REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1292** (CTA Case No. 8591)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *JJ.*
SAN MIGUEL BREWERY INC., a Subsidiary of SAN MIGUEL CORPORATION, *Respondent.*	Promulgated: JUN 29 2017 4:02 p.m.

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RESOLUTION

For resolution is the "Motion for Reconsideration (Re: Decision Promulgated 28 September 2016)" filed on October 20, 2016 by petitioner Commissioner of Internal Revenue (CIR), asking the Court *En Banc* to reconsider its Decision dated September 28, 2016 on the following grounds:

1. Judicial admissions admit of exceptions to the general rule;

2. Respondent San Miguel Brewery, Inc. committed misrepresentations;

3. San Mig Light may be reclassified as a variant;

4. Respondent clearly and categorically declared that San Mig Light is a variant;

5. The registration of the descriptive and generic name was erroneous and, as such, no right can arise from it;

6. Legislative intent is part and parcel of the law;

7. San Mig Light is a variant of an existing brand; and

8. Claims for refund are construed strictly against the taxpayer and in favor of the Government.

On January 13, 2017, respondent filed its Comment after two (2) Motions for Extension of Time to File Respondent's Comment; the first, asking for an extension of fifteen (15) days from December 27, 2017 or until January 11, 2017[1], while the second, asking for an extension of ten (10) days from January 11, 2017 or until January 21, 2017[2], both of which were granted by the Court.

In its Comment, respondent San Miguel Brewery, Inc. (SMB) argues that the "exceptions" referred to by the CIR pertain to matters that occurred prior to the execution of the parties' "Stipulation of Facts, Documents and Issues" on June 30, 2013 and that the latter stipulation supersedes the allegations in the CIR's Answer dated March 19, 2013 and the Notice of Discrepancy dated May 28, 2002 as such as a deliberate admission made in a formal document.

As regards the alleged misrepresentation committed by SMB, it argues that these are the very same admissions that the CIR had attributed to SMB which were already found untenable by this Court in its Decision. Furthermore, there was no established error or neglect with respect to the letter of Mr. Item, particularly in confirming that the tax classification and rate of "San Mig Light" as a new brand were in order. The exception to the principle that the government is not estopped by the errors or neglect of its agents is applicable in this case and that would include instances when "the Commissioner is precluded from adopting a position inconsistent with one previously taken where injustice would result thereform."[3]

As regards the CIR's contention that "San Mig Light" may be reclassified as a variant, SMB argues that the pertinent provisions of R.A. No 9334 are clear and do not provide for any exception, even in the case of "a brand erroneously classified as a new brand" and that the BIR itself has confirmed the registration and tax classification of "San Mig Light" as a new and medium-priced brand through the years.

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[1] *Rollo*, pp. 276-278.
[2] *Rollo*, pp. 279-281.
[3] *Rollo*, p. 209.

SMB also reiterates that there is no showing that the word "variant" was used in its Annual Report in the context of its legal definition, and that it was used in its ordinary signification or meaning or "primary and general acceptation".

As to the remaining arguments of the CIR and the corresponding Comment from SMB, it is apparent to this Court that these are not new arguments. They do not raise new matters nor offer a perspective that has not been put forth before. The arguments raised by the CIR in its Motion for Reconsideration, therefore, are a mere rehash of its previous arguments that have been previously discussed and considered in the Decision dated December 23, 2014 and the Resolution dated March 26, 2015 of the Second Division in CTA Case No. 8591. More importantly, they have also been exhaustively studied and considered by this Court prior to rendering our Decision dated September 28, 2016.

Considering that no new matters have been raised, the CIR's "Motion for Reconsideration" is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen J

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

See Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1292** (CTA CASE NO. 8591)
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CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the findings of the *ponencia* in denying the Commissioner of Internal Revenue's Motion for Reconsideration for lack of merit. I wish to stress, however, that on January 25, 2017, during the pendency of this case, the Supreme Court rendered a decision to which the classification of "San Mig Light" (SML) has been laid to rest. The Supreme Court in *Commissioner of Internal Revenue vs. San Miguel Corporation* (*SMC case*),[1] affirmed the decision and resolution of the Court of Tax Appeals *En Banc* where it ruled that SML is a **New Brand**:

"We find for respondent.

[1] G.R. Nos. 205045 & 205723, January 25, 2017.

> Parenthetically, the Bureau of Internal Revenue's actions reflect its admission and confirmation that 'San Mig Light' is a new brand.
>
> When respondent's October 19, 1999 letter requested the registration and authority to manufacture 'San Mig Light,' to be taxed at P12.15 per liter, the Bureau of Internal Revenue granted the request.
>
> The response dated February 7, 2002 of the LTAD II Acting Chief confirmed that respondent was allowed to register, manufacture, and sell 'San Mig Light' as a new brand.
>
> The Joint Stipulation of Facts, Documents and Issues in CTA Cases Nos. 7052 and 7053 dated July 29, 2005, signed by both parties, includes paragraph 1.08, which reads:
>
> > 1.08. ***From the time of its registration as a new brand in October 1999*** and its production in November 1999, 'San Mig Light' products have been withdrawn and sold, and taxes have been paid on such removals, on the basis of its registration and tax rate as a new brand. *(CTA No. 7052: Petition, par. 5.06; Answer, par. 2[e]; CTA No. 7053: Petition, par. 5.06; Answer, par. 2[e]).* (Emphasis supplied)
>
> The May 28, 2002 Notice of Discrepancy was effectively nullified by the subsequent issuance of Revenue Memorandum Order No. 6-2003, which included 'San Mig Light' as a new brand.
>
> The Bureau of Internal Revenue issued Revenue Memorandum Order No. 6-2003 dated March 11, 2003 with the subject, Prescribing the Guidelines and Procedures in the Establishment of Current Net Retail Prices of New Brands of Cigarettes and Alcohol Products Pursuant to Revenue Regulations No. 9-2003. Annex 'A-3' is the Master List of Registered Brands of Locally Manufactured Alcohol Products as of February 28, 2003, and the list includes 'San Mig Light,' classified as 'NB' or 'new brand registered on or after January 1, 1997'" (Citations omitted)

The Supreme Court further declared that the reclassification of fermented liquor products may only be made by an act of Congress, *viz*:

> "IV
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> Any reclassification of fermented liquor products should be by act of Congress. Section 143 of the Tax Code, as amended by Rep. Act No. 9334, provides for this classification freeze referred to by the parties:
>
> > Provided, however, That brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the

> classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such ***classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.***
>
> ....
>
> 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. (Emphasis supplied)

In her Dissenting Opinion, Court of Tax Appeals Associate Justice Cielito N. Mindaro-Grulla discussed that *British American Tobacco v. Camacho* explained the purpose and application of the classification freeze. Her Dissenting Opinion concludes that the classification freeze does not apply when a brand is a variant erroneously determined as a new brand.

British American Tobacco involves Section 145 of the Tax Code governing excise taxes for cigars and cigarettes.

This Court in British American Tobacco discussed that Rep. Act No. 9334 includes, among other things, the legislative freeze on cigarette brands introduced between January 2, 1997 and December 31, 2003, in that these cigarette brands will remain in the classification determined by the Bureau of Internal Revenue as of December 31, 2003 until revised by Congress. In other words, after a cigarette brand is classified under the low-priced, medium-priced, high-priced, or premium-priced tax bracket based on its current net retail price, **its classification is frozen unless Congress reclassifies it.**

The petitioner in *British American Tobacco* questioned this legislative freeze under Section 145 for creating a 'grossly discriminatory classification scheme between old and new brands.' This Court ruled that the classification freeze provision does not violate the constitutional provisions on equal protection.

This Court discussed the legislative intent behind the classification freeze, that is, to deter the potential for abuse if the power to reclassify is delegated and much discretion is given to the Department of Finance and Bureau of Internal Revenue:

> To our mind, the *classification freeze provision* was in the main the result of Congress' 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' administrative concerns regarding delegating too much authority to the DOF and BIR as this will open the tax system to potential areas of 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.

British American Tobacco discussed the legislative history of the classification freeze, but it did not explicitly rule that the classification freeze only refers to retail price tax brackets.

In any event, petitioner's letters and Notices of Discrepancy, which effectively changed San Mig Light's brand's classification from '*new brand* to *variant* of existing brand,' necessarily changes San Mig Light's tax bracket. Based on the legislative intent behind the classification freeze provision, petitioner has no power to do this.

A reclassification of a fermented liquor brand introduced between January 1, 1997 and December 31, 2003, such as 'San Mig Light,' must be by act of Congress. There was none in this case." (Citations omitted, and Boldfacing and underscoring supplied)

As to the question on whether SML is a *variant* of the more popular brand, "San Miguel Pale Pilsen", the Supreme Court made the following disquisition:

"**VI**

xxx xxx xxx

The *variant* contemplated under the tax Code has a technical meaning. A *variant* is determined by the brand (name) of the beer product, whether it was formed by prefixing or suffixing a modifier to the root name of the alleged parent brand, or whether it carries the same logo or design. The purpose behind the definition was to properly tax brands that were presumed to be riding on the popularity of previously registered brands by being marketed under an almost identical name with a prefix, suffix, or a variant. It seeks to address price differentials employed by a manufacturer on similar products differentiated only in brand or design. Specifically, the provision was meant to obviate any tax avoidance by manufacturing firms from the sale of lower priced variants of its existing beer brands, thus, falling in the lower tax bracket with lower excise tax rates. To favor government, a *variant* of a brand is taxed according to the highest rate of tax for that particular brand.

'San Mig Light' and 'Pale Pilsen' do not share a root word. Neither is there an existing brand in the list (Annexes C-1 and C-2 of the Tax Code) called 'San Mig' to conclude that 'Light' is a suffix rendering 'San Mig Light' as its 'variant.' As discussed in the Court of Tax Appeals Decision, **'San Mig Light' should be considered as one brand name.**

Respondent's statements describing San Mig Light as a low-calorie variant is not conclusive of its classification as a *variant* for excise tax purposes. Burdens are not to be imposed nor presumed to be imposed beyond the plain and express terms of the law. The general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.'

Furthermore, respondent's payment of the higher taxes starting January 30, 2004 after deficiency assessments were made cannot be considered as an admission that its San Mig Light is a variant. Section 130(A)(2) of the Tax Code requires payment of excise tax 'before removal of domestic products from place of production.' These payments were made in protest as respondent subsequently filed refund claims." (Citations omitted and Boldfacing supplied)

Finally, in addressing the Bureau of Internal Revenue's invocation of the rule that estoppel does not lie against the government, the Supreme Court categorically stated that "an exception can be made when the application of the rule will cause injustice against an innocent party," *viz*:

"**VII**

Petitioner argues that although the Bureau of Internal Revenue erroneously allowed San Miguel Corporation to manufacture and sell 'San Mig Light' in 1999 as a 'new brand' with the lower excise tax rate for 'new brands,' government is not estopped from correcting previous errors by its agents.

Petitioner submits that the Notice of Discrepancy was to remedy the 'misrepresentation' of 'San Mig Light' as new brand. It submits that respondent's self-assessment of excise taxes as a new brand was without approval:

> San Mig Light was never registered with BIR as a new brand but always as a variant. Thus, petitioner's payment of excise taxes on San Mig Light as a new brand is based on its own classification of San Mig Light as a new brand without approval of the BIR. Under existing procedures in the payment of excise taxes, taxpayers are required to pay their taxes based on self-assessment system with the government relying heavily on the honesty of taxpayers. Such being the case, any payments made, even those allegedly made as a condition for the withdrawal of the product from the place of

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> production, cannot be considered as a confirmation by the BIR of the correctness of such payment. (Citations omitted)

Section 143 of the Tax Code, as amended by Rep. Act No. 9334, provides for the Bureau of Internal Revenue's role in validating and revalidating the suggested net retail price of a new brand of fermented liquor for purposes of determining its tax bracket:

> '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 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 Internal 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 be 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. 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

While estoppel generally does not apply against government, especially when the case involves the collection of taxes, an exception can be made when the application of the rule will cause injustice against an innocent party.

Respondent had already acquired a vested right on the tax classification of its San Mig Light as a new brand. To allow petitioner to change its position will result in deficiency assessments in substantial amounts against respondent to the latter's prejudice.

The authority of the Bureau of Internal Revenue to overrule, correct, or reverse the mistakes or errors of its agents is conceded.

> However, this authority must be exercised reasonably, i.e., only when the action or ruling is patently erroneous or patently contrary to law. For the presumption lies in the regularity of performance of official duty, and reasonable care has been exercised by the revenue officer or agent in evaluating the facts before him or her prior to rendering his or her decision or ruling-in this case, prior to the approval of the registration of San Mig Light as a *new brand* for excise tax purposes. A contrary view will create disorder and confusion in the operations of the Bureau of Internal Revenue and open the administrative agency to inconsistencies in the administration and enforcement of tax laws. xxx" (Citations omitted, and boldfacing and underscoring supplied)

The foregoing constitutes a binding precedent having been declared by no less than the Supreme Court. By tradition and in our system of judicial administration, the Supreme Court has the last word on what the law is, and that its decisions applying or interpreting the laws or the Constitution form part of the legal system of the country, all other courts should take their bearings from its decisions.[2]

All told, I **VOTE** to **DENY** the Motion for Reconsideration filed by the Commissioner of Internal Revenue for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] Filinvest Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.