REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

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

CTA EB No. 1279
(CTA Case No. 8400)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

AUG 25 2016 4:03 p.m.

x---x

RESOLUTION

CASTAÑEDA, JR., J.:

Before *Us* is petitioner's Motion for Reconsideration Re: Decision dated November 16, 2015 filed through registered mail on December 22, 2015, with respondent's Comment on Petitioner's "Motion for Reconsideration" dated December 22, 2015.

The dispositive portion of the assailed Decision[1] reads:

[1] Court En Banc Docket, pp. 174-206.

"**WHEREFORE**, in view thereof, the instant Petition for Review is hereby **DENIED**, for lack of merit. Accordingly, the Decision dated December 1, 2014 is hereby **AFFIRMED**.

SO ORDERED."

Petitioner avers that respondent is estopped from questioning the classification of San Mig Light as a variant of San Miguel Beer Pale Pilsen because it admitted in its 1999 Annual Report that San Mig Light is a low-calorie variant of San Miguel Beer Pale Pilsen and the bottle of San Mig Light indicates that it is a low calorie pale pilsen. Moreover, respondent's numerous public advertisements in both print and media represent San Mig Light as the same as San Miguel Pale Pilsen with the same full flavored taste, although less in calories.

Petitioner further avers that the amendment introduced by Republic Act (RA) No. 9334 to Section 143 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended) will not, in any case, affect the classification of San Mig Light as variant of San Miguel Beer Pale Pilsen; that respondent must prove that the excise tax was not passed on to their end consumers; and that the opinion contained in Mr. Item's letter dated February 7, 2002 has no force and effect.

Respondent, on the other hand, asserts that petitioner did not raise new issues in the instant Motion, which issues were already controverted by respondent. Respondent further asserts that the period covered by its claim for refund for the taxable year 2010 is after the date of effectivity of RA No. 9334 which is on January 1, 2005. Finally, respondent maintains its position that San Mig Light is not a variant but a new brand.

Considering the foregoing, the Court shall resolve the following issues: (1) Whether respondent is estopped from questioning the classification of San Mig Light as a variant of San Miguel Beer Pale Pilsen; (2) Whether the amendment introduced by RA No. 9334 to Section 143 of the NIRC of 1997, as amended, has an effect on the classification of San Mig Light; (3) Whether respondent has the burden to prove that the subject excise tax was not passed on to their end consumers; and finally, (4) Whether San Mig Light is a new brand and not a variant.

We deny the instant Motion.

Respondent is not estopped from raising the issue that San Mig Light is a new brand and not a variant

Petitioner insists that through respondent's admissions in its 1999 annual report and advertisements, it is deemed to have admitted that San Mig Light is a variant of San Miguel Beer Pale Pilsen. Petitioner states in the instant Motion that:

> "A testament to this admission is respondent's own publication, 'San Miguel Corporation 1999 Annual Report and the same was offered in evidence by petitioner (then respondent in CTA Case No. 8400) and marked as Exhibit 'R-1'. Page 11 of the said annual report states:
>
> > To keep the pipeline flowing, we're continuing to test new products as we work to leverage the equity our flagship brand has in the market. **We recently introduced San Mig Light, a low calorie variant of SMB** that has gained overwhelming acceptance since its soft launch in December. You can expect a slew of new product to follow.
>
> Once more, on page 18 of the said publication, respondent again admitted that San Mig Light is a premium, low calorie variant of San Miguel Beer. Quoted hereunder is the exact admission made by respondent in its publication.
>
> > **San Mig Light, a premium, low calorie variant of San Miguel Beer** appealing to younger, health conscious drinkers, was rolled out in Metro Manila in December 1999."[2]

Moreover, petitioner states that respondent advertises San Mig Light to be the same as San Miguel Pale Pilsen, with the same full flavored taste but with less calories.

Indeed, the Court observes that respondent used the word "variant" in its publication, in relation to the product San Mig Light. The issue, therefore, is whether respondent is bound by the use of the term "variant" in its ordinary or technical sense, to properly categorize San Mig Light as a new brand or as a variant.

Section 14, Rule 130 of the Revised Rules of Court provides: *ga*

[2] Arguments/Discussion, Motion for Reconsideration Re: Decision dated November 16, 2015, Court En Banc Docket, pp. 224-225.

> "**SEC. 14.** *Peculiar signification of terms*. – The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissible to show that they have a local, technical or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly."

Under Section 14, Rule 130 of the Revised Rules of Court, the terms of a writing are presumed to have been used in their primary and general acceptation, except when there is evidence showing that: (1) the terms have local, technical or otherwise peculiar signification; and (2) the terms were used and understood in the particular instance.

An analysis of the circumstances shows that the subject publication was intended for respondent's stockholders. On the other hand, the numerous advertisements of respondent were intended for its end consumers. In other words, it was not the taxing authority, but the respondent's stakeholders and the general public, to which the publication and advertisements were directed.

While the term variant has a technical meaning under Section 143 of the NIRC of 1997, as amended, respondent failed to show that such term was used and understood in its technical sense. Respondent could not have used the term variant in its technical sense where its intended audiences were its stakeholders and consumers. In the same vein, respondent's stakeholders and consumers could not have understood the term variant under its technical definition under the Tax Code.

Thus, pursuant to Section 14, Rule 130 of the Revised Rules of Court, the term variant shall be presumed to have been used by respondent in its primary and general acceptation. It follows, therefore, that for tax purposes, respondent is not estopped from arguing that San Mig Light is a new brand and not a variant of San Miguel Beer Pale Pilsen.

The amendment to Section 143 of the NIRC of 1997, as amended, maintains San Mig Light's classification as a new brand

Petitioner rehashed the argument that the amendment introduced by RA No. 9334 to Section 143 of the NIRC of 1997, as amended, does not affect San Mig Light's classification as a variant.

In this regard, *We* reiterate *Our* ruling in the earlier case of *Commissioner of Internal Revenue vs. San Miguel Corporation* cited in the assailed Decision, as follows:

> "Beginning January 1, 2005, R.A. 9334 amended Section 143 of the 1997 NIRC making reference to fermented liquors either as a new brand or variant. R.A. 9334 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.
>
> Clearly, a new brand is one that is registered after the effectivity of R.A. 8240 on January 1, 1997. Pursuant to R.A. 8424, a variant is defined as either a brand with a modifier prefixed and/or suffixed to the root name of the brand or a different brand which carries the same logo or design of the existing brand. The first type of variant is retained in R.A. 9334.
>
> In the instant case, San Mig Light, a fermented liquor is a new brand due to the fact that on October 27, 1999, Assistant Commissioner Leonardo B. Albar of the Excise Tax Division granted respondent's request for the product's registration. To prove that San Mig Light is a new brand is supported by the fact that it was not among the brands registered after the effectivity of R.A. 8240. Nowhere is San Mig Light recognized as among the existing fermented liquor brands as shown in Annexes 'C-1' and 'C-2' of R.A. 8240 as aptly observed by the Court in Division as follows:
>
> 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 mi.', 'Super Dry 355 mi.', 'Grande 1000 mi.', 'RPT in cans 330 mi.', 'Premium Bottles 355 mi.' and 'Premium Can 330 mi.' 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 mi.', 'Premium Bottles 355 mi.', and 'Premium Bottle Can 330 mi.' for high priced brands; and 'Super Dry 355 mi.', 'Pale Pilsen 320 mi.', and 'Grande' for medium-priced brands.

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. xxx"

In the afore-cited cases, it has been aptly ruled and explained by the Court *En Banc* that "San Mig Light" is a new brand and not a variant.

At any rate, Section 3 of Republic Act No. 9334 is clear in its *proviso* that:

> "**SEC. 3.** Section 143 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> 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.**"

In the instant case, respondent presented as evidence a request for the registration of its then new product, San Mig Light, on October 19, 1999. Thus, petitioner proved that the subject product was introduced in the market between January 1, 1997 and December 31, 2003. Consequently, respondent likewise proved that San Mig Light is a new brand as of December 31, 2003 through the letter from Assistant Commissioner Edwin R. Abella dated February 7, 2002, classifying San Mig Light as a new brand. Hence, pursuant to Section 143 of the NIRC, as amended by Republic Act No. 9334, said classification by the BIR cannot be revised except by an act of Congress. In other words, the BIR cannot unilaterally revise the classification it previously accorded to San Mig Light, *i.e.*, as a new brand, without an act of Congress."[3]

As aptly held by this Court, San Mig Light subsists as a new brand and not a variant considering that it was introduced to market on October 19, 1999, or between January 1, 1997 and December 31, 2003. Thus, the BIR cannot unilaterally revise the classification of San Mig Light as a new brand without a legislation being enacted by Congress. As such, the Court sees no reason to deviate from its earlier ruling.

Respondent has no burden to prove that it did not pass the subject excise taxes to be entitled to its claim, because it is the statutory taxpayer entitled to claim for refund

Petitioner argues that if respondent passed the burden of tax to its end consumer, then it already recovered the tax it paid. As such, to grant its claim for refund is to allow respondent to recover twice.

In the case of *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*,[4] the Supreme Court ruled that while the end consumer ultimately bears the tax burden, it is the statutory taxpayer who is entitled to claim tax refund. Thus:

"In the first *Silkair* case decided on February 6, 2008, this Court categorically declared:

The proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. Section 130 (A)(2) of the NIRC provides that '[u]nless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before

[3] Please see pp. 14-16 of the assailed Decision, Court En Banc Docket, pp. 187-189.
[4] G.R. No. 166482, January 25, 2012.

> removal of domestic products from place of production.' Thus, **Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.**
>
> Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.

Just a few months later, the decision in the second *Silkair* case was promulgated, reiterating the rule that in the refund of indirect taxes such as excise taxes, the statutory taxpayer is the proper party who can claim the refund. We also clarified that petitioner Silkair, as the purchaser and end-consumer, ultimately bears the tax burden, but this does not transform its status into a statutory taxpayer.

The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as 'any person subject to tax.' In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, the Court ruled that:

> 'A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote a legal obligation or duty to pay a tax.'

The excise tax is due from the manufacturers of the petroleum products and is paid upon removal of the products from their refineries. Even before the aviation jet fuel is purchased from Petron, the excise tax is already paid by Petron. Petron, being the manufacturer, is the 'person subject to tax.' In this case, Petron, which paid the excise tax upon removal of the products from its Bataan refinery, is the 'person liable for tax.' Petitioner is neither a 'person liable for tax' nor 'a person subject to tax.' There is also no legal duty on the part of petitioner to pay the excise tax; hence, petitioner cannot be considered the taxpayer.

Even if the tax is shifted by Petron to its customers and even if the tax is billed as a separate item in the aviation delivery receipts and invoices issued to its customers, **Petron remains the taxpayer because the excise tax is imposed directly on Petron as the manufacturer. Hence, Petron, as** ͟

> **the statutory taxpayer, is the proper party that can claim the refund of the excise taxes paid to the BIR.**
>
> Xxx xxx xxx
>
> In the third *Silkair* case decided last year, the Court called the attention to the consistent rulings in the previous two *Silkair* cases that petitioner as the purchaser and end-consumer of the aviation fuel is not the proper party to claim for refund of excise taxes paid thereon. Xxx"

In the *Silkair* case, although Petron shifted the tax burden to Silkair, the Supreme Court held that Petron is the statutory taxpayer who may claim for refund. While the *Silkair* case is not on all fours with the circumstances of this case, this Court applies by analogy that since respondent is the statutory taxpayer, it has the personality to institute a claim for refund whether it actually shifted the tax burden to its end consumers, similar to what happened to Petron in *Silkair*.

As such, the Court declares that respondent has no burden to prove that it did not shift the tax burden to its end consumers, because whether it shifted the tax burden is irrelevant being the statutory taxpayer who is the proper party to claim for refund.

San Mig Light is a new brand

Considering the above-discussion, the Court still rules that San Mig Light is a new brand and not a variant. On this score, *We* reiterate our discussion in the assailed Decision, *viz*:

> "In the case of *Commissioner of Internal Revenue vs. San Miguel Corporation*, the Court *En Banc* held that San Mig Light is a new brand, in this wise:
>
> 'In addition, in a similar case promulgated by the First Division involving the same parties and the same issue, it was ruled that 'San Mig Light' is a new brand. The pertinent portion of the said decision provides:
>
> 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 mi.', 'Super Dry 355 mi.', 'Grande 1000 mi.', 'RPT in cans 330 mi.', 'Premium Bottles 355 mi.' and 'Premium Can 330 mi.' 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 mi.', 'Premium Bottles 355 mi.', and 'Premium Bottle Can 330 mi.' for high priced brands; and 'Super Dry 355 mi.', 'Pale Pilsen 320 mi.', and 'Grande' for medium-priced brands.

Thus, it is clear that when the product 'San Mig Light' was introduced in 1999, it was considered as an entirely new product and a 'new brand' of petitioner's fermented liquor, there being no root name of 'San Miguel' or 'San Mig' in its existing brand names. The existing registered and classified brand name of petitioner at that time was 'Pale Pilsen'. Therefore, the word 'Light' cannot be considered as a mere suffix to the word 'San Miguel', but it is part and parcel of an entirely new brand name, 'San Mig Light'. Evidently, as correctly pointed out by petitioner, 'San Mig Light' is not merely a variant of an existing brand, but an entirely 'new brand'.

Anent the second type of 'variant 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':

2) as to 'Pale Pilsen' and 'San Mig Light' in bottles:

2. 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:

2. 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.

Thus, 'San Mig Light' is a new brand and not a variant of any of SMC's existing beer products."

To conclude, petitioner failed to convince *Us* that San Mig Light is a variant and not a new brand. Hence, *We* are constrained to deny the instant Motion.

WHEREFORE, in view thereof, petitioner's Motion for Reconsideration Re: Decision dated November 16, 2015 is **DENIED**, for lack of merit. Je

SO ORDERED.

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

WE CONCUR:

(I reiterate my concurring opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
(With due respect, I maintain my Separate Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

(With due respect, I Join Justice Grulla's Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS LIBAN
Associate Justice