REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

CTA Case No. 7953

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

CTA Case No. 7973

Members:

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 06 2015
2:10 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

This resolves the following: a) respondent Commissioner of Internal Revenue's Motion for Reconsideration questioning the Decision dated November 26, 2014 and b) petitioners San Miguel

Corporation ("SMC") and San Miguel Brewery, Inc. ("SMBI") Opposition to the Motion for Reconsideration.

Respondent alleges the following grounds:

I

THE SURROGATE ADS OF SAN MIG LIGHT PALE PILSEN (SML) READILY REVEALS THAT IT IS INDEED A VARIANT OF SAN MIGUEL PALE PILSEN;

II

THE LETTER DATED 07 FEBRUARY 2002 BEARS A CAVEAT WITH REGARD TO THE TAX CLASSIFICATION AND RATES USED BY SAN MIGUEL CORPORATION (SMC);

III

THE SUBSEQUENT ISSUANCE OF REVENUE MEMORANDUM ORDER (RMO) No. 6-2003 DATED 11 MARCH 2003 IS NOT CONCLUSIVE AS TO THE CLASSIFICATION OF SAN MIG LIGHT;

IV

THE HONORABLE COURT ERRED IN NOT RECOGNIZING THE INTENT OF THE LEGISLATURE ON THE PURPOSE OF WHAT THE LAW SOUGHT TO AVOID IN DETERMINING A VARIANT OF A BRAND.[1]

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[1] Rollo, p. 1710.

Petitioners on the other hand, assert that there are marked differences between the "San Mig Light" brand and "Pale Pilsen" brand, as may be seen from the actual products.

There is no evidence on record introduced by respondent that "San Miguel Light" is being marketed under almost an identical name with a prefix, suffix or a variant as "Pale Pilsen".

"San Miguel Pale Pilsen" or "San Miguel Beer" or "SMB" is not the correct name of the brand "Pale Pilsen", but should be recognized as "Pale Pilsen" only.

The brands of San Miguel Corporation existing as of October 1, 1996, are identified and determined under Section 143 of the 1997 NIRC and are listed and classified in Annexes "C-1" and "C-2" of the law. Under the said list and classification "Pale Pilsen" has been originally registered with the BIR. The name "San Mig" is not listed therein.

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.

In *British American Tobacco v. Camacho*[2], the classification freeze provision pertains to the freezing of tax classification of brands. If the freeze provision refers to retail prices, it will ultimately result in the freezing of classification of brands, whether the brand is new or a variant.

Respondent's Motion for Reconsideration is unmeritorious.

The grounds interposed by respondent in her Motion for Reconsideration have been fully explained in the assailed Decision. We reiterate the following salient points:

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[2] G.R. No. 163583, August 20, 2008, 562 SCRA 511.

1. Under R.A. 9334, a new brand is one that is registered after the effectivity of R.A. 8240 on January 1, 1997; while a variant is defined as a brand with a modifier prefixed and/or suffixed to the root name of the brand. Thus, the classification of "San Mig Light" as a new brand or variant is not determined by the physical appearance or publication of a product.

2. "San Mig Light" as a new brand is supported by the fact that it is 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.

3. Under R.A. 8240, the brand "Pale Pilsen" and not "San Miguel" or "San Mig" is registered and classified as a brand name of petitioner SMC.

4. The term "Light" cannot be separated from the word "San Mig" or "San Miguel" but should be considered as one brand name. If the modifier "Light" be suffixed to the root word "San Miguel Pale Pilsen", the effect should be "San Miguel Pale Pilsen Light" and not as "San Mig Light".[3] The root name "Pale Pilsen" cannot be seen in the brand "San Mig Light".

5. Petitioner SMC through its Assistant Vice President for Finance, Mr. Virgilio S. de Guzman requested the BIR for registration of, and authority to manufacture "San Mig Light" as a new brand on October 19, 1999[4] which was granted and reconfirmed in the letter dated October 27, 1999[5] issued by Assistant Commissioner Leonardo B. Albar and the letter dated February 7, 2002 issued by Acting Chief for Large Taxpayers Assistance Division II, Conrado P. Item.[6]

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[3] *San Miguel Brewery Inc., a Subsidiary of San Miguel Corporation*, CTA Case No. 8209, September 12, 2014.
[4] Exhibit "MM"; Joint Stipulation of Facts, Documents, Issues and Other Matters, Docket, CTA Case No. 7973, p. 463.
[5] Exhibit "PP-3"; Joint Stipulation of Facts, Documents, Issues and Other Matters, Docket, CTA Case No. 7973, p. 463.
[6] Exhibit "QQ"; Joint Stipulation of Facts, Documents, Issues and Other Mattes, Docket, CTA Case No. 7973, p. 464.

6. The documents specifically the letter dated October 27, 1999 issued by Assistant Commissioner Leonardo B. Albar and the letter dated February 7, 2002 issued by Acting Chief for Large Taxpayers Assistance Division II, Conrado P. Item bolster the fact that "San Mig Light" is a new brand and not a variant.

7. "San Mig Light" registration as a new brand after the date of effectivity of R.A. 8240 or after January 1, 1997 conforms with the law. Any subsequent reclassification of fermented liquor products such as "San Mig Light" products should be undertaken pursuant to the act of Congress as mandated by law.[7] Thus, in this case, the BIR on its own, is not authorized to reclassify "San Mig Light" from a new brand to a variant of a brand imposing higher excise taxes.

8. In a number of cases, this Court has consistently ruled on San Mig Light's classification as a new brand.[8]

The Court sees no cogent reason to reverse, much less, modify the assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[7] *Secretary of Finance v. La Suerte Cigar and Cigarette Factory*, G.R. No. 166498, June 11, 2009, 589 SCRA 72 & *British American Tobacco v. Jose Isidro Camacho*, G.R. No. 163583, August 20, 2008, 562 SCRA 511.
[8] *CIR v. San Miguel Corporation*, CTA EB Case No. 873, October 24, 2012 & CTA EB Case No.755, September 20, 2012; *San Miguel Brewery Inc., a subsidiary of San Miguel Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8209, September 12, 2014; *San Miguel Corporation v. Commissioner of Internal Revenue*, CTA Case No. 7708, January 7, 2011; *San Miguel Corporation v. Commissioner of Internal Revenue and Officer-in-Charge, Large Taxpayers Service, Bureau of Internal Revenue* and *San Miguel Corporation v. Commissioner of Internal Revenue*, CTA Case Nos. 7052, 7053 & 7405, October 18, 2011.

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(I maintain my Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice