Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

****

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 8591

Members:

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

Promulgated:

DEC 23 2014

10:45 a.m.

x---x

DECISION

CASTAÑEDA, JR., J.:

This is a claim for refund or issuance of tax credit certificate in the amount of Seven Hundred Forty Million Three Hundred Thousand Seven Hundred Seventeen and 82/100 Pesos (₱740,300,717.82) allegedly representing San Miguel Brewery, Inc.'s erroneously, excessively and/or illegally collected and overpaid excise taxes on "San Mig Light" during the period from January 1, 2011 up to December 31, 2011.

The Facts

Petitioner San Miguel Brewery, Inc., a subsidiary of San Miguel Corporation (SMC), is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[1]

[1] Par. 1.01, Stipulation of Facts, Documents, Issues, and Other Matters (SFDIOM), docket, p. 905.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

One of the beer products being manufactured by petitioner San Miguel Brewery, Inc. and previously by its parent company, San Miguel Corporation, is "San Mig Light".[2]

On October 19, 1999, Mr. Virgilio S. de Guzman, then Assistant Vice President-SMBP Finance of San Miguel Corporation, wrote a letter to Assistant Commissioner Leonardo B. Albar of BIR Excise Tax Services, requesting registration of and authority to manufacture San Mig Light.[3] In response, Assistant Commissioner Albar sent a reply-letter dated October 27, 1999 to SMC, granting the request for registration of San Mig Light.[4]

Subsequently, on November 3, 1999, due to the change in the net retail price of San Mig Light, Mr. de Guzman wrote a letter advising Assistant Commissioner Albar that San Mig Light will be sold at the suggested net retail price of ₱21.15 per liter, less VAT and specific tax, to be taxed at ₱9.15 per liter.[5]

In a letter dated January 28, 2002, Mr. Afredo R. Villacorte, then Vice President and Manager of SMC Group Tax Services, wrote to the Chief of the BIR Large Taxpayers Assistance Division II, requesting information on the tax rate and classification of San Mig Light.[6]

On February 7, 2002, Mr. Conrado P. Item, then Acting Chief of the BIR Large Taxpayers Assistance Division II, sent a letter in reply to the January 28, 2002 letter of SMC, confirming that based on the documents submitted, SMC is using the correct classification and rates for San Mig Light as a new brand.[7] Meanwhile, in the Master List of Registered Brands of Locally Manufactured Alcohol Products, as stated in Revenue Memorandum Order (RMO) No. 6-2003 dated March 11, 2003, San Mig Light is listed as a new brand.[8]

On May 28, 2002, the BIR, through Assistant Commissioner Edwin R. Abella of the Large Taxpayers Service, issued a Notice of Discrepancy to SMC, stating,

[2] Par. 2.31, SFDIOM, docket, p. 913.
[3] Par. 2.01, SFDIOM, docket, p. 906; Exhibit "A".
[4] Par. 2.02, SFDIOM, docket, p. 906; Exhibit "B".
[5] Par. 2.03, SFDIOM, docket, p. 906; Exhibit "C".
[6] Par. 2.04, SFDIOM, docket, p. 907; Exhibits "D" and "D-1" to "D-8".
[7] Par. 2.05, SFDIOM, docket, p. 907; Exhibit "E".
[8] Par. 2.06, SFDIOM, docket, p. 907; Exhibit "F".

among others, that San Mig Light is a variant of SMC's existing beer products; hence, it should be subjected to a higher excise tax rate.[9]

In the letter-reply dated July 9, 2002, Mr. Bienvenido N. Banas, then Finance Manager of SMC Beer Division, requested Assistant Commissioner Abella to withdraw said Notice of Discrepancy.[10]

On October 14, 2002, Assistant Commissioner Abella sent his letter-rejoinder to SMC, stating that "San Mig Light Pale Pilsen" is truly a variant of "San Miguel Pale Pilsen".[11] On November 20, 2002, Mr. Alfredo R. Villacorte, then Vice-President and Manager of SMC Group Tax Services, replied to Assistant Commissioner Abella requesting, among others, that San Mig Light be reconfirmed as a new brand and that the Notice of Deficiency and the demand for payment against SMC be withdrawn.[12]

Subsequently, three (3) conferences were held on the San Mig Light tax classification issue between SMC and the BIR's Management Committee headed by then BIR Commisioner Guillermo Parayno, Jr. At the conference held on December 16, 2003, Commissioner Parayno announced that the final voting by the members of the BIR Management Committee was not unanimous: five (5) members voted that San Mig Light is a variant of "Pale Pilsen in can", and two (2) members voted that it is a variant of "Premium", then a high-priced beer product of SMC that was no longer being manufactured.[13]

On January 6, 2004, Commissioner Guillermo Parayno, Jr. issued a letter to SMC, concluding, based on the grounds stated therein, that San Mig Light is a variant of "San Miguel Pale Pilsen in can".[14]

On January 28, 2004, Deputy Commissioner Estelita C. Aguirre, then Officer-in-Charge of the BIR Large Taxpayers Service, issued a Preliminary Assessment Notice (PAN) against SMC for the amount of ₱852,039,418.15, allegedly representing deficiency excise tax, inclusive of increments, on the removals of "San Mig Pale Pilsen Light" for the period covering 1999 to January 7, 2004; citing as basis thereof that San Mig Light is a variant of SMC's existing beer products.[15] Consequently, SMC responded to the said PAN.[16] *je*

[9] Par. 2.08, SFDIOM, docket, p. 907.
[10] Par. 2.09, SFDIOM, docket, p. 908.
[11] Par. 2.10, SFDIOM, docket, p. 908.
[12] Par. 2.11, SFDIOM, docket, p. 908.
[13] Par. 2.12, SFDIOM, docket, p. 908.
[14] Par. 2.13, SFDIOM, docket, p. 908.
[15] Par. 2.14, SFDIOM, docket, p. 909.
[16] Par. 2.15, SFDIOM, docket, p. 909.

On April 12, 2004, Deputy Commissioner Aguirre issued a Formal Letter of Demand (FLD) against SMC, with an accompanying Assessment Notice also dated April 12, 2004, requesting SMC to pay the deficiency excise tax assessment in the total amount of ₱876,098,898.83, including interest until April 30, 2004, for the period of November to December 1999 at ₱12.52 per liter, and January 2000 to January 7, 2004 at ₱13.61 per liter. In the Details of Discrepancy accompanying the FLD, it was stated that "the Management Committee of the Bureau of Internal Revenue confirmed the classification of the aforementioned beer product (San Mig Light) as variant of RPT in cans" (San Miguel Pale Pilsen).[17]

SMC then filed a Protest/Request for Reconsideration on the aforesaid FLD with accompanying Assessment Notice.[18]

On August 17, 2004, Deputy Commissioner Kim S. Jacinto-Henares, the then Officer-in-Charge of the BIR Large Taxpayers Service, issued a Final Decision on Disputed Assessment informing SMC that its Protest/Request for Reconsideration has been denied for lack of legal and factual bases. She stated that San Mig Light is "a variant of RPT in can (San Miguel Beer Pale Pilsen in can)".[19]

Similarly, on February 4, 2004, then Deputy Commissioner Aguirre issued a Notice of Discrepancy to SMC, stating, among others, that San Mig Light "is a variant of your existing beer products", but that "the said brand was treated by your company as a new brand and subjected to excise tax rate of ₱10.25 per liter, instead of ₱13.61, and that in view thereof, there was found due from SMC an alleged deficiency excise tax in the amount of ₱28,876,108.84, this time representing deficiency tax due on removals of San Mig Light for the period covering January 8, 2004 to January 29, 2004.[20]

On March 24, 2004, Deputy Commissioner Aguirre issued a PAN against SMC, citing as basis that San Mig Light is a "variant of RPT in can" (San Miguel Beer Pale Pilsen).[21]

On May 26, 2004, a Formal Letter of Demand was issued against SMC, with accompanying Assessment Notice No. TF 129-05-04 also dated May 26, 2004. Among other things, the FLD reiterated that "San Mig Light is a variant of RPT in can". The BIR requested SMC to pay the deficiency excise tax assessment in the total amount of ₱30,763,133.68, including interest up to June 30, 2004.[22] Thus, *jc*

---

[17] Par. 2.16, SFDIOM, docket, p. 909.
[18] Par. 2.17, SFDIOM, docket, p. 909.
[19] Par. 2.18, SFDIOM, docket, pp. 909-910.
[20] Par. 2.19, SFDIOM, docket, p. 910.
[21] Par. 2.20, SFDIOM, docket, p. 910.
[22] Par. 2.21, SFDIOM, docket, p. 910.

SMC also filed with the BIR a Protest/Request for Reconsideration dated July 5, 2004 on the aforesaid FLD dated May 26, 2004.[23]

On August 20, 2004, then Deputy Commissioner Kim S. Jacinto-Henares issued a Final Decision on Disputed Assessment to inform SMC that its Protest/Request for Reconsideration dated July 5, 2004 has been denied for "lack of legal and factual basis". It was also stated that San Mig Light is "a variant of RPT in can" (San Miguel Beer Pale Pilsen in can).[24]

Subsequently, on September 17, 2004 and September 22, 2004, SMC filed Petitions for Review with this Court by way of appeal from the above-mentioned rulings of the BIR on SMC's Protests/Requests for Reconsideration on the deficiency excise tax assessments issued against it. The Petitions for Review were respectively docketed as CTA Case No. 7052 (April 12, 2004 assessment) and CTA Case No. 7053 (May 26, 2004 assessment). These cases were decided on October 18, 2011 by the CTA First Division in favor of SMC, cancelling and setting aside the aforesaid assessments, which decision has been affirmed by the Court *En Banc.* The Decision of the Court *en banc* has been appealed by respondent to the Supreme Court by way of a Petition for Review, which has been docketed as G.R. No. 205723.[25]

In view of the January 28, 2004 PAN, SMC was made to pay a higher excise tax on San Mig Light at the rate of ₱13.61 per liter from February 1, 2004 to December 31, 2004; ₱16.33 per liter from January 1, 2005 to December 31, 2006; and ₱17.64 from January 1, 2007 to September 30, 2007.[26]

As a consequence, SMC filed with the BIR three claims for refund representing excise taxes collected from SMC by the BIR with respect to San Mig Light, namely: (1) an amount of ₱782,238,161.47 for the period covering February 1, 2004 up to November 30, 2005 filed on December 28, 2005; (2) an amount of ₱926,389,172.02 for the period covering December 1, 2005 up to July 31, 2007 filed on August 30, 2007; and (3) an amount of ₱105,632,376.64 for the period covering August 1, 2007 up to September 30, 2007 filed on June 17, 2009.[27]

No action having been taken on these claims for refund, SMC filed with the Court Petitions for Review thereon, docketed as CTA Case No. 7405, which was decided on October 18, 2011 by the First Division in favor of SMC, which decision has been affirmed by the Court *en banc;* CTA Case No. 7708, which was decided on January 7, 2011 in favor of SMC by the Third Division, which decision was also affirmed by the Court *en banc;* and CTA Case No. 7953, which is pending trial in the Third Division. With respect to the decision of the Court *en banc* affirming the

---

[23] Par. 2.22, SFDIOM, docket, p. 911.
[24] Par. 2.23, SFDIOM, docket, p. 911.
[25] Par. 2.24, SFDIOM, docket, p. 911.
[26] Par. 2.25, SFDIOM, docket, p. 911.
[27] Par. 2.27, SFDIOM, docket, p. 912.

decision of the First Division in CTA Case No. 7405, the same is included in the Petition for Review filed by respondent with the Supreme Court, docketed as G.R. No. 205723; while the decision of the Court *en banc* affirming the decision of the Third Division in CTA Case No. 7708 was likewise appealed by respondent to the Supreme Court by way of a Petition for Review docketed as G.R. No. 205045.[28]

In the meantime, effective October 1, 2007, SMC spun off its domestic beer business into a new company, herein petitioner SMB.[29]

The spin off was implemented by way of a "Master Deed of Assignment of Domestic Beer Assets," which was executed by SMC and petitioner on August 23, 2007. In the said Master Deed, SMC assigned, transferred and conveyed in favor of petitioner all of its rights, title and interest over its beer assets used in its domestic beer business, effective October 1, 2007.[30] As a consequence, petitioner continued SMC's business operations of manufacturing, selling and distribution of fermented and malt-based beverages, including San Mig Light.[31]

During the period from October 1, 2007 up to December 31, 2008, petitioner was obliged to pay excise taxes on its removals of San Mig Light at the increased tax rate of ₱17.64 per liter; and from January 1, 2009 up to December 31, 2009, and from January 1, 2010 up to December 31, 2010, petitioner was made to pay excise taxes on its removals of San Mig Light at the increased tax rate of ₱19.05 per liter.[32]

On September 10, 2009, SMB filed with the BIR three successive claims for refund of its overpaid excise taxes: first, on September 10, 2009 in the amount of ₱828,487,561.71 covering the period October 1, 2007 to December 31, 2008; second, on November 4, 2010 in the amount of ₱730,602,083.97 covering the period January 1, 2009 to December 31, 2009; and third, on October 14, 2011 in the amount of ₱699,584,314.54 covering the period January 1, 2010 to December 31, 2010.[33]

As no action had been taken by respondent on petitioner's claims for refund, petitioner filed Petitions for Review thereon, which were docketed as CTA Case No. 7973, pending trial in the Second Division; CTA Case No. 8209, pending trial in the First Division; and CTA Case No. 8400, pending trial in the Third Division.[34]

In the meantime, during the period from January 1, 2011 up to December 31, 2011, petitioner was obliged to pay excise taxes on its removals of San Mig Light at

[28] Par. 2.28, SFDIOM, docket, pp. 912-913.
[29] Par. 2.29, SFDIOM, docket, p. 913.
[30] Par. 2.30, SFDIOM, docket, p. 913.
[31] Par. 2.31, SFDIOM, docket, p. 913.
[32] Par. 2.32, SFDIOM, docket, p. 913.
[33] Par. 2.33, SFDIOM, docket, p. 914.
[34] Par. 2.34, SFDIOM, docket, p. 914.

the increased tax rate of ₱20.57 per liter.[35] As a result, on July 30, 2012, petitioner filed with the BIR its fourth claim for refund dated July 27, 2012 in the amount of ₱740,300,717.82 for the period January 1 to December 31, 2011.[36]

Claiming inaction by respondent on the above claim for refund, petitioner filed the instant Petition for Review[37] on December 21, 2012 with the Court of Tax Appeals.

Respondent filed her Answer[38] on March 21, 2013, stating the following special and affirmative defenses:

> "7. Respondent hereby repleads the foregoing admissions and denials as part of her special and affirmative defenses.
>
> 8. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 9. It is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two-year period as provided under Section 229 of the NIRC of 1997, which reads as follows:
>
> xxx xxx xxx
>
> 10. A valid claim for refund should consist of the following:
>
> a. There must be a written claim for refund filed by the taxpayer with the Commissioner of Internal Revenue. xxx
> 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.

[35] Par. 2.35, SFDIOM, docket, p. 914.
[36] Par. 2.36, SFDIOM, docket, pp. 914-915.
[37] Docket, pp. 8-83.
[38] Docket, pp. 346-361.

11. Based on the above-mentioned provision, it is crystal clear that there are only three (3) instances whereby a taxpayer may claim for refund. They are enumerated as follows:

1. Erroneously or illegally assessed or collected internal revenue taxes;
2. Penalties imposed without authority; and
3. Any sum alleged to have been excessive or in any manner wrongfully collected.

Petitioner in this case is claiming tax refund on the ground of alleged overpayments of excise taxes erroneously, excessively and/or illegally assessed on, and collected by the respondent from petitioner with respect to 'San Mig Light'. Contrary to the allegations of petitioner, respondent respectfully submits that there was no erroneous payment of excise taxes. There was no reclassification of San Mig Light Pale Pilsen (SML) because it has always been classified as a variant of an existing brand. The truth of this matter is apparent based on the following:

> 11.1 The complete name of SML is San Mig Light Pale Pilsen. In Annexes C-1 and C-2 of the NIRC of 1997, the parent brands of SML are RPT in cans, Pale Pilsen and Super Dry. As shown in the packages of the said brands, the registered RPT in can 330 ml. (24) refers to San Miguel Beer Pale Pilsen (SMB Pale Pilsen), while Pale Pilsen refers to San Miguel Beer Pale Pilsen in bottles. Accordingly, the root name of the existing brand 'Pale Pilsen.'
>
> 11.2 Out of these three variants, RPT or San Miguel Pale Pilsen in can 330 ml. (24) has the highest tax classification at the time SML was introduced. Accordingly, pursuant to Section 143 of the NIRC of 1997, the proper tax classification of SML for excise tax purposes is that of a variant of RPT in can.
>
> 11.4 SML falls within the second part of the definition of a variant brand under Section 143 of the NIRC of 1997 which states that a 'variant of brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.
>
> xxx xxx xxx

12. Petitioner is estopped from questioning the classification of SML as a variant of San Miguel Pale Pilsen xxx

xxx xxx xxx

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

xxx xxx xxx

17. It has been held by the Supreme Court that a claim for refund is not *ipso facto* granted because respondent still has to investigate and ascertain the veracity of the claim. Concrete proof should be presented by petitioner showing its actual effectively zero-rated sales. Failure of respondent to prove its entitlement to the refund claim by concrete evidence will merit its denial. With the foregoing in mind, vacillation is hardly a factor.

18. 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.'

19. All told, petitioner is not entitled to a claim for refund."

On June 21, 2013, the parties submitted their Stipulation of Facts, Documents, Issues and Other Matters.[39] Thereafter, the Court issued a Pre-Trial Order[40] on July 9, 2013, which, among others, terminated the pre-trial.

During trial, the parties presented their respective pieces of evidence.

Petitioner presented Atty. Pedro Clinton L. Laudencia, Jr.,[41] Mr. Virgilio S. De Guzman,[42] Mr. Bienvenido N. Banas,[43] Mr. Marciano Requilme, Jr.,[44] Ms. Minerva

[39] Docket, pp. 905-913.
[40] Docket, pp. 918-925.
[41] Minutes of the Hearing dated July 10, 2013, docket, p. 926.
[42] Minutes of the Hearing dated July 31, 2013, docket, p. 943.
[43] Minutes of the Hearing dated July 31, 2013, docket, p. 943.
[44] Minutes of the Hearing dated August 5, 2013, docket, p. 944.

Lourdes B. Bibonia,[45] Ms. Noemi L. Ronquillo,[46] and Atty. Rosabel Socorro T. Balan[47] as its witnesses. Petitioner then formally offered its documentary evidence consisting of Exhibits "A" to "TT-12", "V" to "VV5-320", and "XX1-1" to "XX5-2,344", which this Court admitted as evidence via a Resolution[48] dated December 11, 2013.

On the other hand, during the hearing on January 29, 2014,[49] respondent's counsel orally offered as evidence Exhibits "R-1", "R-2" and "R-3", which were all admitted by the Court.

The case was submitted for decision on April 8, 2014,[50] considering the Memorandum for Petitioner[51] filed on March 5, 2014 and respondent's Memorandum[52] filed on March 26, 2014.

The Issues

The following are the issues[53] submitted by the parties for this Court's resolution:

> "4.00. The parties agree that the issues for resolution of this Honorable Court are:
>
> 4.00.a. Whether petitioner SMB is entitled to a refund by the Bureau of Internal Revenue of the amount of ₱740,300,717.82 as having been erroneously, excessively and/or illegally collected from and overpaid by it as excise taxes on 'San Mig Light' for the period from January 1, 2011 up to December 31, 2011 as a consequence of its re-classification by the Bureau of Internal Revenue as a variant.
>
> 4.01. The following are the corollary issues:
>
> 4.01.a. Whether under the amendments introduced by Republic Act No. 9334 on Section 143 of the National Internal Revenue Code of 1997, 'San Mig Light' may still be re-classified as a "variant".

[45] Minutes of the Hearing dated August 5, 2013, docket, p. 944.
[46] Minutes of the Hearing dated August 14, 2013, docket, p. 948.
[47] Minutes of the Hearing dated September 4, 2013, docket, p. 949.
[48] Docket, p. 1204.
[49] Minutes of the Hearing dated January 29, 2014, docket, p. 1212.
[50] Docket, p. 1421.
[51] Docket, pp. 1224-1309.
[52] Docket, pp. 1369-1391.
[53] Docket, pp. 911-912.

Lourdes B. Bibonia,[45] Ms. Noemi L. Ronquillo,[46] and Atty. Rosabel Socorro T. Balan[47] as its witnesses. Petitioner then formally offered its documentary evidence consisting of Exhibits "A" to "TT-12", "V" to "VV5-320", and "XX1-1" to "XX5-2,344", which this Court admitted as evidence via a Resolution[48] dated December 11, 2013.

On the other hand, during the hearing on January 29, 2014,[49] respondent's counsel orally offered as evidence Exhibits "R-1", "R-2" and "R-3", which were all admitted by the Court.

The case was submitted for decision on April 8, 2014,[50] considering the Memorandum for Petitioner[51] filed on March 5, 2014 and respondent's Memorandum[52] filed on March 26, 2014.

The Issues

The following are the issues[53] submitted by the parties for this Court's resolution:

> "4.00. The parties agree that the issues for resolution of this Honorable Court are:
>
> 4.00.a. Whether petitioner SMB is entitled to a refund by the Bureau of Internal Revenue of the amount of ₱740,300,717.82 as having been erroneously, excessively and/or illegally collected from and overpaid by it as excise taxes on 'San Mig Light' for the period from January 1, 2011 up to December 31, 2011 as a consequence of its re-classification by the Bureau of Internal Revenue as a variant.
>
> 4.01. The following are the corollary issues:
>
> 4.01.a. Whether under the amendments introduced by Republic Act No. 9334 on Section 143 of the National Internal Revenue Code of 1997, 'San Mig Light' may still be re-classified as a "variant".

---

[45] Minutes of the Hearing dated August 5, 2013, docket, p. 944.
[46] Minutes of the Hearing dated August 14, 2013, docket, p. 948.
[47] Minutes of the Hearing dated September 4, 2013, docket, p. 949.
[48] Docket, p. 1204.
[49] Minutes of the Hearing dated January 29, 2014, docket, p. 1212.
[50] Docket, p. 1421.
[51] Docket, pp. 1224-1309.
[52] Docket, pp. 1369-1391.
[53] Docket, pp. 911-912.

4.01.b. Whether under the aforesaid amendments introduced by Republic Act No. 9334 on Section 143 of the National Internal Revenue Code of 1997, 'San Mig Light' may still be re-classified as a 'variant' without an act of Congress.

4.01.c. Whether 'San Mig Light' is not a new brand but a variant of an existing brand.

4.01.d. Assuming 'San Mig Light' is not a new brand but a variant of an existing brand, which existing brand is it a variant of.

4.01.e. Whether or not the higher tax rate of ₱20.57 per liter, effective January 1, 2011, applies to 'San Mig Light' removals from January 1, 2011 up to December 31, 2011.

4.01.f. Whether the assessments issued against San Miguel Corporation are void."

The foregoing issues can be summarized into two main issues, to wit:

1. Whether San Mig Light is a variant of an existing brand or a new brand; and

2. Whether petitioner is entitled to a refund in the amount of ₱740,300,717.82.

The Court's Ruling

Whether San Mig Light is a variant of an existing brand or a new brand

The issue as to whether San Mig Light is a variant of petitioner's existing brand or a new brand is not a novel issue. In fact, in several decisions issued by the Court *en banc*, it has been consistently ruled that San Mig Light is a new brand and not a variant.

In the case of *Commissioner of Internal Revenue v. San Miguel Corporation,*[54] the Court *en banc* ruled: *jv*

---

[54] CTA EB No. 755, September 20, 2012.

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 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.

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':

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.

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

Additionally, in the case of *Commissioner of Internal Revenue v. San Miguel Corporation,*[55] the Court *en banc* ruled that:

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

---

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

'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

The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex C, shall remain in force until revised by Congress.

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

Beginning January 1, 2005, R.A. 9334 amended Section 143 of the 1997 NIRC making reference to fermented liquors either as a new brand or variant. R.A. 9334 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. *ju*

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 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.

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 by the Court *en banc* that San Mig Light is a new brand which, under R.A. No. 8424 amending Section 143 of the NIRC of 1997, should be classified according to its current net retail price. Considering the factual similarities involved in the afore-quoted cases and in the instant case, the Court sees no cogent reason to deviate from the foregoing findings and hence, the Court rules that San Mig Light is a new brand and not a variant.

Whether SMB is entitled to a refund in the amount of ₱740,300,717.82

The Court shall now proceed to determine whether petitioner is entitled to a refund.

Anent the question of timeliness of petitioner's filing of its administrative and judicial claims for refund, Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide for the procedure to govern the refund of erroneously paid taxes, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after

> payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

It is clear that the above-quoted provisions govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC of 1997. Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of the tax. However, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the *date of payment of the tax*.[56] The date of payment of the tax is important for purposes of counting the two-year prescriptive period.[57]

In the case of excise taxes, the goods subject to the said tax cannot be removed from the place of production without paying the correct amount of tax. Section 130(A)(2) of the NIRC of 1997 states:

> "SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.* –
>
> (A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –
>
> xxx xxx xxx
>
> (2) *Time for Filing of Return and Payment of the Tax.* - **Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production**: xxx" *(Emphasis supplied)*

The claim for refund covers the taxable period January 1 to December 31, 2011. This means that petitioner had two years or until January 1, 2013 to file its claim for refund. Records reveal that petitioner's administrative claim was filed on July 30, 2012[58], while its judicial claim was filed on December 21, 2012[59]. Clearly, petitioner's claim for refund was filed within the two-year prescriptive period.

---

[56] *Asiasec Equities, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8242, November 4, 2013.
[57] *Manila North Tollways Corporation v. Commissioner of Internal Revenue*, CTA EB No. 812, October 11, 2012.
[58] Exhibit "X", docket, pp. 672-674; Par. 2.36, SFDIOM, docket, pp. 914-915.
[59] Petition for Review, docket, pp. 8-83.

To proceed, the amount of ₱740,300,717.82 being claimed for refund refers to excise taxes overpaid by petitioner on its removal of San Mig Light from its five (5) plants located in Polo, Valenzuela; San Fernando, Pampanga; Bacolod City, Negros Occidental; Mandaue City, Cebu; and Davao City, for the period covering January 1, 2011 to December 31, 2011, broken down as follows:

Brewery	Volume of Removals (in liters)	Excise Taxes Paid at ₱20.57		Should be Excise Taxes Paid at ₱15.49		Difference (Amount being claimed for Refund)
		Per Liter	Amount	Per Liter	Amount	
Polo, Valenzuela	32,151,284.24	20.57	₱ 661,351,916.82	15.49	₱ 498,023,392.88	₱ 163,328,523.94
San Fernando, Pampanga	87,619,918.32	20.57	1,802,341,719.84	15.49	1,357,232,534.78	445,109,185.06
Bacolod City, Negros Occidental	10,427,994.72	20.57	214,503,851.39	15.49	161,529,638.21	52,974,213.18
Mandaue City, Cebu	10,277,483.04	20.57	211,407,826.13	15.49	159,198,212.29	52,209,613.84
Davao City	5,251,807.44	20.57	108,029,679.04	15.49	81,350,497.24	26,679,181.80
Total	**145,728,487.76**		**₱2,997,634,993.22**		**₱2,257,334,275.40**	**₱740,300,717.82**

In order to support its claim, petitioner adduced as evidence the following documents examined and verified by Normita L. Villaruz, the Court-commissioned Independent Certified Public Accountant (CPA):

PLANT	DOCUMENTS	EXHIBITS
Polo, San Fernando, Bacolod, Mandaue, Davao	Movement Report with Allocated Deposits	"TT-1" to "TT-12"
Polo, Valenzuela	Excise Tax Returns	"SS1-1" to "SS1-549"
	Official Register Book	"VV1-1" to "VV1-312"
	Excise Taxpayer's Removal Declaration	"VV1-313" to "VV1-5018"
	Shipping Memorandum, Issue/Receipt Documents	"XX1-1" to "XX1-5512"
San Fernando, Pampanga	Excise Tax Returns	"SS2-1" to "SS2-549"
	ETRD, Daily and Monthly Sworn Statement	"VV2-1" to "VV2-336"
	Shipping Memorandum, Claim Memo and Gate Pass	"XX2-1" to "XX2-12299"
Bacolod City, Negros Occidental	Excise Tax Returns	"SS3-1" to "SS3-545"
	Official Delivery Invoice, Revenue Officer on Premises, Daily Report, and Official Register Book	"VV3-1" to "VV3-316"
	Shipping Memorandum, Delivery Receipt	"XX3-1" to "XX3-2574"
Mandaue City, Cebu	Excise Tax Returns	"SS4-1" to "SS4-538"
	Official Delivery Invoice, Revenue Officer on Premises, Daily Report, and Official Register Book	"VV4-1" to "VV4-315"
	Shipping Memorandum, Delivery Receipt	"XX4-1" to "XX4-3211"
Davao City	Excise Tax Returns	"SS5-1" to "SS5-545"
	Official Delivery Invoice, Official Register Book, and Report on Excise Tax Payments and Applications	"VV5-1" to "VV5-320"
	Shipping Memorandum, Complimentary Form and Gate Pass	"XX5-1" to "XX5-2344"

k

After a thorough scrutiny of the evidence submitted before the Court, the Court finds petitioner's claim meritorious.

As ascertained by the Independent CPA, petitioner's total Advance Excise Tax Deposits for the period covered for all beer products for each of the five plants amounted to ₱17,230,972,577.71, which were duly filed and paid by petitioner to the BIR through manual filing and Electronic Filing and Payment System (eFPS). The said amount may be broken down as follows:[60]

PLANTS	REF.	AMOUNT
Polo, Valenzuela	SS_1[61]	₱ 3,001,279,000.47
San Fernando, Pampanga	SS_2[62]	7,203,819,000.44
Bacolod City, Negros Occidental	SS_3[63]	1,081,602,575.96
Mandaue City, Cebu	SS_4[64]	3,943,556,000.40
Davao City	SS_5[65]	2,000,716,000.44
Total Advance Excise Tax Deposits		**₱17,230,972,577.71**

On the other hand, petitioner's Movement Report with Allocated Deposits[66] shows that the computed excise taxes due on the removal of all beer products from the five plants for the period January 1, 2011 to December 31, 2011 amounted to ₱17,215,511,855.01, summarized as follows:[67]

PLANTS	AMOUNT
Polo, Valenzuela	₱ 2,991,715,428.10
San Fernando, Pampanga	7,209,906,586.82
Bacolod City, Negros Occidental	1,082,122,566.18
Mandaue City, Cebu	3,933,849,771.94
Davao City	1,997,917,501.97
TOTAL EXCISE TAX DUE	**₱17,215,511,855.01**

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 ₱17,215,511,855.01 has been duly filed and paid to the BIR as evidenced by the

---

60 Annex SS, Independent CPA Report.
61 Annex SS_1, $SS_{1.1}$ to $SS_{1.12}$, Independent CPA Report.
62 Annex SS_2, $SS_{2.1}$ to $SS_{2.12}$, Independent CPA Report.
63 Annex SS_3, $SS_{3.1}$ to $SS_{3.12}$, Independent CPA Report.
64 Annex SS_4, $SS_{4.1}$ to $SS_{4.12}$, Independent CPA Report.
65 Annex SS_5, $SS_{5.1}$ to $SS_{5.12}$, Independent CPA Report.
66 A monthly report containing the excise taxes due on daily and total monthly removals of all beer products and advance excise tax deposits as well as the beginning and ending balances of outstanding excise tax deposits for the month, as per Exhibit "QQ", Judicial Affidavit of Normita L. Villaruz in lieu of Direct Testimony, docket, p. 967.
67 Annex TT of Exhibit "RR" (Independent CPA Report).

Excise Tax Returns (BIR Form No. 2200-A)[68] of the five plants for the period January 1, 2011 to December 31, 2011.

The total amount of Advance Excise Tax Deposits made for the period covered amounting to ₱17,230,972,577.71 when added to the beginning balance of Advance Excise Tax Deposits of ₱33,623,814.44 will result in a total amount of ₱17,264,596,392.15. The sum is sufficient to cover the total computed excise taxes due per Movement Report with Allocated Deposits amounting to ₱17,215,511,855.01 and will result in an excess advance payment of ₱49,084,537.02 as of December 31, 2011, computed as follows:

	ANNEX	AMOUNT
Beginning Balance of Advance Payment of Excise Tax Deposit per ETR, December 31, 2010 of the five (5) plants	UU	₱ 33,623,814.44
Add: Advance Payment of Excise Tax Deposit of the five (5) plants for the period covered January 1, 2011 to December 31, 2011	SS	17,230,972,577.71
Advance Payments of Excise Tax Deposit as of December 31, 2010 of the five (5) plants		**17,264,596,392.15**
Less: Excise Taxes due on ALL BEER products for the period covered January 1, 2011 to December 31, 2011 per Monthly Movement Report with Allocated Deposits	TT	17,215,511,855.01
Variance per Monthly Movement Report vs Excise Tax Returns		0.12
Total Excise Taxes due on removals per Excise Tax Returns of the five (5) plants for the period covered per ETR	SS6	**17,215,511,855.13**
Excess of Advance Payment of Excise Tax Deposits over Excise Taxes due as of December 31, 2011		**₱ 49,084,537.02**

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 five plants for the covered period.

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 ₱17,215,511,855.13 from the five plants were comprised of (1) excise taxes due and paid on San Mig Light removals amounting to ₱2,997,634,993.19 and the (2) excise taxes due on all other beer products amounting to ₱14,217,876,861.94, detailed as follows:

	Actual Excise Taxes Due and Paid for the Period covered January 1, 2011 to December 31, 2011				
	On SML products	**On other beer products**			
Brewery	**at ₱20.57**	**at ₱10.41**	**at ₱15.49**	**at ₱20.57**	**Total**
Polo	₱ 661,351,916.81	₱ 1,476,495,435.26	₱ 605,826,666.25	₱248,041,409.79	₱ 2,330,363,511.30

[68] Exhibits "SS1-1" to "SS1-549", "SS2-1" to "SS2-549", "SS3-1" to "SS3-545", "SS4-1" to "SS4-538", and "SS5-1" to "SS5-545".

San Fernando	1,802,341,719.84	4,539,176,898.84	868,387,968.12	-	5,407,564,866.96
Bacolod City	214,503,851.39	587,733,042.50	279,885,672.40	-	867,618,714.90
Mandaue City	211,407,826.13	2,328,877,886.14	1,393,564,059.67	-	3,722,441,945.81
Davao City	108,029,679.02	1,352,516,992.30	537,370,830.67	-	1,889,887,822.97
Total	**₱2,997,634,993.19**	₱10,284,800,255.04	₱3,685,035,197.11	₱248,041,409.79	**₱14,217,876,861.94**
Total Excise Taxes Due and Paid					**₱17,215,511,855.13**

The total amount of excise taxes due on San Mig Light removals filed and paid to the BIR amounting to ₱2,997,634,993.19 would tally with the total amount of excise taxes paid per petitioner's Petition for Review amounting to ₱2,997,634,993.22, except for a minimal difference of ₱0.03, as shown below:

	ANNEX	IN LITERS	AMOUNT OF EXCISE TAXES AS PAID AT ₱20.57
Excise Taxes filed and paid per BIR Form 2200-A Schedule 1 of ETRs for the five (5) plants	$TT_{1.2.1}$	145,728,487.76	₱2,997,634,993.19
Excise Taxes claimed as paid per petitioner's Petition for Review		145,728,487.76	2,997,634,993.22
Rounding-off difference		**0.00**	**₱ (0.03)**

As found by the Independent CPA, a comparison of the total San Mig Light removals as reported per Excise Tax Returns versus San Mig Light removals per Shipping Memorandums (SMs) and list of SM per SAP Files, Official Delivery Invoice (ODIs), Excise Taxpayer's Removal Declaration (ETRD), Daily and Monthly Official Register Book (ORB) and Sworn Statement of the Volume of Removals (SSRs) and Daily Reports from Revenue Officers on Premise (ROOP) resulted in a net variance of 12,933.36 liters of San Mig Light removals which were traced to have come from the Polo Plant representing underpayment of excise taxes on its removals amounting to an excise tax of ₱266,039.22, if computed at ₱20.57 per liter excise tax rate as used by the BIR; or ₱200,337.75, if computed at ₱15.49 per liter as claimed by petitioner. The said variance was caused by the following:[69]

1.1.1 a) Understatement of Excise Taxes paid on "San Mig Light" removals at the Polo Plant on June 13, 2011.

The total "San Mig Light" 30 liter/keg removals in liters per ORB in Polo Plant on June 13, 2011 was 36,526.80 liters while the its total removals per SM and list of SMs per SAP files for Polo Plant on the same date was 37,246.80 liters or a variance of 720 liters or an understatement of excise taxes paid on its removals of ₱14,810.40, if

[69] Exhibit "RR" (Independent CPA Report), pages 16-21.

computed at ₱20.57 per liter rate as used by BIR or ₱11,152.80, if computed at ₱15.49 per liter as claimed by SMB, as follows:

	Volume of Liters	Amount of Excise Tax @P15.49	Amount of Excise Tax @P20.57
Per ORB and ETR Paid as	36,526.80	₱ 565,800.13	₱ 751,356.28
Per SM and List of SM per SAP Should be	37,246.80	576,952.93	766,166.68
Variance - Underpayment[70]	**(720.00)**	**(₱11,152.80)**	**(₱14,810.40)**

1.1.1 b) Overstatement of Excise Taxes paid on Pale Pilsen 30 liters/keg removals at the Polo Plant on June 13, 2011.

The Court found that the understatement in the volume of liters paid for "San Mig Light" removals on June 13, 2011 pertains to the same overstatement of volume in liters of 720 liters for the removal of **Pale Pilsen 30 liters/keg** or an equivalent excise taxes due of ₱11,152.80 computed at ₱15.49 per liter rate applicable for Pale Pilsen 30 liters/keg, as follows:

	Volume of Liters	Amount of Excise Tax @P15.49
Per ORB and ETR Paid as	1,440.00	₱ 22,305.60
Per List of Other Beer Products per SAP File Should be	720.00	11,152.80
Variance - Overpayment[71]	**720.00**	**₱11,152.80**

1.1.2 Understatement of Excise Taxes paid on "San Mig Light" removals at the Polo Plant on August 2, 2011.

The total removals of "San Mig Light" 30 liters/keg per SMs 30145156 and 30145183 from Polo Plant on August 2, 2011 were 12 cases and should be converted to 600 liters (12 cases x 30 liters). However, the said removals were presented as "San Mig Light" 15 liters/keg in the ORB and were converted to 180 liters (12 cases x 15 liters) resulting to an understatement in the volume of liters removed from the Polo Plant and an understatement in the payment of excise taxes per ETR of Polo Plant. It further resulted to an understatement in the payment of excise taxes per ETR of ₱8,639.40, if computed at

[70] Annex $XX_{1.1}$ of the Independent CPA Report.
[71] Annex $XX_{1.1}$ of the Independent CPA Report.

₱20.57 per liter rate as used by BIR; or 6,505,.80, if computed at ₱15.49 per liter as claimed by SMB, as follows:

	Volume in Cases	Conversion in Liters	Volume of Liters	Amount of Excise Tax @ ₱15.49	Amount of Excise Tax @ ₱20.57
Per ORB and ETR Paid as	12	15 liters/keg	180.00	₱ 2,788.20	₱ 3,702.60
Per SM and List of SM per SAP Should be	12	30 liters/keg	600.00	9,294.00	12,342.00
Variance - Underpayment[72]	**0**		**(420.00)**	**(₱6,505.80)**	**(₱8,639.40)**

1.1.3 Understatement of Excise Taxes paid on "San Mig Light" removals at the Polo Plant on November 29, 2011.

The total removals per SM and list of SMs per SAP File in Polo Plant on November 29, 2011 was 21,732.48 liters but was declared per ORB and ETR as 8,902.08 liters only, resulting to an underpayment of excise taxes due of ₱263,921.33, if computed at ₱20.57 per liter rate as used by BIR; or ₱198,742.90, if compared at ₱15.49 per liter as claimed by SMB, as follows:

	Quantity in Cases	Volume of Liters	Amount of Excise Tax @P15.49	Amount of Excise Tax @P20.57
Per ORB and ETR Paid as	1,124	8,902.08	₱ 137,893.22	₱ 183,115.79
Per SM and List of SM per SAP Should be	2,744	21,732.48	336,636.12	447,037.11
Variance - Underpayment[73]	**(1,620)**	**(12,830.40)**	**(₱198,742.90)**	**(₱263,921.33)**

SMB Polo Brewery Plant's underpayment of excise taxes of "San Mig Light" removals on November 29, 2011 was due to the offsetting of payments they made against the overstatement in the declaration, filing and payment of excise taxes due on the removals of **San Mig Strong Ice** from the Polo Plant on November 18, 19, 20, 21, 22 and 24, 2011, as follows:

[72] Annex $XX_{1.2}$ of the Independent CPA Report.
[73] Annex $XX_{1.3}$ of the Independent CPA Report.

	Quantity in Cases	Volume of Liters	Amount of Excise Tax @ ₱15.49	Amount of Excise Tax @ ₱20.57
Per ORB and ETR Paid as	5,391	₱ 42,696.72	-	₱ 878,271.53
Per SM and List of SM per SAP Should be	3,771	29,866.32	-	614,350.20
Variance - Overpayment	**1,620**	**₱12,830.40**	**-**	**₱263,921.33**

However, since the excise taxes paid on Polo Brewery Plant's "San Mig Light" removals on November 29, 2011 were based on the understated and undeclared removals for the day, the excise taxes due as recomputed and adjusted were based on the actual SML removals in liter per SM and deducted from the claim.

1.1.4 Understatement of Excise Taxes paid on SML removals at the Polo Plant on December 31, 2011.

The total "San Mig Light" removals per SM and list of SMs per SAP File in Polo Plant on December 31, 2011 was 9,638.64 liters but was declared per ORB and ETR as 9,535.68 liters only, resulting to an underpayment of excise taxes due of ₱2,117.89, if computed at ₱20.57 per liter rate as used by BIR; or ₱1,594.85, if computed at ₱15.49 per liter as claimed by SMB as follows:

	Volume of Liters	Amount of Excise Tax @ ₱15.49	Amount of Excise Tax @ ₱20.57
Per ORB and ETR Paid as	9,535.68	₱147,707.68	₱ 196,148.94
Per SM and List of SM per SAP Should be	9,638.64	149,302.53	198,266.82
Variance - Underpayment[74]	**(102.96)**	**(₱1,594.85)**	**(₱2,117.89)**

SMB Polo Brewery Plant's underpayment of excise taxes of SML removals on December 31, 2011 was due to the offsetting of payments they made against the overstatement in the declaration, filing and payment of excise taxes due on the removals of **Pale Pilsen Can** from the Polo Plant during the period December 2 to 31, 2011, as follows: *Je*

[74] Annex $XX_{1.4}$ of the Independent CPA Report.

	Quantity in Cases	Volume of Liters	Amount of Excise Tax @ ₱15.49	Amount of Excise Tax @ ₱20.57
Per ORB and ETR Paid as	80,289	595,116.72	-	₱12,241,550.93
Per SM and List of SM per SAP Should be	75,128	595,013.76	-	12,239,433.04
Variance - Overpayment	**5,161**	**102.96**	-	**₱ 2,117.89**

1.1.5 Overstatement of Excise Taxes paid on SML removals at the Polo Plant on August 11, 2011.

The total removals of "San Mig Light" 30 liters/keg in cases per SM 30145817 in Polo Plant on August 11, 2011 was 48 cases and should have been converted to 1,440 liters. However, said removals were presented as SML 50 liters/keg and were converted to equivalent 2,400 liters in the ORB resulting to an overstatement in the payment of excise taxes per ETR of ₱19,747.20, if computed at ₱20.57 per liter rate as used by BIR; or ₱14,870.40, if computed at ₱15.49 per liter as claimed by SMB, as follows:

	Volume in Cases	Conversion in Liters	Volume of Liters	Amount of Excise Tax @ ₱15.49	Amount of Excise Tax @ ₱20.57
Per ORB and ETR Paid as	48	50 liters/keg	2,400.00	₱ 37,176.00	₱ 49,368.00
Per SM and List of SM per SAP should be	48	30 liters/keg	1,440.00	22,305.60	29,620.80
Variance - Overpayment[75]	**0**		**960.00**	**₱14,870.40**	**₱19,747.20**

1.1.6 a) Overstatement of Excise Taxes paid on SML removals at the Polo Plant on December 15, 2011.

The total "San Mig Light" 30 liters/keg removals in liters per ORB in Polo Plant on December 15, 2011 was 2,160 liters while its total removals per SM and list of SMs per SAP Files for Polo Plant on the same date was 1,980 liters or a variance of 180 liters, or an overstatement of excise taxes paid on SML removals of ₱3,702.60, if computed at ₱20.57 per liter rate as used by BIR; or ₱2,788.20, if computed at ₱15.49 per liter as claimed by SMB, as follows: *fe*

---

[75] Annex $XX_{1.2}$ of the Independent CPA Report.

	Volume of Liters	Amount of Excise Tax @ ₱15.49	Amount of Excise Tax @ ₱20.57
Per ORB and ETR Paid as	2,160.00	₱33,458.40	₱44,431.20
Per SM and List of SM per SAP Should be	1,980.00	30,670.20	40,728.60
Variance - Overpayment[76]	**180.00**	**₱2,788.20**	**₱3,702.60**

1.1.6 b) Understatement of Excise Taxes paid on Pale Pilsen 30 liters/keg removals at the Polo Plant on December 15, 2011.

The Court found that the overstatement in the volume of liters paid for "San Mig Light" removals on December 15, 2011 pertains to the same understatement of 180 liters for the removals of **Pale Pilsen 30 liters/keg** or an equivalent excise taxes due of ₱3,702.60 computed at ₱20.57 per liter rate applicable for Pale Pilsen 30 liters/keg, as follows:

	Volume of Liters	Amount of Excise Tax @ ₱20.57
Per ORB and ETR Paid as	180.00	₱ 3,702.60
Per List of Other Beer Products per SAP File Should be	360.00	7,405.20
Variance - Underpayment[77]	**(180.00)**	**(₱3,702.60)**

Notwithstanding the foregoing findings of the Independent CPA, particularly, the variances due to misclassifications and mispostings of removals on June 13, 2011 *(No. 1.1.1a and b)*, the amount of the excise taxes due remain unaffected as the net variance amounts to zero (₱0.00).

However, since there were understatements of excise taxes paid on August 2, 2011 due to misconversion of volume of liters of San Mig Light removed *(No. 1.1.2)* and the underdeclaration of its removals on November 29 *(No. 1.1.3)* and December 31, 2011 *(No. 1.1.4)*, petitioner's claim was understated by ₱67,835.07, as computed below:

	Volume of Liters	Amount of Excise Tax at ₱15.49	Amount of Excise Tax at ₱20.57	Variance
August 2, 2011 (No. 1.1.2)				

[76] Annex $XX_{1.4}$ of the Independent CPA Report.
[77] Annex $XX_{1.4}$ of the Independent CPA Report.

Per ORB and ETR Paid as	180.00	₱ 2,788.20	₱ 3,702.60	₱ 914.40
Per SM and List of SM per SAP Should be	600.00	9,294.00	12,342.00	3,048.00
subtotal	**(420.00)**	**(6,505.80)**	**(8,639.40)**	**(2,133.60)**
November 29, 2011 (No. 1.1.3)				
Per ORB and ETR Paid as	8,902.08	137,893.22	183,115.79	45,222.57
Per SM and List of SM per SAP Should be	21,732.48	336,636.12	447,037.11	110,401.00
subtotal	**(12,830.40)**	**(198,742.90)**	**(263,921.33)**	**(65,178.43)**
December 31, 2011 (No. 1.1.4)				
Per ORB and ETR Paid as	9,535.68	147,707.68	196,148.94	48,441.25
Per SM and List of SM per SAP Should be	9,638.64	149,302.53	198,266.82	48,964.29
subtotal	**(102.96)**	**(1,594.85)**	**(2,117.89)**	**(523.04)**
Variance	**(13,353.36)**	**₱(206,843.55)**	**₱(274,678.62)**	**₱(67,835.07)**

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

At any rate, petitioner's claim for refund should be reduced by ₱5,791.20 (₱4,876.80 plus ₱914.40), due to the following:

1. Excise taxes due on San Mig Light removals per ORBs and ETRs made on August 11, 2011 *(No. 1.1.5)* were more than the excise taxes due on San Mig Light removals per SM and list of SM per SAP files, to wit:

Per Official Register Book and ETR	2,400.00
Per SM and list of SM per SAP Files	1,440.00
Difference	960.00
Excise Taxes Due on 960.00 liters:	
at ₱20.57	₱19,747.20
at ₱15.49	14,870.40
	₱4,876.80

2. Excise taxes due on the removals of Pale Pilsen 30 liters/keg made on December 15, 2011 *(No. 1.1.6)* were misclassified, filed and paid as San Mig Light 30 liters/keg removals per ORB and ETR, to wit:

Per Official Register Book and ETR	2,160.00
Per SM and list of SM per SAP Files	1,980.00
Difference	180.00
Excise Taxes Due on 180.00 liters:	
at ₱20.57	₱3,702.60
at ₱15.49	2,788.20
	₱ 914.40

Considering the foregoing, the Court finds that petitioner was able to prove by sufficient evidence its refund claim in the reduced amount of ₱740,294,926.62 (₱740,300,717.82 minus ₱5,791.20), representing its overpayment of excise taxes.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱740,294,926.62** representing overpayment of its excise taxes for the period covering January 1, 2011 to December 31, 2011.

SO ORDERED.

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

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

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8591

Members:

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

Promulgated:

DEC 2 3 2014
10:45 a.m.

x- x

DISSENTING OPINION

COTANGCO-MANALASTAS, *J.:*

With due respect, I believe that the ruling of the Court *En Banc* in CTA EB Case Nos. 755 and 873 holding that San Mig Light is a new brand requires to be revisited. Thus, I maintain my Dissenting Opinions in CTA Case No. 7708, CTA EB Case No. 873 and CTA Case Nos. 7953 and 7973 holding that San Mig Light should be classified as a variant of San Miguel Pale Pilsen and not as a new brand.

Considering that the issue at hand was already discussed at length in my dissenting opinions in the above-mentioned cases, I will reiterate my position herein concisely.

Whether under the un-amended Section 143 of the National Internal Revenue Code (NIRC) or after the amendment introduced by Republic Act No. 9334, I believe that San Mig Light should be classified as a variant.

Under the un-amended Section 143 of the NIRC, carrying the same logo or design was sufficient to justify the classification of San Mig Light as a variant of San Miguel Pale Pilsen. Even after the deletion of the second part of the definition that a product may be classified as a variant if it carries the same logo or design of an existing brand, still, San Mig Light should be classified as a variant. 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.

Contrary to petitioner's argument that the registered brand is just "Pale Pilsen", I believe that petitioner intended the words "San Miguel" to form part of the brand name, otherwise, "San Miguel Pale Pilsen", 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". Thus, it is clear that "San Mig" is a mere modified root name of "San Miguel" with the mere suffixation of a modifier "Light" to form "San Mig Light". This conclusion is supported by Section 2 (d) of Revenue Regulations No. 03-06. 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.

Also, petitioner points out that although "Pale Pilsen" may not be registerable and appropriable as a trademark under the Intellectual Property Code in accordance with the *Asia Brewery*[1] case, this does not preclude and constitute a legal obstacle to its registration as a brand under the 1997 NIRC. It is worthy to note that "brand" was not defined in Section 143 of the NIRC only "variant of a brand". While said section did not define "brand", the same should be understood in their usual and ordinary meaning. A "brand" is a name or symbol used by a seller or manufacturer to identify goods or services to distinguish them from competitor's goods or services[2]; it is a class of goods identified as the product of a particular firm or producer[3]. Thus, as ordinarily understood, a brand is a name used to identify or distinguish a product of a particular manufacturer from that of a competitor. Hence, if the words "Pale Pilsen" are to be assumed as the brand name and not "San Miguel Pale Pilsen", how could it be identified or

---

[1] *Asia Brewery, Inc. vs. Court of Appeals, et al.*, G.R. No. 103543, July 5, 1993.
[2] Black's Law Dictionary, 8th ed., 2004, p. 199.
[3] Webster's New Ideal Dictionary, 2nd ed., 1989, p. 61.

distinguished from other brands considering that "Pale Pilsen" are mere generic words?

Finally, I do not agree with petitioner's argument that the classification of San Mig Light as a new brand, not a variant, may not be revised except by an Act of Congress. A reading of *British American Tobacco vs. Camacho, et al.*[4] would show that the classification freeze provision does not prohibit the reclassification of a brand to a variant of a brand erroneously classified as a new brand. 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.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

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