REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN MIGUEL CORPORATION, Petitioner,

CTA Case No. 7953

-versus-

COMMISSIONER OF INTERNAL REVENUE Respondent.

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

CTA Case No. 7973

-versus-

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

COMMISSIONER OF INTERNAL REVENUE Respondent.

Promulgated: NOV 2 6 2014

10:45 a.m.

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D E C I S I O N

CASTAÑEDA, JR., ***J.*:**

THE CASE

The consolidated Petitions for Review filed by San Miguel Corporation and San Miguel Brewery Inc. seek the refund or the issuance of tax credit certificate in the aggregate amount of ₱934,119,938.35, allegedly representing illegally, erroneously and/or excessively collected and paid excise taxes on removals of "San Mig Light" during the period from August 1, 2007 to September 30, 2007 and October 1, 2007 to December 31, 2008, broken down as follows:

CTA CASE NO.	CLAIMANT	PERIOD COVERED	AMOUNT OF CLAIM
7953	San Miguel Corporation	August 1, 2007 to September 30, 2007	₱ 105,632,376.64
7973	San Miguel Brewery, Inc.	October 1, 2007 to December 31, 2008	828,487,561.71
TOTAL			**₱934,119,938.35**

THE FACTS

Both petitioners San Miguel Corporation (SMC) and San Miguel Brewery, Inc. (SMBI) are corporations duly organized and existing under the laws of the Republic of the Philippines.[1]

Respondent on the other hand, is the head of the Bureau of Internal Revenue (BIR) with the power and authority to perform the duties of her office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.[2]

On October 19, 1999, Mr. Virgilio S. De Guzman, then Assistant Vice President, SMBP Finance, of SMC, wrote Assistant Commissioner Leonardo B. Albar, Excise Tax Services, of the BIR, requesting for the registration of, and authority to manufacture "San Mig Light", as a new brand, to be taxed at P12.15 per liter.[3]

On October 27, 1999, Assistant Commissioner Leonardo B. Albar granted the above request of petitioner SMC to register "San Mig Light" as a new and medium-priced brand pursuant to Section 143 of the 1997 NIRC, as amended.[4]

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[1] Docket, CTA Case No. 7953, Vol.1, p. 8 & CTA Case No. 7973, p. 12.
[2] Joint Stipulation of Facts, Documents, Issues, and other Matters, Docket, CTA Case No. 7973, pp. 460-461.
[3] Joint Stipulation of Facts, Documents, Issues, and other Matters, Docket, CTA Case No. 7973, p. 463.
[4] Joint Stipulation of Facts and Issues, CTA Case No. 7973, p. 462-463.

On May 28, 2002, the BIR through Assistant Commissioner Edwin R. Abella of the Large Taxpayers Service, issued a notice declaring "San Mig Light" as a variant; thus, it was subjected to higher excise tax rate which commenced in the year 2000.[5]

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

Effective October 1, 2007, petitioner SMC assigned, transferred and conveyed its rights, title and interest over its beer assets to petitioner SMBI.[6] Consequently, petitioner SMBI continued petitioner SMC's business operations in the manufacture, sale and distribution of fermented and malt-based beverages, including "San Mig Light"[7].

Petitioner SMC paid excise taxes on "San Mig Light" at the increased rate of P17.64 per liter or the total amount of P105,632,376.64 for the period August 1, 2007 to September 30, 2007.[8]; while petitioner SMBI paid P828,487,561.71 for the period October 1, 2007 to December 31, 2008.[9]

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

Respondent's inaction on petitioners' refund claims prompted them to file before the Court of Tax Appeals ("CTA") Petitions for Review docketed as CTA Case Nos. 7953 and 7973 on July 24, 2009 and September 28, 2009, respectively.[11]

On October 7, 2009, respondent filed her Answer[12] in CTA Case No. 7953 with the following arguments: ge

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[5] Joint Stipulation of Facts and Issues and Other Matters, CTA Case No. 7973, p. 466.
[6] Joint Stipulation of Facts and Issues, and other Matters, CTA Case No. 7973, p.474.
[7] Joint Stipulation of Facts, Documents, Issues, and other Matters, Docket, CTA Case No. 7973, p.474.
[8] Joint Stipulation of Facts, Documents, Issues, and other Matters, Docket, CTA Case No. 7973, p. 473.
[9] Joint Stipulation of Facts, Documents, Issues, and other Matters, Docket, CTA Case No. 7973, p. 474.
[10] Docket, CTA Case No. 7973, pp. 29 & 31.
[11] Docket, CTA Case No. 7953, Vol. I, p. 1 & CTA Case No. 7973, p. 4.
[12] Docket, CTA Case No. 7953, Vol. I, pp. 310-326.

10. Petitioner's alleged claim for refund is subject to administrative routinary investigation by respondent Bureau of Internal Revenue (BIR).

11. The amount of ₱105,632,376.64 being claimed by petitioner as alleged overpayment of excise taxes which are allegedly erroneously, excessively and/or illegally assessed on, and collected by respondent is not properly documented.

12. Petitioner must prove that it has complied with the provisions of Section 229 in relation to 204(C) of the NIRC, as amended, on the prescriptive period for recovery of tax erroneously or illegally collected.

13. Petitioner must convincingly and substantially prove that the alleged overpaid excise taxes for its San Mig Light for the period covering August 1 to September 30, 2007 has not been passed on when sold to end consumers. It is a well settled rule that an excise tax is an indirect tax where the tax burden can be shifted to the consumer.

In *Commissioner of Internal Revenue v. Philippine Long Distance Company,* G.R. No. 140230, 15 December 2005, 478 SCRA 61, 71-72, the Highest Court of the Land explained the difference between a direct tax and an indirect tax.

> Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct or indirect tax.
>
> In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in.
>
> ***On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else.*** *Stated elsewise,* ***indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden,***

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not the liability to pay it, to the purchases a part of the price of goods sold or services rendered.

14. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

15. Petitioner's admission in its petition for review that it started paying on February 2, 2004 the excise tax under the highest tax classification of San Miguel Pale Pilsen (RPT in cans) is a clear indication on the correctness of the SML's tax classification as a variant of an existing brand.

16. Respondent's re-classification of SML as variant of existing brand has legal basis and is not contrary to Section 143 of the NIRC of 1997 based on the following:

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

Out of the three (3) variants, RPT or San Miguel Pale Pilsen in can 330 ml. (24), has the highest tax classification at the time San Mig Light was introduced. Accordingly, pursuant to the provisions of Section 143 of the NIRC of 1997, the proper tax classification of SML for excise tax purposes is that of a variant of RPT (SMB Pale Pilsen) in can.

b). SML falls squarely within the second part of the definition of a "variant of 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**. SML is really a variant of an existing brand which falls squarely under the NIRC of 1997. A comparison of the logos and designs of "San Miguel Pilsen" and "San Mig Light" have almost the same label font and design layout, bearing the same striped diagonal lines. And as compared with SMC's other existing brands, only the labels of San Mig Light and San Miguel Beer bear the word "Pale Pilsen". Except for their colors, the designs of the labels of these pale pilsen beer brands are almost identical. Accordingly, SML is a variant of an existing brand.

c). The special issue of San Miguel Corporation's (SMC) Kaunlaran for the month of January 2, 2000 contains a statement that SML is variant of San Miguel Pale Pilsen with the same full flavored taste and alcohol content or a low calorie variant. SMC also admits on the bottle itself that SML is a low calorie pale pilsen.

The portion of SMC's author Maricar Yap statement in Kaunlaran January 2000 issue is hereunder quoted:

> "San Miguel Pale Pilsen now known as SMB – short for San Miguel Beer – appears more to the younger set than that traditional San Miguel Beer drinker. The slight departure from previous ads keeps the brand vital - evolving, reflecting and - anticipating what the consumer wants. Not one to rest on its laurels, San Miguel continues to beef up its roster of powerful brand names with such recent products offerings **as San Mig Light, a low calorie light beer with the same full-flavored taste and alcohol content as SMB."** (Underscoring Ours.)

Similarly, on page 9 of the Kaunlaran issue for the month of October 1999, it was also stated that "San Mig Light is the Philippines first and low calorie beer. It has the same refreshing, full flavored taste and alcohol content of the nations favourite brew, San Miguel Pilsen xxx".

Moreover, on page 11 of petitioner's 1999 Annual Report, it was stated that said beer product is a low-calorie variant of San Miguel Beer Pale Pilsen with the same full-flavored taste and alcohol content.

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

(1) Provide uniform guide lines and procedures for establishing the current net retail prices of new brands of cigarette, fermented liquors, wines and distilled spirits;
(2) Delineate the duties and responsibilities of all concerned revenue officials and personnel who are

responsible in the determination of the current net retail prices of the aforementioned excisable products;

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

Paragraph II (2) of the above-mentioned RMO No. 6-2003 states "A master list of all registered brands for locally manufactured and imported cigarettes fermented liquors, wines and distilled spirits (Annexes "A", "A-2", "A-3", and "A-4") as prepared by respondent's Large Taxpayers Assistance Division II (LTAD II) shall be used as reference document for the conduct of the survey". Considering that the subject, objectives and policies of RMO 6-2003 do not affirm any tax classification and rate but rather make use of the said master list for want of reference document for survey, said master list cannot be petitioner's legal basis for treating SML as new brand. Moreover, the said master list was prepared on the basis of the available records of the BIR notwithstanding the proper classification of the registered brands. Likewise, granting that SML was erroneously included in the master list as one of the new brands, the government is not estopped from correcting such error.

e) Hence, all removals of the SML from the time it was introduced in the market should be subject to an excise tax rate of ₱12.52 and subsequently increased to ₱13.61 per liter after effecting a 12% increase starting January 1, 2000 pursuant to the provisions of Section 143(C) of the NIRC of 1997, as amended, and as implemented by Revenue Regulations No. 2-97 and 17-99.

17. It is a well settled rule in taxation that the Government is not estopped by the mistakes or errors of its agents; an erroneous application and enforcement of law by a public officer does not prevent the subsequent correct application of statutes.

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

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

Assuming arguendo that Mr. Contrado Item's letter is a ruling on the matter, it must be noted that pursuant to Section 4 of the NIRC of 1997, the power to interpret the provisions of the said Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner subject to review by the Secretary of Finance. Likewise, the provisions of Section 7 of the same Code states that the power to recommend the promulgation of rules and regulations by the Secretary of Finance, and to issue rulings of first impression or to reverse or revoke or modify any existing ruling of the BIR cannot be delegated. Accordingly, the said letter is considered null and void, hence, cannot bind the BIR.

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

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

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

18. The power of taxation will not be surrendered except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty – its most essential power of

taxation – by vague or ambiguous language. **Since tax refunds are in the nature of tax exemptions, these are deemed to be in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption.** (*Commissioner of Internal Revenue vs. Solidbank Corporation, 416 SCRA 436).* It must be indubitably shown to exist, for every presumption is against it (*Davao Light & Power Co., Inc. vs. Commissioner of Customs, 44 SCRA 122*).

Ignoring the above teaching of the Supreme Court and adopting the interpretation favorable to petitioner cannot be done because it runs afoul of established jurisprudence **that those who claim to be exempt from the payment (here, claim for a refund) of a particular tax must do so under clear and unmistakable terms found in the statute**. They must be able to point to some positive provision, not merely a vague implication (*Asiatic Petroleum Co., Ltd. vs. Llanes, 49 Phil. 466*), **of the law creating that right** (*Español vs. Philippine Veterans Administration, 137 SCRA 314*).

Respondent interposed the following special and affirmative defenses in her Answer[13] in CTA Case No. 7973 filed on November 12, 2009:

16. Respondent repleads the abovementioned admissions and denials as part of his special and affirmative defenses and further states that:

17. It is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two-year period provided under Section 229 of the NIRC of 1997.

18. Section 229 of the NIRC reads in part:

"*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." xxx

19. A valid claim for refund should consists of the following:

a. There must be a written claim for refund filed by the taxpayer with the Commissioner of Internal Revenue. This is a mandatory requirement. Without this requirement, the CIR is without any authority to refund. 9r

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[13] Docket, CTA Case No. 7973, pp. 317- 325.

b. The claim for refund must be a categorical demand for reimbursement.

c. The claim for refund must be filed within two years from date of payment of the tax or penalty regardless of any supervening cause. In claims for refund, the thirty-day period to appeal should be within the two-year prescriptive period.

20. Assuming *por arguendo* that BIR Ruling No. 18-01 was issued favoring petitioner, it is incumbent upon the claimant to prove that the facts as presented therein remain true as it was at the time of the issuance. Every BIR Ruling concludes with the following *caveat:*

"This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void."

Hence, a BIR Ruling by itself is insufficient for a meritorious claim for refund.

21. In the case of *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, the Supreme Court held:

"A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. To stress, the taxpayer must present convincing evidence to substantiate a claim for refund."

22. Petitioner must prove that it is indeed entitled to a claim for refund under existing laws, rules and jurisprudence."

On May 12, 2010, the Court granted petitioner SMB's Motion to Consolidate CTA Case No. 7973 with CTA Case No. 7953.[14]

Petitioner moved to commission Normita L. Villaruz as Independent Certified Public Accountant (CPA), which the Court granted on April 4, 2011.[15]

During trial, petitioners presented Bienvenido N. Banas, Virgilio S. De Guzman, Alfredo R. Villacorte, Jr., Minerva Lourdes B. Bibonia, Marciano B. Requilme, Jr., Normita L. Villaruz, Jeffrey Marquez, Fritz Gerald R. Legaspi, and James Vier T. Garcia as witnesses.

[14] Docket, CTA Case No. 7953, Vol. II, pp. 551-552.
[15] Docket, CTA Case No. 7953, Vol. II, pp. 740-741.

On November 11, 2011, petitioners filed a Consolidated Formal Offer of Evidence, praying that: (1) the Court will take judicial notice of (a) the three Joint Stipulations of Facts, Documents and Issues; (b) Republic Act No. 9334; and (c) the four actual beer products mentioned in the formal offer of evidence, pursuant to the provisions of Sections 1 and 2 of Rule 129 of the Revised Rules of Evidence, the parties in the instant cases and in CTA Case Nos. 7052, 7053, 7405 and 7708 being the same and/or representing the same interests, and being intimately related; and (2) for the Court to admit in evidence all the listed exhibits for petitioners.[16]

On January 31, 2012, the Court took judicial notice of Republic Act No. 9334, being an official act of the legislative department of the Philippines, but set a hearing on the judicial notice of the three Joint Stipulations of Facts, Documents and Issues and the four actual beer products.[17]

On April 13, 2012, the Court partially granted petitioner's Motion by taking judicial notice only as to the existence of the four actual beer products marked as Exhibits "VV-1", "WW-1", "XX-1", and "YY-1".[18]

In the Resolution[19] issued on May 23, 2012, the Court admitted Exhibits A" to "F", "H" to "S", "V" to "JJ", "LL" to "TTT", "VVV" to "ZZZ", "CCCC" to "DDDD", "FFFF", and "HHHH", inclusive of submarkings. Acting on petitioners' Motion for Reconsideration, the Court granted the same and eventually admitted Exhibits "G", "KK", "CCCC1-428", "HHHH1-327", "HHHH 2-5,947", and "HHHH 2-6,901" to "HHHH2-6,914" as shown in the Resolution dated September 24, 2012.[20]

On August 3, 2012, respondent filed a Motion for Production of Evidence[21], which the Court denied.[22]

Subsequently, respondent submitted a Motion for Issuance of S*ubpoena Duces Tecum* and S*ubpoena Ad Testificandum* to be issued to petitioner SMC's representative, Ms. Claire Valdez on February 11, 2013 and a Motion for Reconsideration on April 25, 2013;[23] which the Court both

[16] Docket, CTA Case No. 7953, Vol. II, pp. 872-922.
[17] Docket, CTA Case No. 7953, Vol. II, pp. 1044-1046.
[18] Docket, CTA Case No. 7953, Vol. II, pp. 1069-1071.
[19] Docket,CTA Case No. 7953, Vol. II, pp. 1079-1082.
[20] Docket, CTA Case No. 7953, Vol. III, p.1229-1238.
[21] Docket, CTA Case No. 7953, Vol. III, pp. 1207-1212.
[22] Resolution dated September 24, 2012, Docket, CTA Case No. 7953, Vol. III, pp. 1229-1238.
[23] Docket, CTA Case No. 7953, Vol. III, pp. 1270-1274 & 1290-1298, respectively.

denied in its Resolutions dated March 26, 2013 and May 22, 2013,[24] respectively.

During the hearing on July 31, 2013, respondent's counsel manifested that she has no witness to present, but requested for a stipulation with petitioners' counsel. As such, the parties stipulated the genuineness and existence of the following: (a) 1999 Annual Report, (b) San Miguel Corporation Kaunlaran Magazine, January 2000, Issue No. 1, Volume No. 33, Special, and (c) Compact Disc containing video footages of two "San Mig Light" commercials described as FIZZ 2000 and MARTHA 2003.[25]

Despite notice to parties, only petitioners SMC and SMBI submitted their Joint Memorandum before this Court. Thus, the case was submitted for decision.[26] However, respondent moved for the reconsideration of the Resolution dated December 3, 2013 which the Court eventually granted in the interest of substantial justice. The Court likewise admitted respondent's Memorandum.[27]

THE ISSUES

The parties jointly stipulated on the following issues:

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

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

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

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[24] Docket, CTA Case No. 7953, Vol. III, pp. 1283-1287 & 1315-1318, respectively.
[25] Supplemental Stipulation of Facts, Docket ,CTA Case No. 7953, Vol. III, pp. 1333, 1339-1340.
[26] Docket, CTA Case No. 7953, Vol. III, pp. 1451-1534 & 1594.
[27] Docket, CTA Case No. 7953, Vol. III, p. 1663.

IV. Assuming it is a variant of an existing brand, whether or not the tax rate of P17.64 per liter, applies to "San Mig Light" removals.[28]

THE COURT'S RULING

Before the Court resolves the issue on petitioners' entitlement to the refund claims, it is necessary to first determine if "San Mig Light" is a new brand or a variant.

Petitioners assert that "San Mig Light" is a new and medium-priced brand, and not a variant of "Pale Pilsen" or any other SMC/SMBI Brand. If it is a variant, the BIR has been ambivalent and vacillating on its position as to which existing SMBI Beer brand, "San Mig Light" is allegedly a variant of.

Petitioners further argue that under the amendments introduced on Section 143 of the 1997 NIRC, the classification of "San Mig Light" as a new brand, and therefore not a variant, may not be revised except by an act of Congress.

Respondent counters that petitioner is estopped from questioning the classification of "San Mig Light" as a variant of "San Miguel Pale Pilsen". Apart from slight differences in appearances, the commercial advertisements clearly gave public impression that "San Mig Light" has the same quality and taste as that of "San Miguel Pale Pilsen". Beginning January 30, 2004, petitioner SMC's excise tax payments of "San Mig Light" products under the highest classification of "San Miguel Pale Pilsen" (RPT in cans) constitute as an admission of the correctness of the classification as a variant of an existing brand.

The listing of "San Mig Light" as a new brand in RMO No. 6-2003 issued by former Commissioner Guillermo Parayno, Jr., is not conclusive with regard to its classification.

Respondent also maintains that it is incumbent upon petitioners to prove that the alleged refund claims were filed within the two year prescriptive period under Section 229 of the 1997 NIRC, as amended.

The Petitions for Review are meritorious. *gr*

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[28] Joint Stipulation of Facts, Documents, Issues and other Matters, Docket, CTA Case No. 7973, pp. 486-487.

"SAN MIG LIGHT" IS A NEW BRAND AND NOT A VARIANT.

Effective January 1, 2005, R.A. 9334[29] amended Section 143 of the 1997 NIRC making reference to fermented liquors either as a new brand or variant distinguished as follows:

> "SEC. 143. Fermented Liquors. - xxx
>
> "A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand. xxx
>
> "New brand shall mean a brand registered after the date of the effectivity of R.A. 8240."

Under R.A. 9334, a new brand is one that is registered after the effectivity of R.A. 8240 on January 1, 1997; while a variant is defined as a brand with a modifier prefixed and/or suffixed to the root name of the brand.

"San Mig Light" as 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 follows:

MFTR	BRAND
	xxx
	High Priced Brands
San Miguel Corp.	RPT in cans 330 ml.(24)
San Miguel Corp.	Premium Bottles 355 ml.(24)
San Miguel Corp.	Premium Can 330 ml. (24)

xxx

[29] AN ACT INCREASING THE EXCISE TAX RATES IMPOSED ON ALCOHOL AND TOBACCO PRODUCTS, AMENDING FOR THE PURPOSE SECTIONS 131, 141, 142,143, 144, 145 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

Medium Priced Brands

San Miguel Corp.	Super Dry 355 ml. (24)
San Miguel Corp.	Keg 30 liters
San Miguel Corp.	Keg 50 liters
San Miguel Corp.	Pale Pilsen 320 ml (24)
San Miguel Corp.	Grande 1000 ml (6)
San Miguel Corp.	Cerveza Negra 320 ml (24)
San Miguel Corp.	Blue Ice

xxx

Low Priced Brands

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

The above illustration shows that "San Mig Light" is not a variant of an existing brand. "San Miguel" or "San Mig" is not registered nor is it an existing classified brand under R.A. 8240. At that time, the brand "Pale Pilsen" was registered and classified as a brand name of petitioner SMC. Respondent erred in treating the wordings "San Miguel" or "San Mig" as a root word and "Light" as a modifier. The term "Light" cannot be separated from the word "San Mig" or "San Miguel" but should be considered as one brand name. If the modifier "Light" be suffixed to the root word "San Miguel Pale Pilsen", the effect should be "San Miguel Pale Pilsen Light" and not as "San Mig Light".[30] The root name "Pale Pilsen" cannot be seen in the brand "San Mig Light".

Moreover, petitioner SMC through its Assistant Vice President for Finance, Mr. Virgilio S. de Guzman requested the BIR for registration of, and authority to manufacture "San Mig Light" as a new brand on October 19, 1999[31] which was granted and reconfirmed in the letter dated October 27, 1999[32] issued by Assistant Commissioner Leonardo B. Albar and the letter dated February 7, 2002 issued by Acting Chief for Large Taxpayers Assistance Division II, Conrado P. Item.[33] These documents bolster the fact that "San Mig Light" is a new brand and not a variant. ge

[30] *San Miguel Brewery Inc., a Subsidiary of San Miguel Corporation*, CTA Case No. 8209, September 12, 2014.
[31] Exhibit "MM"; Joint Stipulation of Facts, Documents, Issues and Other Matters, Docket, CTA Case No. 7973, p. 463.
[32] Exhibit "PP-3"; Joint Stipulation of Facts, Documents, Issues and Other Matters, Docket, CTA Case No. 7973, p. 463.
[33] Exhibit "QQ"; Joint Stipulation of Facts, Documents, Issues and Other Mattes, Docket, CTA Case No. 7973, p. 464.

RECLASSIFICATION OF "SAN MIG LIGHT" AS A VARIANT IS PROHIBITED BY LAW.

"San Mig Light" is correctly classified as a new brand. Since it was registered in October 1999 or within the period of **January 1, 1997 until December 31, 2003**, any subsequent reclassification of "San Mig Light" as a fermented liquor product should be in accordance with 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:
>
> xxx xxx xxx
>
> "SEC. 143. Fermented Liquors.- xxx
>
> xxx xxx xxx
>
> Provided, however, **That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.** (Emphasis supplied.)

"San Mig Light" registration as a new brand after the date of effectivity of R.A. 8240 or after January 1, 1997 conforms with the law. Any subsequent reclassification of fermented liquor products such as "San Mig Light" products should be undertaken pursuant to the act of Congress as mandated by law.[34] The BIR's reclassification of "San Mig Light" as a variant imposing higher excise taxes violates the law.

In the Supreme Court case of *Secretary of Finance v. La Suerte Cigar and Cigarette Factory*, one-time classification of sin products was explained in this manner:

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[34] *Secretary of Finance v. La Suerte Cigar and Cigarette Factory,* G.R. No. 166498, June 11, 2009, 589 SCRA 72 & *British American Tobacco v. Jose Isidro Camacho,* G.R. No. 163583, August 20, 2008, 562 SCRA 511.

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

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

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

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

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

xxx xxx xxx

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

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

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

Thus, in this case, the BIR is not authorized to reclassify "San Mig Light" from a new brand to a variant.

IN A NUMBER OF CASES, THIS COURT HAS CONSISTENTLY RULED ON SAN MIG LIGHT'S CLASSIFICATION AS A NEW BRAND.

In two (2) *en banc* cases of *Commissioner of Internal Revenue v. San Miguel Corporation*[35], a majority of the members of the Court confirmed the classification of "San Mig Light" as a new brand and not a variant. This was recently pointed out in the case of *San Miguel Brewery Inc., a subsidiary of San Miguel Corporation v. Commissioner of Internal Revenue*[36]; and in the earlier Division cases of *San Miguel Corporation v. Commissioner of Internal Revenue*[37]*; San Miguel Corporation v. Commissioner of Internal Revenue and Officer-in-Charge, Large Taxpayers Service, Bureau of Internal Revenue* and *San Miguel Corporation v. Commissioner of Internal Revenue*[38].

THE REFUND CLAIMS BEFORE THE ADMINISTRATIVE AND JUDICIAL LEVELS ARE TIMELY MADE.

The Court shall address the timeliness of the filing of petitioners' administrative and judicial claims for refund. Pertinent to the resolution of this issue are Sections 204(C) and 229 of the NIRC of 1997, as amended, which are quoted hereunder for ready reference:

> "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."

[35] CTA EB Case No. 873, October 24, 2012 & CTA EB Case No.755, September 20, 2012.
[36] CTA Case No. 8209, September 12, 2014.
[37] CTA Case No. 7708, January 7, 2011.
[38] CTA Case Nos. 7052, 7053 & 7405, October 18, 2011.

> "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."

The foregoing provisions govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally. Section 204(C) applies to administrative claims filed with the BIR; while Section 229 refers to judicial actions for the recovery of the tax.[39] However, 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,** regardless of any supervening cause that may arise after payment.[40] Therefore, the date of payment of the tax is relevant for the purpose of counting the two-year prescriptive period in erroneously or illegally collected taxes.

The object covered by excise tax cannot leave the place where it was manufactured without first being subject to the correct amount of tax. Section 130(A)(2) of the NIRC of 1997, as amended, states:

[39] *Asiasec Equities, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 8242, November 4, 2013.
[40] *Manila North Tollways Corporation vs. Commissioner of Internal Revenue,* CTA EB No. 812, October 11, 2012 & *Commissioner of Internal Revenue, v. Dash Engineering Philippines, Inc.,* G.R. No. 184145. December 11, 2013.

"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 present case, the claims for refund involve the periods of August 1, 2007 to September 30, 2007 (CTA Case No. 7953) and October 1, 2007 to December 31, 2008 (CTA Case No. 7973). Petitioner had two years from said dates or until August 1, 2009 and October 1, 2009, at the earliest, within which to file its claims for refund both in the administrative and judicial levels for the periods covering August 1, 2007 to September 30, 2007 and October 1, 2007 to December 31, 2008, respectively. Clearly, the refund claims were filed within the two-year prescriptive period, as shown below:

CTA Case No.	Period	Administrative Claim	Petition for Review
7953	August 1, 2007 to September 30, 2007	June 17, 2009 (Exhibit "HH")	July 24, 2009
7973	October 1, 2007 to December 31, 2008	September 10, 2009 (Exhibit "PPP")	September 28, 2009

Based on the foregoing, the refund claims are timely filed before the administrative and judicial levels.

ON SUBSTANTIATION

The Court shall proceed if the amount of ₱934,119,938.35 is duly substantiated.

Records reveal that the total amount of ₱934,119,938.35 (₱105,632,376.64 plus ₱828,487,561.71) refers to excise taxes overpaid by petitioners on removals of "San Mig Light" products from three (3) plants located in Polo, Valenzuela; San Fernando, Pampanga; and Bacolod City, Negros Occidental, for the period covering August 1, 2007 to September 30, 2007 (CTA Case No. 7953) and October 1, 2007 to December 31, 2008 (CTA Case No. 7973), broken down as follows:

Period	Volume of Removals (in liters)	Excise Taxes Paid at ₱17.64		Should be Excise Taxes Paid at ₱13.28		Difference (Amount being claimed for refund)
		Per Liter	Amount	Per Liter	Amount	
Aug. 1 to Sep. 30, 2007	24,227,609	17.64	₱ 427,375,028.41	13.28	₱ 321,742,651.77	₱ 105,632,376.64
Oct. 1 to Dec. 31, 2007	39,527,985	17.64	697,273,654.69	13.28	524,931,640.26	172,342,014.43
Jan. 1 to Dec. 31, 2008	150,492,099	17.64	2,654,680,608.72	13.28	1,998,535,061.44	656,145,547.28
Total	**214,247,693**		**₱3,779,329,291.82**		**₱2,845,209,353.47**	**₱934,119,938.35**

To support its claim, petitioners presented, among others, the following documents, which were all examined and verified by the Court-commissioned Independent CPA, to wit:[41]

Plants	Documents	Exhibits
Polo, San Fernando, Bacolod	Movement Report with Allocated Deposits, Removal Schedules, and Total Removals Reports	"DDDD-1" to "DDDD-17"
Polo, Valenzuela	Excise Tax Returns	"CCCC1-1" to "CCCC1-673"
	Official Delivery Invoice (ODIs), and Daily and Monthly Sworn Statements of Removals (SSRs)	"FFFF1-1" to "FFFF1-463"
	Shipping Memorandum (SM) and Delivery Receipts (DRs)	"HHHH1-1" to "HHHH1-7,210"
San Fernando, Pampanga	Excise Tax Returns	"CCCC2-1" to "CCCC2-679"
	Official Delivery Invoice (ODIs), and Daily and Monthly Sworn Statements of Removals (SSRs)	"FFFF2-1" to "FFFF2-446"

[41] Exhibit "WWW".

	Shipping Memorandum (SM) and Delivery Receipts (DRs)	"HHHH2-1" to "HHHH2-18,684"
Bacolod City, Negros Occidental	Excise Tax Returns	"CCCC3-1" to "CCCC3-672"
	Official Delivery Invoice (ODIs), and Daily and Monthly Sworn Statements of Removals (SSRs)	"FFFF3-1" to "FFFF3-488"
	Shipping Memorandum (SM) and Delivery Receipts (DRs)	"HHHH3-1" to "HHHH3-5,180"

After a thorough scrutiny of the evidence submitted, the Court agrees with the findings and observations of the Independent CPA.

As established by the report, petitioners' total Advance Excise Tax Deposits per Excise Tax Returns for the period covering all beer products for the three plants amounted to ₱14,564,783,999.86, which were duly filed and paid by petitioners to the BIR through manual filing and Electronic Filing and Payment System (eFPS). The said amount is broken down as follows:

	Polo[42]	**San Fernando**[43]	**Bacolod**[44]	**Total**
2007				
August	₱ 267,585,000.00	₱ 538,460,000.00	₱ 78,655,000.00	₱ 884,700,000.00
September	167,854,000.00	487,860,000.00	94,907,000.00	750,621,000.00
October	270,650,000.00	523,710,000.00	52,660,000.00	604,020,000.00
November	244,500,000.00	467,705,000.00	63,085,000.00	775,290,000.00
December	267,500,000.00	567,895,000.00	94,445,000.00	929,840,000.00
subtotal	***₱1,218,089,000.00***	***₱2,585,630,000.00***	***₱ 383,752,000.00***	***₱ 4,187,471,000.00***
2008				
January	₱ 324,000,000.00	₱ 555,090,000.00	₱ 100,250,000.00	₱ 979,340,000.00
February	270,800,000.00	554,670,000.00	94,255,000.00	919,725,000.00
March	277,000,000.00	609,865,000.00	103,410,000.00	990,275,000.00
April	226,000,000.00	458,665,000.00	80,930,000.00	765,595,000.00
May	291,000,000.00	539,585,000.00	102,890,000.00	933,475,000.00

[42] Annex $CCCC_1$, $CCCC_{1.1}$ to $CCCC_{1.17}$ of Exhibit "WWW".
[43] Annex $CCCC_2$, $CCCC_{2.1}$ to $CCCC_{2.17}$ of Exhibit "WWW".
[44] Annex $CCCC_3$, $CCCC_{3.1}$ to $CCCC_{3.17}$ of Exhibit "WWW".

June	264,436,018.81	513,725,000.00	74,505,000.00	852,666,018.81
July	218,000,000.00	364,370,000.00	61,540,000.00	643,910,000.00
August	206,000,000.00	401,225,000.00	62,600,000.00	669,825,000.00
September	241,000,000.00	533,840,000.00	83,115,000.00	857,955,000.00
October	241,000,000.00	546,260,000.00	88,931,000.00	876,191,000.00
November	237,000,000.00	572,125,000.00	91,730,000.00	900,855,000.00
December	307,500,000.00	581,413,000.00	98,587,981.05	987,500,981.05
subtotal	***₱3,103,736,018.81***	***₱6,230,833,000.00***	***₱1,042,743,981.05***	***₱10,377,312,999.86***
Total	**₱4,321,825,018.81**	**₱8,816,463,000.00**	**₱1,426,495,981.05**	**₱14,564,783,999.86**

On the other hand, petitioners' Movement Report with Allocated Deposits[45] shows that the computed excise taxes due on the removal of all beer products from the three (3) plants for the period covering August 1, 2007 to December 31, 2008 amounted to ₱14,675,541,126.80, summarized as follows:

	Polo[46]	**San Fernando**[47]	**Bacolod**[48]	**Total**
2007				
August	₱ 235,898,862.96	₱ 513,208,603.58	₱ 76,102,124.81	₱ 825,209,591.35
September	196,701,638.45	510,284,161.30	64,439,048.16	771,424,847.91
October	254,342,686.40	518,733,752.67	81,504,184.29	854,580,623.36
November	277,578,860.77	531,653,017.08	74,572,589.23	883,804,467.08
December	293,431,836.46	597,275,379.40	99,760,998.72	990,468,214.58
Subtotal	***₱1,257,953,885.04***	***₱2,671,154,914.03***	***₱ 396,378,945.21***	***₱ 4,325,487,744.28***
2008				
January	₱ 299,599,609.51	₱ 560,967,016.45	₱ 100,185,864.52	₱ 960,752,490.48
February	283,801,247.24	540,324,729.79	93,516,803.11	917,642,780.14

45 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 "VVV", Judicial Affidavit of Mrs. Normita L. Villaruz in lieu of Direct Testimony.

46 Annex $CCCC_{4.1}$, $CCCC_{4.1.1}$ to $CCCC_{4.1.17}$ of Exhibit "WWW".

47 Annex $CCCC_{4.2}$, $CCCC_{4.2.1}$ to $CCCC_{4.2.17}$ of Exhibit "WWW".

48 Annex $CCCC_{4.3}$, $CCCC_{4.3.1}$ to $CCCC_{4.3.17}$ of Exhibit "WWW".

March	274,362,674.00	599,492,640.63	100,495,102.44	974,350,417.07
April	235,711,012.21	483,859,586.74	84,023,028.93	803,593,627.88
May	257,299,137.26	490,846,979.93	92,579,944.61	840,726,061.80
June	242,965,242.60	468,577,598.44	71,455,789.18	782,998,630.22
July	249,958,717.24	414,845,483.88	65,830,984.46	730,635,185.58
August	233,936,857.11	446,191,186.44	73,032,215.62	753,160,259.17
September	233,010,328.60	509,752,792.59	82,122,877.43	824,885,998.62
October	249,189,312.65	565,492,235.05	88,903,307.56	903,584,855.26
November	231,951,531.04	557,486,158.02	90,659,967.31	880,097,656.37
December	292,964,465.29	587,287,633.77	97,373,320.87	977,625,419.93
Subtotal	***₱3,084,750,134.75***	***₱6,225,124,041.73***	***₱1,040,179,206.04***	***₱10,350,053,382.52***
Total	**₱4,342,704,019.79**	**₱8,896,278,955.76**	**₱1,436,558,151.25**	**₱14,675,541,126.80**

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 ₱14,675,541,126.80, were filed and paid to the BIR as evidenced by the Excise Tax Returns (BIR Form No. 2200-A)[49] of the three plants for the period August 1, 2007 to December 31, 2008.

The total amount of Advance Excise Tax Deposits made for the period covered amounting to ₱14,564,783,999.86 when added to the beginning balance of Advance Excise Tax Deposits amounting to ₱158,430,857.51 will result in a total amount of ₱14,723,214,857.37. The sum is sufficient to cover the total computed excise taxes due per Movement Report with Allocated Deposits amounting to ₱14,675,541,126.80 and will result in an excess advance payment of ₱47,673,730.57, as computed below:[50]

	Annex	Amount
Beginning Balance of Advance Payment of Excise Tax Deposit per ETR, August 1, 2007	EEEE	₱ 158,430,857.51

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[49] Exhibits "CCCC1-1" to "CCCC1-673", "CCCC2-1" to "CCCC2-679", and "CCCC3-1" to "CCCC3-672".
[50] Exhibit "WWW", pp. 7 to 8.

Add: Advance Payments of Excise Tax Deposit for the Period Covered August 1, 2007 to December 31, 2008		
August 1 to December 31, 2007		4,187,471,000.00
January 1 to December 31, 2008		10,377,312,999.86
Total Advance Payment of Excise Tax Deposits	CCCC	14,564,783,999.86
Advance Payments of Excise Tax Deposits as of December 31, 2008		**14,723,214,857.37**
Less: Excise Taxes Due on All Beer Products for the Period covered August 1, 2007 to December 31, 2008		
August 1 to December 31, 2007		(4,325,487,745.14)
January 1 to December 31, 2008		(10,350,053,384.64)
Total Excise Taxes Due on Removals of All Beer Products per Monthly Movement Report	DDDD	(14,675,541,129.78)
Variance per Monthly Movement Report per Excise Tax Returns for the period covered		2.98
Total Excise Taxes Due on Removals per Excise Tax Returns for the Period Covered	$DDDD_{1.1}$	**(14,675,541,126.80)**
Excess of Advance Payment of Excise Tax Deposits Over Excise Taxes Due as of December 31, 2008	EEEE	**₱ 47,673,730.57**

As ascertained by the Independent CPA, the daily running balances of Advance Excise Tax Deposits were always in excess of the required daily payment of excise taxes due based on the actual volume of "San Mig Light" removals from the three plants for the period covering the present claim.[51]

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 ₱14,675,541,126.80 from the three plants comprised of (1) excise taxes due and paid on "San Mig Light" removals amounting to ₱3,779,329,290.97, and (2) excise taxes due on all other beer products amounting to ₱10,896,211,835.83, detailed as follows: *gc*

[51] Exhibit "WWW", p. 18.

	Polo[52]	San Fernando[53]	Bacolod[54]	Total
SML Products at ₱17.64				
2007	₱ 141,102,084.04	₱ 839,273,791.85	₱ 144,272,806.99	₱ 1,124,648,682.88
2008	543,527,240.12	1,739,096,259.89	372,057,108.08	2,654,680,608.09
Subtotal	**₱ 684,629,324.16**	**₱2,578,370,051.74**	**₱ 516,329,915.07**	***₱ 3,779,329,290.97***
Other Beer Products				
Tax rate at ₱8.93				
2007	₱ 637,647,007.16	₱ 1,333,303,139.51	₱ 142,426,478.04	₱ 2,113,376,624.71
2008	1,400,304,437.64	3,455,664,787.60	389,323,486.57	5,245,292,711.81
Tax rate at ₱13.28				
2007	381,093,869.96	498,577,982.67	109,679,660.18	989,351,512.81
2008	928,091,799.21	1,030,362,994.24	278,798,611.39	2,237,253,404.84
Tax rate at ₱17.64				
2007	98,110,923.88	-	-	98,110,923.88
2008	212,826,657.78	-	-	212,826,657.78
Subtotal	₱ 3,658,074,695.63	₱ 6,317,908,904.02	₱ 920,228,236.18	***₱10,896,211,835.83***
Total	**₱4,342,704,019.79**	**₱8,896,278,955.76**	**₱1,436,558,151.25**	**₱14,675,541,126.80**

The total amount of excise taxes due on "San Mig Light" removals filed and paid to the BIR amounting to ₱3,779,329,290.97 tallies with the total amount of excise taxes paid per Petition for Review amounting to ₱3,779,329,291.82, except for a very minimal difference of ₱0.85, as shown below:

	Annex	In Liters	Amount of Excise Taxes as Paid at ₱17.64
Excise Taxes filed and paid per BIR Form No. 2200-A Schedule 1 of ETRs	$DDDD_{1.2.1}$	214,247,692.28	₱3,779,329,290.97
Excise Taxes claimed as paid per	BBBB	214,247,693.00	3,779,329,291.82

[52] Annex $DDDD_{1.2}$, $DDDD_{1.3}$ of Exhibit "WWW".
[53] Annex $DDDD_{1.2}$, $DDDD_{1.4}$ of Exhibit "WWW".
[54] Annex $DDDD_{1.2}$, $DDDD_{1.5}$ of Exhibit "WWW".

Petitioner's Petition for Review			
Rounding-Off Difference		**(0.72)**	**(₱ 0.85)**

Petitioners paid the corresponding excise taxes on the total volume of liters of "San Mig Light" removed from the three plants for the period covered through the following procedures:

(1) By tracing the volume of removals of "San Mig Light" and the amounts of corresponding excise taxes due and paid from the daily ODI and daily and monthly SSR, which were duly signed by the Internal Revenue Office to the monthly Movement Report with Allocated Deposits as attached to the Total Removals Report and monthly Removals Schedule submitted to the BIR; and (2) by checking that the excise taxes due and paid on "San Mig Light" removals were computed using the excise tax rate of ₱17.64 per volume of liter as provided in Section 143 of the NIRC of 1997, as amended, for the years 2007 and 2008. As a result, it was found that the total excise taxes due on "San Mig Light" removals per SM and lists of SM per SAP, ODIs, daily and monthly SSR of the three plants for the period covered amounted to ₱2,845,208,526.93 at ₱13.28 and ₱3,779,328,194.26 using ₱17.64, as computed below:

	Annex	**Quantity of Volume in Liters**	**Excise Taxes Due at ₱13.28 (2007-2008)**	**Excise Taxes Due at ₱17.64 (2007-2008)**
Excise taxes due on removals per ODI		214,259,584.52	₱ 2,845,367,282.43	₱ 3,779,539,071.07
For Adjustment:				
Bacolod Plant				
1. Erroneous/Double printing of the same SML removals per ODI No. 5476 dated Nov 25, 2008	$GGGG_{3.1}$	(187,949.52)	(2,495,969.63)	(3,315,429.53)
Excise taxes due on SML removals per ODI after adjustment	**FFFF**	**214,071,635.00**	**₱2,842,871,312.80**	**₱3,776,223,641.54**
Add (Deduct) Reconciling Items:				
Polo Plant				
1. SML Removals dated Aug. 7 and 23, 2007 which were declared per ETRs have no corresponding ODIs	$GGGG_{1.1}$	104,909.76	1,393,201.61	1,850,608.20
2. SML Removals per ODI dated Aug. 27, 2007 were lesser than the amounts declared per ETR	$GGGG_{1.1}$	71,155.44	944,944.24	1,255,181.97
3. Removals of SML per SM were greater than the removals per ODI	$HHHH_{1.1}$	3,515.36	46,683.98	62,011.02

4. Removals of SML per SM were greater than the removals per ODI	$HHHH_{1.1}$	(3,340.00)	(44,355.20)	(58,917.53)
San Fernando Plant				
1. SML Removals per ODI were greater than the removals per SM due to erroneous typing of amounts in the ODI	$HHHH_{2.1}$	(245.52)	(3,260.51)	(4,330.94)
Adjusted balance of Excise Taxes Due on SML Removals		**214,247,630.04**	**₱ 2,845,208,526.93**	**₱3,779,328,194.26**

Based on the checking of the daily ODI, daily and monthly SSR, SMs and lists of SM per SM, the overpayment of actual excise taxes due on removals of "San Mig Light" amounts to ₱934,120,764.04, as computed below:

Plants		**Quantity in Liters**	**Amount of Excise Taxes Due**
Actual Removals of SML at tax rate of ₱13.28			
Polo	(Annex $IIII_1$)	38,811,361.56	₱ 515,414,881.53
San Fernando	(Annex $IIII_2$)	146,165,857.20	1,941,082,583.61
Bacolod	(Annex $IIII_3$)	29,270,411.28	388,711,061.79
	(Annex IIII)	214,247,630.04	₱2,845,208,526.93
Excise Taxes Paid for SML removals at ₱17.64			
Polo		38,811,186.20	₱ 684,629,324.16
San Fernando		146,166,102.72	2,578,370,051.74
Bacolod		29,270,403.36	516,329,915.07
	(Annex $DDDD_{1.2.1}$)	214,247,692.28	₱3,779,329,290.97
Variance - Overpayment at ₱17.64			**₱934,120,764.04**

Clearly, petitioner is entitled to a refund. The Court finds that petitioners are entitled to the amount of ₱934,119,938.35 as prayed for in the consolidated Petitions for Review, representing overpayment of excise taxes on "San Mig Light" products for the period covering August 1, 2007 to December 31, 2008. *ge*

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(with Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN MIGUEL CORPORATION,
Petitioner, **CTA Case No. 7953**

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- -x

SAN MIGUEL BREWERY, INC., A Subsidiary of San Miguel Corporation,
Petitioner, **CTA Case No. 7973**

- versus-

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 2 6 2014
10:45 a.m.

x- -x

D I S S E N T I N G O P I N I O N

COTANGCO-MANALASTAS, *J.:*

With due respect, I maintain my Dissenting Opinions in CTA Case No. 7708 and CTA EB Case No. 873 holding that San Mig Light should be classified as a variant of San Miguel Pale Pilsen, and not as a new brand.

The basis of petitioner's claim for refund arose from its argument that San Mig Light, being a new and medium-priced brand and not a variant of San Miguel Pale Pilsen or any other San Miguel Corporation (SMC)/San Miguel Brewery, Inc. (SMBI) brand as re-classified by respondent, should only be taxed at the rate of ₱13.28 per liter (not ₱17.64 per liter as assessed by respondent) and therefore entitled to a refund of excess excise tax paid (₱4.36 per liter) for the period covering August 1, 2007 to December 31, 2008.

Originally, San Mig Light was classified as a new brand as evidenced by the letter of Mr. Conrado P. Item, then Acting Chief of the Large Taxpayer Assistance Divison II, dated February 7, 2002, in reply to SMC's letter dated January 28, 2002, confirming, based on documents submitted, that SMC is allowed to register, manufacture, and sell "San Mig Light" as a new brand and has been paying the excise tax thereon for a considerable length of time, and that the tax classification and rate of "San Mig Light" as a new brand are in order.[1]

However, on May 28, 2002, the BIR, through Assistant Commissioner Edwin R. Abella, issued a Notice of Discrepancy to petitioner, stating among others, that San Mig Light is "a variant of your existing beer products"[2].

Thereafter, respondent consistently classified San Mig Light as a variant of SMC's existing beer products or San Miguel Pale Pilsen and has always demanded that petitioner pay the higher excise tax; which petitioner paid under protest commencing February 2, 2004, since petitioner had no alternative but to pay the increased excise tax rate demanded by the BIR, which would not have allowed removals of San Mig Light if paid at the lower rate.

Respondent argues that petitioner is estopped from questioning the classification of San Mig Light as a variant of San Miguel Beer Pale Pilsen. The commercials clearly showed that San Mig Light was introduced in the market as a variant of San Miguel Pale Pilsen. Another, petitioner in its 1999 Annual Report to its stockholders made an admission that San Mig Light is a premium, low calorie variant of San Miguel Beer. Again, SMC's Kaunlaran Magazine, January 2000, Issue No. 1, Volume No. 33, Special, contains statements in which petitioner admitted that San Mig Light is a low calorie light beer with the same full-flavored taste and alcohol contents as San Miguel Pale Pilsen.

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[1] Exhibit "E" in CTA Case No. 7953; Exhibit "QQ" in CTA Case No. 7973; Par. 3.06, Joint Stipulation, docket (CTA Case No. 7973), p. 464.
[2] Exhibit "V" in CTA Case No. 7953; Exhibit "BBB" in CTA Case No. 7973.

A cursory examination of the San Mig Light and San Miguel Pale Pilsen labels for bottle and can will show that the labels while not completely identical give the same impression on the viewer as to make one draw the conclusion that San Mig Light and San Miguel Pale Pilsen belong to the same product group/line of petitioner, and that San Mig Light is a mere variant of the San Miguel Pale Pilsen.

Under the National Internal Revenue Code[3] (NIRC), prior to its amendment by Republic Act (RA) No. 9334[4], Section 143 provides:

> "Sec. 143. Fermented Liquor. — . . .
>
> A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand."

On the other hand, Section 143 of the NIRC, as amended by RA No. 9334, provides:

> "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."

Despite the deletion of the portion that a product may be classified as a variant if it carries the same logo or design of a different brand, I believe that San Mig Light should still be classified 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 a 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.

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[3] Republic Act No. 8424.
[4] RA No. 9334 took effect on January 1, 2005.

It also bears stressing that RR No. 03-06[5], clarifies what "variant of a brand" means, thus:

> "Sec. 2. *Definition of Terms.* — . . .
>
> 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 (BIR).
>
> 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."

To advance the position that San Mig Light is not a variant of any existing brand, petitioner argues that "San Miguel" is the name of the manufacturer and does not form part of the SMC or SMBI beer brands; "San Miguel" is a trade name. In Annexes C-1 and C-2 of the NIRC, the registered

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[5] Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto.

brand is just "Pale Pilsen". Petitioner further argues that the words "Pale Pilsen" are mere generic words, following the Supreme Court ruling in *Asia Brewery, Inc. v. Court of Appeals, et al.* [6]

However, if these confusing arguments were followed, then one of petitioner's products, "San Miguel Pale Pilsen", contained in Annexes C-1 and C-2 of the NIRC will appear to be an unbranded product of the petitioner since it only has the name of the manufacturer "San Miguel" and the generic words "Pale Pilsen". Clearly, this cannot be the case. Moreover, if the words "Pale Pilsen" were to be assumed as the brand name and not "San Miguel Pale Pilsen", how could it be identified or distinguished from other brands?

I believe that the more logical conclusion is that petitioner intended "San Miguel" to form 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.

Petitioner also argues that even if the word "San Miguel" were to be considered as part of the brand, the aforesaid words are not present in "San Mig Light"[7]. I do not agree.

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 Mig 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 RR No. 03-06, which provides in Section 2 (d) that:

> "In case 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 . . .
>
> Illustration:

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[6] Docket (CTA Case No. 7953), pp. 1512 to 1513.
[7] Docket (CTA Case No. 7953), p. 1516.

No. 2 —

ROOT NAME	MODIFIER IS PREFIXED	MODIFIER IS SUFFIXED	MODIFIED 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	Pal 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 suffixation of "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 is reasonable to conclude that petitioner intended San Mig Light to ride on the popularity of its original brand San Miguel Pale Pilsen with the added incentive of the new variant having less calories. This is why Congress intended to tax those "variant of a brand" to the highest classification. I agree with the observations made by Hon. Associate Justice Cielito N. Mindaro-Grulla in her dissenting opinion in CTA EB Case No. 755 dated September 20, 2012, *to wit*:

> "...The definition of 'Variant of a Brand', refers to brand on which a modifier is prefixed and/or suffixed to the root name of the brand, emanates from RA No. 8240. In formulating said definition the legislature purposely intended to tax those 'variant of a brand' to the highest classification, specifically those brands who ride on the popularity of previously registered brand, in order to generate tax revenue. Thus, it is noteworthy to cite the intent and purpose of the legislature in defining a variant of a brand specifically the integration of prefix or suffix in the definition. In Senate's deliberation on House Bill No. 7198 (the precursor of RA 8240), the interpellation between Senator Juan Ponce Enrile and Senator Miriam Santiago would be relevant.
>
> "Senator Santiago:
>
> **Mr. President, allow me to begin with the elementary observation that when we institute tax reforms, we should consider certain factors including ease of administering the tax, simplicity of the tax system, the capability of the tax machinery to implement the tax laws and the avoidance of the tax leaks that encourage tax evasion.**

> **. . ., [I] still need to raise certain questions even only for clarification of those who will later be tasked with the implementation of this law.**
>
> **. . . . I am talking about variants of existing brands.**
>
> I would like to lay the basis for my question. I find it confusing that the taxation of variants is defined in this manner. The definition of a variant "is made to depend on the prefix or the suffix. It is based on the name although referring to the same product.
>
> The bill provides that the tax shall be based on the highest value. Tax wise, it would be unfair for manufacturer who would wish to introduce cheaper and more affordable versions of their products. It defeats the purpose of coming out with lower-priced products.
>
> For example, let us assume that a beer product is well-known in the market. In order to make it available to more consumers, the manufacturer, let us assume, comes out with the cheaper version of the original and attaches the name of the original to this new product in order to assure consumers that the new one is backed by the same quality guarantee as the original one. It seems to be absurd for the new product to be taxed as much as the original product in this light.
>
> My question then is: Should the variant not be that, which is nearest in value and not which is highest in value? (Emphasis supplied)
>
> Senator Enrile:
>
> Mr. President, to answer the question briefly, I would like to state here that from a purely business viewpoint, probably I will concede that there is some merit to the argument just stated by the distinguished Senator from Iloilo. But on the other hand, from a purely fiscal taxation position, to discard the provision that we have suggested would open a very wide door for tax avoidance, if not tax evasion because a beer is beer. It is just a question of brands.
>
> What is the composition of beer? Water and some fermenting elements — malt and some other

> fermenting elements. But if we not put this, those **brands that are already well-known in the market could be marketed under almost an identical name with a prefix, suffix or a variant and put in a lower category in order to enjoy a lower tax level, in which case, the government will be losing**. That is the purpose of this measure." (Emphasis supplied)
>
> Evidently, when the legislature defines a 'variant of a brand', the legislature refers to the word 'brand' as those brand marketed to the consumers and that it intended to tax those brands marketed under almost an identical name with a prefix or suffix of brands that are already well-known in the market. Moreover, the omission in the law of the other definition of a variant of a brand such as — 'a different brand which carries the same logo or design of the existing brand' in fact reveals the legislative intent to adopt the purpose to tax those brands who ride on the popularity of previously registered brand marketed under almost an identical name with a prefix, suffix or a variant."

Furthermore, that San Mig Light is a variant of San Miguel Pale Pilsen is bolstered by petitioner's own admission, as pointed out by respondent in her Memorandum, *to wit*:

a. When San Mig Light was introduced in the market, it was indeed associated with San Miguel Pale Pilsen. The commercials clearly showed that San Mig Light was introduced in the market as a variant of San Miguel Pale Pilsen (Exhibit "3"). It clearly gave the impression to the public that San Mig Light has the same quality and taste as that of San Miguel Pale Pilsen; only that by this time SMC offers a beer product with low calories but retains the same original full-flavored San Miguel Pale Pilsen, hence San Mig <u>Light</u> Pale Pilsen.

b. Petitioner, in its 1999 Annual Report to its stockholders (page 18, Exhibit "1"), made an admission that San Mig Light is a premium, low calorie variant of San Miguel Beer. Again, on page 6 of SMC's Kaunlaran Magazine, January 2000, Issue No. 1, Volume No. 33, Special (Exhibit "2"), contains statements in which petitioner admitted that San Mig Light is a low calorie light beer with the same full-flavored taste and alcohol contents as SMB (San Miguel Pale Pilsen).

Based on the above discussion, I find that there is sufficient basis to conclude that San Mig Light is a mere variant of San Miguel Pale Pilsen. Under the un-amended Section 143, 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." After its amendment, Section 143 now provides:

> "Variants of existing brands and variants of new brands which are introduced in the domestic market after the effectivity of this Act shall be taxed under the proper classification thereof based on their suggested net retail price: Provided, however, That such classification shall not, in any case, be lower than the highest classification of any variant of that brand."

Under both the un-amended and the current provision of Section 143, new variants shall be taxed at the highest classification of any variant of that brand. As discussed above, San Miguel Pale Pilsen is the regular brand which is taxed as a medium-priced brand. It has a variant under the high-priced brands as "RPT in cans" which is actually San Miguel Pale Pilsen in cans. Therefore, San Mig Light, which was introduced in 1999, falls under the coverage of the un-amended Section 143 and thus subject to the excise tax of the highest classification of any variant of the brand San Miguel Pale Pilsen. Thus, San Mig Light is taxable as a high-priced brand similar to the highest classification of any variant, which in this case is the San Miguel Pale Pilsen in can or "RPT in can" in Annexes C-1 and C-2 of the NIRC.

Therefore, I agree with respondent that San Mig Light, either in bottle or in can, was properly taxed as a high priced brand and thus, petitioner is not entitled to a refund.

Petitioner further argues that the classification of San Mig Light as a new and medium-priced brand, therefore not a variant, made by the BIR itself may no longer be revised except by an Act of Congress[8]. Petitioner quotes the following portions of Section 143, as amended, of the NIRC:

> ". . . That brands of fermented liquor introduced in the domestic market between January 1, 1997 and December

[8] Docket (CTA Case No. 7953), p. 1493.

31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress."

I do not agree. Again, I concur with the position advanced by Hon. Associate Justice Cielito N. Mindaro-Grulla in her dissenting opinion in CTA EB Case No. 755, *to wit*:

"The above mentioned classification freeze provision pertains not to the determination of whether a brand is indeed a new brand or variant of a brand but rather to the specific range of net retail prices of brand upon which is levied, assessed and collected a rate of excise tax. In the case of *British American Tobacco vs. Camacho, et al.*, the Supreme Court illustrates the classification freeze provision as follows:

'. . ., [T]he law creates a four-tiered system which we may refer to as the low-priced, medium-priced, high-priced, and premium-priced tax brackets. When a brand is introduced in the market, the current net retail price is determined through the aforequoted specified procedure. The current net retail price is then used to classify under which tax bracket the brand belongs in order to finally determine the corresponding excise tax rate on a per pack basis. The assailed feature of this law pertains to the mechanism where, after a brand is classified based on its current net retail price, the classification is frozen and only Congress can thereafter reclassify the same. From a practical point of view, Annex "D" is merely a by-product of the whole mechanism and philosophy of the assailed law. That is, the brands under Annex "D" were also classified based on their current net retail price, the only difference being that they were the first ones so classified since they were the only brands surveyed as of October 1, 1996, or prior to the effectivity of RA 8240 on January 1, 1997.

Due to this legislative classification scheme, it is possible that over time the net retail price of a previously classified brand, whether it be a brand under Annex "D" or a new brand classified after the effectivity of RA 8240 on January 1, 1997, would increase (due to inflation, increase of production costs, manufacturer's decision to increase its prices, etc.) to a point that its net retail price pierces the tax bracket to which it was previously classified. Consequently, even if its present day net retail price would make it fall *under a higher tax bracket, the previously classified brand would continue to be subject to the excise tax rate under the lower tax bracket by virtue of the legislative classification freeze.'*

xxx xxx xxx

Apparently, CIR is precluded from reclassifying the net retail prices of existing and those brands introduced between January 1, 1997 and December 31, 2003 but not in properly determining a brand as variant of a brand erroneously determined as new brand."

Furthermore, in *British American Tobacco vs. Camacho, et al.*[9], same case cited above, it can be gleaned that the classification freeze provision pertains to the tax bracket under which a new brand is classified based on its current net retail price, *to wit*:

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

Senator Recto:

Because, like I said, when Congress agreed to adopt a specific tax system [under R.A. 8240], when Congress did not index the brackets, and Congress did not index the rates but only provided for a one rate increase in the year 2000, we shifted from *ad valorem* which was based on value to a system of specific which is based on volume. Congress then, in effect, determined the classification based on the prices at that particular period of time and classified these products accordingly.

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[9] G.R. No. 163583, August 20, 2008.

> Of course, Congress then decided on what will happen to the new brands or variants of existing brands. **To favor government, a variant would be classified as the highest rate of tax for that particular brand. In case of a new brand, Mr. President, then the BIR should classify them. But I do not think it was the intention of Congress then to give the BIR the authority to reclassify them every so often. I do not think it was the intention of Congress to allow the BIR to classify a new brand every two years, for example, because it will be arbitrary for the BIR to do so. . . .** (Emphasis supplied)
>
> For these reasons, the amendments introduced by RA 9334 to RA 8240, insofar as the freezing mechanism is concerned, must be seen merely as underscoring the legislative intent already in place then, i.e., **new brands as being covered by the freezing mechanism after their classification based on their current net retail prices**." (*Emphasis supplied*)

Hence, the classification freeze provision is a mechanism where, after a brand is classified under a tax bracket, say, low-priced tax bracket, based on its current net retail price, the classification is frozen and the BIR cannot reclassify the same under the medium-priced tax bracket on the ground that its current net retail price has increased (say due to inflation or increase in production costs) and only Congress can thereafter reclassify the same. As for a variant of a brand, there is no need to determine its current net retail price for purposes of fixing the tax bracket to which it belongs, since a variant would be taxed based on the highest classification of any variant of that brand. Consequently, the classification freeze provision does not prohibit the reclassification of a brand to a variant of a brand erroneously classified as a new brand.

From all the foregoing, I believe that there is sufficient basis to hold that San Mig Light is a variant of San Miguel Pale Pilsen. Therefore, respondent correctly taxed the former under the highest classification of any variant of the latter brand (*i.e.*, "RPT in cans" classified as a high-priced brand).

WHEREFORE, I vote to DENY the instant claim for refund of erroneously paid excise taxes.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice