REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

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

- versus -

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8209

Members:

DEL ROSARIO, *Chairperson*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 12 2014 ; 10:00 a.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner San Miguel Brewery Inc., *a subsidiary of San Miguel Corporation*, on December 28, 2010, seeking the refund or the issuance of tax credit certificate in the amount of **SEVEN HUNDRED THIRTY MILLION SIX HUNDRED TWO THOUSAND EIGHTY THREE AND 97/100 PESOS (₱730,602,083.97)** representing excise taxes on *"San Mig Light"* which, allegedly, were erroneously, excessively and/or illegally collected from, and overpaid by, San Miguel Brewery, Inc. to the Bureau of Internal Revenue, for the period from January 1, 2009 to December 31, 2009.

THE FACTS

Petitioner San Miguel Brewery Inc. ("SMB"), 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, and may be served with processes in this case through its counsel at 4th Floor, Dynavision Bldg., 108 Rada St., Legaspi Village, Makati City, Metro Manila.[1]

Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue ("BIR"), with office address at the Office of Commissioner of Internal Revenue, BIR Building, Diliman, Quezon City, Metro Manila, where she may be served with summons and other processes.[2]

One of the beer products being manufactured by petitioner SMB, and previously by its parent company, SMC, is "San Mig Light".[3]

On October 19, 1999, Mr. Virgilio S. De Guzman, then Assistant Vice President, SMBP Finance, of SMC, wrote Assistant Commissioner Leonardo B. Albar, Excise Tax Services, of the BIR, requesting for the registration of, and authority to manufacture "San Mig Light", as a new brand, to be taxed at ₱12.15 per liter.[4]

In a letter dated October 27, 1999, Assistant Commissioner Albar granted SMC's request dated October 19, 1999.[5]

Subsequently, on November 3, 1999, due to the change in the net retail price of "San Mig Light", Mr. De Guzman of SMC advised 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.[6]

On January 28, 2002, Mr. Alfredo R. Villacorte, then Vice President and Manager, Group Tax Services, of SMC, wrote to the Chief, Large Taxpayers Assistance Division II, of the BIR, requesting information on the tax rate and classification of "San Mig Light" and another beer product of the company, "Gold Eagle King".[7]

On February 7, 2002, Mr. Conrado P. Item, then Acting Chief of Large Taxpayers Assistance Division II, BIR, replying to the January 28,

[1] Par. 1.01, Stipulation of Facts, Documents, Issues (SFDI), *CTA Docket*, pp. 464 to 465.
[2] Par. 1.02, SFDI, *CTA Docket*, p. 465.
[3] Par. 3.01, SFDI, *CTA Docket*, p. 471.
[4] Par. 3.02, SFDI, *CTA Docket*, p. 471.
[5] Par. 3.03, SFDI, *CTA Docket,* p. 472.
[6] Par. 3.04, SFDI, *CTA Docket,* p. 472.
[7] Par. 3.05, SFDI, *CTA Docket,* p. 472.

2002 letter of SMC, confirmed (on the basis of the documents submitted by SMC showing that SMC was allowed to register, manufacture and sell "San Mig Light" as a new brand and has been paying the excise tax thereon for a considerable length of time) that the tax classification and rate of "San Mig Light" as a new brand were in order.[8]

On May 28, 2002, the BIR, through the then Assistant Commissioner Edwin R. Abella, Large Taxpayers Service, issued a "NOTICE OF DISCREPANCY" against SMC, stating, among others, that "San Mig Light" is "a variant of your existing beer products", and for that reason, commencing with the year 2000, it was to be subjected to a higher excise tax rate.[9]

In a letter-reply dated July 9, 2002 of Mr. Bienvenido N. Banas (then Finance Manager, Beer Division of SMC), SMC requested Assistant Commissioner Abella for the withdrawal of the Notice of Discrepancy dated May 28, 2002. In support thereof, SMC stated, among other things, that "San Mig Light" is not a variant of any of its existing beer brands for the reasons stated in the said letter.[10]

On October 14, 2002, the BIR, through then Assistant Commissioner Abella, sent its letter-rejoinder to SMC, stating, among others, that "San Mig Light Pale Pilsen" is a variant of "San Miguel Pale Pilsen".[11]

On November 20, 2002, Mr. Villacorte replied to then Assistant Commissioner Abella's letter-rejoinder, requesting, among other things, that "San Mig Light" be reconfirmed as a new brand and that the Notice of Deficiency and the demand for payment on SMC be withdrawn based on the grounds discussed in the letter.[12]

On December 16, 2003, during a conference, then Commissioner Guillermo Parayno, Jr. announced that the final voting on this particular issue 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

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[8] Par. 3.06, SFDI, *CTA Docket,* p. 472.
[9] Par. 3.10, SFDI, *CTA Docket*, p. 474.
[10] Par. 3.11, SFDI, *CTA Docket,* p. 474.
[11] Par. 3.12, SFDI, *CTA Docket,* p. 475.
[12] Par. 1.03, SFDI, *CTA Docket,* p. 465.

"Premium", then a high-priced beer product of SMC that was no longer being manufactured.[13]

On January 6, 2004, then BIR Commissioner Parayno addressed 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, the BIR, through the then Officer-in-Charge of the Large Taxpayers Service (Deputy Commissioner Estelita C. Aguirre at that time), issued a "PRELIMINARY ASSESSMENT NOTICE" against SMC for the amount of ₱852,039,418.15, representing alleged deficiency excise tax, inclusive of increments, on removals of "San Miguel Pale Pilsen Light" for the period 1999 to January 7, 2004, citing as basis thereof that "San Mig Light" is a "variant of your existing beer products".[15]

On February 4, 2004, the BIR, through 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 for the period January 8, 2004 to January 20, 2004, representing "Basic Deficiency Tax Due on Removals of San Mig Pale Pilsen Light".[16]

On March 24, 2004, the BIR, through then Deputy Commissioner Aguirre, issued a "PRELIMINIARY ASSESSMENT NOTICE" against SMC, citing as basis thereof that "San Mig Light" is a "variant of RPT in can (San Miguel Beer Pale Pilsen)".[17]

On April 12, 2004, the BIR, through then Deputy Commissioner Aguirre issued a FORMAL LETTER OF DEMAND on 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 up to April 30, 2004, for the period 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

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[13] Par. 1.04, SFDI, *CTA Docket,* pp. 465 to 466.
[14] Par. 1.05, SFDI, *CTA Docket,* p. 466.
[15] Par. 3.13, SFDI, *CTA Docket,* p. 475.
[16] Par. 3.17, SFDI, *CTA Docket*, pp. 476 to 477.
[17] Par. 1.07, SFDI, *CTA Docket*, p. 466.

DISCREPANCY" accompanying the Formal Letter of Demand, it was stated that "the Management Committee of the Bureau of Internal Revenue confirmed the classification of the aforementioned been product [San Mig Light] as variant of RPT in cans (San Miguel Beer Pale Pilsen)." [18]

SMC filed a Protest/Request for Reconsideration of the aforesaid Formal Letter of Demand, with accompanying Assessment Notice, within the reglementary period .[19]

On May 26, 2004, the BIR, through then Deputy Commissioner Aguirre, issued a "FORMAL LETTER OF DEMAND" on SMC, with the accompanying ASSESSMENT NOTICE NO. TF 129-05-04, also dated May 26, 2004. Among other things, the aforesaid Formal Letter of Demand 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.[20]

SMC filed a Protest/Request for Reconsideration of the aforesaid Formal Letter of Demand, with accompanying Assessment Notice, both dated May 26, 2004, within the reglementary period .[21]

On August 17, 2004, the then Officer-in-Charge of the BIR Large Taxpayers Service (Deputy Commissioner Kim S. Jacinto-Henares at that time) addressed a letter to SMC, informing the latter that its Protest/Request for Reconsideration on the assessment [dated April 12, 2004] has been denied "for lack of legal and factual basis". It is stated in the aforesaid letter that "San Mig Light" is a variant of RPT in can (San Miguel Pale Pilsen in can).[22]

On August 20, 2004, the then Deputy Commissioner Henares addressed a letter to SMC, informing the latter that its Protest/Request for Reconsideration dated July 5, 2005 on the assessment has been denied "for lack of legal and factual basis". It is stated in the aforestated letter that "San Mig Light" is "a variant of RPT in can (San Miguel Beer Pale Pilsen in can)".[23]

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[18] Par. 3.15, SFDI, *CTA Docket*, pp. 475 to 476.
[19] Par. 3.16, SFDI, *CTA Docket*, p.476.
[20] Par. 1.08, SFDI, *CTA Docket*, p. 467
[21] Par. 3.18, SFDI, *CTA Docket*, p. 477.
[22] Par. 1.06, SFDI, *CTA Docket*, p. 466.
[23] Par. 1.09, SFDI, *CTA Docket*, p. 467.

On September 17, 2004 and September 22, 2004, SMC filed with this Court, Petitions for Review by way of appeal from the rulings of the Office of the BIR Commissioner on SMC's Protests/Requests for Reconsideration on the deficiency excise tax assessments 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).[24]

On October 1, 2007, SMC spun off its domestic beer business into a new company, which is herein petitioner SMB.[25]

The spinning off [of SMC's domestic beer business into a new company] was implemented by way of a "MASTER DEED OF ASSIGNMENT OF DOMESTIC BEER ASSETS", which was executed by SMC and SMB on August 23, 2007. In the aforesaid "MASTER DEED OF ASSIGNMENT...", SMC assigned, transferred and conveyed in favor of SMB all the former's rights, title and interest over its beer assets used in its domestic beer business, effective October 1, 2007, as a consequence of which SMB shall own the beer assets and operate the beer business as a going concern.[26]

Petitioner SMB continued SMC's business operations of manufacturing, selling and distribution of fermented and malt-based beverages, including "San Mig Light".[27]

Prior to February 1, 2004, SMC paid excise taxes only at the rate of ₱10.25 per liter (adjusted from ₱9.15 beginning January 1, 2000), in accordance with the provisions of Section 143 of the 1997 National Internal Revenue Code (1997 NIRC), because "San Mig Light" was classified by, and registered with, the BIR as a new and medium-priced brand with a retail price of less than ₱22.00 per liter. The aforesaid tax rate for medium-priced brands was increased to ₱12.30 per liter commencing January 1, 2005; to ₱13.28 per liter beginning January 1, 2007; and to ₱14.34 per liter starting January 1, 2009, also by virtue of Republic Act (RA) No. 9334.[28]

In view of the January 28, 2004 assessment, and commencing February 1, 2004, SMC paid to the BIR, and the latter collected from SMC,

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[24] Par. 3.19, SFDI, *CTA Docket*, p. 477.
[25] Petition for Review, par. 10.00, *CTA Docket*, p. 29; Par. 4.17, SFDI, *CTA Docket,* p. 489; Exhibit "KK", *CTA Docket*, p. 272 to 282.
[26] Par. 3.29, SFDI, *CTA Docket,* p. 480.
[27] Par. 3.30, SFDI, *CTA Docket,* p. 480.
[28] Par. 3.37, SFDI, *CTA Docket,* p. 482.

excise taxes on "San Mig Light" at the higher 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, 2005; and ₱17.64 from January 1, 2007 onward until September 30, 2007; and thereafter, commencing October 1, 2007 onward, petitioner SMB paid to the BIR, and the latter collected from SMB, excise taxes on "San Mig Light" at the rate of ₱17.64 per liter, and starting January 1, 2009 onward, at the rate of ₱19.05 per liter. The increases in excise tax rate are provided for in RA No. 9334.[29]

In the meantime, during the period from January 1, 2009 up to December 31, 2009, petitioner SMB was obliged to pay excise taxes on its removals of "San Mig Light" at the increased tax rate of ₱19.05 per liter, totaling ₱730,602,083.97.[30]

On November 4, 2010, petitioner SMB filed with the BIR a claim for refund dated October 28, 2010 in the amount of ₱730,602,083.97, representing, as mentioned above, excise taxes assessed on, and/or collected from, SMB by the BIR in respect of "San Mig Light" for the period from January 1, 2009 up to December 31, 2009[31] on the ground that the re-classification by the BIR of "San Mig Light" as a variant has no legal basis and is in fact contrary to and in violation of Section 143 of the 1997 NIRC.[32]

Petitioner SMB filed the subject Petition for Review before this Court on December 28, 2010.[33]

In her Answer, [34] respondent raised the following special and affirmative defenses, *viz.*:

> **"Special and Affirmative Defenses**
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> 12. Respondent hereby repleads the foregoing admissions and denials as part of her special and affirmative defenses.
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> 13. It is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two-year period provided under Section 229 of the NIRC of 1997.
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[29] Par. 3.36, SFDI, *CTA Docket*, p. 481.
[30] Par. 3.34, SFDI, *CTA Docket*, p. 481.
[31] Par. 4.19, SFDI, *CTA Docket*, p. 490.
[32] Exhibits "MM", "MM-1", "MM-2", *CTA Docket*, pp. 287 to 289.
[33] *CTA Docket*, pp. 1 to 77.
[34] Answer, *CTA Docket*, pp. 329-345.

15. 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. This is a mandatory requirement. Without this requirement, the CIR is without any authority to refund.
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.

16. There was no erroneous payment of excise taxes. There was 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:

16.1 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."

16.2 Out of these three variants, RPT or San Miguel Pale Pilsen in can 330 ml. (24), has the highest tax classification at the same 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.

16.3 "San Miguel Pale Pilsen" and "San Mig Light" have almost the same label font and design layout, bearing the same striped diagonal lines. As compared with petitioner's other existing brands, only the labels of SML and SMB bear the same "Pale Pilsen". Except for their colors, the designs of the labels of these pale pilsen brands are almost identical.

16.4 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.

17. Petitioner is estopped from questioning the classification of SML as a variant of San Migule [*sic*] Pale Pilsen based on the following grounds:

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

17.2 "Kaunlaran" (petitioner's publication) contains statements that SML is a variant of Pale Pilsen with the same full flavored taste and alcohol content or a low calorie variant.

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

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

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

18. The opinion contained in Mr. Item's letter dated 07 February 2002 has no force and effect.

18.1 Under Section 4 of the NIRC of 1997, the power to interpret NIRC provision and other tax laws is the exclusive and original jurisdiction of the Commissioner of Internal Revenue subject to the review of the Secretary of Finance.

18.2 Under Section 7 of the NIRC of 1997, the power to recommend the promulgation of rules and regulations by the Secretary of Finance, and to issue rulings of first impression or to reverse or revoke or modify any existing ruling of the BIR cannot be delegated. The opinion is null and void.

19. The listing of SML as a new brand in RMO No. 6-2003 is not conclusive with regard to classification of SML.

19.1 RMO No. 6-2003 was issued in order to prescribe the guidelines and procedures in the establishments of current net retail prices of new brands of cigarettes and alcohol products pursuant to RR No. 9-2003. This is clear from Paragraph II (2) of RMO No. 6-2003 which provides "A master list of all registered brands for locally manufactured and imported cigarettes, fermented liquors, wines and distilled spirits (Annexes "A-1", "A-2", "A-3" and "A-4") as prepared by the LTAID II shall be used as reference document in the conduct of the survey.

19.2 Considering that the objectives and policies of RMO No. 6-2003 do not affirm any tax classification and rate but rather make use of the said master list for want of reference document, said master list cannot be SMC's legal basis for treating SML as a new brand.

20. 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.

20.1 When SML was introduced into market in 1999, Section 143 of the NIRC of 1997 still applied. The use of the same logo or design as a device to advertise the SMB variant is adequate to classify SML as a variant of San Miguel Beer Pale Pilsen.

20.2 The inclusion of the word "Light" in the name San Miguel Light is a modifier suffixed to the root name that is contemplated by the definition of a variant under Section 143 of the NIRC of 1997.

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

21. In CTA Case No. 7708, under the Dissenting Opinion, Justice Amelia R. Cotangco-Manalastas stated the following keen observations:

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22. 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. Xxx xxx xxx. 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.

22. [*sic*] 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.

23. [*sic*] All told, petitioner is not entitled to a claim for refund."[35]

The Pre-Trial of the case was held on March 18, 2011 during which the parties were granted a period of twenty (20) days from said date within which to file their Joint Stipulation of Facts and Issues.[36]

On April 27, 2011, the parties' submitted their Stipulation of Facts, Documents, and Issues.[37] On May 2, 2011, the Court issued a Resolution[38]

[35] *CTA Docket*, pp.333 to 343.
[36] Resolution dated March 18, 2013, *CTA Docket*, p. 453.
[37] *CTA Docket*, pp. 462-494.
[38] *CTA Docket*, p. 496.

stating that the parties failed to indicate the list of documents to be presented, the names of their witnesses and the hearing dates agreed upon in their Stipulation of Facts, Documents, and Issues. On May 27, 2011, the parties submitted their Supplement to "Stipulation of Facts, Documents, and Issues."[39] In a Resolution[40] dated May 31, 2011, the Court approved the "Stipulation of Facts, Documents, and Issues" filed by the parties on April 27, 2011 as well as the Supplement to Stipulation of Facts, Documents, and Issues filed on May 27, 2011. The Court also terminated the Pre-Trial and ordered the parties to proceed with the initial presentation of their evidence.

On January 9, 2012, the Court issued a Pre-Trial Order and terminated the pre-trial.[41]

On January 10, 2012, petitioner SMB filed a Motion for Commissioning of Independent Certified Public Accountant asking the Court to commission Ms. Normita L. Villaruz as Independent Certified Public Accountant (Independent CPA).[42] On January 13, 2012, the Court in a Resolution[43] granted petitioner SMB's motion to commission Ms. Normita Lansang Villaruz as Independent CPA.

During trial, the parties presented and formally offered their respective witnesses and documentary evidence. This case was submitted for decision on October 30, 2013[44] taking into consideration the Memorandum for Petitioner [45] filed on September 17, 2013, and respondent's Memorandum[46] filed on October 21, 2013.

ISSUES

The parties jointly submitted the following stipulated issues for the Court's consideration:

[39] *CTA Docket*, pp. 533-549.
[40] *CTA Docket*, p. 551.
[41] *CTA Docket*, pp. 626-651.
[42] *CTA Docket*, pp. 652-679.
[43] *CTA Docket*, p. 683.
[44] *CTA Docket*, p. 1339.
[45] *CTA Docket*, pp. 1203-1281.
[46] *CTA Docket*, pp. 1314-1336.

"Main Issue

5.01.a Whether petitioner SMB is entitled to a refund by the Bureau of Internal Revenue of the amount of ₱730,602,083.97 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, 2009 up to December 31, 2009 as a consequence of its reclassification by the Bureau of Internal Revenue as a variant.

Corollary Issues

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

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

5.02.d. Assuming it is a variant of an existing brand, whether or not the higher tax rate of ₱19.05 per liter, effective January 1, 2009, applies to "San Mig Light" removals from January 1, 2009 up to December 31, 2009."[47]

THE COURT'S RULING

I. Timeliness of the Filing of Petitioner SMB's Administrative and Judicial Claims for Refund

Sections 204(C) and 229 of the 1997 NIRC, as amended, provide for the procedure governing the refund of erroneously paid taxes, *to wit:*

> **"SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may-
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[47] SFDI, *CTA Docket*, pp. 492-493.

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

The foregoing provisions govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, pursuant to the NIRC.[48] For erroneously or illegally collected internal revenue taxes, the settled rule is that both the claim for refund with the BIR and the subsequent appeal to this Court must be filed within the two-year period from the date of payment of the tax.

For goods subject to excise tax, the correct amount of excise tax shall be paid by the manufacturer or producer before removal of domestic products from place of production pursuant to Section 130(A)(2) of the 1997 NIRC, as amended.

In the present case, the claim for refund or issuance of tax credit certificate covers excise taxes paid for the period starting January 1, 2009 to

[48] Asiasec Equities, Inc. vs. CIR, CTA Case No. 8242, November 4, 2013; CIR vs. Central Azucarera Don Pedro, 49 SCRA 474; CIR vs. Insular Lumber Co., 21 SCRA 1237

December 31, 2009. Hence, petitioner SMB has two years from the aforesaid period to file its administrative and judicial claims. The administrative claim was filed on November 4, 2010[49] and the judicial claim was filed on December 28, 2010. Indubitably, both the administrative and judicial claims were filed within the two-year prescriptive period provided by law.

In view of the timely filing of petitioner SMB's administrative and judicial claims, this Court is vested with jurisdiction to determine petitioner SMB's entitlement to the claim for refund or issuance of tax credit certificate representing excise taxes on *"San Mig Light"* which, allegedly, were erroneously, excessively and/or illegally collected from, and overpaid by, petitioner SMB to the BIR, for the period from January 1, 2009 to December 31, 2009.

II. Classification of "San Mig Light"

The crux of the controversy boils down to whether or not "San Mig Light" is a *new brand* or a *variant of an existing brand.*

The resolution of this issue will determine petitioner SMB's entitlement to the refund of alleged overpaid excise taxes on "San Mig Light" for the period January 1, 2009 to December 31, 2009. In the event that the Court finds that "San Mig Light" is a variant of an existing and registered brand of petitioner SMB, there is no basis for the Court to grant the claim for refund or issuance of tax credit certificate as the payment of excise taxes at the rate of ₱19.05 per liter, which was based on the highest classification of the brand to which it is a variant of, is deemed to have been properly made by petitioner SMB. On the other hand, should the Court rule that "San Mig Light" is a new brand, it is deemed to have erroneously and excessively paid excise taxes at the rate of ₱19.05 per liter. As a new and medium-priced brand, the excise tax rate due on "San Mig Light" would be the lower rate of P14.34 per liter.

Petitioner SMB postulates that "San Mig Light" is a new brand. Allegedly, the brands of SMC existing as of October 1, 1996, identified and determined under Section 143 of the 1997 NIRC, and listed and classified in Annexes C-1 and C-2 of RA No. 8240 are the following:

[49] Exhibits "MM" and "MM-4", *CTA Docket*, pp. 287 and 291.

High Priced Brands	Medium Priced Brands	Low Priced Brands
RPT in cans 330 ml. (24)	Super Dry 355 ml. (24)	Gold Eagle 320 ml. (24)
Premium Bottles 355 ml. (24)	Keg 30 liters	Mucho 750 ml. (6)
Premium Can 330 ml. (24)	Keg 50 liters	Red Horse 500 ml. (12)
	Pale Pilsen 320 ml. (24)	RH Stallion 330 ml. (24)
	Grande 1000 ml. (6)	Texas
	Cerveza Negra 320 ml. (24)	
	Blue Ice	

Petitioner SMB argues that under Annexes C-1 and C-2 of RA No. 8240, "San Miguel" does not appear as part of the registered brands of SMC/SMB but as the manufacturer's name; that the words "San Miguel Corporation", "San Miguel Brewery, Inc.", or "San Miguel" refer to the names of the manufacturer and does not form part of any of the SMC or SMB beer brands. Since "San Mig Light" was not formed by adding a prefix and/or suffix to the root name of the brand "Pale Pilsen" or of any other existing SMC brand listed in the 1997 NIRC, "San Mig Light" is not merely a variant of an existing brand but an entirely new brand. Also, petitioner SMB avers that the BIR has no authority to change the classification as to which are variants and which are new brands as said classification may no longer be revised except by act of Congress.

On the other hand, respondent argues that "San Mig Light" is a variant of an existing product which is "San Miguel Pale Pilsen" pursuant to the definition of a variant of a brand under Section 143 of the 1997 NIRC 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."

Definition of New Brand and Variant

Republic Act (RA) No. 8240,[50] which took effect on January 1, 1997, defines the term "variant of a brand" in relation to the excise tax imposable on fermented liquors, as follows:

> "SECTION 3. Section 140 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> SEC. 140. Fermented Liquor. — There shall be levied, assessed and collected a specific tax on beer, larger beer, ale,

[50] AN ACT AMENDING SECTIONS 138, 139, 140 AND 142 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSE

porter, and other fermented liquors except tuba, basi, tapuy and similar domestic fermented liquors in accordance with the following schedule:

xxx xxx xxx

Variants of existing brands which are introduced in the domestic market after the effectivity of this Act shall be taxed under the highest classification of any variant of that brand.

xxx xxx xxx

The specific tax from any brand of fermented liquor within the next three (3) years from the effectivity of this Act shall not be lower than the tax which was due from each brand on October 1, 1996.

The rates of specific tax on fermented liquor under paragraphs (a), (b) and (c) hereof shall be increased by twelve percent (12%) on January 1,2000.

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 a different brand which carries the same logo or design of the existing brand." (Emphasis supplied)

In connection therewith, Section 2(10) and (18) as well as Section 4(C) of Revenue Regulations (RR) No. 2-97[51] state:

"SECTION 2. Definition of Terms. — For purposes of these regulations the following words and phrases shall have the meaning indicated below:

xxx xxx xxx

10. **New Brands — shall mean brands registered <u>after</u> January 1, 1997 and shall include previously registered, but inactive brands of alcohol products.** OM

[51] Revenue Regulations Governing Excise Taxation on Distilled Spirits, Wines and Fermented Liquors.

xxx xxx xxx

18. **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**, such as the following:

a) Modifier is prefixed — Example: A registered existing "ABC" Brand manufactured as "Premium ABC" or "Top ABC".

b) Modifier is suffixed — Example: A registered existing "ABC" brand manufactured as "ABC Dry" or "ABC Supreme".

c) A different brand which carries the same logo or design of the existing brand — Example: A registered existing "ABC" brand carrying the logo, badge, emblem, or mark in the shape of a horseshoe is manufactured as "XYZ" brand carrying the same shape of a horseshoe logo, badge, emblem or mark; or a registered and existing "XYZ" brand carrying two (2) horizontal stripes with red and white colors is manufactured as a new "ABC" brand carrying the same set of stripes and colors.

xxx xxx xxx

SECTION 4. Classification and Manner of Taxation of Existing Brands, New Brands and Variants of Existing Brands. —

xxx xxx xxx

C. Variants of Existing Brands

Variants of Existing Brands which are introduced in the domestic market after January 1, 1997 shall be taxed under the highest classification of any variant of that brand and shall remain in this classification until revised by Congress." (Emphases supplied)

Section 140 of RA No. 8240 was substantially reproduced in Section 143 of the 1997 NIRC,[52] including the definition of the term "variant of a brand" as referring 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".

Based on the foregoing, "new brands" shall refer to brands registered after January 1, 1997 (date of the effectivity of RA No. 8240) and shall include previously registered, but inactive brands of alcohol products. This

[52] Republic Act No. 8424 (AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES).

definition is vital in determining whether a brand introduced in the market after January 1, 1997 could be classified as a "new brand". On the other hand, "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. Notably, Annexes C-1 and C-2 of RA No. 8240, which are listings of existing and registered brands of fermented liquors per manufacturer, became an integral part of the 1997 NIRC as its own Annexes C-1 and C-2.

When RA No. 9334[53] took effect on January 1, 2005, Section 143 of the 1997 NIRC was amended to read as follows:

> "SEC. 143. Fermented Liquors. — There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except tuba, basi, tapuy and similar fermented liquors in accordance with the following schedule:
>
> (a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is less than Fourteen pesos and fifty centavos (P14.50), the tax shall be Eight pesos and twenty-seven centavos (P8.27) per liter;
>
> (b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fourteen pesos and fifty centavos (P14.50) up to Twenty-two pesos (P22.00), the tax shall be Twelve pesos and thirty centavos (P12.30) per liter;
>
> (c) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Twenty-two pesos (P22.00), the tax shall be Sixteen pesos and thirty-three centavos (P16.33) per liter.
>
> Variants of existing brands and variants of new brands which are introduced in the domestic market after the effectivity of this Act shall be taxed under the proper classification thereof based on their suggested net retail price: *Provided, however*, That such classification shall not, in any case, be lower than the highest classification of any variant of that brand.
>
> **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.**

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[53] 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.

> Fermented liquors which are brewed and sold at micro-breweries or small establishments such as pubs and restaurants shall be subject to the rate in paragraph (c) hereof.
>
> New brands, as defined in the immediately following paragraph, shall initially be classified according to their suggested net retail price.
>
> **'New brand' shall mean a brand registered after the date of effectivity of R.A. No. 8240."** (Emphases supplied)

On January 3, 2006, the BIR issued RR No. 3-2006[54] to implement the provisions of RA No. 9334. Pertinent parts of RR No. 3-2006 are quoted hereunder:

> "SECTION 2. Definition of Terms. — For purposes of these Regulations, the following words and phrases shall have the meaning indicated below:
>
> xxx xxx xxx
>
> (d) **VARIANT OF A BRAND — shall refer to a brand of alcohol or tobacco products on which a modifier is prefixed and/or suffixed to the root name of the brand.**
>
> For this purpose, the term "root name" shall refer to a letter, word, number, symbol, or character; or a combination of letters, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: *Provided*, That the root name has been originally registered as such with the Bureau of Internal Revenue (BIR).
>
> Examples of root name: "L & M", "ßW", "10", "Pall Mall", "Blue Ice", "Red Horse", etc.
>
> The term "modifier" shall refer to a word, a number, or a combination of words and/or numbers that specifically describe the root name to distinguish one variant from another whether or not the use of such modifier is a common industry practice. The root name, although accompanied by a modifier at the time of the original brand registration, shall be the basis in determining the tax classification of subsequent variants of such brands.
>
> Examples of modifiers: For cigarettes: "Filter", "Menthol", "Kings", "100's", "American Blend", "International", etc.

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

For beer: "Light", "Dry", "Ice", "Lager", "Hard", "Premium", etc.

Any variation in the color and/or design of the label (such as logo, font, picturegram, and the like), manner and/or form of packaging or size of container of the brand originally registered with the BIR shall not, by itself, be deemed an introduction of a new brand or a variant of a brand: *Provided,* That all instances of such variation shall require a prior written permit from the BIR.

In case such BIR-registered brand has more than one (1) tax classification as a result of the shift in the manner of taxation from ad valorem tax to specific tax under R.A. No. 8240, the highest tax classification shall be applied to such brand bearing a new label, package, or volume content per package, subject to the provisions of the immediately preceding paragraph.

ILLUSTRATION:

No. 1 XYZ, Inc., a cigarette manufacturer, owns the brand, "KC" that is packaged in soft and hard packs. "KC" is an existing brand that is being manufactured since 1995. "KC" in soft pack is tax classified under low-priced tax category while "KC" in hard pack is under the medium-priced tax category. In 2005, the current net retail prices per pack of "KC" in soft and hard packs are P8.00 and P16.00, respectively. XYZ, Inc. intends to introduce "KC" in soft tin cans with a suggested net retail price of P 15.00 per pack falling under the high-priced tax category.

Question: What is the proper tax classification of "KC" in soft tin cans upon introduction in 2005?

Answer: "KC" in soft tin cans shall be tax classified as medium-priced brand following the tax classification of "KC" in hard pack considering that the suggested net retail price per pack of "KC" in soft tin cans is lower than the current net retail price per pack of "KC" in hard pack.

Question: Assuming that the current net retail prices of "KC" in soft and hard packs are P8.00 and P14.00, respectively, what is now the proper tax classification "KC" in soft tin cans upon its introduction in the domestic market in 2005?

Answer: "KC" in soft tin cans shall be classified under the premium-priced category of P25.00 per pack. It shall be treated as a variant of "KC" in soft and hard packs since its suggested net retail price is higher than the current net retail prices of the originally registered "KC" brands. om

In case a letter(s), number(s), symbol(s) or word(s) is/are deleted from or replaced by another letter(s), number(s), symbol(s) or word(s) in the root name of a previously BIR-registered brand, such that the introduction of the said brand bearing such change(s) shall ride on the popularity of the said previously registered brand, the same shall be classified as a variant of such previously registered brand: *Provided,* That where the introduction of such brand by another manufacturer or importer will give rise to any legal action with respect to infringement of patent or unfair competition, such brand shall be considered a variant of such previously registered brand.

ILLUSTRATION:

No. 2 —

ROOT NAME	MODIFIER IS PREFIXED	MODIFIER IS SUFFIXED	MODIFIED ROOT NAME
L & M	Kings L & M	L & M Lights	M & L
10	Perfect 10	10 Menthols	Ten
Blue Ice	Wild Blue Ice	Blue Ice Supreme	Blue Iced
Red Horse	Flying Red Horse	Red Horse Premium	Reddish Horse
Pall Mall	Long Pall Mall	Pall Mall Filter	Pal Mall

(e) **EXISTING BRAND — shall refer to a brand of alcohol or tobacco products which is included in Annexes A, B, C and D of R.A. No. 8240 and Revenue Regulations (RR) Nos. 1-97 and 2-97**;

(f) **NEW BRAND — shall refer to a brand that is registered and introduced in the market after the date of effectivity of R. A. No. 8240;**" (Emphases supplied)

Thus, under Section 143 of the 1997 NIRC, as amended by RA No. 9334, "**new brand" shall refer to a brand registered after the date of effectivity of RA No. 8240**[55] **on January 1, 1997** while "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.

There was no change in the definition of "new brand" while the definition of "variant of a brand" was amended in view of the deletion of the second portion of its original definition, that is, "a different brand which carries the same logo or design of the existing brand". om

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[55] AN ACT AMENDING SECTIONS 138, 139, 140 AND 142 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

"San Mig Light" as a new brand

After painstakingly evaluating the parties' respective legal and factual bases, the Court holds that "San Mig Light" is a **NEW BRAND** and not a variant of an existing brand.

As afore-stated, a new brand refers to a brand which was registered after the effectivity of RA No. 8240 on January 1, 1997. "San Mig Light" is among the brands registered after the effectivity of RA No. 8240. Truth to tell, no less than the BIR has registered "San Mig Light" as **a new brand**.

In a Letter[56] dated October 19, 1999 to Assistant Commissioner Alvar [sic] which was sent by SMC's Assistant Vice-President for Finance, Mr. De Guzman, the latter sought for the registration and authority to manufacture fermented liquor, "San Mig Light", *viz.*:

> "Dear Mr. Alvar [sic]:
>
> This is to request for the **registration and authority to manufacture fermented liquor bearing the trademark "SAN MIG LIGHT". This <u>new product</u> will be packaged in 330ml-flint bottle of 24 bottles a case and will be manufactured at our Polo, Valenzuela plant.** Sample bottle and other pertinent documents accompany this request.
>
> Consistent with Section 143 of the Tax Reform Act of 1997, as amended, and with the Revenue Regulations No. 2-97 entitled "Revenue Regulations Governing Excise Taxation on Distilled Spirits, Wines and Fermented Liquors", San Mig Light shall be taxed at P12.15 per liter. xxx." (Emphasis supplied)

In a Letter[57] dated October 27, 1999, **Assistant Commissioner Albar granted SMC's request for registration and authority**, *to wit*:

> "Gentlemen:
>
> Your request dated October 19, 1999, for the registration of San Miguel Corporation commercial label for beer bearing the trademark "San Mig Light" Pale Pilsen, for domestic sale or export, 24 bottles in a case, each flint bottle with contents of 330ml., is hereby **granted**. Xxx" (Emphasis supplied)

[56] Exhibit "E", *CTA Docket*, p. 82.
[57] Exhibit "F", *CTA Docket*, p. 83.

Meanwhile, in a Letter dated February 7, 2002[58] to SMC, through Mr. Condrado P. Item, Acting Chief of Large Taxpayers Assistance Division II, **the BIR confirmed SMC's registration to manufacture "San Mig Light" as <u>a new brand</u>**, *to wit*:

> "The documents that you have submitted show that you were allowed to register, manufacture and sell the two foregoing brands and you have been paying the excise tax for a considerable length of time, as follows:
>
> **San Mig Light P9.15 (now P10.25) as a new brand**; and xxx.
>
> Based on the foregoing, **it appears that the tax classification and rates you are currently using are in order**. Xxx xxx xxx."
> (Emphases supplied)

True, the BIR eventually issued letters and notices to SMC insisting that "San Mig Light" is a variant of SMC's "existing beer products" or of "San Miguel Pale Pilsen" or of "RPT in can". But the Court notes that the subsequent reclassification of "San Mig Light" as a new brand is bereft of any legal and factual basis.

Before a product can be classified as a variant of a brand, it is imperative to establish the existence and registration of a brand to which it is considered a variant of. While the BIR insists that "San Mig Light" is a variant of an existing brand, it fails, however, to specify with utmost certainty as to which existing brand "San Mig Light" is actually a variant of.

The registered brands of fermented liquors as of the date of the enactment of the 1997 NIRC are listed in its Annexes C-1 and C-2. Until the law is modified, its Annexes, which are integral parts of the law, remain valid, binding and conclusive upon the BIR.

Notably, "Pale Pilsen" is one of the existing registered brands of SMC listed in Annexes C-1 and C-2 of the 1997 NIRC. "San Mig Light" could not, however, be considered a variant of the existing brand "Pale Pilsen". Illustratively, by adding the word "Light" as a prefix or suffix to "Pale Pilsen", the result would either be "Light Pale Pilsen" or "Pale Pilsen Light", and certainly not "San Mig Light". This patently demonstrates that "San Mig Light" was not formed by adding a prefix and/or suffix to the root name of the existing brand "Pale Pilsen". OM

[58] Exhibit "I", *CTA Docket*, p. 94.

Of course, respondent also claims that "San Mig Light" is a variant of "San Miguel Pale Pilsen". Although "San Miguel Pale Pilsen" is not among the brand names listed in Annexes C-1 and C-2 of the 1997 NIRC, respondent is of the position that the registered brand name "Pale Pilsen" actually pertains to "San Miguel Pale Pilsen". To support its position, respondent points out that on page 6 of SMC's 1999 Annual Report,[59] "San Miguel Pale Pilsen" was specifically recognized as one of SMC's existing brands; that on page 6 of SMC's Kaunlaran Magazine (January 2000, Issue No. 1, Volume No. 33, Special),[60] "San Miguel Pale Pilsen" was particularly referred to as one of SMC's various brands.

It is a basic legal truism that a law may not be modified by mere public statements, nor by commercial advertisements, however persuasive they may be. Until the 1997 NIRC and its Annexes C-1 and C-2 are modified, "Pale Pilsen" (and not "San Miguel Pale Pilsen") remains the registered brand of SMC for purposes of the imposition of excise tax. Since Annexes C-1 and C-2 of the 1997 NIRC do not include the names "San Mig" or "San Miguel" or "San Miguel Pale Pilsen" as registered brands of SMC, there is no basis to hold that the word "Light" is actually a prefix or a suffix to the words "San Mig" or "San Miguel" or "San Miguel Pale Pilsen". Instead, the logical conclusion is that when "San Mig Light" was registered with the BIR and introduced in the market in 1999, it was regarded as an entirely new brand or new product of SMC.

Besides, even assuming *arguendo* that "San Miguel Pale Pilsen" is an existing brand of SMC as enumerated in Annexes C-1 and C-2 of the 1997 NIRC, there is still no basis to conclude that "San Mig Light" is a variant of "San Miguel Pale Pilsen". As defined under Section 143 of the 1997 NIRC, as amended by RA No. 9334, 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. If the word "Light" is considered a modifier suffixed to the root name "San Miguel Pale Pilsen", then the resulting brand name should be "San Miguel Pale Pilsen Light" and not "San Mig Light" as it is currently registered.

Since there is no existing brand to which "San Mig Light" can be a variant of, "San Mig Light" cannot, by any stretch of the statutory definition, be considered as a mere variant of an existing brand.

Respondent is also of the position that the fact that "San Mig Light" is described as a low calorie light beer with the same full-flavored taste and

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[59] Exhibit "1", *CTA Docket*, p. 1122.
[60] Exhibit "3", *CTA Docket*, p. 1172.

alcohol content as SMB (San Miguel Pale Pilsen)[61] proves that "San Mig Light" is a variant of "San Miguel Pale Pilsen".

The Court does not agree.

To be sure, neither taste nor alcohol content is relevant in determining whether "San Mig Light" is a variant of "Pale Pilsen" or "San Miguel Pale Pilsen", assuming the latter is an existing brand. In defining "variant of a brand", Section 143 of the 1997 NIRC, as amended by RA No. 9334, does not make any reference to the beer's calorie contents. In truth, to constitute a "variant of a brand", the law clearly requires that the brand was formed by prefixing or affixing a modifier to the root name of the existing, registered brand. As discussed above, the brand name "San Mig Light" was not formed by adding a prefix or suffix to the registered brand "Pale Pilsen".

More importantly, Sections 2 (10) and 4(C) of RR No. 2-97 as earlier cited, provide that "new brands" shall refer to brands registered after January 1, 1997. There is no denying that San Mig Light" was introduced in the market only in October 1999, or between January 1, 1997 and December 1, 2003; thus, it must necessarily fall within the classification of a "new brand". Not only that, the 1997 NIRC, as amended by RA No. 9334, provides 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 BIR has determined them to belong and such classification shall not be revised except by an act of Congress.

Section 143 of the 1997 NIRC, as amended by RA No. 9334, states:

> "SEC. 143. Fermented Liquors. — There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except tuba, basi, tapuy and similar fermented liquors in accordance with the following schedule:
>
> xxx xxx xxx
>
> "'New brand' shall mean a brand registered after the date of effectivity of R.A. No. 8240.
>
> "'Suggested net retail price' shall mean the net retail price at which new brands, as defined above, of locally manufactured or imported fermented liquor are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those

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[61] Respondent's Memorandum, *CTA Docket*, p. 1316.

> marketed nationwide, and in other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail price as defined herein and determine the correct tax bracket to which a particular new brand of fermented liquor, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Interns Revenue shall revalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket which a particular new brand of fermented liquors shall he classified: 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. <u>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</u>.** (*Emphasis supplied*)

Relatedly, RR No. 03-2006 amplifies the prohibition against any reclassification of certain brands of alcoholic products, thus:

> SECTION 4. Prohibition Against Reclassification of Certain Brands of Alcohol and Tobacco Products. — **The tax classification of the following brands of alcohol and tobacco products shall remain in force until revised by Congress**:
>
> (a) **Brands enumerated in Annexes "A," "B," "C" and "D" of R.A. No. 8240**;
>
> (b) **Brands listed in RR Nos. 1-97 and 2-97**; and
>
> (c) **New brands introduced in the domestic market between January 1, 1997 and December 31, 2003.**
>
> With respect to any of the brands listed in Annexes "A," "B," "C" and "D" of R.A. No. 8240, the owner of the brand may file with the BIR a notarized request for the delisting thereof from the said Annexes. The filing of such request shall be deemed a waiver of the statutory protection against reclassification of such brand; Provided, further, that in the event that the same brand shall be manufactured or imported by another entity subsequent to the filing of such request, such brand shall be considered a new brand subject to the prohibition on downward reclassification prescribed under Section 5 of these Regulations." (Emphases supplied)

As oft-repeated, "San Mig Light" is not a variant of any of the brands enumerated in Annexes "C-1" and "C-2". It is a "new brand" introduced in the domestic market between January 1, 1997 and December 31, 2003. Its classification as a "new brand" was confirmed by the BIR as early as

October 27, 1999, through Assistant Commissioner Albar,[62] and again on February 27, 2002, through Mr. Item,[63] the then Acting Chief of the BIR Large Taxpayers Assistance Division II. To now allow the BIR to re-classify "San Mig Light" from new brand to variant of an existing brand, thereby increasing the product's tax base, would infringe upon the basic legal maxim that *what cannot be done directly cannot be done indirectly.*[64] Indeed, only Congress can lawfully make such re-classification.

In *British Tobacco vs. Commissioner of Internal Revenue*[65], the Supreme Court discussed the purpose of the classification freeze provision and the danger that ensues without it, *viz.*:

> To our mind, the classification freeze provision was in the main the result of Congress's earnest efforts to improve the efficiency and effectivity of the tax administration over sin products while trying to balance the same with other State interests. **In particular, the questioned provision addressed Congress's administrative concerns regarding delegating too much authority to the DOF and BIR as this will open the tax system to potential areas for abuse and corruption. Congress may have reasonably conceived that a tax system which would give the least amount of discretion to the tax implementers would address the problems of tax avoidance and tax evasion.**
>
> To elaborate a little, Congress could have reasonably foreseen that, under the DOF proposal and the Senate Version, **the periodic reclassification of brands would tempt the cigarette manufacturers to manipulate their price levels or bribe the tax implementers in order to allow their brands to be classified at a lower tax bracket even if their net retail prices have already migrated to a higher tax bracket after the adjustment of the tax brackets to the increase in the consumer price index. Presumably, this could be done when a resurvey and reclassification is forthcoming.** As briefly touched upon in the Congressional deliberations, the difference of the excise tax rate between the medium-priced and the high-priced tax brackets under RA 8240, prior to its amendment, was P3.36. For a moderately popular brand which sells around 100 million packs per year, this easily translates to P336,000,000. The incentive for tax avoidance, if not outright tax evasion, would clearly be present. Then again, the tax implementers may use the power to periodically adjust the tax rate and reclassify the brands as a tool to unduly oppress the taxpayer in order for the government to achieve its revenue targets for a given year.

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[62] Exhibit "F", *CTA Docket*, p. 83.
[63] Exhibit "I", CTA Docket, p. 94.
[64] Sps. Bulaong vs. Gonzales, G.R. No. 156318, September 5, 2011.
[65] G.R. No. 163583, April 15, 2009.

> Thus, Congress sought to, among others, simplify the whole tax system for sin products **to remove these potential areas of abuse and corruption from both the side of the taxpayer and the government.** Without doubt, the classification freeze provision was an integral part of this overall plan. This is in line with one of the avowed objectives of the assailed law "to simplify the tax administration and compliance with the tax laws that are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion." RA 9334 did not alter this classification freeze provision of RA 8240. On the contrary, Congress affirmed this freezing mechanism by clarifying the wording of the law. We can thus reasonably conclude, as the deliberations on RA 9334 readily show, that the administrative concerns in tax administration, which moved Congress to enact the classification freeze provision in RA 8240, were merely continued by RA 9334. Indeed, administrative concerns may provide a legitimate, rational basis for legislative classification. In the case at bar, these administrative concerns in the measurement and collection of excise taxes on sin products are readily apparent as afore-discussed.
>
> **Aside from the major concern regarding the elimination of potential areas for abuse and corruption from the tax administration of sin products, the legislative deliberations also show that the classification freeze provision was intended to generate buoyant and stable revenues for government.** With the frozen tax classifications, the revenue inflow would remain stable and the government would be able to predict with a greater degree of certainty the amount of taxes that a cigarette manufacturer would pay given the trend in its sales volume over time. The reason for this is that the previously classified cigarette brands would be prevented from moving either upward or downward their tax brackets despite the changes in their net retail prices in the future and, as a result, the amount of taxes due from them would remain predictable. The classification freeze provision would, thus, aid in the revenue planning of the government.
>
> All in all, the classification freeze provision addressed Congress's administrative concerns in the simplification of tax administration of sin products, **elimination of potential areas for abuse and corruption in tax collection, buoyant and stable revenue generation, and ease of projection of revenues.** Consequently, there can be no denial of the equal protection of the laws since the rational-basis test is amply satisfied. (Emphases supplied)

The discussion in the case of *Secretary of Finance vs. La Suerte Cigar and Cigarette Factory*[66] is also enlightening with regard to the rationale behind the one time classification of sin products:

> In order to implement RA 8240 following its effectivity on January 1, 1997, the BIR issued Revenue Regulations No. 1-97, dated December

[66] G.R. No. 166498, June 11, 2009.

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

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

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

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

Of course, Congress then decided on what will happen to the new brands or variants of existing brands. To favor government, a variant would be classified as the highest rate of tax for that particular brand. In case of a new brand, Mr. President, then the BIR should classify them. But

I do not think it was the intention of Congress then to give the BIR the authority to reclassify them every so often. I do not think it was the intention of Congress to allow the BIR to classify a new brand every two years, for example, because it will be arbitrary for the BIR to do so. x x x (Emphasis supplied)

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

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

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

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

The foregoing pronouncements of the Supreme Court emphasize the mandatory nature of the classification freeze mechanism. As applied to the present controversy, the notices and letters issued by the BIR, which *re-*

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classifies "San Mig Light" as a variant of an existing brand, is violative of such freeze mechanism.

Otherwise stated, the re-classification of a product from new brand to a variant of an existing brand, after a previous classification has already been made, necessarily engenders the same evil the law seeks to prevent - - the existence of uncertainty (and flexibility in a way of speaking) - - on the tax applicable to beer. Parenthetically, in the absence of a classification freeze provision, both the government and the taxpayers would be exposed to the undesirable scheme of changing the classification of the product to fall within the category that could either result in an increased tax rate or reduced tax rate, depending on the identity of the taxpayer as well as of the implementing officials. Precisely, the classification freeze provision seeks to address and prevent either the possible abuse of discretion by the BIR or any unfair business practice on the part of the taxpayer that thread on tax evasion. Incidentally, in fixing the selling price of their products, manufacturers take into consideration the tax component thereof. To alter the classification of a product that results in higher tax bracket, after it has been previously classified under a lower tax bracket, is anathema to a fair and just taxation.

There is no denying that "San Mig Light" is identifiable with SMC as its manufacturer. But distinction should be made between the attribution of a product to a manufacturer and the attribution of a brand to an existing brand of the manufacturer. In the first instance, the goodwill of a manufacturer is entirely irrelevant in determining whether a brand is a variant of an existing brand; but not so with respect to the second instance. To state that SMC - - capitalizing on the goodwill of its business name - - cannot introduce a "new brand", as long as it is attributable to it as a manufacturer is absurd, to say the least. The law never intends the absurd.

The Court is not unaware of the *1993* case of **Asia Brewery, Inc. vs. The Honorable Court of Appeals and San Miguel Corporation**[67] where the Supreme Court held that the word *"pale pilsen"* are generic words descriptive of the color (pale) and of a type of beer (pilsen) and that the word "pale pilsen' may not be appropriated by SMC for its exclusive use. Suffice it to say that notwithstanding afore-stated 1993 pronouncement, the legislature passed RA No. 8240 in 1996 and RA No. 8424 in 1997 which recognized the registration of "Pale Pilsen" as one of SMC's beer products. Unless and until RA No. 8240 and RA No. 8424 *vis-a-vis* their Annexes are rendered void or unconstitutional, "Pale Pilsen" remains petitioner SMB's

[67] G.R. No. 103543, July 5, 1993.

brand for purposes of classification of beer products and the imposition of excise tax thereon

All told, this Court concludes that "San Mig Light" is a new brand and not a variant of any of SMC's or petitioner SMB's existing beer products. Being a new brand that is being sold at the net retail price of ₱21.15 per liter, or bottle, less VAT and specific tax, the same should only be taxed at the rate of ₱12.30 per liter.

The foregoing pronouncement that "San Mig Light" is a new brand and not a variant of any of SMC's or petitioner SMB's existing beer products is not, however, novel. In the case of **Commissioner of Internal Revenue vs. San Miguel Corporation,**[68] the Court *En Banc* already ruled that "San Mig Light" is a new brand. Pertinent pronouncement of the Court *En Banc* reads:

> "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 x x x.
>
> Xxx xxx xxx.
>
> **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 xxx xxx.
>
> Based on the law and admission by both parties on August 2, 2005, the fact of registration of San Mig Light as a new brand in October 1999 and reconfirmation of such classification on February 7,

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[68] CTA EB No. 873, October 24, 2012, penned by Senior Associate Justice Juanito C. Castañeda, Jr. and concurred by Retired Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista, Associate Justice Caesar A. Casanova, Retired Associate Justice Olga Palanca-Enriquez and Associate Justice Cielito N. Mindaro-Grulla. Associate Justices Erlinda P. Uy, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas were on leave.

> 2002 belie 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 x x x.:
>
> Xxx xxx xxx.
>
> 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. 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."

Accordingly, this Court shall proceed to determine the amount of excise taxes that should be refunded to petitioner SMB for the period January 1, 2009 to December 31, 2009.

III. Amount of Excise Taxes Paid to be Refunded or Issued Tax Credit Certificate in favor of Petitioner SMB

A close scrutiny of the records reveals that the total excise taxes claimed for refund in the amount of ₱730,602,083.97 pertains to excise taxes overpaid by petitioner SMB on its removal of "San Mig Light", one of its beer products, 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, 2009 to December 31, 2009, broken down as follows:[69]

Brewery	Volume of Removals (in liters)	Excise Taxes Paid @ ₱19.05		Should be Excise Taxes Paid @ ₱14.34		Difference (Amount being claimed for refund)
		Per Liter	Amount	Per Liter	Amount	
Polo, Valenzuela	34,119,217.00	₱19.05	₱ 649,971,089.17	₱14.34	₱ 489,269,575.80	₱160,701,513.37
San Fernando, Pampanga	95,178,846.00	19.05	1,813,157,007.17	14.34	1,364,864,644.76	448,292,362.41

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[69] Exhibit "OO", p. 1.

Bacolod City, Negros Occidental	15,233,898.00	19.05	290,205,761.47	14.34	218,454,100.76	71,751,660.71
Mandaue City, Cebu	4,509,505.00	19.05	85,906,078.63	14.34	64,666,308.01	21,239,770.62
Davao City	6,075,749.00	19.05	115,743,014.65	14.34	87,126,237.79	28,616,776.86
Total	**155,117,215.00**		**₱2,954,982,951.09**		**₱2,224,380,867.12**	**₱730,602,083.97**

To support its claim, petitioner SMB adduced in evidence the following documents, *inter alia*, which were all examined and verified by the Court-commissioned Independent Certified Public Accountant (ICPA), Mrs. Normita L. Villaruz of Villaruz, Villaruz & Co., CPAs, to wit:

1. Excise Tax Returns and related documents;[70]
2. Movement Reports with Allocated Deposit Removals Schedules, and Total Removals Reports;[71]
3. Official Delivery Invoices and Daily Sworn Statements[72] – Polo Brewery;
4. Official Delivery Invoices and Daily Sworn Statements[73] – San Fernando Brewery;
5. Official Delivery Invoices and Monthly Sworn Statements[74] – Bacolod Brewery;
6. Official Delivery Invoices, Daily Sworn Statements and Revenue Officer on Premise Daily Reports[75] - Mandaue Brewery;
7. Summaries of Shipment, Official Delivery Invoices, Daily Sworn Statements and Revenue Officer on Premise Daily Reports[76] – Davao Brewery;
8. Shipping Memorandums and Issue Receipt Documents[77] – Polo Brewery;
9. Shipping Memorandums, Claim Memos and Gate Passes[78] – San Fernando Brewery;
10. Shipping Memorandums and Delivery Receipts[79] - Bacolod Brewery;
11. Shipping Memorandums[80] - Mandaue Brewery; and,
12. Shipping Memorandums, Complimentary Forms and Gate Passes[81] - Davao Brewery

After a thorough scrutiny of the evidence submitted by petitioner, the Court sustains the findings and observations of the Court-commissioned ICPA.

[70] Exhibits "RR1-1" to "RR1-468"; "RR2-1" to "RR2-498"; "RR3-1" to "RR3-498"; "RR4-1" to "RR4-491"; "RR5-1" to "RR5-489".
[71] Exhibits "SS-1" to "SS-12".
[72] Exhibits "UU1-1" to "UU1-310".
[73] Exhibits "UU2-1" to "UU2-328".
[74] Exhibits "UU3-1" to "UU3-329".
[75] Exhibits "UU4-1" to "UU4-135".
[76] Exhibits "UU5-1" to "UU5-304".
[77] Exhibits "WW1-1" to "WW1-5,968".
[78] Exhibits "WW2-1" to "WW2-12,833".
[79] Exhibits "WW3-1" to "WW3-2,548".
[80] Exhibits "WW4-1" to "WW4-1,521".
[81] Exhibits "WW5-1" to "WW5-2,172".

As established by Court-commissioned ICPA in her Report, petitioner SMB's total Advance Excise Tax Deposits for the period covered for all beer products for each of the five (5) plants amounted to ₱15,822,488,575.02, which were duly filed and paid by petitioner SMB to the BIR thru BIR eFPS [82]. The said amount may be broken down as follows:[83]

Plants	Amount
Polo, Valenzuela	₱ 2,974,766,000.02
San Fernando, Pampanga	7,039,648,000.04
Bacolod City, Negros Occidental	1,033,882,574.87
Mandaue City, Cebu	3,298,979,000.04
Davao City	1,475,213,000.05
Total Advance Excise Tax Deposits (Annex RR)	**₱15,822,488,575.02**

On the other hand, petitioner SMB's Movement Report with Allocated Deposits shows that the computed excise taxes due on the removal of all beer products from the five (5) plants for the period January 1, 2009 to December 31, 2009 amounted to ₱15,843,082,993.11, summarized as follows:[84]

Plants	Amount
Polo, Valenzuela	₱ 2,982,131,190.92
San Fernando, Pampanga	7,044,277,494.47
Bacolod City, Negros Occidental	1,033,280,759.53
Mandaue City, Cebu	3,302,776,669.05
Davao City	1,480,616,879.14
Total Excise Tax Due	**₱15,843,082,993.11**

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 ₱15,843,082,993.11 has been duly paid to the BIR as evidenced by the Excise Tax Returns (BIR Form No. 2200-A)[85] filed for the five (5) plants for the period January 1, 2009 to December 31, 2009. OM

[82] Exhibits "RR1-1" to "RR1-468"; "RR2-1" to "RR2-498"; "RR3-1" to "RR3-498"; "RR4-1" to "RR4-491"; "RR5-1" to "RR5-489".
[83] Exhibit "OO", p. 6.
[84] Exhibit "OO", p. 7.
[85] Exhibits "RR1-1" to "RR1-468"; "RR2-1" to "RR2-498"; "RR3-1" to "RR3-498"; "RR4-1" to "RR4-491"; "RR5-1" to "RR5-489".

The total amount of Advance Excise Tax Deposits made for the period covered amounting to ₱15,822,488,575.02 when added to the beginning balance of Advance Excise Tax Deposits amounting to ₱87,419,305.62 will result to a total amount of ₱15,909,907,880.64. The sum is sufficient to cover the total computed excise taxes due per Movement Report with Allocated Deposits amounting to ₱15,843,082,993.11 and will result in an excess advance payment of ₱66,824,887.73, as computed below:[86]

	Annex	Amount
Beginning Balance of Advance Payment of Excise Tax Deposit per ETR, December 31, 2008 of the five (5) plants	TT	₱ 87,419,305.62
Add: Advance payments of excise tax deposits of the five (5) plants for the period covered January 1, 2009 - December 31, 2009	RR	15,822,488,575.02
Advance Payments of Excise Tax Deposit as of December 31, 2009 of the five (5) plants		**₱15,909,907,880.64**
Less: Excise taxes due on ALL BEER products for the period covered January 1, 2009 - December 31, 2009 Variance per monthly Movement Report vs ETR	SS	₱15,843,082,993.11 (0.20)
Total excise taxes due on removals per Excise Tax Returns of the five [5] plants for the period covered	$SS_{1.1}$	**₱15,843,082,992.91**
Excess of Advance Payment of Excise Tax Deposits over Excise Taxes due as of December 31, 2009	TT	**₱ 66,824,887.73**

As reported by the ICPA, 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 (5) plants for the period covered in the present claim[87].

An examination of the Excise Tax Returns (ETRs), 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 ₱15,843,082,992.91 from the five (5) plants comprised of: (1) excise taxes due and paid on "San Mig Light" removals amounting to ₱2,954,982,951.07 and the (2) excise taxes due on all other beer products amounting to ₱12,888,100,041.84[88], detailed as follows:

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[86] Exhibit "OO", p. 8.
[87] Exhibit "OO", p. 22.
[88] The sum of ₱8,966,308,663.12, ₱3,722,244,591.65 and ₱199,546,787.07.

Actual Excise Taxes Paid for the Period covering January 1, 2009 to December 31, 2009					
	On SML products	**On other beer products**			
Brewery	**@ ₱19.05**	**@ ₱9.64**	**@ ₱14.34**	**@ ₱19.05**	**Total**
Polo	₱ 649,971,089.20	₱1,372,536,469.69	₱ 760,076,844.87	₱199,546,787.07	₱ 2,982,131,190.83
San Fernando	1,813,157,007.15	4,144,330,318.53	1,086,790,168.84	-	7,044,277,494.52
Bacolod	290,205,761.47	465,329,067.54	277,745,930.43	-	1,033,280,759.44
Mandaue	85,906,078.64	2,029,768,144.26	1,187,102,446.10	-	3,302,776,669.00
Davao	115,743,014.61	954,344,663.10	410,529,201.41	-	1,480,616,879.12
Total	**₱2,954,982,951.07**	**₱8,966,308,663.12**	**₱3,722,244,591.65**	**₱199,546,787.07**	**₱15,843,082,992.91**

The total amount of excise taxes due on "San Mig Light" removals paid to the BIR amounting to ₱2,954,982,951.07 tallies with the total amount of excise taxes paid per petitioner SMB's Petition for Review amounting to ₱2,954,982,951.09 except for a minimal difference of ₱.02 due to rounding-off, as shown below:

	Annex	**in Liters**	**Amount of Excise Taxes as paid @ ₱19.05**
Excise Taxes filed and paid per BIR Form 2200-A Schedule 1 of ETRs for the five (5) plants	$SS_{1.2.1}$	155,117,215.28	₱ 2,954,982,951.07
Excise Taxes claimed as paid per petitioner's Petition for Review	QQ_1	155,117,215.00	2,954,982,951.09
Variance-rounding-off difference		**0.28**	**₱ (0.02)**

Further, a comparison of total "San Mig Light" removals as reported per ETRs versus "San Mig Light" removals per Shipping Memoranda (SMs) and lists of SM per SAP Files, Official Delivery Invoices (ODIs), Daily Sworn Statements and Revenue Officer on Premise Reports (SSRs) and Summaries of Shipment resulted in a net adjustment or overpayment of excise taxes due on 1,425.60 liters of "San Mig Light" removals for the Polo Plant, amounting to ₱6,715.14, breakdown as follows:[89]

[89] Exhibit "OO", pp. 13-14.

Polo Plant	Annex	Quantity of Volume in Liters	Excise Taxes		Additions/ (Deductions) from claim
			Due at ₱19.05	Due at ₱14.34	
1.) June 8, 2009 - ODI No. 0021508 - Overpayment of Excise taxes paid per ETR on misclassified SML removals which should have been paid for Other Beer products and which should not be included in the claim. SML removals in liters per: SM, ODI & SSR 13,233.84 ETR 20,219.28 Variance (6,985.44)	$VV_{1.1}$	(6,985.44)	₱ (133,073.19)	₱ (100,171.21)	₱ (32,901.98)
2.) October 26, 2009 - Underpayment of excise taxes paid on SML removals which were paid for Other Beer products and which should be included in the payment of excise taxes for SML removals SML Excise tax payment Per daily SSRSR 62,593.44 Per ETR 57,033.60 Variance 5,559.84	$VV_{1.1}$	5,559.84	105,914.95	79,728.11	26,186.84
Total Net Adjustment		**(1,425.60)**	**₱ (27,158.24)**	**₱ (20,443.10)**	**₱ (6,715.14)**

On the basis of the foregoing, the Court holds that petitioner SMB's is entitled to the refund or issuance of tax credit certificate of its overpaid excise taxes on "San Mig Light" for the period from January 1, 2009 to December 31, 2009 but in the reduced amount of ₱730,595,368.81, as computed below:

Total Excise Taxes Claimed for Refund		₱ 730,602,083.97
Less: Deductions from claim:		
Variance of excise taxes per CTA Petition vs per ETRs	₱ 0.02	
Overpayment of excise taxes due to misclassifications	6,715.14	6,715.16
Recomputed Excise Taxes for Refund/Issuance of Tax Credit Certificate		**₱ 730,595,368.81**

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WHEREFORE, in light of the foregoing, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner San Miguel Brewery Inc. in the amount of **SEVEN HUNDRED THIRTY MILLION FIVE HUNDRED NINETY FIVE THOUSAND THREE HUNDRED SIXTY EIGHT PESOS AND 81/100** (₱730,595,368.81) representing excise taxes on "San Mig Light" which were erroneously, excessively and/or illegally collected from, and overpaid by, San Miguel Brewery Inc. to the Bureau of Internal Revenue, for the period from January 1, 2009 to December 31, 2009.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

With Dissenting Opinion:
Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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 in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

SAN MIGUEL BREWERY INC., A SUBSIDIARY OF SAN MIGUEL CORPORATION, Petitioner,	**CTA CASE NO. 8209**
	Members: DEL ROSARIO, PJ, *Chairperson* UY, and MINDARO-GRULLA, JJ.
-versus-	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 12 2014 ; 10:00 a.m.

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DISSENTING OPINION

MINDARO-GRULLA:

With due respect, I dissent from the majority opinion. I maintain my earlier position (dissenting opinion) in the case of CIR vs. San Miguel Corporation, CTA EB Case No. 755 (CTA Case No. 7708), dated September 20, 2012. Thus, in the instant case, I vote to deny the claim for refund in the amount of ₱730,602,083.97, representing excise taxes on "San Mig Light" allegedly erroneously, excessively, and /or illegally collected.

I find the product, "San Mig Light"[1] marketed as a "low calorie pale pilsen", a variant of "San Miguel Pale Pilsen"[2] described as "expertly brewed beer". Likewise, it is my view that the CIR is precluded from reclassifying the net retail prices of existing and those brands introduced between January 1, 1997 and December 31, 2003 but not in properly determining a brand as variant of a brand erroneously determined as new brand. The classification freeze provision pertains not to the determination of whether a brand is indeed a new brand or variant of a brand but rather to the specific range of net retail prices[3] of brand upon which is levied, assessed and collected a rate of excise tax[4]. Thus, I

[1] Exhibit "W-4".
[2] Exhibit "W-3", CTA docket p.708; Exhibit "1" CTA docket p.1122; Exhibit "3" CTA docket p.1172.
[3] British American Tobacco vs. Camacho, et al., G.R. No. 162583, August 20, 2008.
[4] Revenue Regulations No. 03-06

maintain my view in the Court En banc case docketed as CTA EB No. 755 (CTA Case No. 7708) involving the same issues and parties. To wit:

*"xxx,**[W]hen the legislature defines a "variant of a brand", the legislature refers to the word "brand" as those brand marketed to the consumers and that it intended to tax those brands marketed under almost an identical name with a prefix or suffix of brands that are already well-known in the market.** Moreover, the omission in the law of the other definition of a variant of a brand such as — "a different brand which carries the same logo or design of the existing brand" in fact reveals the legislative intent to adopt the purpose to tax those brands who ride on the popularity of previously registered brand marketed under almost an identical name with a prefix, suffix or a variant.*

*While in Annexes C1 and C2 of RA 8240, the list contained San Miguel Corporation as manufacturer and brand "RPT in Cans 330 ml (24)" and "pale pilsen 320 ml (24)", as high priced brands and medium priced brands respectively, it is not the brand contemplated by the legislature as being marketed to the consumer. **RPT is hardly a brand name marketed by SMC or mere "pale pilsen"; rather, it is "San Miguel Pale Pilsen". "RPT in Cans" (Ring Pull Tab) refers to San Miguel Pale Pilsen in can and "Pale Pilsen 320 ml" to San Miguel Pale Pilsen in bottles. Visibly, SMC incorporated its tradename in the product name "San Miguel Pale Pilsen" and trademark thereon. Moreover, in Asia Brewery, Inc. vs. The Honorable Court of Appeals and San Miguel Corporation, the Supreme Court held that the word "pale pilsen" is mere generic words, non-registerable and not appropriable by any beer manufacturer**, to wit:*

> *'There is hardly any dispute that the dominant feature of SMC's trademark is the name of the product: SAN MIGUEL PALE PILSEN, written in white Gothic letters with elaborate serifs at the beginning and end of the letters "S" and "M" on an amber background across the upper portion of the rectangular design.*
>
> *xxx xxx xxx.*
>
> *The fact that the words pale pilsen are part of ABI's trademark does not constitute an infringement of SMC's trademark: SAN MIGUEL PALE PILSEN, for "pale pilsen"*

(k) CLASSIFICATION — shall refer to the specific range of net retail prices of brands of alcohol or tobacco products upon which is levied, assessed and collected a rate of excise tax specified by the Act, inclusive of the tax rates imposed on certain brands under Annexes A, B, C and D of R.A. No. 8240, as implemented by Revenue Regulations No. 17-99;

are generic words descriptive of the color ("pale"), of a type of beer ("pilsen"), which is a light bohemian beer with a strong hops flavor that originated in the City of Pilsen in Czechoslovakia and became famous in the Middle Ages. (Webster's Third New International Dictionary of the English Language, Unabridged. Edited by Philip Babcock Gove. Springfield, Mass.: G & C Merriam Co., [c] 1976, page 1716.) "Pilsen" is a "primarily geographically descriptive word," (Sec. 4, subpar. [e] Republic Act No. 166, as inserted by Sec. 2 of R.A. No. 638) hence, non-registerable and not appropriable by any beer manufacturer. . . . .'

Even if mere "pale pilsen" or "RPT" (ring pull tab) were registered as SMC's brand we shall consider the name of the product as it appears on the product itself. The word "San Miguel Pale Pilsen" describes as "expertly brewed original full-flavored" and not mere "Pale Pilsen" which is non-registerable and not appropriable by any beer manufacturer, against "San Mig Light" describe as a "low calorie pale pilsen".

SMC stressed the following points in its memorandum we quote:

"9.05a The word "Light" in "San Mig Light" can not be categorized as mere suffix. It is part and parcel of the brand "San Mig light".

9.05b "San Mig Light" is the root name of the brand itself, and not merely "San Mig". Section 143 of the NIRC does not make mention of any "modified root name".

9.05c. In Annexes "C-1 and C-2" of the 1997 NIRC, which are integral parts of the law, there is no official brand of "San Miguel Pale Pilsen", but only pale pilsen.

9.05d. If "San Miguel Pale Pilsen" is the brand, "San Mig" a mere modified root name of "San Miguel" and the word "Light" is to be considered as a modifier then the resulting brand would have been "San Miguel Pale Pilsen Light" and not "San Mig Light". Indeed, If "San Miguel Pale Pilsen" is the brand and respondent wanted to ride on the popularity of "Pale Pilsen", it would have adopted the brand "San Mig Pale Pilsen Light."

9.05.e. For a brand to be a variant of another, Section 143 of the NIRC, prior to its amendment by RA No. 9334, required that the design of their brands must be "same"; "great similarity" is not sufficient."

Unless erroneous, courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce. Moreover, the need for certainty and predictability in the implementation of tax laws is crucial in the scheme of judicial tax administration. Applying Revenue Regulations No. 03-06 implementing RA 9334 which took effect on January 1, 2005, "San Mig Light" described as a "low calorie pale pilsen" is a variant of "San Miguel Pale Pilsen" described as "expertly brewed original full-flavored". Said revenue regulations, in general have the force and effect, or partake of the nature, of a statute.

I agree to the application of Revenue Regulations No. 03-06 implementing RA 9334 which took effect on January 1, 2005 and the findings in the dissenting opinion of the Decision dated January 7, 2011, to wit:

> *'It bears stressing that Revenue Regulations No. 03-06, which was issued by the respondent, clarifies certain provisions of the NIRC with respect to the excise tax applicable to alcohol and tobacco products. It states thus:*
>
> *SECTION 2. Definition of Terms. — . . .*
>
> *xxx xxx xxx*
>
> *(d) VARIANT OF A BRAND — shall refer to a brand*
>
> *For this purpose, the term "root name" shall refer to a letter, word, number, symbol, or character; or a combination of letters, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: Provided, That the root name has been originally registered as such with the Bureau of Internal Revenue (BIR).*
>
> *xxx xxx xxx.*
>
> *The term "modifier" shall refer to a word, a number, or a combination of words and/or numbers that specifically describe the root name to distinguish one variant from another whether or not the use of such modifier is a common industry practice. The root name, although accompanied by a modifier at the time of the original brand registration, shall be the basis in determining the tax classification of subsequent variants of such brands.*
>
> *Examples of modifiers:*
>
> *xxx xxx xxx.*
>
> *For beer: "Light", "Dry", "Ice", "Lager", "Hard", "Premium", etc.*
>
> *To advance the position that San Mig Light is not a variant of any existing brand, petitioner argues that San Miguel is not part of the brand but merely the name of manufacturer. Petitioner further argues that the words "Pale Pilsen" are*

mere generic words, following the Supreme Court in Asia Brewery, Inc. v. Court of Appeals, et al." which was decided in 1993.

I do not agree with petitioner. If these arguments are followed, then one of petitioner's products the "San Miguel Pale Pilsen" which is contained in Annexes C-1 and C-2 of the NIRC will appear to be unbranded product of petitioner since it only has the name of the manufacturer "San Miguel" and the generic words "Pale Pilsen". This clearly cannot be the case.

xxx xxx xxx.

The petitioner argues that assuming that the word "San Miguel" forms part of the brand, the aforesaid words are not present in "San Mig Light. We find this argument specious.

Based on the discussion above, petitioner clearly intended that the words "San Miguel form part of the brand name of this line of beer products. Thus, the addition of the modifier "Light" to the brand is merely an indication that "San Mig Light" is a variant of the San Miguel Pale Pilsen brand, one which is "lighter" in the sense that it has less calories than the regular San Miguel Pale Pilsen. This conclusion is supported by Revenue Regulations No. 03-06, which provides in Section 2 that:

In case a letter(s), number(s), symbol(s) or word(s) is/are deleted from or replaced by another letter(s), number(s), symbol(s) or word(s) in the root name of a previously BIR-registered brand, such that the introduction of the said brand bearing such change(s) shall ride on the popularity of the said previously registered brand, the same shall be classified as a variant of such previously registered brand: Provided, That where the introduction of such brand by another manufacturer or importer will give rise to any legal action with respect to infringement of patent or unfair competition, such brand shall be considered a variant of such previously registered brand.

ILLUSTRATION:
No. 2 —

ROOT NAME	*MODIFIER IS PREFIXED*	*MODIFIER IS SUFFIXED*	*MODIFIED ROOT NAME*
L & M	*Kings L & M*	*L & M Lights*	*M & L*
10	*Perfect 10*	*10 Menthols*	*Ten*
Blue Ice	*Wild Blue Ice*	*Blue Ice Supreme*	*Blue Iced*
Red Horse	*Flying Red Horse*	*Red Horse Premium*	*Reddish*
Horse			
Pall Mall	*Long Pall Mall Pall Mall*		*Filter Pal Mall*

Based on the above quoted regulation, it is clear that "San Mig" is a mere modified root name of "San Miguel" with the mere affixation of "Light" to form "San Mig Light" . . . .'

Likewise, Revenue Regulations No. 03-06, clarifies that any variation in the color and/or design of the label (such as logo, font, picturegram, and the like), manner and/or form of packaging or size of container of the brand originally registered with the BIR shall not, by itself, be deemed an introduction of a new brand or a variant of a brand. Thus, the differences or similarity in the packaging of San Miguel Pale Pilsen and San Mig Light, is not by itself deemed an introduction of a new brand or a variant of a brand.

From the definition of "variant of a brand" in RA 9334 which took effect on January 1, 2005, the revenue regulation implementing the said provision, as well as the legislative deliberation clarifying the purpose and intent behind the law, as well as the findings of CIR that of the existing beer products of SMC only "San Mig Light" and "San Miguel Pale Pilsen" has the word "pale pilsen" in its label. Thus, it can be concluded that "San Mig Light" described as low calorie pale pilsen is a "variant of a brand" of "San Miguel Pale Pilsen".

Respectfully submitted.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice