REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SAN MIGUEL CORPORATION, Petitioner,	**CTA CASE NO. 7708**
	Members:
- versus -	**BAUTISTA,** *Chairperson* **PALANCA-ENRIQUEZ,** and **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 7 2011 3:10 p.m.

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DECISION

BAUTISTA, J.:

The Petition for Review seeks for the refund or issuance of tax credit certificate in the amount of P926,389,172.02 allegedly representing erroneously, excessively and/or illegally collected, and overpaid excise taxes on "San Mig Light" during the period from December 1, 2005 to July 31, 2007.

FACTS OF THE CASE

The relevant facts as succinctly recited in the parties' Stipulation of Facts, Documents and Issues,[1] to wit:

[1] *Records*, pp. 487-522.

Petitioner, 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.[2]

Respondent, 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.[3]

One of the beer products being manufactured by petitioner is "San Mig Light."

On October 19, 1999, Mr. Virgilio S. De Guzman, petitioner'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.[4]

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

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.[6]

On January 28, 2002, Mr. Alfredo R. Villacorte, petitioner's Vice-President and Manager of the Group Tax Services, wrote to the Chief of the Large Taxpayers

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[2] *Id.*, at p. 487.
[3] *Id.*, at p. 488
[4] *Exhibit "K."*
[5] *Exhibit "L."*
[6] *Exhibit "M."*

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."[7]

On February 7, 2002, Mr. Conrado P. Item, Acting Chief of the LTAD II, replied to petitioner's letter dated January 28, 2002, confirming based on documents submitted that petitioner 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.[8]

On May 28, 2002, Assistant Commissioner Edwin R. Abella of the Large Taxpayers Service ("LTS"), issued a Notice of Discrepancy against petitioner, 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.[9]

In a letter-reply dated July 9, 2002, Mr. Bienvenido N. Banas, petitioner's then Finance Manager, Beer Division, requested for the withdrawal of the said Notice of Discrepancy.[10]

On October 14, 2002, Assistant Commissioner Abella, sent its letter-rejoinder to petitioner, stating, that "San Mig Light Pale Pilsen" is truly a variant of "San

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[7] *Exhibit "N."*
[8] *Exhibit "O."*
[9] *Exhibit "EE."*
[10] *Exhibit "OO."*

Miguel Pale Pilsen." In support of this finding, he cited certain statements made in "Kaunlaran," a publication of petitioner, and the latter's Annual Report.[11]

On November 20, 2002, Mr. Alfredo R. Villacorte, petitioner'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.[12]

On January 6, 2004, Commissioner Guillermo Parayno, Jr., issued a letter to petitioner, 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 petitioner is forthcoming.[13]

On January 28, 2004, Deputy Commissioner Estelita C. Aguirre, issued a Preliminary Assessment Notice[14] against petitioner 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 petitioner, stating that there is found due from petitioner an alleged deficiency excise tax in the amount of P28,876,108.84 for the period covering January 8, 2004 to January 29, 2004.[15]

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[11] *Exhibits "FF"* and *"FF-1."*
[12] *Exhibit "PP."*
[13] *Exhibit "GG."*
[14] *Exhibit "HH."*
[15] *Exhibit "KK."*

On March 24, 2004, Deputy Commissioner Aguirre, issued a Preliminary Assessment Notice[16] against petitioner 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 petitioner, with attached Assessment Notice, also dated April 12, 2004, requesting petitioner 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.[17]

Petitioner then filed a Protest/Request for Reconsideration of the said Formal Letter of Demand and Assessment Notice.[18]

On May 26, 2004, Deputy Commissioner Aguirre, issued a Formal Letter of Demand against petitioner, with attached Assessment Notice No. TF 129-05-04, also dated May 26, 2004.[19] The aforesaid Formal Letter of Demand requested petitioner to pay the deficiency excise tax assessment in the total amount of P30,763,133.68, including interest until June 30, 2004.

Petitioner also filed a Protest/Request for Reconsideration dated July 5, 2004 on the said Formal Letter of Demand and Assessment Notice.[20]

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[16] *Exhibit "LL."*
[17] *Exhibit "II."*
[18] Stipulation of Facts, Documents and Issues ("SFDI"), par. 4.12; *Records*, p. 519.
[19] *Exhibit "MM."*
[20] SFDI, par. 4.13; *Records*, p. 519.

On August 17, 2004, the then Officer-in-Charge of the LTS, Deputy Commissioner Kim S. Jacinto-Henares, replied to the letter of petitioner, 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 Beer Pale Pilsen in can)."[21]

On August 20, 2004, Deputy Commissioner Kim S. Jacinto-Henares, informed petitioner 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 Beer Pale Pilsen in can)."[22]

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.[23]

On December 28, 2005, petitioner filed its first claim for refund of the amount of P782,238,161.47 with the BIR.[24]

And on January 31, 2006, 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.[25]

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[21] *Exhibit "JJ."*
[22] *Exhibit "NN."*
[23] SFDI, par. 1.21; *Records*, p. 494.
[24] *Ibid.*, par. 4.14; *Id.*, at p. 519.
[25] *Ibid.*, par. 4.15; *Id.*, at p. 519.

During the period from December 1, 2005 to December 31, 2006, petitioner 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.[26]

On August 30, 2007, petitioner filed its second claim for refund dated August 28, 2007, with the BIR in the amount of P926,389,172.02.[27]

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

In her Answer,[29] filed on January 30, 2008, respondent averred the following Special and Affirmative Defenses, to wit:

> 24. Petitioner is estopped from questioning the classification of San Mig Light as variant of San Miguel Pale Pilsen due to the following grounds:
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> > a. Petitioner has already admitted the correctness of the classification of San Mig Light as a variant of San Miguel Pale Pilsen in can when [p]etitioner 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.
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> > c. Petitioner admitted in its Annual Report to its stockholders that San Mig Light is a variant of San Miguel Pale Pilsen in can.

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[26] *Exhibit "B,"* p. 1.
[27] *Exhibit "RR."*
[28] *Records*, pp. 1-301, with Annexes.
[29] *Id.*, at pp. 319-331.

d. Petitioner 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 l[a]w by public officer do not prevent the subsequent correct application of statutes. Furthermore, the rule of estoppel 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 estopped to collect legitimate taxes because of errors committed by its agent *(Visayan Terminal Co., Inc. v. Commissioners of Internal Revenue, L-19530 and 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. Petitioner's imagined defects in the issuance of the assessments for deficiency excise taxes against petitioner has 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.[30]

During the trial on the merits, petitioner and respondent presented documentary and testimonial evidence.

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[30] *Id.*, at pp. 328-329.

On January 8, 2010, the Court considered the case submitted for decision after respondent filed her Memorandum[31] on December 28, 2009, while petitioner submitted its Memorandum[32] on December 29, 2009.

The case was originally raffled for study and report to Associate Justice Amelia R. Cotangco-Manalastas. During the deliberation, Associate Justice Lovell R. Bautista made a Dissenting Opinion to which Associate Justice Olga Palanca-Enriquez concurred through a Separate Dissenting Opinion. Thus, the case was assigned to Associate Justice Lovell R. Bautista to write the majority decision.

Hence, this Decision.

THE ISSUES

The issues as stipulated by the parties for resolution by this Court, *viz*:

Principal Issue:

Whether petitioner is entitled to a refund in the amount of P926,389,179.02 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 reclassification by the respondent as a variant.

Corollary Issues:

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; and

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[31] *Id.*, at pp. 1222-1232.
[32] *Id.*, at pp. 1234-1335.

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.[33]

THE COURT'S RULING

The issues in the case at bench can be summarized as "whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P926,389,172.02 allegedly representing erroneous, excessive and/or illegally collected and paid excise taxes for the period from December 1, 2005 to July 31, 2007 as a consequence of the re-classification of one of its product named as 'San Mig Light.'"

In order to resolve the foregoing issue, the determination of "whether or not 'San Mig Light' is a new brand or a variant of an existing brand" is significant.

Revenue Regulations No. 2-97, entitled "*Revenue Regulations Governing Excise Taxation on Distilled Spirits, Wines and Fermented Liquors,*" issued on December 13, 1996, provides the following definitions, *viz*:

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

[33] *Id.*, at pp. 520-521.

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.

Corollary thereto, Section 143 of the 1997 National Internal Revenue Code ("NIRC") provides in full:

SEC. 143. *Fermented Liquor.* – 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 domestic fermented liquors in accordance with the following schedule:

(a) If the net retail price (excluding the excise tax and value-added tax) per liter of volume capacity is less than Fourteen pesos and fifty centavos (P14.50), the tax shall be Six pesos and fifteen centavos (P6.15) 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 Nine pesos and fifteen centavos (P9.15) 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 Twelve pesos and fifteen centavos (P12.15) per liter.

Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.

Fermented liquor 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.

The excise tax from any brand of fermented liquor within the next three (3) years from the effectivity of Republic Act No. 8240 shall not be lower than the tax which was due from each brand on October 1, 1996.

The rates of excise 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.

For the above purpose, *"net retail price"* shall mean the price at which the fermented liquor is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of fermented liquor marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the *"net retail price"* shall mean the price at which the fermented liquor is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

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.

Every brewer or importer of fermented liquor shall, within thirty (30) days from the effectivity of R.A. No. 8240, and within the first five (5) days of every month thereafter, submit to the Commissioner a sworn statement of the volume of sales for each particular brand of fermented liquor sold at his establishment for the three-month period immediately preceding.

> Any brewer or importer who, in violation of this Section, knowingly misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as brewer or importer of fermented liquor.
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> Any corporation, association or partnership liable for any of the acts or omissions in violation of this Section shall be fined treble the amount of deficiency taxes, surcharge and interest which may be assessed pursuant to this Section.
>
> Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.
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> If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation.

From the above-quoted provisions, a *"new brand"* shall mean brands registered after January 1, 1997 and which shall include previously registered, but inactive brands of alcohol products; while a *"variant of a brand,"* is 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, otherwise 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"

> SECTION 3. Section 143 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
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> 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.

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.

"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.

"Net retail price," as determined by the Bureau of Internal Revenue through a price survey to be conducted by the Bureau of Internal Revenue itself, or the National Statistics Office when deputized for the purpose by the Bureau of Internal Revenue, shall mean the price at which the fermented liquor is sold on retail in at least twenty (20) major supermarkets in Metro Manila (for brands of fermented liquor marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed outside Metro Manila, the "net retail price" shall mean the price at which the fermented liquor is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

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.

The rates of tax imposed under this Section shall be increased by eight percent (8%) every two years starting on January 1, 2007 until January 1, 2011.

Any downward reclassification of present categories, for tax purposes, of existing brands of fermented liquor duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited.

Every brewer or importer of fermented liquor shall, within thirty (30) days from the effectivity of this Act, and within the first five (5) days of every month thereafter, submit to the Commissioner a sworn statement of the volume of sales for each particular brand of fermented liquor sold at his establishment for the three-month period immediately preceding.

Any brewer or importer who, in violation of this Section, knowingly misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as brewer or importer of fermented liquor.

Any corporation, association or partnership liable for any the acts or omissions in violation of this Section shall be fined treble the amount of deficiency taxes, surcharges and interest which may be assessed pursuant to this Section.

Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.

If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation.

Pursuant thereto, Revenue Regulations No. 03-06, entitled "*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,*" issued on January 3, 2006, provides as follows:

> SECTION 2. *Definition of Terms.* – For purposes of these Regulations, the following words and phrases shall have the meaning indicated below:
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> 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.
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> 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 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;

From the foregoing, a "*new brand*" is now defined as a brand registered after the date of effectivity of Republic Act No. 8240;[34] while a "*variant of a brand*" shall

[34] An Act Amending Sections 138, 139, 140 and 142 of the National Internal Revenue Code, as amended, and for Other Purposes, which took effect on January 1, 1997.

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

To illustrate:

	Under RR No. 2-97	**Under RA No. 9334**
New Brand	a brand registered after January 1, 1997 and shall include previously registered, but inactive brands of alcohol products.	a brand registered after the date of effectivity of R.A. No. 8240
Variant of a Brand	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.	a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.

Based on the table, the definition of a "*new brand*" has remained the same, while the definition of a "*variant of a brand*" has been amended, *i.e.*, the second portion has been deleted.

Further, Section 143 of the 1997 NIRC, as amended, now provides as follows:

xxx xxx xxx

xxx: *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.

Likewise, RR No. 03-2006, 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.

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.

Based on the records of the case, a Letter dated October 19, 1999, addressed to Assistant Commissioner Alvar, was sent by petitioner's Assistant Vice President - Finance, Mr. De Guzman, seeking for the registration and authority to manufacture fermented liquor bearing the trademark, "San Mig Light."[35] In reply, a Letter dated October 27, 1999 was issued by Assistant Commissioner Alvar, granting the said request.[36]

On February 7, 2002, a Letter was issued by Acting Chief, LTAD II, Mr. Item, addressed to petitioner, stating as follows:[37]

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

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[35] *Exhibit "K."*
[36] *Exhibit "L."*
[37] *Exhibit "O."*

xxx xxx xxx

And Revenue Memorandum Order ("RMO") No. 6-2003, entitled "*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,*" issued on March 11, 2003, includes as follows:

> Masterlist of Registered Brands of Locally Manufactured Alcohol Products

Annex "A-3"
MASTERLIST OF REGISTERED BRANDS OF LOCALLY MANUFACTURED ALCOHOL PRODUCTS
As of February 28, 2003

xxx xxx xxx

BRAND NAME	CLASS	SPECIFICATION	PACKAGE	INTENDED MARKET		REMARKS	
				DOMESTIC SALE	EXPORT	STATUS	DATE OF LAST PRODUCTION
San Mig Light	NB[38]	330 ml flint bottle	24 bots	X	X	Active	

It must be noted that RMO No. 6-2003 has been duly issued and signed by the Commissioner of Internal Revenue, Guillermo L. Parayno, Jr.. Further, *Annex "A-3"* as an integral part of the said RMO has been duly determined as of February 28, 2003, or before December 31, 2003, as provided in the earlier cited Section 143, as amended, and as implemented by RR No. 03-06. Thus, it only bolstered petitioner's stand that its product named "San Mig Light" is a new brand, and not a variant of an existing brand.

If indeed that the brand name "San Mig Light" is a variant of an existing beer product, as claimed by respondent, then its reclassification was made in violation of Section 143 of the 1997 NIRC, as amended, and RR No. 03-06.

[38] New Brand.

And considering that, based on the records, "San Mig Light" is being sold at a suggested retail price of P21.15 per liter, or P6.98 per bottle, less VAT and specific tax,[39] it should be levied in accordance with Section 143(b) of the 1997 NIRC, as amended, which prescribes an excise tax of P12.30 per liter.

The Court finding that "San Mig Light" is a new brand of fermented liquor with retail price of P21.15 per liter, therefore, the same should be taxed at the rate of P12.30 per liter.

Based on the records of the case, the total excise tax claimed for refund in the amount of P926,389,172.02 pertains to the overpaid excise taxes by petitioner on its removal of "San Mig Light," one of its beer products, from its three plants located in Polo, Valenzuela, San Fernando, Pampanga, and Bacolod City, for the period covered December 1, 2005 to July 31, 2007, broken down as follows:[40]

Period	Volume of removals (in liters)	Excise Taxes Paid @ P16.33 and P17.64		Should be Excise Taxes Paid @ P12.30 and P13.28		Difference
		Per Liter	Amount	Per Liter	Amount	
Dec 1-31, 2005	13,209,424.56	P16.33	P 215,709,903.06	P 12.30	P 162,475,922.09	P 53,233,980.97
Jan 1 to Dec 31, 2006	130,364,912.76	16.33	2,128,859,025.37	12.30	1,603,488,426.95	525,370,598.42
Jan 1 to July 31, 2007	79,767,108.40	17.64	1,407,091,792.18	13.28	1,059,307,199.55	347,784,592.63
Total	223,341,445.72		P3,751,660,720.61		P2,825,271,548.59	P926,389,172.02

In order to support its claim for refund, petitioner adduced in evidence the following documents, *viz*:

1. Excise Tax Returns (ETRs), Filing Reference Statements of the Bureau of Internal Revenue (BIR), Union Bank of the Philippines (UBP) Payment Status Form or UBP Acknowledgement Receipts, Union Bank Online Confirmation Pages, Bank of the Philippine Islands (BPI)

[39] *Exhibit "M."*
[40] *Exhibit "B,"* p. 1.

ExpressLink and Tax Payment Confirmation Receipts, BIR Tax Payment Deposit Slips, BIR Electronic Filing and Payment System (EFPS) Payment Confirmation, Tax Credit Certificates.[41]

2. Daily Shipping Memoranda (SM), Delivery Receipts, and Daily Excise Taxpayer's Removal Declarations.[42]

3. Daily Official Delivery Invoices (ODI), Daily and Monthly Sworn Statements of Removals (SSR) duly signed by the BIR Revenue Officer in the premises of the three brewery plants.[43]

4. Monthly Movement Report with Allocated Monthly Removals Schedules and Total Removals Reports.[44]

After a thorough scrutiny of the evidences presented, the Court agrees with the findings of the Court-commissioned Independent Certified Public Accountant, Ms. Normita L. Villaruz, of Villaruz, Villaruz & Co., CPAs.

Out of the total amount of P926,389,172.02 being claimed for refund by petitioner as overpaid excise taxes due on "San Mig Light" removals for the period December 1, 2005 to July 31, 2007, only the amount of P926,169,056.74 is fully supported by relevant documents. The said amount is arrived at as follows:

1. Comparing the total amounts of excise taxes due on SML removals duly filed and paid to BIR per BIR Form 2200-A-Schedule 1 of Excise Tax Returns amounting to P3,751,220,636.62 as against the total amounts of excise taxes claimed as paid per SMC's CTA Petition amounting to P3,751,660,720.61, noting a variance of P440,083.99, as follows:

	Annex	in Liters	Amount of Excise Taxes as Paid at P16.33 & P17.64	Should be Excise Taxes Paid per SMC's Petition at P12.30 & P13.28	Difference (Amount being claimed for Refund)
Per BIR Form 2200-A Schedule 1 of ETRs	D_1.2	223,316,497.72	P3,751,220,636.62	P2,824,940,239.15	P926,280,397.47

[41] *Exhibits "C_1-1" to "C_1-1,103," "C_2-1" to "C_2-1,012," "C_3-1" to "C_3-994."*
[42] *Exhibits "H_1-1" to "H_1-3,594," "H_2-1" to "H_2-20,575," "H_3-1" to "H_3-5,619."*
[43] *Exhibits "F_1-1" to "F_1-479," "F_2-1" to "F_2-531," "F_3-1" to "F_3-546."*
[44] *Exhibits "D-1" to "D-20."*

As declared per Petition	B	223,341,445.72	3,751,660,720.61	2,825,271,548.59	926,389,172.02
Variance - Overstatement		(24,948.00)	P (440,083.99)	P (331,309.44)	P (108,774.55)

Since the amount of excise taxes paid as reflected in SMC's CTA Petition is more than the amount of excise taxes filed and paid per Excise Tax Returns examined, the amount being claimed for refund as SMC's CTA Petition would also be in excess by P108,774.55. This was subsequently traced to the Bacolod SML removals and its equivalent excise taxes due as reflected in the Excise Tax returns filed and paid on January 12, 2007 amounting to P5,049,914.28 instead of the amount of P4,609,831.56 per ODI number 4843 as reflected in the Amended Excise Tax Returns duly paid and filed on January 15, 2007. Based on the examination of supporting ODIs, SSRs and SMs, the equivalent excise taxes due of SML removals amounting to P4,609,831.56 correspond to the amounts of excise taxes per Amended Excise Tax Returns filed and paid on January 15, 2007. Thus, the amount of excise taxes due and paid that should be reflected in SMC's CTA Petition should be P4,609,831.56, thereby overstating the amount of excise taxes due being claimed for refund by P108,773.28 plus various rounding off difference amounting to P1.27, resulting to an overstatement of claim made by SMC's CTA Petition pertaining to this Bacolod transaction.[45]

2. Comparing the total excise taxes due on SML removals duly filed and paid per BIR Form 2200-A Schedule 1 of Excise Tax Returns as against the amount of excise taxes due per Official Delivery Invoices and Shipping Memorandum. Based on the detailed examination of ODIs, SSRs and SMs, included in the total excise taxes due, filed and paid for SML removals from the three plants for the period covered amounting to P3,7551,220,636.62 were excise taxes due and paid for San Mig Strong Ice in can and bottle removed from Polo Plant on December 20, 2005 and July 7, 2006 amounting to P342,216.71 and P87,300.18, respectively, or a total amount of P429,516.89.

   The said removals of San Mig Strong Ice were erroneously reflected in the duly filed Excise Tax returns as SML removals, hence, the equivalent excise taxes due and paid for San Mig Strong Ice were included in the computation of SMC's claim for refund and petition for review. This resulted to overstatement in the amount being claimed for refund amounting to P105,998.36, computed as follows:[46]

[45] *Exhibit "B,"* pp. 9 to 10.
[46] *Exhibit "B,"* p. 11.

	Annex	in Liters	Amount of Excise Taxes as Paid at P16.33 & P17.64	Should be Excise Taxes Paid per SMC's Petition at P12.30 & P13.28	Difference (Amount being claimed for Refund)
December 20, 2005 - Per ODI No. 010762	G1.1	20,956.32	P 342,216.71	P 257,762.74	P 84,453.97
July 7, 2006 - Per ODI No.0011259	G1.1	5,346.00	87,300.18	65,755.79	21,544.39
Variance - Overstatement		26,302.32	P 429,516.89	P 323,518.53	P105,998.36

3. Verifying the excise taxes paid on the volume of SML removed from the company's plants in Polo, San Fernando and Bacolod. As a result, there were removals per Shipping Memoranda from the San Fernando Brewery Plant which were greater than those reflected in the Official Delivery Invoices by P5,342.37, which should be deducted from the present claim, computed as follows:[47]

Date	ODI	PER OFFICIAL DELIVERY INVOICE (ODI) (in Liters)	PER SHIPPING MEMORANDUM (in Liters)	Variance (in Liters)	Adjustment to the Claim at P12.30 & P13.28
2006					
January 16	011074	296,611.92	297,609.84	(997.92)	P(12,274.42)
February 23	011146	508,788.72	508,242.24	546.48	6,721.70
February 28	011156	378,647.28	378,671.04	(23.76)	(292.25)
March 2	011160	85,369.68	85,345.92	23.76	292.25
2007				-	-
March 1	011789	415,578.24	415,586.16	(7.92)	(105.18)
June 26	00015395	395,461.44	395,437.68	23.76	315.53
Total		2,080,457.28	2,080,892.88	(435.60)	P (5,342.37)

In view of the above findings, the Court finds merit in petitioner's claim for refund or issuance of tax credit certificate of its overpaid excise taxes but in the reduced amount of P926,169,056.74, as computed below:

Total Excise Taxes Claimed for Refund P926,389,172.02

Deductions from claim:

[47] *Annex "H_2.1" of Exhibit "B."*

1)	Overstatement in amount being claimed due to difference in the amount of SML removals and excise taxes due and paid per ETRs *v.* amounts of excise taxes due claimed as paid per Petition, per ODI No.4843-Bacolod Plant	108,774.55	
2)	Overstatement in amount being claimed per Petition due to excise taxes due and paid for San Mig Strong Ice per ODI Nos.010762 and 0011259 which were erroneously presented as excise taxes due of SML removals in the ETRs and in the Petition-Polo Plant	105,998.36	
3)	Excise taxes due per Shipping Memorandum were greater than the amounts per ODI-San Fernando Plant	5,342.37	220,115.28
Recomputed Excise Taxes for Refund/Issuance of Tax Credit Certificate			**P926,169,056.74**

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor petitioner in the amount of P926,169,056.74, representing erroneously, 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.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

See attached Separate Concurring Opinion

OLGA PALANCA-ENRIQUEZ
Associate Justice

(With Dissenting Opinion)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.

ERNESTO D. ACOSTA
Presiding Justice