REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN MIGUEL BREWERY, INC., A SUBSIDIARY OF SAN MIGUEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8748

Members:
CASTAÑEDA, JR., *Chairperson;*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
JUN 09 2017 4:10 p.m.

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DECISION

CASANOVA, *J.*:

This is a Petition for Review[1], filed on December 19, 2013, by petitioner San Miguel Brewery, Inc., a subsidiary of San Miguel Corporation, seeking the refund or issuance of tax credit certificate in the amount of ₱761,067,629.80, representing its erroneously, excessively and/or illegally collected and overpaid excise taxes on "San Mig Light" during the period from January 1, 2012 up to December 31, 2012.

Petitioner San Miguel Brewery, Inc., a subsidiary of San Miguel Corporation (SMC), is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[2]

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue, with office address at the Office of the Commissioner of Internal Revenue, Bureau

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[1] Docket (Vol I), pp. 6-55.
[2] Par. 2.01, Stipulation of Facts, Documents, Issues, and Other Matters (SFDIOM), Docket (Vol. III), p. 1196.

of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[3]

One of the beer products being manufactured by petitioner San Miguel Brewery, Inc., and previously by its parent company, San Miguel Corporation, is "San Mig Light".[4]

On October 19, 1999, Mr. Virgilio S. de Guzman, then Assistant Vice President, SMBP Finance, of San Miguel Corporation, wrote a letter[5] to Assistant Commissioner Leonardo B. Albar, of the BIR Excise Tax Services, requesting for the registration of, and authority to manufacture "San Mig Light", as a new brand, to be taxed at ₱12.15 per liter.[6]

In response thereto, Assistant Commissioner Albar sent a letter[7] dated October 27, 1999 to SMC, granting the request for registration of "San Mig Light".[8]

Subsequently, on November 3, 1999, due to the change in the net retail price of "San Mig Light", Mr. de Guzman wrote a letter[9] advising Assistant Commissioner Albar that "San Mig Light" will be sold at the suggested net retail price of ₱21.15 per liter, less VAT and specific tax, to be taxed at ₱9.15 per liter.[10]

On January 28, 2002, Mr. Afredo R. Villacorte, then Vice President and Manager of SMC Group Tax Services, wrote to the Chief of the BIR Large Taxpayers Assistance Division II, requesting information on the tax rate and classification of "San Mig Light".[11]

On February 7, 2002, Mr. Conrado P. Item, then Acting Chief of the BIR Large Taxpayers Assistance Division II, sent a letter[12] in reply to the SMC letter dated January 28, 2002, confirming that based on the documents submitted, SMC was allowed to register, manufacture

[3] Par. 1.01, SFDIOM, Docket (Vol. III), p. 1191.
[4] Par. 2.02, SFDIOM, Docket (Vol. III), p. 1196.
[5] Exhibit "P".
[6] Par. 2.03, SFDIOM, Docket (Vol. III), p. 1197.
[7] Exhibit "P-1".
[8] Par. 2.04, SFDIOM, Docket (Vol. III), p. 1197.
[9] Exhibit "P-2".
[10] Par. 2.05, SFDIOM, Docket (Vol. III), p. 1197.
[11] Par. 2.06, SFDIOM, Docket (Vol. III), p. 1197.
[12] Exhibit "P-4".

and sell "San Mig Light" as a new brand and is using the correct classification and rates for "San Mig Light" as a new brand.[13]

Meanwhile, in the "Master List of Registered Brands of Locally Manufactured Alcohol Products" attached as Annex "A-3"[14] of Revenue Memorandum Order (RMO) No. 6-2003[15] dated March 11, 2003, "San Mig Light" is listed as a new brand.[16]

On May 28, 2002, respondent, through Assistant Commissioner Edwin R. Abella of the Large Taxpayers Service, issued a Notice of Discrepancy to SMC, stating among others, that "San Mig Light" is a variant of SMC's existing beer products; hence, starting year 2000, it should be subjected to a higher excise tax rate.[17]

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

On August 23, 2007, SMC and petitioner executed a "Master Deed of Assignment of Domestic Beer Assets,"[18], wherein effective October 1, 2007, SMC spun off its domestic beer business into a new company, herein petitioner SMB.[19] In the said Master Deed of Assignment, SMC assigned, transferred and conveyed in favor of petitioner all of its rights, title and interest over its beer assets used in its domestic beer business.[20] As a consequence, petitioner continued SMC's business operations of manufacturing, selling and distribution of fermented and malt-based beverages, including "San Mig Light".[21]

During the period from January 1, 2012 up to December 31, 2012, petitioner was obliged to pay excise taxes on its removals of "San Mig Light" at the increased tax rate of ₱20.57 per liter.[22] Petitioner alleges that it should have paid only ₱15.49 per liter. Thus, it claims that there was an erroneous, excessive and/or illegal

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[13] Par. 2.07, SFDIOM, Docket (Vol. III), p. 1197.
[14] Exhibit "P-5-a".
[15] Exhibit "P-5".
[16] Par. 2.08, SFDIOM, Docket (Vol. III), p. 1197.
[17] Par. 2.11, SFDIOM, Docket (Vol. III), p. 1199.
[18] Docket (Vol. II), pp. 813-818.
[19] Par. 2.31, SFDIOM, Docket (Vol. III), p. 1204.
[20] Par. 2.32, SFDIOM, Docket (Vol. III), p. 1204.
[21] Par. 2.33, SFDIOM, Docket (Vol. III), p. 1205; Exhibit "P-28".
[22] Par. 2.37, SFDIOM, Docket (Vol. III), p. 1206.

assessment and collection in the amount of ₱5.08 per liter, amounting to ₱761,067,629.80.[23]

As a result, on August 23, 2013, petitioner filed with respondent its claim[24] for refund dated August 16, 2013 in the amount of ₱761,067,629.80 representing overpayments of excise taxes erroneously, excessively and or illegally collected for the period January 1, 2012 to December 31, 2012.[25]

Considering that no action had been taken by respondent on petitioner's claim for refund, petitioner filed the instant Petition for Review on December 19, 2013.

Upon motion[26] of petitioner, the Court commissioned Ms. Normita L. Villaruz as the Independent Certified Public Accountant (ICPA) on March 27, 2014.[27]

On April 1, 2014, respondent filed his Answer[28], interposing the following Special and Affirmative Defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

8. Respondent repleads the foregoing allegations, and incorporates the same by reference in this section of her *Answer*, insofar as they are material and applicable.

A. This Honorable Court does not have jurisdiction over petitioner's claim for tax refund.

1. Petitioner committed a fatal error when it failed to submit the supporting documents necessary to substantiate its

[23] Par. I, VIII. Prayer, Petition for Review, Docket (Vol. I), p. 52.
[24] Exhibits "P-37" to "P-37-o".
[25] Par. 2.38, SFDIOM, Docket (Vol. III), p. 1206.
[26] Motion for Commissioning of Independent Certified Public Accountant, Docket (Vol. I), pp. 298-302.
[27] Minutes of Hearing dated March 27, 2014, Docket (Vol. I), pp. 548-549.
[28] Docket, Vol. I, pp. 550-568.

> **administrative claim for tax refund;**
>
> **2. Such failure rendered petitioner as to have not thoroughly applied the administrative remedy which was available to it;**
>
> **3. Petitioner's failure to exhaust its administrative remedies renders this Honorable Court without jurisdiction over this particular claim.**

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9. Respondent respectfully maintains that this Honorable Court does not have jurisdiction over petitioner's claim for refund. To be more precise, respondent contends that petitioner's failure to thoroughly apply the administrative remedy available to it, led to the premature filing of the instant *Petition*, and ultimately prevented this Honorable Court from acquiring jurisdiction over the same.

10. Respondent also respectfully adds that before this Honorable Court assumes jurisdiction over the substantive issue of whether or not petitioner is entitled to its claim for tax refund, petitioner must first establish that it preliminarily complied with all the administrative requirements leading up to the filing of this action. This Honorable Court must first be convinced that petitioner indeed thoroughly pursued an administrative claim for tax refund, before it proceeds to determine petitioner's entitlement to the same under substantive law.

11. With respect to this pursuit of an administrative claim for refund, while respondent concedes that petitioner initiated the same before her office, particularly on 23 August 2013, respondent nonetheless submits that her office could not have properly acted upon it, and had no recourse but to treat it as pro forma, considering

petitioner's failure to submit all the documentary evidence appurtenant thereto.

12. Respondent maintains that petitioner is not entitled to its claim for tax refund or credit in the aggregate amount of THIRTY-FIVE MILLION SEVEN HUNDRED FIFTY-THREE THOUSAND SEVEN HUNDRED SEVENTY-NINE PESOS AND FOUR CENTAVOS (Php 35,753,779.04), which according to petitioner, represents its unutilized input tax on zerorated transactions, because it failed to submit all the necessary and relevant documents pertaining thereto.

13. Petitioner submitted documents but did not submit all documents required to substantiate its claim for refund. In view of petitioner's actual failure to submit the necessary documents supporting its claim, the intendment of the law, in prescribing that the taxpayer comply with all the administrative requirements continuing up to judicial review, was not served. Simply put, petitioner did not exhaust its administrative remedies.

14. Respondent respectfully submits that the requirement to exhaust administrative remedies is not satisfied with the mere filing of an administrative claim. Rather, respondent contends that an administrative remedy shall only be deemed to have been exhausted if the same had been thoroughly applied, which was not what happened in this case. In support of her position, respondent respectfully invites the attention of this Honorable Court to the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner Of Internal Revenue*, wherein the Honorable Supreme Court ruled that:

> 'xxx xxx xxx
>
> First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims.

> **<u>In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.</u>** Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **<u>Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.</u>**
>
> xxx xxx xxx' (emphases and underscoring supplied)

15. The aforecited doctrine clearly requires a tax refund claimant to submit all documents which may be relevant or important in substantiating its administrative claim. Absent compliance with this requisite, the recourse to judicial action merely becomes an attempt by the taxpayer to circumvent the administrative claim and bypass respondent's office.

16. Equally relevant and noteworthy is the following pronouncement made by the Honorable Supreme Court in *Jesus A. Jariol v. Commission on Elections*:

> 'xxx xxx xxx
>
> A party aggrieved thereby must not merely initiate the prescribed administrative procedure to obtain relief, but also must pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by

itself correctly and prevent unnecessary and premature resort to the court.

xxx xxx xxx'

17. Had petitioner submitted the complete documents, respondent would have had the opportunity to determine the merits of petitioner's claim. The failure of petitioner to submit its documents essentially deprived respondent of the opportunity to properly exercise her function. Moreover, as it stands, petitioner filed its administrative and judicial claims too closely to each other, on 23 August 2013 and 19 December 2013 respectively, just when the two-year period is about to prescribe. Petitioner effectively reduced the filing of the administrative claim to a perfunctory step it had to undertake prior to its filing of a judicial claim for refund before this Honorable Court.

18. Petitioner bypassed its administrative remedy, and it is only now at the judicial stage, before this Honorable Court, that petitioner submits and proposes to present documentary evidence allegedly establishing its entitlement to a tax refund. Respondent respectfully submits that this should not be allowed as this pernicious practice contravenes the well-settled principle that matters not preliminarily raised in the administrative level cannot be raised for the first time upon appeal.

19. The concept and consequences of the non-exhaustion of administrative remedies need not be discussed in detail. Suffice it to say that the Honorable Supreme Court has long and consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide upon a matter that comes within his or her jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.

20. Applying the foregoing jurisprudential guidelines to the case at hand, respondent respectfully maintains that petitioner's non-exhaustion of its administrative remedies should bar it from seeking judicial recourse. Its failure to exhaust all administrative remedies is fatal to its claim

considering that such non-exhaustion is not merely for purposes of practicality and formality, but is also jurisdictional in nature. Hence, petitioner's failures, first, in not submitting the complete documents necessary to substantiate its claim, and second, in excluding from its *Petition* any proof of its compliance with the preceding requirement, warrant a summary dismissal of the instant *Petition for Review*.

B. Petitioner is not entitled to a tax refund because there was no erroneous or illegal collection of excise taxes.

21. The remedy of tax refund is provided for under Sections 204 and 229 of the National Internal Revenue Code of 1997 (hereinafter, 'NIRC'),to wit:

> '**Section 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. –**
>
> 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.
>
> A Tax Credit Certificate validly issued under the provisions of this Code maybe applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable.

xxx xxx xxx

<u>Section 299. Recovery of Tax Erroneously or Illegally Collected. –</u>

No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been **<u>erroneously or illegally assessed or collected</u>**, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully 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.' (emphases and underscoring supplied)

22. Petitioner, in this case, claims entitlement to a tax refund under these aforecited provisions, particularly upon the ground of alleged overpayments of excise taxes erroneously collected by respondent from petitioner, with respect to its product "San Miguel Light" (hereinafter, "SML").

23. However, contrary to petitioner's claim, respondent respectfully submits that there was no erroneous payment of excise taxes. Consequently,

respondent holds further that petitioner is not entitled to a tax refund.

24. In the first place, respondent earnestly maintains that there was no reclassification of SML because it has always been classified as a variant of an existing brand. In support of her contention, respondent invites the attention of this Honorable Court to the following:

> 24.1. The complete name of SML is actually San Mig Light Pale Pilsen. In Annexes C-1 and C-2 of the NIRC, 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, while Pale Pilsen refers to San Miguel Beer Pale Pilsen in bottles. Accordingly, the root name of the existing brand 'Pale Pilsen';
>
> 24.2. 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;
>
> 24.3. 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 the root name of the brand and/or a different brand which carries the same logo or design of the existing brand;
>
> 24.4. In the SML in can, it is blatantly noticeable that San Mig Light is a 'LOW CALORIE PALE PILSEN'. While the San Miguel Pale Pilsen in can, it is clearly written therein that that it is 'EXPERTLY BREWED ORIGINALLY FULL-FLAVORED'. With that in mind, it can be obviously inferred that the 'low calorie Pale Pilsen (SML)' is a variant of an 'original full-flavored (Pale Pilsen)';
>
> 24.5. Furthermore, San Miguel Pale Pilsen and SML are the same beer considering that both are pale

pilsens. It just happened that SML is a variant or derivative of San Miguel Pale Pilsen. Contrary to the allegations of petitioner, the determination of whether a product is a variant of an existing brand does not exclusively depend upon the aesthetic appearance of their respective containers. In fact, considering that San Miguel Pale Pilsen and SML are the same beer or pale pilsen, scrutiny as to their contents is more germane to this determination.

24.6. The normal person considers SML is *(sic)* a low calorie pale pilsen. This comes as no surprise since SML has in fact been marketed as such. In San Miguel Pale Pilsen in can, it is described as 'A truly satisfying beer with a refined, well-balanced flavour, perfected and brewed following a century tradition of brewing excellence', while in SML in can, it is described as 'San Miguel Light is the low-calorie beer that gives you the full beer flavour, *the same beer alcohol, yet it's less filling*. A superior beer brewed in the San Miguel tradition of excellence.' From the foregoing, it is undeniable that petitioner itself considers SML as a variant of San Miguel Pale Pilsen, or more accurately, as a low-calorie derivative thereof. Petitioner clearly marketed SML as being the same beer as its San Miguel Pale Pilsen, albeit the former is less filling. With these taken into consideration, respondent respectfully submits that SML is a variant of San Miguel Pale Pilsen;

24.7. Even further, the name San Mig Light (Low Calorie Pale Pilsen) is merely a derivative of San Miguel Pale Pilsen. San Mig Light is a lighter version of the original full flavoured pale pilsen. Petitioner lied to this Honourable Court when it stated that the registered brand is just 'Pale Pilsen' and not 'San Miguel Pale Pilsen' or 'San Miguel Beer Pale Pilsen'. To enlighten everyone with regard to this specific matter, it is worthy to quote certain portions of the case *Asia Brewery, Inc. vs. The Honorable Court of Tax Appeals and San Miguel Corporation*, to wit:

> 'On September 15, 1988, San Miguel Corporation (SMC) filed a complaint against Asia Brewery Inc. (ABI) for

> infringement of trademark and unfair competition on account of the latter's BEER PALE PILSEN or BEER NA BEER product which has been competing with **SMC's San Miguel Pale Pilsen** for a share of the local beer market.
>
> xxx xxx xxx
>
> The registered trademark of SMC for its pale pilsen beer is:
> ***San Miguel Pale Pilsen*** *With Rectangular Hops and Malt Design.* (Philippine Bureau of Patents, Trademarks and Technology Transfer Trademark Certificate of Registration No. 36103, dated 23 Oct. 1986,
>
> xxx xxx xxx
>
> **The words 'pale pilsen' may not be appropriated by SMC for its exclusive use even if they are part of its registered trademark: SAN MIGUEL PALE PILSEN...'** (emphases and underscoring supplied)

25. Secondly, respondent contends that petitioner should be considered as estopped from questioning the classification of SML as a variant of San Miguel Pale Pilsen, on account of its prior representations, as are apparent from the following prior circumstances:

25.1. Petitioner has already admitted the correctness of the classification of SML as a variant of San Miguel Pale Pilsen in can when petitioner started paying on 30 January 2004 the excise tax under the highest tax classification of San Miguel Pale Pilsen (RPT in cans). This indicates admission on the part of SMC that SML is a variant of an existing brand;

25.2. 'Kaunlaran' (petitioner's publication) contains statements that SML is a variant of Pale

Pilsen with the same full flavored taste and alcohol content or a low calorie variant;

25.3. Petitioner indicated in the bottle itself of SML that it is a low calorie pale pilsen;

25.4. Petitioner admitted in its 1999 Annual Report to its stockholders that San Mig Light is a low-calorie variant of SMB;

25.5. Petitioner's numerous public advertisements in both print and media, that San Mig Light is the same San Miguel Pale Pilsen with the same full flavoured taste but with low calories.

26. Thirdly, with respect to the SML's prior listing in Revenue Memorandum Order No. 06-2003 as a new brand, such listing is inconclusive and of no material as regards the classification of SML. Respondent respectfully points out that this memorandum order was issued in order to prescribe the guidelines and procedures in the establishments of current net retail prices of new brands of cigarettes and alcohol products. This is rather clear from Paragraph II (2) of the memorandum order, which provides that "A master list of all registered brands for locally manufactured and imported cigarettes, fermented liquors, wines and distilled spirits (Annexes 'A-1', 'A-2', 'A-3' and 'A-4') as prepared by the LTAID II shall be used as reference document in the conduct of the survey.'

27. Considering that the objectives and policies of the memorandum order does not pertain to, much less affirm, any tax classification and rate, but rather just concerns itself with a masterlist for the sake of reference, said listing cannot be petitioner's legal basis for treating SML as a new brand.

28. Moreover, the removal of the second part of the definition of the term 'variant brand' under paragraph 9 of the NIRC of 1997 does not alter the fact that SML is a variant of SMB.

29. When SML was introduced into the market in 1999, Section 143 of the NIRC was still applicable. The use of the same logo or design as a device to advertise the

SMB variant is adequate to classify SML as a variant of San Miguel Beer Pale Pilsen. The inclusion of the word 'Light' in the name San Mig Light should be considered as a modifier suffixed to the root name that is contemplated by the definition of a variant under Section 143 of the NIRC of 1997.

30. Under Revenue Regulations No. 03-06, certain provisions of the NIRC of 1997 relative to excise taxes applicable to alcohol and tobacco products were clarified:

> 'Sec. 2 Definition of Terms. - xxx xxx xxx
> xxx xxx xxx
>
> (d) VARIANT OF A BRAND- shall refer to a brand of alcohol or tobacco products on which a modifier is prefixed and/or suffixed to the root name of the brand.
>
> For this purpose, the term 'root name' shall refer to a letter, word, number, symbol, or character; or a combination of letters, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: Provided, That the root name has been originally registered as such with the Bureau of Internal Revenue.
>
> xxx xxx xxx
>
> The term 'modifier' shall refer to a word, a number, or a combination of words and/or numbers that specifically describe the root name to distinguish one variant from another whether or not the use of such modifier is a common industry practice. The root name, although accompanied by a modifier at the time of the original brand registration, shall be the basis in determining the tax classification of subsequent variants of such brands.
>
> **Examples of modifiers:**

xxx xxx xxx

For beer: 'Light', 'Dry', 'Ice', 'Lager', 'Hard', 'Premium', etc.' (emphases and underscoring supplied)

31. Finally, respondent takes this opportunity to cite the following portion of the Dissenting Opinion rendered by Justice Amelia R. Cotangco-Manalastas in CTA Case No. 7708, to wit:

'xxx xxx xxx

Under the old NIRC prior to its amendment by Republic Act No. 9334, Section 143 provides:

Section 143. Fermented Liquor. xxx xxx xxx

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

On the other hand, Section 143 of the NIRC, as amended, provides:

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

Despite the deletion of the portion that a product may be classified as variant if it carries the same logo or design, I believe there is sufficient basis to classify San Mig Light as a variant.

When San Mig Light was introduced in 1999, the un-amended Section 143 of the NIRC still applied. Thus, carrying the same logo or design was sufficient to justify the classification of San Mig Light as variant of San Miguel Pale Pilsen.

In addition to the foregoing, the inclusion of the word 'Light' in the San Mig Light variant is precisely a modifier suffixed to the root name that is contemplated by the definition of a variant under Section 143 of the NIRC.

It also bears stressing that Revenue Regulations No. 03-06, which was issued by the respondent, clarifies certain provisions of the NIRC with respect to the excise taxes applicable to alcohol and tobacco products. It states thus:

> Sec. 2. Definition of Terms. - x x x
>
> (d) VARIANT OF A BRAND - shall refer to a brand of alcohol or tobacco products on which a modifier is prefixed and/or suffixed to the root name of the brand.
>
> For this purpose, the term 'root name' shall refer to a letter, word, number, symbol, character; or a combination of letter, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: *Provided*, That the root name has been originally registered as such with the Bureau of Internal Revenue.
>
> xxx
>
> The term 'modifier' shall refer to a word, name or a combination of words and/or numbers that specifically describes the root name to distinguish one variant from another whether or not the use of such modifier is a common industry practice. The root name, although accompanied by a modifier at the time of the original brand registration, shall be the basis in determining the tax classification of subsequent variant of such brands.

> Examples of modifiers:
>
> xxx
>
> For beer: 'Light', 'Dry', 'Ice', 'Lager', 'Hard', 'Premium', etc.
>
> xxx
>
> Instead, I believe that the more logical conclusion is that 'San Miguel' to form a part of its brand name, and that 'San Miguel Pale Pilsen' is the brand name for one of its products, which is taxed as a medium-priced beer. Following the foregoing argument, petitioner's 'RPT in cans' cannot have been intended to be the brand name for its high-priced brands despite its allegation that this is the official brand as registered in Annexes C-l and C-2 of the NIRC. 'RPT in cans' cannot also be found as a brand name in the product San Miguel Pale Pilsen in can. Instead, I believe that 'San Miguel Pale Pilsen in can' is classified as a high-priced brand is merely a variant of the San Miguel Pale Pilsen in bottle, the only difference being the container, one being in a bottle and other in can.
>
> The petitioner argues that assuming that the word 'San Miguel' forms part of the brand, the aforesaid words are not present in 'San Miguel Light'. We find this argument specious.
>
> Based on the discussion above, petitioner clearly intended that the words 'San Miguel' form part of the brand name of this line of beer products. Thus, the addition of the modifier 'Light' to the brand is merely an indication that 'San Miguel Light' is a variant of the San Miguel Pale Pilsen brand, one which is 'lighter' in the sense that it has less calories than the regular San Miguel Pale Pilsen. This conclusion is supported by Revenue Regulations No. 03-06, which provides in Section 2 that:
>
> > In case of a letter(s), number(s), symbol(s), or word(s) is/are deleted from

> or replaced by another letter(s), number(s), symbol(s), or word(s) in the root name of a previously BIR-registered brand such that the introduction of the said brand bearing such change(s) shall ride on the popularity of the said previously registered brand the same shall be classified as a variant of such previously registered brand x x x.
>
> Illustration:

Root Name	Modifier is Prefixed	Modifier is Suffixed	Modifier is Root Name
L&M	Kings L&M	L&M Lights	M&L
10	Perfect 10	10 Menthols	Ten
Blue Ice	Wild Blue Ice	Blue Ice Supreme	Blue Iced
Red Horse	Flying Red Horse	Red Horse Premium	Reddish Horse
Pall Mall	Long Pall Mall	Pall Mall Filter	Pall Mall

Based on the above quoted regulation, it is clear that 'San Mig' is a mere modified root name of 'San Miguel' with the mere affixation 'Light' to form 'San Mig Light'. Taking the modification of the root name and the great similarity in the brand logo and design of San Mig Light to San Miguel Pale Pilsen, it can be concluded that petitioner intended San Mig Light to ride on the popularity of its original variant having less calories.

C. The burden of proof to establish entitlement to a tax refund rests upon petitioner, and its failure to discharge such burden is fatal to its claim. a

32. In an action for refund, the burden of proof is upon the taxpayer to establish his or her right to a refund, and his or her failure to sustain this burden is fatal to the claim.

33. In this particular case, it is upon petitioner to prove the substantive merits of its claim, as well as its compliance with and satisfaction of all the statutory and administrative requirements pertinent to the issuance of a tax refund. Failure at proving both or either calls for a denial of the claim.

34. Petitioner failed to submit complete documents to support its application for refund. It cannot be emphasized enough that mere filing of an administrative claim for refund without submitting the complete documents in support of the application thereof is not conclusive to sustain its contention that it has the right to claim for refund.

35. Even here, with its *Petition* before this Honorable Court, petitioner still failed to substantiate its claim for refund and failed to submit the required documents to prove its entitlement thereto. Hence, the petition must fail.

D. Claims for tax exemption must be justified by the clearest grant of law.

36. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.'

37. And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. The right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. A claim for exemption from tax payments must be clearly shown and be based upon language in the law too plain to be mistaken. Otherwise

stated, taxation is the rule, exemption therefrom is the exception.

38. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *strictissimi juris* against the person or entity claiming the exemption. This means that in an action for refund, the burden of proof is upon the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications.

39. The Honorable Supreme Court has confirmed this construction even as early as in 1926, when it decided the case of *Asiatic Petroleum Co. vs Llanes* in the following manner:

> 'xxx xxx xxx
>
> Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.
>
> xxx xxx xxx'

40. Finally, in the case of *The City of Iloilo v. Smart Communications, Inc.,* the Honorable Supreme Court held that:

> 'xxx xxx xxx
>
> The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law... a
>
> xxx xxx xxx

> When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim; it is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported.
>
> xxx xxx xxx"

A pre-trial conference[29] was scheduled on May 8, 2014. Subsequently, the Petitioner's Pre-Trial Brief[30] was filed on May 15, 2014, while respondent's Pre-Trial Brief[31] was filed through registered mail on May 19, 2014 and was received by the Court on May 23, 2014.

Thereafter, the parties filed their Stipulation of Facts, Documents, Issues and Other Matters[32] on June 20, 2014. This was approved and adopted by the Court in the Pre-Trial Order[33] dated June 27, 2014 which also terminated the pre-trial.

In support of its claim, petitioner presented the following witnesses: Mr. Virgilio S. De Guzman[34], SMC's Finance Manager, Infrastructure Group; Mr. Bienvenido N. Banas[35], Consultant of San Miguel Corporation; Ms. Minerva Lourdes B. Bibonia[36], petitioner's Senior Vice President and Marketing Manager; Atty. Rosabel Socorro T. Balan[37], petitioner's General Counsel and Corporate Secretary; Mr. Marciano B. Requilme, Jr.[38], petitioner's Assistant Vice President and Quality Assurance Manager, Brewing Technical Group; Atty. Lorenzo G. Timbol[39], an Associate in the Law Office of Estelito P. Mendoza and Associates, petitioner's counsel; Ms. Noemi L. Ronquillo[40], petitioner's Manager, Accounting and Financial Services; and Ms. Normita L. Villaruz[41], the Independent Certified Public Accountant (CPA).

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[29] Notice of Pre-Trial Conference, Docket (Vol. I), p. 569.
[30] Docket (Vol. II), pp. 571-584.
[31] Docket (Vol. II), pp. 1158-1163.
[32] Docket (Vol. II), pp. 1191-1217.
[33] Docket (Vol. III), pp. 1223-1231.
[34] Exhibit "P-56"; Minutes of the Hearing dated June 30, 2014, Docket (Vol. III), p. 1232.
[35] Exhibit "P-57"; Minutes of the Hearing dated July 28, 2014, Docket (Vol. III), p. 1233.
[36] Exhibit "P-58"; Minutes of the Hearing dated August 27, 2014, Docket (Vol. III), p. 1234.
[37] Exhibit "P-59"; Minutes of the Hearing dated September 24, 2014, Docket (Vol. III), p. 1235.
[38] Exhibit "P-60"; Minutes of the Hearing dated September 24, 2014, Docket (Vol. III), p. 1235.
[39] Exhibit "P-61"; Minutes of the Hearing dated October 15, 2014, Docket (Vol. III), p. 1236.
[40] Exhibit "P-62"; Minutes of the Hearing dated October 29, 2014, Docket (Vol. III), p. 1237.
[41] Exhibit "P-63"; Minutes of the Hearing dated October 29, 2014, Docket (Vol. III), pp. 1279-1280.

Petitioner also presented and formally offered pieces of documentary evidence. It filed its Formal Offer of Evidence[42] on April 10, 2015.

In a Resolution[43] dated June 25, 2015, the Court admitted petitioner's exhibits except Exhibit "P-51.1831", which was denied for not being found in the records.

Thus, on July 14, 2015, petitioner filed a Motion for Partial Reconsideration[44] of the denial of Exhibit "P-51.1831" which was granted by the Court in the Resolution[45] dated December 9, 2015.

On February 22, 2016, respondent filed a Motion for Leave to File Supplemental Stipulation of Facts[46], which was granted by the Court on February 24, 2016.[47] Thereafter, respondent filed the Supplemental Stipulation of Facts[48] on March 21, 2016. On April 4, 2016, respondent filed a Manifestation[49] stating therein that he would no longer file a Formal Offer of Evidence on the ground that his documents were already stipulated.

In the Resolution[50] dated April 25, 2016, the Court noted respondent's Manifestation as well as the Supplemental Stipulation of Facts.

Thereafter, the Memorandum for Petitioner[51] was filed on June 27, 2016, while respondent failed to file his memorandum, per Records Verification dated July 1, 2016.[52] The case was then considered submitted for decision in the Resolution[53] dated July 7, 2016.

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[42] Docket (Vol. III), pp. 1299-1337.
[43] Docket (Vol. III), pp. 1831-1833.
[44] Docket (Vol. III), pp. 1836-1840.
[45] Docket (Vol. IV), pp. 1860-1861.
[46] Docket (Vol. IV), pp. 1863-1865.
[47] Resolution dated February 24, 2016, Docket (Vol. IV), p. 1869.
[48] Docket (Vol. IV), pp. 1878-1879.
[49] Docket (Vol. IV), pp. 1948-1951.
[50] Docket (Vol. IV), pp. 1953-1954.
[51] Docket (Vol. IV), pp. 1963-2035.
[52] Docket (Vol. IV), p. 2036.
[53] Docket (Vol. IV), p. 2037.

Nonetheless, respondent filed his Motion for Leave to File and Admit Attached Memorandum[54] on February 21, 2017, which was denied by the Court in the Resolution[55] dated March 7, 2017.

The parties agree that the issues[56] for resolution of this Court are the following:

1. The main issue for resolution of this Court is:

    Whether petitioner SMB is entitled to a refund by the Bureau of Internal Revenue of the amount of ₱761,067,629.80 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, 2012 up to December 31, 2012 as a consequence of "San Mig Light's" re-classification by the BIR as a variant.

2. The following are the corollary issues:

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

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

    c. Assuming it is a variant of an existing brand, whether or not the higher tax rate of ₱20.57 per liter applies to "San Mig Light" removals from January 1, 2012 up to December 31, 2012.

    d. Whether under the amendments introduced by Republic Act No. 9334 on Section 143 of the National Internal Revenue Code of 1997, the original classification of "San Mig Light" by the BIR as a new brand, and therefore not a variant, may not be revised except by an Act of Congress, and the

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[54] Docket (Vol. IV), pp. 2039-2044.
[55] Docket (Vol. IV), p. 2065.
[56] Par. 4.00, SFDIOM, Docket (Vol. III), p. 1215-1216.

> principal basis upon which respondent's case depended has ceased to exist.

Petitioner's administrative and judicial claim for refund were timely filed

The Court finds it proper to determine first whether petitioner's claim for refund was timely filed.

Pertinent to the resolution of this matter are Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, which 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 stamped 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 xxx."
>
> **"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 therefore, 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."

The foregoing provisions govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC[57]. Section 204 (C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax.

In the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*[58], the Supreme Court held that Section 229 of the NIRC of 1997, as amended, states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR).

Thus, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the ***date of payment of the tax.*** [59]

In the case of excise taxes, the goods subject to such tax cannot leave the place where it was manufactured without paying the correct

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[57] *CIR vs. Central Azucarera Don Pedro*, L-28467, February 28, 1973; *CIR vs. Insular Lumber Co.*, L-24221, December 11, 1967.

[58] G.R. No. 216130, August 3, 2016.

[59] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968; *Collector vs. J. N. Sweeney, A. O. Baigrie, and Ramon Burgas*, G.R. No. L-12178, August 21, 1959; *P.J. Kiener Company, Ltd. v. Saturnino David*, G.R. No. L-5163, April 23, 1953.

amount of tax. Section 130(A)(2) of the NIRC of 1997,as amended, states:

> "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*)

The instant claim for refund covers the period starting January 1, 2012 to December 31, 2012. This means that petitioner has two years or until January 1, 2014, at the earliest, to file its claim for refund. The administrative claim[60] was filed on August 23, 2013 and the judicial claim was filed on December 19, 2013. Clearly, the claim for refund was filed within the two-year prescriptive period.

Petitioner is entitled to its claim for refund of overpaid excise taxes due on its removals of "San Mig Light" for the period January 1, 2012 to December 31, 2012

The issue as to whether "San Mig Light" is a variant of petitioner's existing brand or a new brand is not a novel issue. In several decisions[61] issued by the CTA *En Banc*, it has been consistently ruled that "San Mig Light" is a new brand and not a variant, thus, subject to the excise tax rate of ₱15.49 per liter instead of the ₱20.57 per liter

[60] Exhibit "II".

[61] *Commissioner of Internal Revenue vs. San Miguel Brewery, Inc., a Subsidiary of San Miguel Corporation*, CTA EB No. 1292 (CTA Case No. 8591), September 28, 2016; *Commissioner of Internal Revenue vs. San Miguel Brewery, Inc., A Subsidiary of San Miguel Corporation*, CTA EB No. 1279 (CTA Case No. 8400), November 26, 2015; *Commissioner of Internal Revenue vs. San Miguel Corporation*, CTA EB No. 873 (CTA Case Nos. 7052, 7053 & 7405), October 24, 2012; and *Commissioner of Internal Revenue vs. San Miguel Corporation*, CTA EB No. 755 (CTA Case No. 7708), September 20, 2012.

imposed by respondent. Consequently, there was an erroneous, excessive and/or illegal assessment and collection in the amount of ₱5.08 per liter removal of petitioner's "San Mig Light".

Records reveal that petitioner's claimed excess excise tax payment in the amount of ₱761,067,629.80 arose from its five (5) plants located in Polo, Valenzuela; San Fernando, Pampanga; Bacolod City; Mandaue City, Cebu; and Davao City, for the period covering January 1, 2012 to December 31, 2012, broken down as follows:[62]

Brewery	Volume of Removals (in liters)	Excise Taxes Paid @ ₱20.57		Should be Excise Taxes Paid @ ₱15.49		Difference (Amount being claimed for refund)
		Per Liter	Amount	Per Liter	Amount	
Polo, Valenzuela	40,190,673.76	₱20.57	₱ 826,722,159.25	₱15.49	₱ 622,553,536.54	₱ 204,168,622.71
San Fernando, Pampanga	80,069,734.80	20.57	1,647,034,444.84	15.49	1,240,280,192.05	406,754,252.79
Bacolod City, Negros Occidental	11,722,574.16	20.57	241,133,350.46	15.49	181,582,673.74	59,550,676.72
Mandaue City, Cebu	12,028,515.84	20.57	247,426,570.83	15.49	186,321,710.36	61,104,860.47
Davao City	5,804,964.00	20.57	119,408,109.47	15.49	89,918,892.36	29,489,217.11
Total	**149,816,462.56**		**₱3,081,724,634.85**		**₱2,320,657,005.05**	**₱761,067,629.80**

To support its claim, petitioner adduced in evidence, among others, the following documents, which were all examined and verified by the Court-commissioned Independent Certified Public Accountant (ICPA), Ms. Normita L. Villaruz of Villaruz, Villaruz & Co., CPAs, *viz:*

Plant	Documents	Exhibits
Polo, San Fernando, Bacolod, Mandaue, and Davao	Movement Reports with Allocated Deposits	"P-45.1" to "P-45.12"
Polo, Valenzuela	Excise Tax Returns	"P-40.1" to "P-40.505"
	Official Register Book	"P-46.1" to "P-46.366"
	Excise Taxpayer's Removal Declaration	"P-46.367" to "P-46.5,920"
	Shipping Memorandums	"P-51.1" to "P-51.5,850"
	Shipping Memorandums and Issue /Receipt Documents	"P-51.5,851" to "P-51.6,731"
San Fernando, Pampanga	Excise Tax Returns	"P-41.1" to "P-41.526"
	Excise Taxpayer's Removal Declaration and Daily and Monthly Sworn Statements of the Volume of Removals	"P-47.1" to "P-47.327"

[62] Exhibit "P-39", p. 1.

	Shipping Memorandums	"P-52.1" to "P-52.10,396"
	Shipping Memorandums, Claim Memos and Gate Pass Forms	"P-52.10,397" to "P-52,11,689"
Bacolod City, Negros Occidental	Excise Tax Returns	"P-42.1" to "P-42.519"
	Excise Taxpayer's Removal Declarations, Revenue Officer on Premise's Daily Reports and Official Register Books	"P-48.1" to "P-48.329"
	Shipping Memorandums and Delivery Receipts	"P-53.1" to "P-53.3,930"
Mandaue, Cebu	Excise Tax Returns	"P-43.1" to "P-43.520"
	Official Delivery Invoices, Revenue Official on Premise's Daily Reports and Official Register Books	"P-49.1" to "P-49.305"
	Shipping Memorandums and Delivery Receipts	"P-54.1" to "P-54.3,672"
Davao City	Excise Tax Returns	"P-44.1" to "P-44.508"
	Official Delivery Invoices, Official Register Books and Reports on Excise Tax Payments and Applications	"P-50.1" to "P-50.327"
	Shipping Memorandums, Complimentary Forms and Gate Pass Forms	"P-55.1" to "P-55.2,580"

After a thorough scrutiny of the pieces of evidence submitted, the Court agrees with the findings and observations of the Court-commissioned ICPA.

As aptly noted by the ICPA in her report[63] dated May 19, 2014, petitioner's total Advance Excise Tax Deposits for January 1, 2012 to December 31, 2012 for all beer products for all of its five (5) plants amounted to ₱16,572,425,001.23. The said amount being supported by Excise Tax Returns, duly filed and paid by petitioner thru the BIR's (Electronic Filing and Payment System) EFPS[64], is broken down as follows:[65]

Plant	Annexes to Exhibit "P-39"	Amount
Polo, Valenzuela	B_1 ($B_{1.1}$ to $B_{1.12}$)	₱ 3,111,000,000.19
San Fernando, Pampanga	B_2 ($B_{2.1}$ to $B_{2.12}$)	6,418,025,000.27
Bacolod City, Negros Occidental	B_3 ($B_{3.1}$ to $B_{3.12}$)	1,040,678,000.26
Mandaue City, Cebu	B_4 ($B_{4.1}$ to $B_{4.12}$)	4,119,803,000.26
Davao City	B_5 ($B_{5.1}$ to $B_{5.12}$)	1,882,919,000.25

63 Exhibit "P-39".
64 Exhibits "P-40.1" to "P-40.505", "P-41.1" to "P-41.526", "P-42.1" to "P-42.519", "P-43.1" to "P-43.520", and "P-44.1" to "P-44.508".
65 Exhibit "P-39", Findings and Observations, A.1, to A.1.2, pp. 5-6.

Total Advance Excise Tax Deposits		**₱16,572,425,001.23**

On the other hand, petitioner's Movement Report with Allocated Deposits[66] shows that the computed excise taxes due on the removal of all beer products from the five (5) plants for the same period amounted to ₱16,576,290,244.03, summarized as follows:[67]

Plant	Amount
Polo, Valenzuela	₱ 3,114,888,296.83
San Fernando, Pampanga	6,411,951,130.35
Bacolod City, Negros Occidental	1,040,926,162.54
Mandaue City, Cebu	4,130,445,293.66
Davao City	1,878,079,360.65
Total Excise Taxes Due	**₱ 16,576,290,244.03**

The above total excise taxes due on removals of all beer products as reported in the Movement Report with Allocated Deposits had been duly paid to the BIR as evidenced by the Excise Tax Returns (BIR Forms No. 2200-A)[68] filed by petitioner for all of its five (5) plants for the period January 1, 2012 to December 31, 2012.

The total amount of ₱16,572,425,001.23 advance excise tax deposits made by petitioner for the subject period of claim when added to the beginning balance of ₱49,084,536.82 advance excise tax deposits will result to an accumulated amount of ₱16,621,509,538.05. The sum is sufficient to cover the total computed excise taxes due per Movement Report with Allocated Deposits amounting to ₱16,576,290,244.03 and will result to an excess advance excise tax deposits of ₱45,219,294.02, computed as follows:[69]

Beginning Balance of Advance Payment of Excise Tax Deposits per Excise Tax Returns (ETRs), December 31, 2011 of the five (5) plants	₱ 49,084,536.82
Add: Advance Payment of Excise Tax Deposits of the five (5) plants for the period covered January 1, 2012 to December 31, 2012	16,572,425,001.23
Advance Excise Tax Deposits as of December 31, 2012 of the five (5) plants	**₱16,621,509,538.05**

[66] Exhibits "P-45.1" to "P-45.12".
[67] Exhibit "P-39", Findings and Observations, A.2, to A.2.1, pp. 6-7.
[68] Exhibits "P-40.1" to "P-40.505", "P-41.1" to "P-41.526", "P-42.1" to "P-42.519", "P-43.1" to "P-43.520", and "P-44.1" to "P-44.508".
[69] Exhibit "P-39", Annex D.

Less: Excise Taxes due on ALL BEER products for the period covered January 1, 2012 to December 31, 2012 per Monthly Movement Report with Allocated Deposits	16,576,290,244.03
Excess of Advance Excise Tax Deposits over Excise Taxes Due as of December 31, 2012	**₱ 45,219,294.02**

An examination of the Excise Tax Returns (ETRs), particularly the attached Schedule 1 - Summary of Removals and Excise Tax Due on Alcohol Products Chargeable Against Payments, as summarized in the ICPA Report[70], reveals that the **total actual excise taxes due and paid** from the five (5) plants amounting to ₱16,576,290,243.38[71] comprised of: (1) excise taxes due and paid on "San Mig Light" (SML) removals amounting to **₱3,081,724,634.89** and (2) excise taxes due on all other beer products in the total amount of ₱13,494,565,608.49, detailed as follows:

	Actual Excise Taxes Paid for the CY 2012				
	On "San Mig Light" beer	**On other beer products**			
Brewery	**@ ₱20.57**	**@ ₱10.41**	**@ ₱15.49**	**@ ₱20.57**	**Total**
Polo	₱ 826,722,159.25	₱1,406,419,090.36	₱ 515,671,059.43	₱366,075,987.94	₱ 3,114,888,296.98
San Fernando	1,647,034,444.85	4,115,541,626.55	649,375,058.92	-	6,411,951,130.32
Bacolod City	241,133,350.47	542,813,741.70	256,979,070.26	-	1,040,926,162.43
Mandaue City	247,426,570.83	2,491,941,161.32	1,391,077,560.85	-	4,130,445,293.00
Davao City	119,408,109.49	1,249,981,871.77	508,689,379.39	-	1,878,079,360.65
Total	**₱3,081,724,634.89**	₱9,806,697,491.70	₱3,321,792,128.85	₱366,075,987.94	₱16,576,290,243.38

However, the ICPA's reconciliation of the computed Excise Taxes Due on "San Mig Light" per Excise Tax Returns with that reflected in the petitioner's supporting documents such as Shipping Memorandums (SM) and List of Shipping Memorandums per SAP Files, Official Register Book (ORB), Issue Receipt Documents (IRD), Official Delivery Invoices (ODI), Excise Taxpayer's Removal Declarations (ETRD) or BIR Forms No. 2299, Sworn Statements of the Volume of Removals (SSR), and Revenue Officer on Premise's (ROOPs) Monitoring Report[72], shows that there must be a downward adjustment to petitioner's claim in the amount of ₱3,803.10 representing net understatement of excise taxes due on "San Mig Light" removals for the subject period, detailed as follows:

[70] Exhibit "P-39", Annexes $C_{1.1}$; $C_{1.2}$ to $C_{1.2.1}$; $C_{1.3}$, $C_{1.3.1}$, to $C_{1.3.12}$; $C_{1.4}$, $C_{1.4.1}$, to $C_{1.4.12}$; $C_{1.5}$, $C_{1.5.1}$, to $C_{1.5.12}$; $C_{1.6}$, $C_{1.6.1}$, to $C_{1.6.12}$; and $C_{1.7}$, $C_{1.7.1}$, to $C_{1.7.12}$.

[71] ₱0.65 lesser than the amount of Excise Taxes Due per monthly Movement Report with Allocated Deposits (Exhibit "P-39", Annex C_1).

[72] Exhibit "P-39", Annexes G_1 to $G_{1.26}$; G_2 to $G_{2.25}$; G_3 to $G_{3.25}$; G_4 to $G_{4.24}$; G_5 to $G_{5.25}$.

Polo Plant	
1) January 2012 - Excise taxes due on "San Mig Light" removals per SM and List of SM per SAP Files were more than the excise taxes due per ORB as filed and paid per Excise Tax Return as follows:[73]	
SML Removals in liters:	
Per SM and List of SM per SAP Files	1,545,358.24
Per Excise Tax Return	1,545,350.32
Understatement	7.92
Excise Tax Due on 7.92 liters at ₱15.49	*₱ 122.68*
2) August 2012 - Excise taxes due on SML removals per SM and list of SM per SAP Files were more than the excise taxes due per ORB as filed and paid per ETR as follows:[74]	
SML Removals in liters:	
Per SM and List of SM per SAP Files	861,238.08
Per ETR	861,230.16
Understatement	7.92
Excise Tax Due on 7.92 liters at ₱15.49	*₱ 122.68*
Davao Plant	
1) March 22, 2012 - Excise taxes due on SML removals per SM70089693 were not included in the ODI and were not declared, filed and paid per ETR.[75]	
Excise Tax Due on 237.60 liters at ₱15.49	*₱ 3,680.42*
Total Understatement of Excise Tax Due	**₱ 3,925.78**
Less: Overstatement of Excise Tax Due	
Bacolod Plant	
1) April 28, 2012 – Excise taxes due on "San Mig Light" removals based on SM and list of SM per SAP Files were lesser than the excise taxes due per ETRD No. 0333851 as filed and paid per ETR	
SML Removals in liters:	
Per SM and List of SM per SAP Files	17,812.08
Per ETRD and ETR	17,820.00
Overstatement	7.92
Excise Tax Due on 7.92 liters at ₱15.49	**₱ 122.68**
Net Understatement of Excise Tax Due	**₱ 3,803.10**

In sum, petitioner has sufficiently proven that it had overpaid the excise taxes due on its removals of "San Mig Light" for the period of January 1, 2012 to December 31, 2012 in the amount of ₱761,063,826.70, computed as follows:

[73] Exhibit "P-39", Annex $G_{1.1}$.
[74] Exhibit "P-39", Annex $G_{1.2}$.
[75] Exhibit "P-39", Annex $G_{5.1}$.

Amount of Claimed Excise Tax Overpayment	₱ 761,067,629.80
Less: Net Understatement of Excise Taxes Due on Certain Removals	3,803.10
Refundable Excise Tax Overpayment	**₱761,063,826.70**

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice