, shall remain in force until revised by Congress.
>>
>> A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or different brand which carries the same logo or design of the existing brand.
>
> Beginning January 1, 2005, R.A. 9334 amended Section 143 of the 1997 NIRC making reference to fermented liquors either as a new brand or variant. R.A. 9334

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

restricted the meaning of a variant in the following manner:

> "A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand. . . .
>
> 'New brand' shall mean a brand registered after the date of the effectivity of R.A. 8240."

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

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

xxx xxx xxx

San Mig Light is not a variant of an existing brand. The petitioner erred in treating the wordings 'San Miguel' or 'San Mig' as a root word and 'Light' as a suffix. **'San Miguel' or 'San Mig' is not registered nor is it an existing classified brand under R.A. 8240. The**

brand 'Pale Pilsen' was registered and classified as a brand name at that time. The term 'Light' cannot be separated from the word 'San Mig' or 'San Miguel' but should be considered as one brand name. Moreover, there are dissimilarities in the appearances of the logos of San Mig Light and Pale Pilsen as described by the Court in Division:

xxx xxx xxx

Based on the law and admission by both parties on August 2, 2005, the fact of registration of San Mig Light as a new brand in October 1999 and reconfirmation of such classification on February 7, 2002 belie Assistant Commissioner Abella's findings that this product is a variant of San Miguel Pale Pilsen.

San Mig Light is correctly classified as a new brand. Any reclassification of a fermented liquor product should be in conformity to the provision of Section 3 of R.A. 9334 which provides:

> Section 3. Section 143 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows: . . .
>
> 'SEC. 143. Fermented Liquors. — . . .
>
> 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 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.
>
> **The BIR's earlier recognition of San Mig Light as a new brand because it is registered after the date of effectivity of R.A. 8240 or after January 1, 1997 in accordance with R.A. 9334 applies. And any subsequent reclassification of fermented liquor products such as San Mig Light should be pursuant to the act of Congress as mandated by law. The BIR's reclassification of San Mig Light as a variant imposing higher excise taxes is devoid of any basis** xxx." (*Boldfacing ours; citations omitted*)

Clearly, whether San Mig Light is indeed a new brand is already a non- issue. Hence, the Court shall now proceed to determine whether petitioner is entitled to the amount subject of the present claim.

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide for the procedure governing the refund of erroneously paid taxes, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit

> or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "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."

Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax erroneously or illegally collected. However, the settled rule is that both the administrative and judicial claims for refund must be filed within two (2) years from the *date of payment of the tax.*

Relevantly, for 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 provides:

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

In the instant case, the claim for refund covers the removals of San Mig Light during the period January 1 to December 31, 2010. In fine, petitioner has two years or until January 1, 2012 to file its claim for refund. Evidence shows that the administrative claim for refund was filed on October 14, 2011[53] while the judicial claim, on December 23, 2011 or within the two-year prescriptive period.

Pieces of evidence also show that the claimed amount of ₱699,584,314.54 refers to overpaid excise taxes on petitioner's removal of San Mig Light from its five (5) plants located in Polo, Valenzuela; San Fernando, Pampanga; Bacolod City, Negros Occidental; Mandaue City, Cebu; and Davao City, for the period covering January 1, 2010 to December 31, 2010, broken down as follows:

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[53] Exhibit "II"

Brewery	Volume of Removals (in liters)	Excise Taxes Paid at ₱19.05		Should be Excise Taxes Paid at ₱14.34		Difference (Amount being claimed for refund)
		Per Liter	Amount	Per Liter	Amount	
Polo, Valenzuela	42,732,563.76	19.05	₱ 814,055,339.63	14.34	₱ 612,784,964.32	₱201,270,375.31
San Fernando, Pampanga	80,872,688.16	19.05	1,540,624,709.45	14.34	1,159,714,348.21	380,910,361.24
Bacolod City, Negros Occidental	9,912,371.04	19.05	188,830,668.31	14.34	142,143,400.71	46,687,267.60
Mandaue City, Cebu	10,075,285.44	19.05	191,934,187.63	14.34	144,479,593.21	47,454,594.42
Davao City	4,938,793.20	19.05	94,084,010.46	14.34	70,822,294.49	23,261,715.97
Total	**148,531,701.60**		**₱ 2,829,528,915.48**		**₱ 2,129,944,600.94**	**₱699,584,314.54**

In support of its claim, petitioner presented, *inter alia,* the following documents, which were all examined and verified by the ICPA:

1. Excise Tax Returns and related documents;[54]
2. Movement Reports with Allocated Deposits;[55]
3. Official Register Books[56] and Excise Taxpayer's Removal Declarations[57] – Polo, Valenzuela Plant;
4. Official Delivery Invoices, Daily Sworn Statements and Excise Taxpayer's Removal Declarations[58] – San Fernando City, Pampanga Plant;
5. Official Delivery Invoices, Revenue Officer on Premises' Daily Monitoring Reports and Official Register Books[59] - Bacolod City, Negros Occidental Plant;
6. Official Delivery Invoices, Revenue Officer on Premises' Daily Monitoring Reports and Official Register Books[60] - Mandaue City, Cebu;
7. Official Delivery Invoices, Official Register Books and Reports on Excise Tax Payments and Applications[61] – Davao City;
8. Shipping Memoranda and Issue/Receipt Documents[62] – Polo, Valenzuela Plant;
9. Shipping Memoranda, Claim Memos and Gate Passes[63] – San Fernando City, Pampanga;

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[54] Exhibits "PP1-1" to "PP1-504", "PP2-1" to "PP2-507", "PP3-1" to "PP3-508", "PP4-1" to "PP4-501", and "PP5-1" to "PP1-495"
[55] Exhibits "QQ-1" to "QQ-12"
[56] Exhibits "SS1-1" to "SS1-323"
[57] Exhibits "SS1-324" to "SS1-6,574"
[58] Exhibits "SS2-1" to "SS2-331"
[59] Exhibits "SS3-1" to "SS3-298"
[60] Exhibits "SS4-1" to "SS4-364"
[61] Exhibits "SS5-1" to "SS5-323"
[62] Exhibits "UU1-1" to "UU1-7,182"
[63] Exhibits "UU2-1" to "UU2-11,441"

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10. Shipping Memoranda and Delivery Receipts[64] - Bacolod City, Negros Occidental;
11. Shipping Memoranda and Delivery Receipts/Stock Transfer Receipts[65] - Mandaue City, Cebu; and
12. Shipping Memoranda, Complimentary Forms and Gate Passes[66] - Davao City.

A revisit of the evidence submitted result in a conclusion supportive of the ICPA's findings and observations.

Per the ICPA Report,[67] petitioner's total Advance Excise Tax Deposits for the period covered for all beer products for each of the five plants amounted to ₱16,483,747,307.82, which were duly filed and paid by petitioner through the BIR Electronic Filing and Payment System (eFPS).[68] The said amount may be broken down as follows:[69]

Plants	Annex	Amount
Polo, Valenzuela	PP_1	₱ 3,107,300,000.14
San Fernando, Pampanga	PP_2	6,941,016,742.38
Bacolod City, Negros Occidental	PP_3	1,028,603,105.51
Mandaue City, Cebu	PP_4	3,758,581,000.12
Davao City	PP_5	1,648,246,459.67
Total Advance Excise Tax Deposits	PP	**₱ 16,483,747,307.82**

On the other hand, petitioner's Movement Report with Allocated Deposits[70] shows that the computed excise taxes due on the removal of all beer products from the five plants for the period January 1, 2010 to December 31, 2010 amounted to ₱16,516,948,380.67, summarized as follows:[71]

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64 Exhibits "UU3-1" to "UU3-2,040"
65 Exhibits "UU4-1" to "UU4-3,556"
66 Exhibits "UU5-1" to "UU5-2,162"
67 Exhibit "OO"
68 Exhibits "PP1-1" to "PP1-504", "PP2-1" to "PP2-507", "PP3-1" to "PP3-508", "PP4-1" to "PP4-501", and "PP5-1" to "PP5-495"
69 Annex PP of Exhibit "OO"
70 A monthly report containing the excise taxes due on daily and total monthly removals of all beer products and advance excise tax deposits as well as the beginning and ending balances of outstanding excise tax deposits for the month, as per Exhibit "WW", Judicial Affidavit of Mrs. Normita L. Villaruz in lieu of Direct Testimony, docket, p. 1157
71 Exhibit "OO", p. 7

Plants	Amount
Polo, Valenzuela	₱ 3,124,355,447.98
San Fernando, Pampanga	6,936,188,395.86
Bacolod City, Negros Occidental	1,031,029,309.06
Mandaue City, Cebu	3,772,438,550.85
Davao City	1,652,936,676.92
Total Excise Tax Due	**₱ 16,516,948,380.67**

The above total excise taxes due on removals of all beer products as reported in the Movement Report with Allocated Deposits in the amount of ₱16,516,948,380.67 has been duly filed and paid to the BIR as evidenced by the Excise Tax Returns (ETRs)[72] of the five plants for the period January 1, 2010 to December 31, 2010.

The total amount of Advance Excise Tax Deposits made for the period covered amounting to ₱16,483,747,307.82 when added to the beginning balance of Advance Excise Tax Deposits amounting to ₱66,824,891.12 will result in a total amount of ₱16,550,572,198.94. The sum is sufficient to cover the total computed excise taxes due per Movement Report with Allocated Deposits amounting to ₱16,516,948,380.67 and will result in an excess advance payment of ₱33,623,818.30, as computed below:[73]

	Annex	Amount
Beginning Balance of Advance Payment of Excise Tax Deposit per ETR, December 31, 2009 of the five (5) plants	RR	₱ 66,824,891.12
Add: Advance Payment of Excise Tax Deposit of the five (5) plants for the period covered January 1, 2010 to December 31, 2010	PP	16,483,747,307.82
Total Advance Payments of Excise Tax Deposit as of December 31, 2010 of the five (5) plants		**₱ 16,550,572,198.94**
Less: Excise Taxes due on ALL BEER products for the period covered January 1, 2010 to December 31, 2010	QQ	16,516,948,380.67
Variance per Monthly Movement Report vs. ETR		(0.03)
Excess of Advance Payment of Excise Tax Deposits over Excise Taxes due as of December 31, 2010	RR	**₱ 33,623,818.30**

As ascertained by the ICPA, the daily running balances of advance excise tax deposits were always in excess of the

[72] BIR Form No. 2200-A, Exhibits "PP1-1" to "PP1-504", "PP2-1" to "PP2-507", "PP3-1" to "PP3-508", "PP4-1" to "PP4-501", and "PP5-1" to "PP5-495"
[73] Exhibit "OO", p. 8

required daily payment of excise taxes due based on the actual volume of San Mig Light removals from the five plants for the period covered.

An examination of the Excise Tax Returns, particularly the Schedule 1 - Summary of Removals and Excise Tax Due on Alcohol Products Chargeable Against Payments, reveals that the total actual excise taxes due and paid amounting to ₱16,516,948,380.64 from the five plants were comprised of (1) excise taxes due and paid on San Mig Light removals amounting to ₱2,829,528,915.60 and the (2) excise taxes due on all other beer products amounting to ₱13,687,419,465.04, detailed as follows:

Actual Excise Taxes Paid for the Period January 1, 2010 to December 31, 2010					
	On SML products	**On other beer products**			
Brewery	**at ₱19.05**	**at ₱9.64**	**at ₱14.34**	**at ₱19.05**	**Total**
Polo	₱ 814,055,339.67	₱1,423,125,850.86	₱ 671,112,432.47	₱216,061,825.01	₱ 3,124,355,448.01
San Fernando	1,540,624,709.43	4,365,268,899.40	1,030,294,787.05	-	6,936,188,395.88
Bacolod City	188,830,668.32	548,770,798.27	293,427,842.51	-	1,031,029,309.10
Mandaue City	191,934,187.70	2,286,416,067.55	1,294,088,295.56	-	3,772,438,550.81
Davao City	94,084,010.48	1,119,481,342.66	439,371,323.70	-	1,652,936,676.84
Total	**₱ 2,829,528,915.60**	₱9,743,062,958.74	₱3,728,294,681.29	₱216,061,825.01	₱16,516,948,380.64

The total amount of excise taxes due on San Mig Light removals filed and paid to the BIR amounting to ₱2,829,528,915.60 substantially matches the total amount of excise taxes paid by petitioner in its Petition for Review amounting to ₱2,829,528,915.48, as shown below:

	Annex	**in Liters**	**Amount of Excise Taxes as paid at ₱19.05**
Excise Taxes filed and paid per BIR Form No. 2200-A Schedule 1 of ETRs for the five (5) plants	$QQ_{1.2.1}$	148,531,701.60	₱2,829,528,915.60
Excise Taxes claimed as paid per petitioner's Petition for Review	OO_1	148,531,701.60	2,829,528,915.48
Rounding-off difference		-	₱ **0.12**

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Further, a comparison of total San Mig Light removals made on April 14, 2010 as reported per ETRs versus San Mig Light removals per Shipping Memorandum (SM) and lists of SM per SAP Files, Official Delivery Invoices (ODIs), Excise Taxpayer's Removal Declarations (ETRDs), daily and monthly Official Register Book (ORB) and Sworn Statements of the Volume of Removals (SSR), and daily monitoring reports from Revenue Officers on Premise (ROOP) resulted in a variance representing understatement of excise taxes due on San Mig Light removals amounting to ₱1,539,840.46 with respect to the Polo Plant.

However, there was also an overstatement of excise taxes paid for the removals of "Other Beer products" in the same amount. The understatement on excise taxes paid on San Mig Light removals and the overpayment on excise taxes paid for Other Beer products were due to mispostings of removals of San Mig Strong Ice B of 1,496.88 liters amounting to ₱28,515.56 excises taxes, which were classified as San Mig Light and the removals of San Mig Light of 82,328.40 liters amounting to ₱1,568,356.03 which were misclassified as San Mig Strong Ice B, as follows:

	Volume of Liters	**Excise Tax Amount Paid at ₱19.05**
San Mig Light B (SML)		
Per ORB Should Be	82,328.40	₱ 1,568,356.02
Per ETR Paid as	1,496.88	28,515.56
Variance (under)	(80,831.52)	(1,539,840.46)
San Mig Strong Ice B		
Per ORB Should Be	1,496.88	₱ 28,515.56
Per ETR Paid as	82,328.40	1,568,356.02
Variance (over)	80,831.52	1,539,840.46
Net Variance	-	₱ -

Notwithstanding the foregoing misclassification and mis-posting of removals, the amount of the excise taxes due remains unaffected as the net variance amounts to zero (₱0.00). However, since the excise taxes due on San Mig Light removals based on list of SM per SAP Files and ORB were misclassified and declared as Other Beer products, and filed and paid per ETR as Other Beer products, petitioner's claim before this Court was understated by ₱380,716.46, as computed below:

	Volume	Amount
Excise Taxes Due at ₱19.05	80,831.52	₱1,539,840.46
Excise Taxes Due at ₱14.34	80,831.52	1,159,124.00
Variance (not claimed per Petition)		**₱ 380,716.46**

Nevertheless, since the foregoing amount was not included in the computation of petitioner's claim before this Court, the same may not be included in the claim for refund.

On the other hand, petitioner's claim for refund shall be reduced by ₱373.04 since the excise taxes due on San Mig Light removals per ORBs and ETRs made on April 16 and May 31, 2010 were more than the excise taxes due on San Mig Light removals per SM and Internal Revenue Declaration (IRD) based on SAP files, as computed below:

Per Official Register Book and ETR	173,028.64
Per SM and IRD as per SAP Files	172,949.44
Difference	79.20
Excise Taxes Due on 79.20 liters	
at 19.05	₱ 1,508.76
at 14.34	1,135.72
	₱ 373.04

PREMISES CONSIDERED, the Petition for Review dated December 20, 2011, is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner San Miguel Brewery, Inc. in the reduced amount of **₱699,583,941.50** (₱699,584,314.54 minus ₱373.04), representing erroneously, or excessively and/or illegally collected, and overpaid excise taxes on "San Mig Light" during the period from January 1, 2010 to December 31, 2010.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice