REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SAN MIGUEL CORPORATION,
Respondent.

CTA EB NO. 755
(CTA CASE NO. 7708)

Members:

ACOSTA, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, *and,*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
SEP 2 0 2012 10:15 a.m.

x- x

DECISION

ACOSTA, *PJ:*

Before this Court of Tax Appeals *En Banc* is a Petition for Review filed on April 28, 2011 assailing the Decision of the Court of Tax Appeals Third Division promulgated on January 7, 2011 in CTA Case No. 7708 entitled "SAN MIGUEL CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, and its Resolution promulgated on March 23, 2011, denying Petitioner's Motion for Reconsideration of the said Third Division's Decision promulgated on January 7, 2011. The dispositive portion of the assailed January 7, 2011 Decision reads:

> "**WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor [of] petitioner in the amount of P926,169,056.74, representing erroneously, or excessively and/or illegally collected, and overpaid excise taxes on "San Mig Light" during the period from December 1, 2005 up to July 31, 2007.
>
> **SO ORDERED**.

THE FACTS

Culled from the records of the case, the facts as found by this Court's Division are as follows:

> Petitioner (herein respondent SMC), San Miguel Corporation, 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.
>
> Respondent (herein petitioner CIR), Commissioner of Internal Revenue, is the head of the Bureau of Internal Revenue ("BIR"), with office address at the Office of the Commissioner of Internal Revenue, BIR Building, Diliman, Quezon City, Metro Manila.
>
> One of the beer products being manufactured by SMC is "San Mig Light."
>
> On October 19, 1999, Mr. Virgilio S. De Guzman, SMC's then Assistant Vice President – Finance, wrote Assistant Commissioner Leonardo B. Albar of the Excise Tax Services of the BIR, requesting for the registration of, and authority to manufacture "San Mig Light," to be taxed at P12.15 per liter.
>
> In a letter dated October 27, 1999, Assistant Commissioner Albar granted SMC's said request.
>
> On November 3, 1999, due to the change in the net retail price of "San Mig Light," Mr. De Guzman, advised Assistant Commissioner Albar that "San Mig Light" will be sold at a suggested retail price of P21.15 per liter, or P6.98 per bottle, less value-added tax ("VAT") and specific tax, to be taxed at P9.15 per liter.
>
> On January 28, 2002, Mr. Alfredo R. Villacorte, SMC's Vice-President and Manager of the Group Tax Services, wrote to the Chief of

ÿh

the Large Taxpayers Assistance Division II ("LTAD II") of the BIR, requesting for information on the tax rate and classification of "San Mig Light" and another of its beer product named "Gold Eagle King."

On February 7, 2002, Mr. Conrado P. Item, Acting Chief of the LTAD II, replied to SMC's letter dated January 28, 2002, confirming based on documents submitted that SMC is allowed to register, manufacture, and sell "San Mig Light" as a new brand and has been paying the excise tax thereon for a considerable length of time, and that the tax classification and rate of "San Mig Light" as a new brand are in order.

On May 28, 2002, Assistant Commissioner Edwin R. Abella of the Large Taxpayers Service ("LTS"), issued a Notice of Discrepancy against SMC, stating 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.

In a letter-reply dated July 9, 2002, Mr. Bienvenido N. Banas, SMC's then Finance Manager, Beer Division, requested for the withdrawal of the said Notice of Discrepancy.

On October 14, 2002, Assistant Commissioner Abella, sent its letter-rejoinder to SMC, stating, that "San Mig Light Pale Pilsen" is truly a variant of "San Miguel Pale Pilsen." In support of this finding, he cited certain statements made in "Kaunlaran," a publication of SMC, and the latter's Annual Report.

On November 20, 2002, Mr. Alfredo R. Villacorte, SMC's Vice-President and Manager of the Group Tax Services, replied to Assistant Commissioner Abella, requesting that "San Mig Light" be reconfirmed as a new brand and that the deficiency assessment be set aside and the demand for payment be withdrawn.

On January 6, 2004, Commissioner Guillermo Parayno, Jr., issued a letter to SMC, concluding based on the grounds stated therein that "San Mig Light" is a variant of "San Miguel Pale Pilsen in can," and that an assessment for deficiency excise tax against SMC is forthcoming.

On January 28, 2004, Deputy Commissioner Estelita C. Aguirre, issued a Preliminary Assessment Notice against SMC in the amount of P852,039,418.15, allegedly representing deficiency excise tax, inclusive of increments, on the removals of "San Mig Pale Pilsen Light" for the period covering 1999 to January 7, 2004, citing as basis that "San Mig Light is a variant of your existing beer products."

On February 4, 2004, the Officer-in-Charge of the LTS, Deputy Commissioner Aguirre, issued a Notice of Discrepancy against SMC, stating that there is found due from SMC an alleged deficiency excise tax

ʃa

in the amount of P28,876,108.84 for the period covering January 8, 2004 to January 29, 2004.

On March 24, 2004, Deputy Commissioner Aguirre, issued a Preliminary Assessment Notice against SMC for the amount of P29,967,465.37, allegedly representing deficiency excise tax, inclusive of increments, for the period covering January 8, 2004 to January 29, 2004, citing as basis that "San Mig Light" is a "variant of RPT in can (San Miguel Beer Pale Pilsen)."

On April 12, 2004, Deputy Commissioner Aguirre, issued a Formal Letter of Demand against SMC, with attached Assessment Notice, also dated April 12, 2004, requesting SMC to pay the deficiency excise tax assessment in the total amount of P876,098,898.83, including interest until April 30, 2004, for the period of November to December 1999 at P12.52 per liter, and January 2000 to January 7, 2004 at P13.61 per liter.

SMC then filed a Protest/Request for Reconsideration of the said Formal Letter of Demand and Assessment Notice.

On May 26, 2004, Deputy Commissioner Aguirre, issued a Formal Letter of Demand against SMC, with attached Assessment Notice No. TF 129-05-04, also dated May 26, 2004. The aforesaid Formal Letter of Demand requested SMC to pay the deficiency excise tax assessment in the total amount of P30,763,133.68, including interest until June 30, 2004.

SMC also filed a Protest/Request for Reconsideration dated July 5, 2004 on the said Formal Letter of Demand and Assessment Notice.

On August 17, 2004, the then Officer-in-Charge of the LTS, Deputy Commissioner Kim S. Jacinto-Henares, replied to the letter of SMC, informing the latter that its Protest/Request for Reconsideration has been denied "for lack of legal and factual basis." She stated in the aforesaid letter that "San Mig Light" is "a variant of RPT in can (San Miguel Pale Pilsen in can)."

On August 20, 2004, Deputy Commissioner Kim S. Jacinto-Henares, informed SMC that its Protest/Request for Reconsideration dated July 5, 2004 has also been denied "for lack of legal and factual basis." She stated in the aforesaid letter that "San Mig Light" is "a variant of RPT in can (San Miguel Pale Pilsen in can)."

On September 17, 2004 and September 22, 2004, petitioner filed with this Court, Petitions for Review from the above-mentioned rulings of the BIR on its Protests/Requests for Reconsideration of the deficiency excise tax assessments issued against it. The Petitions for Review were respectively docketed as CTA Case No. 7052 and CTA Case No. 7053, and are pending trial before the Second Division.

On December 28, 2005, SMC filed its first claim for refund in the amount of P782,238,161.47 with the BIR.

On January 31, 2005, petitioner filed with this Court a Petition for Review on its first claim for refund which was docketed as CTA Case No. 7405 and is presently pending before the Second Division.

During the period from December 1, 2005 to December 31, 2006, SMC was obliged to continue paying excise taxes on "San Mig Light" at the increased tax rate of P16.33 per liter, and from January 1, 2007 to July 31, 2007 at the increased rate of P17.64 per liter.

On August 30, 2007, SMC filed its second claim for refund dated August 28, 2007, with the BIR in the amount of P926,389,172.02.

Due to the inaction of respondent on petitioner's second claim for refund dated August 28, 2007, SMC filed the present Petition for Review before this Court (in Division) on November 27, 2007.

In her Answer, filed on January 30, 2008, CIR averred the following Special and Affirmative Defenses:

24. SMC is estopped from questioning the classification of San Mig Light as variant of San Miguel Pale Pilsen due to the following grounds:

a. SMC has already admitted the correctness of the classification of San Mig Light as a variant of San Miguel Pale Pilsen in can when SMC has started paying on the excise tax under the highest tax classification of San Miguel Pale Pilsen (RPT in cans). This is a clear indication of the taxpayer's admission of the correctness of the classification of San Mig Light as a variant of an existing brand.

b. The publication of San Miguel, "Kaunlaran" contains statements that San Mig Light is a variant of Pale Pilsen with the same full flavored taste and alcohol or a low calorie variant.

c. SMC admitted in its Annual Report to its stockholders that San Mig Light is a variant of San Miguel Pale Pilsen in can.

d. SMC indicated in the bottle itself of San Mig Light that it is a low calorie pale pilsen.

25. It is a well-settled rule in taxation that the Government is not estopped by the mistakes or errors of its agents; an erroneous application and enforcement of law by public officer do not prevent the

Em

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

26. The opinion contained in Mr. Conrado Item's letter dated February 7, 2002 has no force and effect. Under Section 4 of the NIRC of 1997, the power to interpret the provisions of the said Code and other tax laws is the exclusive and original jurisdiction of the Commissioner of Internal Revenue subject to review by the Secretary of Finance. Further, under the provisions of Section 7 of the same Code, the power to recommend the promulgation of rules and regulations by the Secretary of Finance and to issue rulings of first impression or to reverse or revoke or modify any existing ruling of the BIR cannot be delegated. Accordingly, the opinion rendered in said letter is null and void, hence, cannot bind the BIR.

27. SMC's imagined defects in the issuance of the assessments for deficiency excise taxes against SMC have no bearing in this case. This case involves a claim for refund. It is well-settled that claims for refund partakes of the nature of claims for exemption, thus, it is incumbent upon the petitioner to prove that San Mig Light is not a variant of San Miguel Pale Pilsen in can.

During the trial on the merits, SMC and CIR presented documentary and testimonial evidence.

On January 8, 2010, the Court (in Division) considered the case submitted for decision after CIR filed her Memorandum on December 28, 2009, while SMC submitted its Memorandum on December 29, 2009.

On January 7, 2011, the Court of Tax Appeals Third Division rendered the assailed decision, which PARTIALLY GRANTED SMC's Petition for Review, ruling that "San Mig Light" is a new brand, and not a variant of an existing brand and ORDERED the CIR to REFUND OR ISSUE A TAX CREDIT CERTIFICATE in favor of SMC in the amount of P926,169,056.74.

Em

Herein petitioner CIR filed its Motion for Reconsideration of the said decision on January 28, 2011. The Court of Tax Appeals Third Division, in a Resolution promulgated on March 23, 2011, denied petitioner's Motion.

Hence, herein petitioner CIR filed on April 28, 2011 the instant Petition for Review before the Court *En Banc* assailing the Decision of the Court of Tax Appeals Third Division promulgated on January 7, 2011 in CTA Case No. 7708 entitled "SAN MIGUEL CORPORATION vs. Commissioner of Internal Revenue, and its Resolution promulgated on March 23, 2011, denying CIR's Motion for Reconsideration of the said Third Division's Decision promulgated on January 7, 2011. On the other hand, herein respondent SMC filed its comment on June 14, 2011.

On September 20, 2011, the Court *En Banc* issued a Resolution[1] submitting the case for decision, taking in consideration petitioner's memorandum[2] filed on July 25, 2011 and respondent's memorandum[3] filed on August 24, 2011.

THE ISSUES

The parties have agreed on the following issues[4] to be resolved by this Court:

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

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

---

[1] Docket, p. 524.
[2] Docket, pp. 384-399.
[3] Docket, pp. 405-522.
[4]Stipulation of Facts, Documents and Issues, CTA Case No. 7708, Docket, pp. 518-519.

Ē

3. Assuming it is a variant of an existing brand, whether or not the tax rate of P16.33 per liter, effective January 1, 2005, applies to "San Mig Light" removals from December 1, 2005 up to July 31, 2007.

THE MAIN ISSUE

WHETHER SMC IS ENTITLED TO A REFUND BY THE BUREAU OF INTERNAL REVENUE IN THE AMOUNT OF P926,389,172.02 AS HAVING BEEN ILLEGALLY, ERRONEOUSLY AND/OR EXCESSIVELY COLLECTED FROM AND OVERPAID BY IT AS EXCISE TAXES ON "SAN MIG LIGHT" FOR THE PERIOD FROM DECEMBER 1, 2005 TO JULY 31, 2007 AS A CONSEQUENCE OF ITS RE-CLASSIFICATION BY THE BUREAU OF INTERNAL REVENUE AS A VARIANT.

THE COURT *EN BANC's* DECISION

After a thorough review of the records of the case, the Court *En Banc* finds no cogent reason or overriding justification to disturb the assailed Decision and subsequent Resolution of the Court's Third Division.

Petitioner's arguments brought for the consideration of this Court *En Banc* were intricately and appropriately passed upon and resolved in the assailed Decision and Resolution of the Court's Third Division.

The pertinent provisions of Revenue Regulations No. 2-97 provide:

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 after January 1, 1997 and shall include previously registered, but inactive brands of alcohol products.

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:

En

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. *Variant of Existing Brand*

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 and shall remain in this classification until revised by Congress.

Likewise, prior to its amendment by RA No. 9334[5], section 143 of the National Internal Revenue Code (NIRC) of 1997 defined a "variant of a brand:

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.

Based on the above-mentioned definition, a variant of a brand has two types, namely:

---

[5] 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.

Em

1. A brand on which a modifier is prefixed and/or suffixed to the root name of the brand; and
2. A different brand which carries the same logo or design of the existing brand.

Therefore, based on the said revenue regulations and law, the term "new brands" refers to brands registered after January 1, 1997 and shall include previously registered, but inactive brands of alcohol products. This definition provides the criteria for the classification of brands introduced in the market after January 1, 1997, which are not variants of an existing brand.

Conversely, a "variant of brand" pertains to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

On January 1, 2005, Republic Act (RA) No. 9334, also known as "*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"*, took effect which introduced the following:

> "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, tupuy* and similar fermented liquors in accordance with the following schedule:
>
> xxx xxx xxx
>
> "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.

Gr

"A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.

xxx xxx xxx

"'New brand' shall mean a brand registered after the date of effectivity of R.A. No. 8240.

On January 3, 2006, Revenue Regulations No. 3-2006, *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, was issued which provides:*

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).

xxx xxx xxx

(e) EXISTING BRAND – shall refer to a brand of alcohol or tobacco products which is included in Annexes A, B, C and D of RA 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 RA No. 8240;

A *"new brand"* is now defined as brand registered after the date of effectivity of RA No. 8240 which is January 1, 1997; while a *"variant of a brand"*

Pa

shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.

Hence, the definition of a *"new brand"* has remained the same after RA 9334, while the definition of a *"variant of a brand"* has been amended since the second portion which defines it as *a different brand which carries the same logo or design of the existing brand* under RR No. 2-97 has been deleted.

As correctly found by the Third Division[6]:

> Based on the records of the case, a Letter dated October 19, 1999, addressed to Assistant Commissioner Alvar was sent by SMC's Assistant Vice President – Finance, Mr. De Guzman, seeking for the registration and authority to manufacture fermented liquor bearing the trademark, "San Mig Light." In reply, a Letter dated October 27, 1999 was issued by Assistant Commissioner Alvar, granting the said request.
>
> On February 7, 2002, a Letter was issued by Acting Chief, LTAD II, Mr. Item, addressed to SMC, stating as follows:
>
> 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 xxx xxx

However, a Notice of Discrepancy dated May 28, 2002 and a Letter dated October 14, 2002, was both issued by the then Assistant Commissioner Abella, who opined that "San Mig Light" is a variant of San Miguel Pilsen. Subsequently, on January 6, 2004, Commissioner Guillermo Parayno, Jr., issued a letter to SMC, concluding based on the grounds stated therein that "San Mig Light" is a variant

---

[6] SMC vs. CIR, CTA Case No. 7708, January 7, 2011.

of "San Miguel Pale Pilsen in can," and that an assessment for deficiency excise tax against SMC is forthcoming.

Apparently, the said Notice of Discrepancy and Letters have the effect of "reclassifying" "San Mig Light" as a variant of petitioner's existing beer products.

Nonetheless, such "reclassification" should not be given any legal effect because of the subsequent issuance of Revenue Memorandum Order (RMO) No. 6-2003 dated March 11, 2003 by then Commissioner Parayno. Annex A-3 thereof (MASTERLIST OF REGISTERED BRANDS OF LOCALLY MANUFACTURED ALCOHOL PRODUCTS – As of February 28, 2003) provides that "San Mig Light" is classified as "NB", which means a "new brand registered on or after January 1, 1997". Said RMO effectively nullified the Notice and Letter previously issued by Assistant Commissioner Abella who is merely a subordinate officer.[7]

Furthermore, Section 4(B)(e)(c), second paragraph of Revenue Regulations (RR) No. 2-97, as amended by RR No. 9-2003, provides:

> "For the purpose of establishing or updating the classification of new brands and variant(s) thereof, their current net retail price shall be reviewed periodically through the conduct of survey or any other appropriate activity, as mentioned above, every two (2) years unless earlier ordered by the Commissioner. However, notwithstanding any increase in the current net retail price, ***<u>the tax classification of such new brands shall remain in force until the same is altered or changed through the issuance of an appropriate Revenue Regulations.</u>***" (Emphasis supplied)

Likewise, Section 143 of the 1997 NIRC, as amended, provides:

> xxx xxx xxx
>
> ....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

---

[7] SMC vs. CIR, CTA Case Nos. 7052, 7053 and 7405, October 28, 2011, p.32.

Gm

> belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 ***shall not be revised except by an act of Congress***. (Emphasis supplied)

Moreover, RR No. 3-2006, provides:

> 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***: (Emphasis supplied)
>
> (a) Brands enumerated in Annexes "A", "B", "C" and "D" of RA 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 RA 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 classification prescribed under Section 5 of these Regulations.

Therefore, prior to the effectivity of RA 9334 and RR No. 3-2006, any "reclassification" of new brands shall be done only through the issuance of "an appropriate Revenue Regulations" in accordance with RR 9-2003. After the effectivity of RA 9334 and RR 3-2006, said "reclassification" may only be done through "an act of Congress". There being none, the classification of "San Mig Light" as a new brand remained in force, notwithstanding the subsequent issuance of the subject preliminary assessment notices, formal letters of demand with accompanying assessment notices, and the denial of petitioner's request for reconsideration of the said assessment notices.

En

In addition, in a similar case[8] promulgated by the First Division involving the same parties and the same issue, it was ruled that "San Mig Light" is a new brand. The pertinent portion of the said decision provides:

> The fact that "San Mig Light" is a "new brand" and not merely a variant of an existing brand is bolstered by the fact that Annexes "C-1" and "C-2" of RA No. 8240, which enumerated the fermented liquors registered with the BIR do not include the brand name "San Mig Light". Instead, what were listed, as existing brands of petitioner, as of the effectivity of RA No. 8240, were as follows: "Pale Pilsen 320 ml.", "Super Dry 355 ml.", "Grande 1000 ml.", "RPT in cans 330 ml.", "Premium Bottles 355 ml." and "Premium Can 330 ml." Even in Section 4 of RR No. 2-97 which provides for the classification and manner of taxation of existing brands, new brands and variants of existing brands, the list of existing brands of fermented liquors of petitioner does not include the brand "San Mig Light", but merely "RPT in cans 330 ml.", "Premium Bottles 355 ml.", and "Premium Bottle Can 330 ml." for high priced brands; and "Super Dry 355 ml.", "Pale Pilsen 320 ml.", and "Grande" for medium-priced brands.
>
> Thus, it is clear that when the product "San Mig Light" was introduced in 1999, it was considered as an entirely new product and a "new brand" of petitioner's fermented liquor, there being no root name of "San Miguel" or "San Mig" in its existing brand names. The existing registered and classified brand name of petitioner at that time was "Pale Pilsen". Therefore, the word "Light" cannot be considered as a mere suffix to the word "San Miguel", but it is part and parcel of an entirely new brand name, "San Mig Light". Evidently, as correctly pointed out by petitioner, "San Mig Light" is not merely a variant of an existing brand, but an entirely "new brand".
>
> Anent the second type of "variant of brand", *i.e.*, when a different brand carries the same logo or design of an existing brand, records show that there are marked differences in the designs of the existing brand "Pale Pilsen" and the new brand "San Mig Light":
>
> a) as to "Pale Pilsen" and "San Mig Light" in bottles:
>
> 1. the size, shape and color of the respective bottles are different. Each brand has a distinct design in its packaging. "Pale Pilsen" is in a steiny bottle, while "San Mig Light" is packed in a tall and slim transparent bottle;
>
> 2. the design and color of the inscription on the bottles are different from each other. "Pale Pilsen" has its label encrypted or embossed on the bottle itself, while "San Mig Light" has a silver

---
[8] *Ibid.* pp. 27-29.

Gr

and blue label of distinctive design that is printed on paper pasted on the bottle; and

3. the color of the letters in the "Pale Pilsen" brand is white against the color of the bottle, while that of the words "San Mig" is white against a blue background and the word "Light" is blue against a silver brackground.

b) as to "Pale Pilsen" and "San Mig Light" in cans:

1. the words "Pale Pilsen" are in ordinary font printed horizontally in black on the can against a diagonally striped light yellow gold background, while the words "San Mig" are in Gothic font printed diagonally on the can against a blue background and the word "Light" in ordinary font printed diagonally against a diagonally striped silver background; and

2. the general color scheme of "Pale Pilsen" is light yellow gold, while that of "San Mig Light" is silver.

Though the "escudo" logo appears on both "Pale Pilsen" bottle and can, and "San Mig Light" bottle and can, the same cannot be considered as an indication that "San Mig Light" is merely a variant of the brand "Pale Pilsen", since the said "escudo" insignia is the corporate logo of petitioner. It merely identifies the products as having been manufactured by petitioner, but does not form part of its brand. In fact, it appears not only in petitioner's beer products, but even in its non-beer products.

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

WHEREFORE, the present Petition for Review is hereby **DENIED** for lack of merit. The assailed decision and resolution of the Third Division of this Court promulgated on January 7, 2011 and March 23, 2011, respectively, in CTA Case No. 7708 entitled "SAN MIGUEL CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, are hereby **AFFIRMED**.

Accordingly, petitioner is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of respondent in the amount of P926,169,056.74, representing erroneously, excessively and/or illegally collected,

gr

and overpaid excise taxes on "San Mig Light" during the period December 1, 2005 to July 31, 2007.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

(concurs with the Separate Concurring Opinion of AJ Olga Palanca-Enriquez in CTA Case No. 7708)
JUANITO C. CASTANEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

I maintain my Separate Concurring Opinion in CTA Case No. 7708
OLGA PALANCA-ENRIQUEZ
Associate Justice

(concurs with the Dissenting Opinion of AJ Cielito N. Mindaro-Grulla)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(with Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

(I maintain my Dissenting Opinion in CTA Case No.7708 and concur with the Dissenting Opinion of AJ Cielito N. Mindaro-Grulla)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB CASE NO. 755 (CTA Case No. 7708)
-versus-	Present: ACOSTA, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA PALANCA-ENRIQUEZ FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS, JJ.
SAN MIGUEL CORPORATION, Respondent.	Promulgated: SEP 20 2012 10:15 a.m.

x--x

DISSENTING OPINION

MINDARO-GRULLA, J.

With due respect, I dissent from the majority opinion and vote to grant the petition docketed as CTA EB No. 755.

A brand that is registered and introduced in the market after the date of effectivity of Republic Act No. 8240[1](RA 8240) is a "New Brand". However, it does not necessarily mean that a mere registration and introduction of a new

---

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

product ipso facto make it a "New Brand". The taxing authority has to determine if indeed the new product being introduced to the market is a "New Brand" or a "Variant of a Brand". If a product was erroneously determined as new brand rather than a variant of a brand then the taxing authority should not be precluded in applying the applicable tax rate thereon.

A variant of a brand, presupposes the existence of an "Existing Brand" which pertains to a brand of alcohol or tobacco products which is included in Annexes A, B, C and D of RA No. 8240 and Revenue Regulations (RR) Nos. 1-97 and 2-97[2].

A perusal of Annexes C-1, C-2 of RA 8240 and Revenue Regulations (RR) No. 2-97, would reveal that there is no existing brand of "San Miguel Pale Pilsen", the brands of SMC in the list are as follows:

<u>High Priced Brands</u>

RPT in cans 330 ml. (24)
Premium Bottles 355 ml. (24)
Premium Cans 330 ml. (24)

<u>Medium Priced Brands</u>

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

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

Low Priced Brands

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

Thus, SMC argued that for tax purposes there is no such brand like "San Miguel Beer" or "San Miguel Beer Pale Pilsen". To wit:

> "Words 'San Miguel Corporation' or 'San Miguel' do not also form part of any of the SMC beer brands.-
>
> 15.00 With respect to the words "San Miguel Corporation" or "San Miguel", the same is the name of the manufacturer and does not form part of any of the SMC beer brands.
>
> 15.01 That "San Miguel" or "San Miguel Corporation" is the name of the manufacturer is clear in Annexes "C-1" and "C-2". As earlier stated this is in the law itself and is conclusive on the BIR.
>
> 15.02 The name "San Miguel" or "San Miguel Corporation" is not a brand. It is not one of the beer brands listed in Annexes "C-1" and "C-2" of the law. Thus, for tax purposes, there is no "San Miguel Beer" or San Miguel Beer Pale Pilsen" brand, as used by the BIR in its communications to respondent.
>
> 15.03 More specifically, the words "San Miguel" or "San Miguel Corporation" is a trade name, which is placed on every product which SMC produces, including its non-beer products. As already stated above, the corporate logo, the "Escudo", and corporate name, "San Miguel Corporation", refer to the identity of the manufacturer, which the company has developed in the minds of the public as synonymous with excellence in quality."[3]

Moreover, based in Annex A-3 of Revenue Memorandum Order (RMO) No. 6-2003 issued on March 11, 2003, among of SMC's registered brands of locally manufactured products as of February 28, 2003 were as follows:

[3] En banc docket, pp. 494-495.

Brand Name	Class	Specification	package	Domestic sale	Export	Status
Pale Pilsen	OB	320ml	24 bots	x		active
"Pale Pilsen"	VOB	320ml w/ ACL design	24 bots		x	active
Pale Pilsen Grande	OB	1000ml	6 bots	x		active
Pale Pilsen	VOB		24 cans	x	x	active
San Mig Light	NB	330ml flint bottle	24 bots	x	x	active
San Mig Light Can	VNB		24 cans	x		active

Concededly, there is no existing brand "San Mig Light" in Annex C of RA 8240 and that "San Mig Light" appears to be registered as a "New Brand". However, the main question is whether "San Mig Light" comes within the definition of "Variant of a Brand". The definition of "Variant of a Brand", refers to brand on which a modifier is prefixed and/or suffixed to the root name of the brand[4], emanates from RA No. 8240. In formulating said definition the legislature purposely intended to tax those "variant of a brand" to the highest classification, specifically those brands who ride on the popularity of previously registered brand, in order to generate tax revenue. Thus, it is noteworthy to cite the intent and purpose of the legislature in defining a variant of a brand specifically the integration of prefix or suffix in the definition. In Senate's deliberation on House Bill No. 7198 (the precursor of RA 8240), the interpellation[5] between Senator Juan Ponce Enrile and Senators Miriam Santiago would be relevant.

[4] As provided for in RA 9334 and RA 8240.
[5] Joint Stipulation of Facts, Documents and Issues, Exhibit "DD".

"Senator Santiago:

Mr. President, allow me to begin with the elementary observation that when we institute tax reforms, we should consider certain factors including ease of administering the tax, simplicity of the tax system, the capability of the tax machinery to implement the tax laws and the avoidance of the tax leaks that encourage tax evasion.

xxx, [I] still need to raise certain questions even only for clarification of those who will later be tasked with the implementation of this law.

xxx. I am talking about variants of existing brands.

I would like to lay the basis for my question. I find it confusing that the taxation of variants is defined in this manner. The definition of a variant "is made to depend on the prefix or the suffix. It is based on the name although referring to the same product.

The bill provides that the tax shall be based on the highest value. Tax wise, it would be unfair for manufacturer who would wish to introduce cheaper and more affordable versions of their products. It defeats the purpose of coming out with lower-priced products.

For example, let us assume that a beer product is well-known in the market. In order to make it available to more consumers, the manufacturer, let us assume, comes out with the cheaper version of the original and attaches the name of the original to this new product in order to assure consumers that the new one is backed by the same quality guarantee as the original one. It seems to be absurd for the new product to be taxed as much as the original product in this light.

My question then is: Should the variant not be that, which is nearest in value and not which is highest in value? (Emphasis supplied)

Senator Enrile:

Mr. President, to answer the question briefly, I would like to state here that from a purely business viewpoint, probably I will concede that there is some merit to the argument just stated by the distinguished Senator from Iloilo. But on the other hand, from a purely fiscal taxation position, to discard the provision that we have suggested would open a very wide door for tax avoidance, if not tax evasion because a beer is beer. It is just a question of brands.

> What is the composition of beer? Water and some fermenting elements- malt and some other fermenting elements. But if we not put this, **those brands that are already well-known in the market could be marketed under almost an identical name with a prefix, suffix or a variant and put in a lower category in order to enjoy a lower tax level, in which case, the government will be losing. That is the purpose of this measure.**" (Emphasis supplied)

Evidently, when the legislature defines a "variant of a brand", the legislature refers to the word "brand" as those brand marketed to the consumers and that it intended to tax those brands marketed under almost an identical name with a prefix or suffix of brands that are already well-known in the market. Moreover, the omission in the law of the other definition of a variant of a brand such as- "a different brand which carries the same logo or design of the existing brand"[6] 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 Annex 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

[6] "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.-as provided for in RA8240.

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[7] in the product name "San Miguel Pale Pilsen" and trademark[8] thereon. Moreover, in Asia Brewery Inc. vs. The Honorable Court of Appeals and San Miguel Corporation,[9] 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" 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. xxx."*

---

[7] Tradename- A name, style, or symbol used to distinguish a company, partnership, or business (as opposed to a product or service); the name under which a business operates. Black's Law Dictionay, 8th Edition.

[8] Trademark- A word, phrase, logo, or other graphic symbol used by a manufacturer or seller to distinguish its product or products from those of others. The main purpose of a trademark is to designate the source of goods or services. Black's Law Dictionay, 8th Edition.

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

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"[10] describes as "expertly brewed orginal full-flavored" and not mere "Pale Pilsen" which is non-registerable and not appropriable by any beer manufacturer, against "San Mig Light"[11] describe as a "low calorie pale pilsen".

SMC stressed the following points in its memorandum[12] 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

[10] Division docket, pp.729-732.
[11] Ibid.
[12] En banc docket, pp. 464-465.

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.[13] 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 orginal full-flavored". Said revenue regulations, in general have the force and effect, or partake of the nature, of a statute.[14]

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
> > (d)VARIANT OF A BRAND — shall refer to a brand of alcohol or tobacco products on which a modifier is prefixed and/or suffixed to the root name of the brand.
> >
> > For this purpose, the term "root name" shall refer to a letter, word, number, symbol, or character; or a combination of letters, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: Provided, That the root name has been originally registered as such with the Bureau of Internal Revenue (BIR).
> >
> > xxx

[13] CIR vs. Central Luzon Drug Corporation, G.R. No. 159647 April 15,2005.
[14] Commissioner of Internal Revenue vs. Solidbank Corporation G.R. No. 148191. November 25, 2003.

> 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
> 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 Annex 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 afore said 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 NAME	MODIFIER IS PREFIXED	MODIFIER IS SUFFIXED	MODIFIED ROOT
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 Horse	Flying Red Horse	Red Horse Premium	Reddish
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"xxx."

Likewise, Revenue Regulation 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"[15] 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".

As regards to the reclassification prohibition, RA 9334 provides as follows:

> "That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.
>
> xxx xxx xxx.
>
> The classification of each brand of fermented liquor based on its average net retail price as of October 1, 1996, as set forth in Annex 'C', including the classification of brands for the same products which, although not set forth in said Annex 'C', were registered and were being commercially produced and marketed on or after October 1, 1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress.

Furthermore, Section 4 of Revenue Regulation No. 03-06 provides as follows:

> 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.
>
> xxx xxx xxx.

---

[15] Division docket, p. 545.

The above mentioned classification freeze provision pertains not to the determination of whether a brand is indeed a new brand or variant of a brand but rather to the specific range of net retail prices of brand upon which is levied, assessed and collected a rate of excise tax[16]. In the case of British American Tobacco vs. Camacho, et .al.[17], the Supreme Court illustrates the classification freeze provision as follows:

> *"xxx, [T]he law creates a four-tiered system which we may refer to as the low-priced, medium-priced, high-priced, and premium-priced tax brackets. When a brand is introduced in the market, the current net retail price is determined through the aforequoted specified procedure. The current net retail price is then used to classify under which tax bracket the brand belongs in order to finally determine the corresponding excise tax rate on a per pack basis. The assailed feature of this law pertains to the mechanism where, after a brand is classified based on its current net retail price, the classification is frozen and only Congress can thereafter reclassify the same. From a practical point of view, Annex "D" is merely a by-product of the whole mechanism and philosophy of the assailed law. That is, the brands under Annex "D" were also classified based on their current net retail price, the only difference being that they were the first ones so classified since they were the only brands surveyed as of October 1, 1996, or prior to the effectivity of RA 8240 on January 1, 1997.*
>
> *Due to this legislative classification scheme, it is possible that over time the net retail price of a previously classified brand, whether it be a brand under Annex "D" or a new brand classified after the effectivity of RA 8240 on January 1, 1997, would increase (due to inflation, increase of production costs, manufacturer's decision to increase its prices, etc.) to a point that its net retail price pierces the tax bracket to which it was previously classified. Consequently, even if its present day net retail price would make it fall under a higher tax bracket, the previously classified brand would continue to be subject*

---

[16] Revenue Regulation No. 03-06
(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;
[17] G.R. No. 162583, August 20, 2008.

to the excise tax rate under the lower tax bracket by virtue of the legislative classification freeze.

The Supreme Court further elaborates as follows:

"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.

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. xxx."*[18]

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

In fine, the construction and interpretation of tax statutes and of statutes in general, the primary consideration is to ascertain and give effect to the intention of the legislature.[19] We ought to impute to the lawmaking body the intent to obey the constitutional mandate, as long as its enactments fairly admit of such construction.[20] In fact, no tax can be levied without express authority of law, but the statutes are to receive a reasonable construction with a view to carrying out their purpose and intent."[21]

A perusal of the provision pertaining to fermented liquor, as provided for in RA8240 and RA 9334, would reveal that the legislature intended to tax a "variant of a brand" under the highest classification of any variant of that brand. Moreover, the definition of "variant of a brand" emanates from RA8240 and in crafting the said definition the legislature intended to tax those brands marketed under almost an identical name with a prefix or suffix of brands that

---

[18] Ibid.
[19] Ibid.
[20] Ibid
[21] Commissioner of Internal Revenue vs. Solidbank Corporation G.R. No. 148191. November 25, 2003.

are already well-known in the market in order to ride on the popularity of previously registered brand. In this case I find the product, "San Mig Light" described as a "low calorie pale pilsen", a variant of "San Miguel Pale Pilsen" described as "expertly brewed orginal full-flavored".

IN VIEW OF THE FOREGOING, I vote to grant the petition docketed as CTA EB No. 755.

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

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice