REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL, REVENUE, Petitioner,	**CTA EB No. 873** (CTA Case Nos. 7052,7053 & 7405)
	Present:
-versus-	Acosta, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, Fabon-Victorino, Mindaro-Grulla, and Cotangco-Manalastas, *JJ.:*
SAN MIGUEL CORPORATION, Respondent.	Promulgated: OCT 24 2012 4:10pm

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DECISION

CASTAÑEDA, JR., J.:

Assailed in the Petition for Review are the Decision dated October 18, 2011 and the Resolution dated February 6, 2012 issued by the Court's First Division ("Court in Division") in the consolidated cases entitled "SAN MIGUEL CORPORATION -versus- COMMISSIONER OF INTERNAL REVENUE and OFFICER-IN-CHARGE, LARGE TAXPAYERS SERVICE, BUREAU OF INTERNAL REVENUE" and "SAN MIGUEL CORPORATION -versus- COMMISSIONER OF INTERNAL REVENUE" docketed as CTA Case Nos. 7052, 7053 & 7405. *jc*

THE FACTS

The Commissioner of Internal Revenue ("petitioner") as a public official is tasked to decide disputed assessments, collection, refund of erroneously or excessively paid internal revenue taxes, fees or other charges, penalties, or other matters under the 1997 National Internal Revenue Code ("NIRC"), as amended, or other laws administered by the Bureau of Internal Revenue ("BIR").

On the other hand, San Miguel Corporation ("respondent") is a corporation duly organized and existing under the laws of the Republic of the Philippines. San Mig Light is among the beer products manufactured by the respondent.[1]

In the letter dated October 19, 1999 addressed to Assistant Commissioner Leonardo B. Albar of the BIR Excise Tax Services, respondent through Assistant Vice President for Finance, Mr. Virgilio S. De Guzman requested the registration and authority to manufacture "San Mig Light" to be taxed at P12.15 per liter. Consequently, Assistant Commissioner Albar granted respondent's request evidenced by a letter dated October 27, 1999.[2]

On November 3, 1999, Mr. De Guzman informed Assistant Commissioner Albar of the change in the net retail price of San Mig Light at P21.15 per liter, or P6.98 per bottle, less value-added tax and specific tax, to be taxed at P9.15 per liter.[3]

[1] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 7405, pp.2053- 2054.
[2] Docket, Joint Stipulation of Facts and Issues, CTA Case Nos. 7405, 7053 & 7405, p. 2054.
[3] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 7405 p. 2055.

From October 1999 to November 1999, San Mig Light products have been withdrawn and sold, and taxes have been paid on such removals on the basis of its registration as a new brand.[4] Respondent submitted documents attesting the removals on San Mig Light products, namely: Daily Official Transcript Sheet, Monthly Official Transcript Sheet and Summary of Removals (Total Removals).[5]

Unexpectedly, Assistant Commissioner for Large Taxpayers Service Edwin R. Abella issued a Notice of Discrepancy dated May 28, 2002 stating among others that San Mig Light is a variant of existing beer products subject to higher excise tax starting year 2000.[6] In the same Notice of Discrepancy, the BIR through Assistant Commissioner Abella demanded the payment of deficiency excise tax of P824,750,204.97 exclusive of increments for the years 1999 to April 2002 on the basis of the excise tax rate of P10.76 for the year 1999 instead of P19.91 per liter and for the year 2000, the 12% increase was based at the latter rate pursuant to Section 143 (C)(2) of the same Code.[7]

On October 14, 2002, Assistant Commissioner Abella reiterated his finding that San Mig Light is a variant as shown in respondent's publication known as "Kaunlaran" and its Annual Report.[8]

In the letter dated January 6, 2004, petitioner validated that San Mig Light is a variant of San Miguel Pale Pilsen and the assessment for excise tax deficiency against respondent was forthcoming.[9]

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[4] Docket, Joint Stipulation of Facts and Issues, CTA Case Nos. 7052 & 7053, p. 506.
[5] Docket, Joint Stipulation of Facts and Issues, CTA Case Nos. 7052 & 7053, pp. 506-507.
[6] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 7405 p. 2055.
[7] See Notice of Discrepancy dated May 28, 2002.
[8] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 7405, p. 2056.
[9] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 7405 p. 2057.

Meanwhile, on February 4, 2004, the BIR through its Deputy Commissioner issued a Notice of Discrepancy stating that respondent is liable for alleged deficiency excise tax of P28,876,108.84 for the period January 8, 2004 to January 29, 2004.[10]

As per two Preliminary Assessment Notices ("PAN") dated January 28, 2004 and March 24, 2004, respondent's alleged excise tax deficiencies for the period 1999 to January 7, 2004 and the period January 8, 2004 to January 29, 2004 amount to P852,039,418.15 and P29,967,465.37, respectively.[11]

In the two formal letters of demand with accompanying assessment notices ("FAN") covering Assessment Notices Nos. LTS TF 004-06-02 and LTS TF 129-05-04, petitioner ordered respondent to pay P876,098,898.83 representing alleged deficiency excise tax due on removals of San Mig Light for the period November to December 1999 and January 2000 to January 7, 2004, including interest; and P30,763,133.68 representing deficiency excise tax, including interest for the period January 8, 2004 to January 29, 2004.[12]

On May 12, 2004 and July 7, 2004, respondent protested the FANs, but on August 17, 2004 and August 20, 2004 then Deputy Commissioner Kim Henares denied these protests for lack of legal and factual basis.[13]

On September 17, 2004 and September 22, 2004, respondent as petitioner filed two Petitions for Review docketed as CTA Case Nos. 7052 and 7053 before the Court in Division. The two cases were eventually consolidated.[14]

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[10] Docket, Joint Stipulation of Facts and Issues, CTA Case no. 7405, p. 2058.
[11] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 7405, pp. 2058 & 2059.
[12]Docket, Joint Stipulation of Facts and Issues, CTA Case No. 7405, pp.2058 & 2060.
[13] Docket, Joint Stipulation of Facts and Issues, CTA Case No. 7405, pp.2175 & 2177.

To prevent the issuance of additional excise tax assessments on San Mig Light products and disruption of its operation, respondent paid excise taxes at the rate of P13.61 beginning February 1, 2004.[15]

Consequently, on December 28, 2005, respondent filed an administrative refund claim with the BIR in the amount of P782,238,161.47 for erroneous excise taxes collected on San Mig Light products from February 2, 2004 to November 30, 2005.

Petitioner's inaction prompted respondent to file before the Court in Division a Petition for Review docketed as CTA Case No. 7405 by seeking a refund of P782,238,161.47 of erroneously collected excise taxes on San Mig Light products for the period February 2, 2004 to November 30, 2005. Later, upon Motion, the Court in Division consolidated CTA Case No. 7405 with CTA Case Nos. 7052 and 7053.

In ruling for the respondent, the Court in Division issued a Decision dated October 18, 2011 nullifying Assessment Notices Nos. LTS TF 004-06-02 and LTS TF 129-05-04 pertaining to excise taxes for the periods November 1999 to January 7, 2004 and January 8, 2004 to January 29, 2004. On the other hand, the Court in Division ordered petitioner to partially refund excise taxes in the amount of P781,514,772.56. The dispositive portion of the Court in Division's Decision dated October 18, 2011 reads:

> **WHEREFORE**, in view of the foregoing considerations, the consolidated Petitions for Review in CTA Case Nos. 7052 and 7053 are hereby **GRANTED**. The

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[14] Docket, Joint Stipulation of Facts and Issue, CTA Case Nos. 7052 and 7053, p. 2177.
[15] Docket, Joint Stipulation of Facts and Issues, CTA Case Nos. 7052 and 7053, p. 2183.

(1) letters dated August 17, 2004 and August 20, 2004 of respondents, denying petitioner's Protest/Request for Reconsideration dated May 12, 2004 and July 7, 2004, respectively, and (2) Assessment Notice Nos. LTS TF 004-06-02 and LTS TF 129-05-04 issued by respondent against petitioner for the periods of November 1999 to January 7, 2004 and January 8, 2004 to January 29, 2004, are hereby **CANCELLED** and **SET ASIDE**.

Moreover, the Petition for Review in CTA Case No. 7405 is hereby **PARTIALLY GRANTED**. Respondent CIR is hereby ORDERED to REFUND petitioner, or to ISSUE A TAX CREDIT CERTIFICATE in its favor in, the amount of SEVEN HUNDRED EIGHTY ONE MILLION FIVE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED SEVENTY TWO PESOS AND FIFTY SIX CENTAVOS (P781,514,772.56), as determined below:

Claims for Over-Payment of Excise Taxes per Petition		P782,238,161.47
Less: Deductions from claims:		
1. Excise taxes due on SML removals per ODI which were not paid per Returns Polo Plant	P420,252.62	
2. Excise taxes due per Excise Tax Returns were Lesser than the amounts per ODI Polo Plant	121,975.00	
3. SML Removals per shipping Memorandum were Greater than ODIs		
San Fernando Plant	181,080.11	
Bacolod Plant	81.18	723,388.91
Recomputed Excise Taxes for Refund/Issuance of Tax Credit Certificate		**P781,514,772.56**

SO ORDERED.[16]

Dissatisfied, petitioner moved to reconsider the Decision dated October 18, 2011 and requested the Court to order respondent to produce certain

[16] Penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Ernesto D. Acosta and Esperanza R. Fabon-Victorino, Rollo pp.33-73.

documents; however, in the Resolution dated February 6, 2012, the Court in Division denied the same for lack of merit.[17]

THE ISSUES

Unfazed, petitioner appealed before the Court *en banc* raising the following errors allegedly committed by the Court in Division:

I

THE FIRST DIVISION OF THE HONORABLE COURT ERRED WHEN IT HELD THAT SML IS A NEW BRAND.

II

THE FIRST DIVISION OF THE HONORABLE COURT ERRED WHEN IT HELD THAT SML WAS REGISTERED BY THE BIR AS A NEW BRAND.

III

THE FIRST DIVISION OF THE HONORABLE COURT ERRED WHEN IT HELD THAT RESPONDENT IS ENTITLED TO A REFUND OF P782,238,161.47 FOR ALLEGEDLY ERRONEOUSLY COLLECTED EXCISE TAXES ON SML FOR THE PERIOD 02 FEBRUARY 2004 TO 30 NOVEMBER 2005.

IV.

THE FIRST DIVISION OF THE HONORABLE COURT ERRED WHEN IT DENIED PETITIONER'S MOTION TO UTILIZE DISCOVERY PROCEDURES IN SUPPORT OF HER MOTION FOR RECONSIDERATION.[18]

On May 21, 2012, respondent filed its Comment to the Petition.[19]

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[17] Rollo, pp. 74-78.
[18] Rollo, p.16
[19] Rollo, p.99.

After both parties signified that petitioner is adopting her Petition for Review as her Memorandum and respondent's Comment also as its Memorandum, the Court deemed the case submitted for decision.

THE COURT'S RULING

The core issue in this case is whether or not San Mig Light is a variant of respondent's existing beer brand subject to higher excise tax rate.

Petitioner alleges that respondent is estopped from questioning the classification of San Mig Light as a variant of San Miguel Beer Pale Pilsen. While it is true that San Mig Light was registered as a new brand and taxes were eventually paid, the issuances of assessment notices prove otherwise. Deficiency excise taxes arise on the basis that San Mig Light is a variant of an existing beer product. Although registered as a new brand, respondent advertised San Mig Light as a variant of San Miguel Pale Pilsen.

Petitioner denies the reclassification of San Mig Light because it has always been classified as a variant of an existing brand. The complete name of San Mig Light is San Mig Light Pale Pilsen. Under Section 143 of the 1997 NIRC, the classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996 shall be set forth in Annex C specifically Annexes C-1 and C-2 of the 1997 NIRC. In these documents, the parent brands of San Mig Light are RPT in cans, Pale Pilsen and Super Dry. As shown in the packages of the said brands, the registered RPT in can 330 ml. (24) refers to San Miguel Beer Pale Pilsen (SMB Pale Pilsen), while Pale Pilsen refers to San

Miguel Beer Pale Pilsen in bottles. Thus, the root name of the existing brand is "Pale Pilsen."

Out of these three 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. Pursuant to Section 143 of the NIRC of 1997, the proper tax classification of San Mig Light for excise tax purposes is that of a variant of RPT in can.

Petitioner further argues that San Mig Light covers the definition of a variant under Section 143 of the 1997 NIRC.

First, the inclusion of the term "Light" is a modifier suffixed to the root name pursuant to Section 143 of the 1997 NIRC.

Second, a comparison of the logos and designs of "San Miguel Pale Pilsen" and San Miguel Light" shows these have almost the same label font and design layout bearing the same striped diagonal lines. 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, San Mig Light is a variant of Pale Pilsen.

Assistant Commissioner Edwin R. Abella issued the Notice of Discrepancy dated May 28, 2002 to remedy the effects of a variant of brand that was represented to the BIR as a new brand.

Since San Mig Light is a variant of an existing brand known as San Miguel Beer Pale Pilsen, there is no erroneous payment of excise taxes. Jc

Under Section 130 of the 1997 NIRC, the excise tax is paid by the manufacturer or producer prior to the removal of domestic products from the place of production.

The removal of domestic products from the place of production is conditioned upon the payment of excise taxes.

In Section 229 of the 1997 NIRC, the claim for refund requires the existence of erroneously or illegally paid taxes. Considering that in this case, excise taxes are properly imposed, respondent's claim for refund has no basis.

Respondent on the other hand, counters that under the amendments introduced on Section 143 of the NIRC by Republic Act No. 9334, the classification of "San Mig Light" as a new brand may not be revised except by an act of Congress

The BIR has been ambivalent and vacillating on its position as to which existing respondent's beer brand San Mig Light is a variant of. Respondent has in effect not been informed in writing of the law and the facts on which the assessments against it were made. Hence, the deficiency excise tax assessments are void under Section 228 of the 1997 NIRC.

Through the years, the BIR has confirmed the registration and tax classification of San Mig Light as a new and medium priced brand.

The BIR is devoid of any factual and legal basis in retroactively reclassifying "San Mig Light" as a variant subject to a higher excise tax rate since Bureau itself has confirmed the registration and tax classification of San Mig Light as a new and medium priced brand; thus, the same is in violation of

Sections 143 and 246 of the NIRC, and respondent's constitutional right to due process.

A comparison of San Mig Light with other respondent's beer brands manifests differences in logo or design. "San Might Light" has a distinctive and different inscription, name, shape, color scheme, size, packaging and general appearance.

In order that one brand may be considered as a variant of another, the law does not state that their design must be almost the same; what the law requires is that they must be the same.

Respondent insists that it had no alternative but to pay at the increased excise tax rate demanded by the BIR which would not have allowed the removals if paid at the lower rate. This disputes petitioner's assertion that respondent's payment of excise tax under the highest classification of San Miguel Pale Pilsen ("RPT" in cans) is an admission that San Mig Light is a variant of an existing beer brand.

The amount of P782,238,160.37 is supported by the independent certified public accountant's ("ICPA") findings and relevant documents; thus, respondent is entitled to the refund claim representing erroneous, excessive and/or illegal collection or overpayment of excise taxes for the period of February 1, 2004 to November 30, 2005.

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

Effective January 1, 1998, Republic Act ("R.A.") No. 8424[20] explained the tax treatment of fermented liquors as a new brand in contrast with a variant as follows:

> "CHAPTER III- EXCISE TAX ON ALCOHOL PRODUCTS
>
> SEC. 143. Fermented Liquor. – xxx
>
> Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.
>
> "New brands shall be classified according to their current net retail price. xxx xxx xxx
>
> The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex C, shall remain in force until revised by Congress.
>
> A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or different brand which carries the same logo or design of the existing brand.

Beginning January 1, 2005, R.A. 9334[21] amended Section 143 of the 1997 NIRC making reference to fermented liquors either as a new brand or variant. R.A. 9334 restricted the meaning of a variant in the following manner:

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

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[20] THE TAX REFORM ACT OF 1997.

[21] 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.

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

In the instant case, San Mig Light, a fermented liquor is a new brand due to the fact that on October 27, 1999, Assistant Commissioner Leonardo B. Albar of the Excise Tax Division granted respondent's request for the product's registration.[22] To prove that San Mig Light is a new brand is supported by the fact that it was not among the brands registered after the effectivity of R.A. 8240. Nowhere is San Mig Light recognized as among the existing fermented liquor brands as shown in Annexes "C-1" and "C-2" of R.A. 8240 as aptly observed by the Court in Division as follows:

> The fact that "San Mig Light" is a "new brand" and not merely a variant of an existing brand is bolstered by the fact that Annexes "C-1" and "C-2" of RA No. 8240, which enumerated the fermented liquors registered with the BIR do not include the brand name "San Mig Light". Instead, what were listed, as existing brands of petitioner, as of the effectivity of RA No. 8240, were as follows: "Pale Pilsen 320 ml.", "Super Dry 355 ml.", "Grande 1000 ml.", "RPT in cans 330 ml.", "Premium Bottles 355 ml." and "Premium Can 330 ml." Even in Section 4 of RR No. 2-97, which provides for the classification and manner of taxation of existing brands, new brands and variants of existing brands, the list of existing brands of fermented liquors of petitioner does not include the brand "San Mig Light", but merely "RPT in cans 330 ml.", "Premium Bottles 355 ml.", and "Premium Bottle Can 330 ml." for high priced brands; and "Super Dry 355 ml.", "Pale Pilsen 320 ml.", and "Grande" for medium-priced brands.[23]

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[22] See Docket, Joint Stipulation of Facts and Issues, CTA Case Nos. 7405, p. 2054.
[23] Rollo, p. 59.See *Commissioner of Internal Revenue v. San Miguel Corporation*, CTA EB No. 755, September 20, 2012.

San Mig Light is not a variant of an existing brand. The petitioner erred in treating the wordings "San Miguel" or "San Mig" as a root word and "Light" as a suffix. "San Miguel" or "San Mig" is not registered nor is it an existing classified brand under R.A. 8240. The brand "Pale Pilsen" was registered and classified as a brand name at that time. The term "Light" cannot be separated from the word "San Mig" or "San Miguel" but should be considered as one brand name. Moreover, there are dissimilarities in the appearances of the logos of San Mig Light and Pale Pilsen as described by the Court in Division:

> Anent the second type of "variant of brand", i.e., when a different brand carries the same logo or design of an existing brand, records show that there are marked differences in the designs of the existing brand "Pale Pilsen" and the new brand "San Mig Light", to wit:
>
> a) as to "Pale Pilsen" and "San Mig Light" in bottles:
>
> (1) the size, shape and color of the respective bottles are different. Each brand has a distinct design in its packaging. "Pale Pilsen" is in a steiny bottle, while "San Mig Light" is packed in a tall and slim transparent bottle;
>
> (2) the design and color of the inscription on the bottles are different from each other. "Pale Pilsen" has its label encrypted or embossed on the bottle itself, while "San Mig Light" has a silver and blue label of distinctive design that is printed on paper pasted on the bottle; and
>
> (3) the color of the letters in the "Pale Pilsen" brand is white against the color of the bottle, while that of the words "San Mig" is white against a blue background and the word "Light" is blue against a silver background.
>
> b) as to "Pale Pilsen" and "San Mig Light" in cans:
>
> (1) the words "Pale Pilsen" are in ordinary font printed horizontally in black on the can against a diagonally striped light yellow gold background, while the words "San Mig" are in Gothic font printed diagonally on the can against a blue background and the word "Light" in ordinary font printed diagonally against a diagonally striped silver background; and
> (2) the general color scheme of "Pale Pilsen" is light yellow gold, while that of "San Mig Light" is silver.
>
> Though the "escudo" logo appears on both "Pale Pilsen" bottle and can, and "San Mig Light" bottle and can, the same cannot be considered as an

> indication that "San Mig Light" is merely a variant of the brand "Pale Pilsen", since the said "escudo" insignia is the corporate logo of petitioner. It merely identifies the products, as having been manufactured by petitioner, but does not form part of its brand. In fact, it appears not only in petitioner's beer products, but even in its non-beer products.[24]

Based on the law and admission by both parties on August 2, 2005[25] , the fact of registration of San Mig Light as a new brand in October 1999 and reconfirmation of such classification on February 7, 2002 belie[26] Assistant Commissioner Abella's findings that this product is a variant of San Miguel Pale Pilsen.

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

> SECTION 3. Section 143 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows: xxx
>
> "SEC. 143. Fermented Liquors.- xxx
>
> xxx xxx xxx
>
> "The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex 'C", including the classification of brands for the same products which, although not set forth in Annex 'C', were registered and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress. Jr

[24] Rollo, p.61. See *Commissioner of Internal Revenue v. San Miguel Corporation*, supra.
[25] Docket, Vol. I, CTA Case No. 7052, p. 506.
[26] Dockets, CTA Case No. 7052, p. 71, CTA Case No. 7405, p. 2055.

The BIR's earlier recognition of San Mig Light as a new brand because it is registered after the date of effectivity of R.A. 8240 or after January 1, 1997 in accordance with R.A. 9334 applies. And any subsequent reclassification of fermented liquor products such as San Mig Light should be pursuant to the act of Congress as mandated by law.[27] The BIR's reclassification of San Mig Light as a variant imposing higher excise taxes is devoid of any basis, thus, justifying the cancellation of assessment notices for deficiency excise taxes for the periods November 1999 to January 7, 2004 and January 8, 2004 to January 29, 2004.

ON RESPONDENT'S REFUND CLAIM

The filing of return and payment of excise taxes on domestic products is governed by Section 130(A)(2) of the 1997 NIRC, stating:

> "Sec. 130. Filing of Return and Payment of Excise Tax on Domestic Products. –
> "(A) Persons Liable to File a Return on Removal and Payment of Tax. – 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

The law requires that excise taxes on liquor products must be paid before they are removed from the place of production.

It is two years from the date of payment of excise taxes that recovery of erroneously paid taxes may be availed by the claimant under Section 229 of the 1997 NIRC which reads: *je*

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[27] See *Secretary of Finance v. La Suerte Cigar and Cigarette Factory*, G.R. No. 166498, June 11, 2009, 589 SCRA 72.

> 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 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 years from the date of payment of the tax or penalty regardless of any supervening case 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.

Records disclose that respondent filed its administrative and judicial claim for refund on December 28, 2005 and January 31, 2006, respectively, within the reglementary period. The Court in Division further explained that:

> The claim for refund covers the period starting February 2, 2004 to November 30, 2005. This means that the taxpayer has two years or until February 2, 2006 to file its claim for refund. The administrative claim was filed on December 28, 2005 and the judicial claim was filed on January 31, 2006. Clearly, the refund claim was filed within the two-year prescriptive period.
>
> Records reveal that the claimed amount of P782,238,161.47 refers to excise taxes overpaid by petitioner on its removal of "San Mig Light" from its three plants located in Polo, Valenzuela, San Fernando, Pampanga, and Bacolod City, for the period covering February 2, 2004 to December 31, 2005, broken down as follows:

		Excise Taxes Paid at P13.61 (2004) and P16.33 (2005)		**Should be Excise Taxes Paid at P10. 25 (2004) and P12.30 (2005)**		
Period	**Volume of removals (in liters)**	**Per Liter**	**Amount**	**Per Liter**	**Amount**	**Difference**
2004						
February	P 9,169,166.16	P13.61	P124,792,351.44	P10.25	P 93,983,953.14	P30,808,398.30

March	10,255,346.64	13.61	139,575,267.77	10.25	105,117,303.06	34,457,964.71
April	8,679,139.92	13.61	118,123,094.31	10.25	88,961,184.18	29,161,910.13
May	7,869,573.36	13.61	107,104,893.43	10.25	80,663,126.94	26,441,766.49
June	5,994,077.77	13.61	81,579,398.45	10.25	61,439,297.14	20,140,101.31
July	7,630,421.04	13.61	103,850,030.35	10.25	78,211,815.66	25,638,214.69
August	7,468,314.48	13.61	101,643,760.07	10.25	76,550,223.42	25,093,536.65
September	9,851,619.84	13.61	134,080,546.02	10.25	100,979,103.36	33,101,442.66
October	11,285,417.04	13.61	153,594,525.91	10.25	115,675,524.66	37,919,001.25
November	11,980,364.40	13.61	163,052,759.48	10.25	122,798,735.10	40,254,024.38
December	13,441,022.40	13.61	182,932,314.86	10.25	137,770,479.60	45,161,835.26
	103,624,463.05		**1,410,328,942.11**		**1,062,150,746.26**	**348,178,195.85**
2005						
January	11,083,406.40	16.33	180,992,026.51	12.30	136,325,898.72	44,666,127.79
February	9,694,278.72	16.33	158,307,571.50	12.30	119,239,628.26	39,067,943.24
March	10,095,226.08	16.33	164,855,041.89	12.30	124,171,280.78	40,683,761.10
April	11,378,762.64	16.33	185,815,193.91	12.30	139,958,780.47	45,856,413.44
May	6,256,813.20	16.33	102,173,759.56	12.30	76,958,802.36	25,214,957.20
June	9,809,901.12	16.33	160,195,685.29	12.30	120,661,783.78	39,533,901.51
July	8,600,181.34	16.33	140,440,961.28	12.30	105,782,230.48	34,658,730.80
August	7,674,626.76	16.33	125,326,654.99	12.30	94,397,909.15	30,928,745.84
September	10,826,899.44	16.33	176,803,267.86	12.30	133,170,863.11	43,632,404.74
October	11,292,068.28	16.33	184,399,475.01	12.30	138,892,439.84	45,507,035.17
November	10,995,023.52	16.33	179,548,734.08	12.30	135,238,789.30	44,309,944.79
	107,707,187.50	**16.33**	**1,758,858,371.88**	**12.30**	**1,324,798,406.25**	**434,059,965.63**
TOTAL	**P211,331,650.55**		**P3,169,187,313.99**		**P2,386,949,152.51**	**P782,238,161.48**

After a thorough scrutiny of the evidence 68 presented, this Court agrees with the findings of Ms. Normita L. Villaruz, the Court-commissioned Independent Certified Public Accountant (CPA).

By tracing the volume of removals of "San Mig Light" and the amounts of corresponding excise taxes due and paid from the daily Official Delivery Invoices and daily and monthly Sworn Statements of Removals, which were duly signed by the Internal Revenue Officer to the monthly Movement Report with Allocated Deposits as attached to the Total Removals Report and monthly Removals Schedule submitted to the BIR monthly, and by checking the excises taxes due and paid on "San Mig Light" removals computed using the excise tax rates of P13.61 and P16.33 per volume of liter as provided in Section 143 of the NIRC of 1997, for the years 2004 and 2005, respectively, the Independent CPA was able to ascertain that petitioner paid the corresponding excise taxes on total volume of liters of "San Mig Light", removed from the three plants during the period covered.

However, the total amount of P782,238,161.47 being claimed for refund as overpayments of excise taxes due on "San Mig Light" removals for the period from February 2, 2004 to November 30, 2005 should be adjusted by P723,388.91, representing the discrepancy between the taxes due on removals of "San Mig Light" as reported in the Excise Tax Returns as against the actual excise tax due, based on the checking of the daily Official Delivery Invoices, daily and monthly Sworn Statements of Removals, Shipping Memoranda and lists of Shipping Memoranda per SAP. Findings show that there were "San Mig Light" removals from the three plants as evidenced by daily Official Delivery Invoices and Shipping Memoranda, which were not included in the excise taxes due and paid per Excise Tax Returns of petitioner, to wit:

	In Liters	**Excise Taxes Due at P13.61(2004) & P16.33 (2005)**	**Excise Taxes Due at P10.25 (2004) & P12.30(2005)**
Polo Plant (Annex FFF1.1)			
Excise taxes due on SML removal per ODI which were not paid per Excise Tax Returns			
April14, 2004	997.92	P 13,581.69	P10,228.68
April 09, 2005	25,019.28	408,564.84	307,737.14
August 27, 2005	8,316.00	135,800.28	102,286.80
Sub-Total	**34,333.20**	**557,946.81**	**420,252.62**
Excise taxes due per Excise Tax Returns were lesser than the amounts per ODI			
November 30, 2004	**11,900.00**	**161,959.00**	**121,975.00**
San Fernando Plant (Annex GGGG2.1 &2.2)			
SML Removals per Shipping Memorandum were greater than ODIs			
Year 2004	(54,782.64)	(745,591.73)	(561,522.06)
Year 2005	60,374.16	985,910.03	742,602.17
Sub-Total	**5,591.52**	**240,318.30**	**181,080.11**
Bacolod Plant(Annex GGGG3.1)			
SML Removals per Shipping Memorandum were greater than ODIs			
Year 2004	**7.92**	**107.79**	**81.18**
TOTAL	**51,832.64**	**P960,331.91**	**P723,388.91**

xxx xxx xxx

Claims for Over-Payment of Excise Taxes per Petition	P782,238,161.47

Less: Deductions from claims: Jc

4. Excise taxes due on SML removals per ODI which were not paid per Returns Polo Plant		
	P420,252.62	
5. Excise taxes due per Excise Tax Returns were Lesser than the amounts per ODI Polo Plant		
	121,975.00	
6. SML Removals per shipping Memorandum were Greater than ODIs		
San Fernando Plant	181,080.11	
Bacolod Plant	81.18	723,388.91
Recomputed Excise Taxes for Refund/Issuance of Tax Credit Certificate		**P781,514,772.56**

Hence, the refund of erroneously collected excise taxes on San Mig Light products in the amount of P781,514,772.56 for the period of February 2, 2004 to November 30, 2005 is proper.

THE COURT IN DIVISION CORRECTLY DENIED PETITIONER'S MOTION FOR RESPONDENT TO PRODUCE CERTAIN DOCUMENTS.

Invoking Section 1, Rule 27 of the Rules of Court, petitioner seeks the production of the documents in the custody of the respondent, namely:
a) respondent's own publication "Kaunlaran" for the months of October 1999 and January 2000; b) 1999 Annual Report to its stockholders; and copies of the video footage of San Mig Light commercials as seen in the website.

Resort to discovery procedures is necessary for a full determination of petitioner's defenses through these pieces of evidence which she has repeatedly brought to the Honorable Court's attention, but unfortunately is in the custody and control of the respondent.

We disagree with petitioner's posture.

Generally, a resort to modes of discovery under the Rules of Court such as the production of documents is availed at the time of pre-trial. Pursuant to the Rules of Court, the parties are required to submit, at least 3 days before the pre-trial, pre-trial briefs, containing among others a manifestation of the parties of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners.[28] In the case of *Insular Life Assurance Company, Co., Ltd. v. Honorable Court of Appeals*[29], the Supreme Court cited the importance of discovery procedures as emphasized by retired Supreme Court Chief Justice Andres Narvasa, to wit:

> The various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing under Rule 20, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is, to repeat, to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent that said trials are carried on in the dark.

Here, the motion for the inspection of the questioned documents was filed when petitioner moved for the reconsideration of the Decision dated October 18, 2011 before the Court in Division. At this stage, petitioner's belated motion for production of documents is contrary to the Rules of Court and thus, should not be countenanced.

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[28] *Spouses Expedito Zepeda and Alice D. Zepeda v. China Banking Corporation*, G.R. NO. 172175, October 09, 2006, 504 SCRA 126. See Section 6 Rule 19 of the Rules of Court.
[29] G.R. No. 97654, November 14, 1994, 238 SCRA 88.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The assailed Decision dated October 18, 2011 and the Resolution dated February 6, 2012 are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
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.

ERNESTO D. ACOSTA
Presiding Justice