Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

-versus-

**SAN MIGUEL CORPORATION,**
Respondent,

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**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

-versus-

**SAN MIGUEL CORPORATION,**
Respondent.

x----------x

**G.R. No. 205045**

**G.R. No. 205723**

Present:

CARPIO, *J., Chairperson,*
VELASCO, JR., *
PERALTA,
MENDOZA, and
LEONEN, *JJ.*

**Promulgated:**
25 JAN 2017

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* Designated as Fifth Member of the Second Division per Special Order No. 2416-D dated January 4, 2017.

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## DECISION

**LEONEN, *J.*:**

These consolidated cases consider whether "San Mig Light" is a *new brand* or a *variant* of one of San Miguel Corporation's existing beer brands, and whether the Bureau of Internal Revenue may issue notices of discrepancy that effectively changes "San Mig Light"'s classification from *new brand* to *variant*. The issues involve an application of Section 143 of the 1997 National Internal Revenue Code (Tax Code), as amended, on the definition of a *variant*, which is subject to a higher excise tax rate than a *new brand*. This case also applies the requirement in Rep. Act No. 9334 that reclassification of certain fermented liquor products introduced between January 1, 1997 and December 31, 2003 can only be done by an act of Congress.

The Petition[1] docketed as G.R. No. 205045 assails the Court of Tax Appeals *En Banc*'s September 20, 2012 Decision[2] affirming the Third Division's grant of San Miguel Corporation's refund claim in CTA Case No. 7708, and the December 11, 2012 Resolution[3] denying reconsideration. The Commissioner of Internal Revenue prays for the reversal and setting aside of the assailed Decision and Resolution, as well as the issuance of a new one denying San Miguel Corporation's claim for tax refund or credit.[4]

On the other hand, the Petition[5] docketed as G.R. No. 205723 and consolidated with G.R. No. 205045 assails the Court of Tax Appeals *En Banc*'s October 24, 2012 Decision[6] dismissing the Commissioner of Internal Revenue's appeal, and the February 4, 2013 Resolution[7] denying

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1 *Rollo* (G.R. No. 205045), pp. 64–84. The Petition for Review on Certiorari was filed under Rule 45 of the Rules of Civil Procedure.

2 Id. at 9–25. The Decision was penned by Presiding Justice Ernesto D. Acosta; concurred in by Associate Justices Juanito C. Castaneda, Jr. (concurred with the Separate Concurring Opinion of Associate Justice Olga Palanca-Enriquez in CTA Case No. 7708), Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez (maintained her Separate Concurring Opinion in CTA Case No. 7708); and dissented by Associate Justices Esperanza R. Fabon-Victorino (concurred with the Dissenting Opinion of Associate Justice Cielito N. Mindaro-Grulla), Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas (maintained her Dissenting Opinion in CTA Case No. 7708 and concurred with the Dissenting Opinion of Associate Justice Mindaro-Grulla).

3 Id. at 60–62.

4 Id. at 80. *See also* p. 131, Supplemental Petition.

5 *Rollo* (G.R. No. 205723), pp. 44–127-A. The Petition for Review on Certiorari was filed under Rule 45 of the Rules of Civil Procedure.

6 Id. at 12–39. The Decision was penned by Associate Justice Juanito C. Castaneda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, and Cielito N. Mindaro-Grulla of the Court of Tax Appeals En Banc, Quezon City. Associate Justices Erlinda P. Uy, Esperanza R. Fabon-Victorino, and Amelia R. Cotangco-Manalastas were on leave.

7 Id. at 152–155.

reconsideration. The Commissioner of Internal Revenue prays for the reversal and setting aside of the assailed Decision and Resolution, the issuance of a new one remanding the case to the Court of Tax Appeals for the production of evidence in San Miguel Corporation's possession, or, in the alternative, the dismissal of the Petitions in CTA Case Nos. 7052, 7053, and 7405.[8]

On October 19, 1999, Virgilio S. De Guzman (De Guzman), San Miguel Corporation's Former Assistant Vice President for Finance, wrote the Bureau of Internal Revenue Excise Tax Services Assistant Commissioner Leonardo B. Albar (Assistant Commissioner Albar) to request the registration of and authority to manufacture "San Mig Light," to be taxed at ₱12.15 per liter.[9] The letter dated October 27, 1999 granted this request.[10]

On November 3, 1999, De Guzman advised Assistant Commissioner Albar that "San Mig Light" would be sold at a suggested net retail price of ₱21.15 per liter or ₱6.98 per bottle, less value-added tax and specific tax. "San Mig Light" would also be classified under "Medium Priced Brand" to be taxed at ₱9.15 per liter.[11]

On January 28, 2002, Alfredo R. Villacorte (Villacorte), San Miguel Corporation's Vice President and Manager of the Group Tax Services, wrote the Bureau of Internal Revenue Chief of the Large Taxpayers Assistance Division II (LTAD II) to request information on the tax rate and classification of "San Mig Light" and another beer product named "Gold Eagle King."[12]

On February 7, 2002, LTAD II Acting Chief Conrado P. Item replied to Villacorte's letter.[13] He confirmed that based on the submitted documents, San Miguel Corporation was allowed to register, manufacture, and sell "San Mig Light" as a new brand, had been paying its excise tax for a considerable length of time, and that the tax classification and rate of "San Mig Light" as a new brand were in order.[14]

However, on May 28, 2002, Edwin R. Abella (Assistant Commissioner Abella), Bureau of Internal Revenue Large Taxpayers Service Assistant Commissioner, issued a Notice of Discrepancy against San Miguel Corporation. The Notice stated that "San Mig Light" was a *variant* of its existing beer products and must, therefore, be subjected to the higher excise

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8 Id. at 118.
9 Id. at 517.
10 Id. at 518.
11 Id. at 519.
12 *Rollo* (G.R. No. 205045), pp. 10–11.
13 Id. at. 11.
14 Id.

tax rate for *variants*.[15] Specifically, for the year 1999, "San Mig Light" should be taxed at the rate of ₱19.91 per liter instead of ₱9.15 per liter; and for the year 2000, the 12% increase should be based on the rate of ₱19.91 per liter under Section 143(C)(2) of the Tax Code.[16] Hence, the Notice demanded payments of deficiency excise tax in the amount of ₱824,750,204.97, exclusive of increments for years 1999 to April 2002.[17]

The Finance Manager of San Miguel Corporation's Beer Division wrote a letter-reply dated July 9, 2002 requesting the withdrawal of the Notice of Discrepancy.[18] San Miguel Corporation stated, among other things, that "San Mig Light" was not a *variant* of any of its existing beer brands because of "the distinctive shape, color scheme[,] and general appearance"; and the "different alcohol content and innovative low calorie formulation."[19] It also emphasized that the Escudo logo was not a beer brand logo but a corporate logo.[20]

On October 14, 2002, Assistant Commissioner Abella wrote a letter-rejoinder reiterating its finding that "San Mig Light Pale Pilsen" was truly a *variant* of "San Miguel Pale Pilsen."[21] The letter-rejoinder cited certain statements in San Miguel Corporation's publication, "Kaunlaran," and the corporation's Annual Report as support for its finding.[22]

On November 20, 2002, Villacorte replied by requesting that "San Mig Light be reconfirmed as a new brand . . . the deficiency assessment be set aside and the demand for payment be withdrawn."[23]

Subsequently, three (3) conferences were held on the "San Mig Light" tax classification issue. At the conference held on December 16, 2003, Commissioner Guillermo Parayno, Jr. (Commissioner Parayno) informed San Miguel Corporation that five (5) members of the Bureau of Internal Revenue Management Committee voted that "San Mig Light" was a *variant* of "Pale Pilsen in can," while two (2) members voted that it was a *variant* of "Premium," a high-priced beer product of San Miguel Corporation.[24]

On January 6, 2004, Commissioner Parayno wrote San Miguel Corporation and validated the findings that "San Mig Light" was a *variant* of "San Miguel Pale Pilsen in can," subject to the same excise tax rate of the

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15 Id.; *rollo* (G.R. No. 205723), p. 14.
16 *Rollo* (G.R. No. 205723), p. 14.
17 Id. at 532. In Annex B of the Notice of Discrepancy (p. 535), the amount is ₱824,750,204.73.
18 *Rollo* (G.R. No. 205045), p. 11.
19 *Rollo* (G.R. No. 205723), p. 538.
20 Id.
21 *Rollo* (G.R. No. 205045), p. 11.
22 Id.
23 Id.
24 *Rollo* (G.R. No. 205723), p. 760.

latter—that is, ₱13.61 per liter—and that an assessment for deficiency excise tax against San Miguel Corporation was forthcoming.[25]

On January 28, 2004, a Preliminary Assessment Notice (PAN) was issued against San Miguel Corporation for deficiency excise tax in the amount of ₱852,039,418.15, inclusive of increments, purportedly for the removals of "San Mig Pale Pilsen Light," from 1999 to January 7, 2004.[26]

On February 4, 2004, a Notice of Discrepancy was issued against San Miguel Corporation on an alleged deficiency excise tax in the amount of ₱28,876,108.84, from January 8, 2004 to January 29, 2004.[27]

Accordingly, on March 24, 2004, Bureau of Internal Revenue Deputy Commissioner Estelita C. Aguirre (Deputy Commissioner Aguirre) issued a PAN against San Miguel Corporation for ₱29,967,465.37 representing deficiency excise tax, inclusive of increments, from January 8, 2004 to January 29, 2004.[28]

On April 12, 2004 and May 26, 2004, Deputy Commissioner Aguirre issued two (2) Formal Letters of Demand[29] to San Miguel Corporation with the accompanying Final Assessment Notice (FAN) Nos. LTS TF 004-06-02 and LTS TF 129-05-04, respectively, directing San Miguel Corporation to pay deficiency excise taxes in the amounts of:

(a) ₱876,098,898.83, inclusive of interest until April 30, 2004, for the period of November to December 1999 at ₱12.52 per liter, and January 2000 to January 7, 2004 at ₱13.61 per liter;[30] and

(b) ₱30,763,133.68, inclusive of interest until June 30, 2004, for the period January 8, 2004 to January 29, 2004.[31]

San Miguel filed a Protest/Request for Reconsideration against each FAN.[32]

On August 17, 2004 and August 20, 2004, Former Large Taxpayers Service Officer-in-Charge Deputy Commissioner Kim S. Jacinto-Henares informed San Miguel Corporation of the denial of the Protest/Request for

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25 Id. at 553–558.
26 *Rollo* (G.R. No. 205045), p. 11; *rollo* (G.R. No. 205723), p. 15.
27 Id. at 11–12; *rollo* (G.R. No. 205723), p. 15.
28 Id. at 12; *rollo* (G.R. No. 205723), p. 15.
29 Id; *rollo* (G.R. No. 205723), p. 15.
30 Id.; *rollo* (G.R. No. 205723), p. 15.
31 Id.; *rollo* (G.R. No. 205723), p. 15.
32 Id.; *rollo* (G.R. No. 205723), p. 15.

Reconsiderations against the two (2) FANs "for lack of legal and factual basis."[33]

***G.R. No. 205723***

On September 17, 2004 and September 22, 2004, San Miguel Corporation filed before the Court of Tax Appeals Petitions for Review, docketed as CTA Case Nos. 7052 and 7053, assailing the denials of its Protest/Request for Reconsiderations of the deficiency excise tax assessments.[34]

To prevent the issuance of additional excise tax assessments on San Mig Light products and the disruption of its operations, San Miguel Corporation paid excise taxes at the rate of ₱13.61 beginning February 1, 2004.[35]

On December 28, 2005, San Miguel Corporation filed with the Bureau of Internal Revenue its first refund claim. The claim sought the refund of ₱782,238,161.47 for erroneous excise taxes collected on San Mig Light products from February 2, 2004 to November 30, 2005.[36]

Due to inaction on its claim, on January 31, 2006, San Miguel Corporation filed before the Court Tax Appeals a Petition for Review docketed as CTA Case No. 7405.[37] The Court of Tax Appeals, upon motion, later consolidated CTA Case No. 7405 with CTA Case Nos. 7052 and 7053.[38]

The Court of Tax Appeals First Division, in its Decision[39] dated October 18, 2011, granted the Petitions in CTA Case Nos. 7052 and 7053 and partially granted the Petition in CTA Case No. 7405.[40] The Decision's dispositive portion reads:

> **WHEREFORE**, in view of the foregoing considerations, the consolidated Petitions for Review in CTA Case Nos. 7052 and 7053 are hereby **GRANTED**. The (1) [sic] letters dated August 17, 2004 and August 20, 2004 of respondents, denying petitioner's Protest/Request for Reconsideration dated May 12, 2004 and July 7, 2004, respectively, and

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33 Id.; *rollo* (G.R. No. 205723), p. 15.
34 *Rollo* (G.R. No. 205723), p. 15.
35 Id. at 16.
36 Id.
37 Id.
38 Id.
39 Id. at 971–1010. The Decision was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino of the First Division, Court of Tax Appeals, Quezon City.
40 Id. at 17–18.

(2) Assessment Notice Nos. LTS TF 004-06-02 and LTS TF 129-05-04 issued by respondent against petitioner for the periods of November 1999 to January 7, 2004 and January 8, 2004 to January 29, 2004, are hereby **CANCELLED and SET ASIDE**.

Moreover, the Petition for Review in CTA Case No. 7405 is hereby **PARTIALLY GRANTED**. Respondent CIR is hereby ORDERED to REFUND petitioner, or to ISSUE A TAX CREDIT CERTIFICATE in its favor in, the amount of SEVEN HUNDRED EIGHTY ONE MILLION FIVE HUNDRED FOURTEEN THOUSAND SEVEN HUNDRED SEVENTY TWO PESOS AND FIFTY SIX CENTAVOUS [sic] (P781,514,772.56), as determined below:

| | | |
|---|---|---|
| Claims for Over-Payment of Excise Taxes per Petition | | P782,238,161.47 |
| Less: Deductions from claims: | | |
| 1. Excise taxes due on SML removals per ODI which were not paid per Returns Polo Plant | P420,252.62 | |
| 2. Excise taxes due per Excise Tax Returns were Lesser than [the] amounts per ODI Polo Plant | 121,975.00 | |
| 3. SML Removals per shipping Memorandum were Greater than ODIs | | |
| San Fernando Plant | 181,080.11 | |
| Bacolod Plant | 81.18 | |
| | | 723,388.91 |
| **Recomputed Excise Taxes for Refund/Issuance of Tax Credit Certificate** | | **P781,514,772.56** |

**SO ORDERED**.[41] (Emphasis in the original)

The Commissioner filed a Motion for Reconsideration with Motion for Production of Documents praying that San Miguel Corporation be compelled to produce the following: (a) "Kaunlaran" publication for the months of October 1999 and January 2000; (b) 1999 Annual Report to stockholders; and (c) copies of the video footage of two (2) San Mig Light commercials as seen in its website.[42] The Commissioner claimed "that the admission of said documents would lead to a better illumination of the

[41] Id. at 1008–1009.
[42] Id. at 1041.

outcome of the case."[43]

The Court of Appeals First Division denied the Motions in its Resolution[44] dated February 6, 2012:

> **WHEREFORE**, premises considered, respondent's [CIR's] **MOTION FOR RECONSIDERATION WITH MOTION FOR PRODUCTION OF DOCUMENTS (Re: Decision promulgated 18 October 2011)** and SUPPLEMENTAL **MOTION FOR PRODUCTION OF DOCUMENTS** are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[45] (Emphasis in the original)

The Court of Tax Appeals *En Banc*, in its Decision[46] dated October 24, 2012, dismissed the Petition and affirmed the Division.[47] It also denied reconsideration through the Resolution[48] dated February 4, 2013.

Hence, the Commissioner on Internal Revenue filed the Petition for Review on Certiorari[49] docketed as G.R. No. 205723.

***G.R. No. 205045***

On August 30, 2007, San Miguel Corporation filed its second refund claim with the Bureau of Internal Revenue in the amount of ₱926,389,172.02.[50] Due to inaction on its claim, San Miguel Corporation filed before the Court Tax Appeals a Petition for Review, docketed as CTA Case No. 7708, on November 27, 2007.[51]

The Court of Tax Appeals Third Division, in its Decision dated January 7, 2011, partially granted the Petition.[52] It also denied reconsideration.[53] The Decision's dispositive portion 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]

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43 Id.
44 Id. at 1039–1043. The Resolution was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Esperanza R. Fabon-Victorino of the First Division, Court of Tax Appeals, Quezon City.
45 Id. at 1043.
46 Id. at 12–34.
47 Id. at 33.
48 Id. at 36–39.
49 Id. at 44–127-A.
50 *Rollo* (G.R. No. 205045), p. 13.
51 Id. at 13 and 152.
52 Id. at 14.
53 Id. at 15.

> 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.**[54] (Emphasis in the original)

On September 20, 2012, the Court of Tax Appeals *En Banc*[55] affirmed the Division and thereafter also denied reconsideration. The Decision's dispositive portion reads:

> **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 and overpaid excise taxes on "San Mig Light" during the period December 1, 2005 to July 31, 2007.
>
> **SO ORDERED.**[56] (Emphasis in the original)

Hence, the Commissioner on Internal Revenue filed the Petition for Review on Certiorari[57] docketed as G.R. No. 205045. The two (2) cases were consolidated.

Respondent San Miguel Corporation filed its Comment[58] on the Petitions, to which petitioner filed its Reply.[59] The parties then filed their respective memoranda.[60]

The issues for resolution are:

First, whether a motion for production of documents and objects may be availed of after the court has rendered judgment;

Second, whether petitioner complied with all requisites of a motion for production of documents and objects under Rule 27, such as a showing of good cause;

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54 Id. at 10.
55 Id. at 9–25.
56 Id. at 24–25.
57 Id. at 64–84.
58 *Rollo* (G.R. No. 205723), pp. 1116–1201; *rollo* (G.R. No. 205045), pp. 150–227.
59 Id. at 1217–1226; *rollo* (G.R. No. 205045), pp. 234–235.
60 Id. at 1264–1374; *rollo* (G.R. No. 205045), pp. 1391–1472.

Third, whether "San Mig Light" is a new brand and not a *variant* of "San Miguel Pale Pilsen";

Fourth, whether the "classification freeze" in Rep. Act No. 9334 refers to the freezing of classification of brands, and not to the freezing of net retail prices of brands;

Fifth, whether the deficiency excise tax assessments issued by the Bureau of Internal Revenue against respondent dated April 12, 2004 and May 26, 2004 are valid; and

Lastly, whether respondent is entitled to a refund of excess payment of excise taxes on "San Mig Light" in the amount of ₱781,514,772.56 for the period from February 1, 2004 up to November 30, 2005, and in the amount of ₱926,169,056.74 for the period from December 1, 2005 up to July 31, 2007.

## I

Petitioner questions the denial of its Motion for Production of Documents and Objects. It argues that this motion may be filed after pre-trial or during the pendency of the action since Rule 27, Section 1 of the Revised Rules of Civil Procedure does not explicitly provide that it must be availed of before trial or pre-trial.[61] Petitioner contends that all requisites for filing the motion were satisfied.[62] Assuming the Motion was belatedly filed, it should have been granted in the higher interest of justice.[63]

Respondent counters that the Motions, which were filed only after the Court of Tax Appeals Division rendered judgment, were belatedly filed since this mode of discovery must be availed of before trial.[64] Rule 27, Section 1 used the phrase, "in which an action is pending"; thus, this defines which court has authority to resolve the motion and does not define when the motion must be made.[65] Respondent contends that this remedy must be availed of before trial in order to facilitate and expedite case preparations.[66] Respondent adds that petitioner also failed to comply with the requisites for the motion. Specifically, the Motion did not adequately describe the contents of the documents to be produced to show their materiality and

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61 *Rollo* (G.R. No. 205723), pp. 1464–1467.
62 Id. at 1467–1470.
63 *Rollo* (G.R. No. 205045), pp. 79–80.
64 Id. at 415–416.
65 Id. at 416.
66 Id. at 417.

relevance to the case.[67]

Respondent further submits that the documents and objects are immaterial and irrelevant to the issues. The documents petitioner sought to have respondent produce are referred to as having to do with the taste, alcohol content, and calories of "San Mig Light," when the Tax Code definition of *variant* has nothing to do with these matters.[68] Respondent submits that in filing the Motions after judgment, petitioner was effectively seeking new trial, which it may only avail itself of with "newly discovered" evidence.[69]

Rule 27, Section 1 of the Revised Rules of Civil Procedure provides:

> SECTION 1. *Motion for production or inspection; order.* – Upon motion of any party ***showing good cause*** therefore, ***the court in which an action is pending*** may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence ***material to any matter involved in the action*** and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just. (Emphasis supplied)

Rule 18, Section 6 of the Rules of Court on Pre-Trial requires that the pre-trial briefs shall include "[a] manifestation of their having availed or intention to avail themselves of discovery procedures."

On July 13, 2004, this Court approved A.M. No. 03-1-09-SC, otherwise known as the Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition – Discovery Measures. Among other things, these rules direct trial courts to require parties to submit, at least three (3) days before pre-trial, pre-trial briefs containing "[a] manifestation of the parties of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners."[70]

*Republic v. Sandiganbayan*[71] explained the purpose and policy behind

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67 Id. at 418 and 425.
68 Id. at 419 and 424–426.
69 Id. at 420 and 423.
70 *Hyatt Industrial Manufacturing Corp v. Ley Construction and Development Corp,* 519 Phil 272, 286–287 (2006) [Per J. Austria-Martinez, First Division], *citing* A.M. No. 03-1-09-SC, pars. I.A. 1.2; 2(e).
71 281 Phil. 234 (1991) [Per J. Narvasa, En Banc].

modes of discovery:

> The truth is that "evidentiary matters" may be inquired into and learned by the parties before the trial. Indeed, ***it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action***, not only those known to them individually, but also those known to their adversaries; in other words, the *desideratum* is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. The experience in other jurisdictions has been that ample discovery before trial, under proper regulation, accomplished one of the most necessary ends of modern procedure: ***it not only eliminates unessential issues from trials thereby shortening them considerably, but also requires parties to play the game with the cards on the table so that the possibility of fair settlement before trial is measurably increased. . . .***
>
> As just intimated, the deposition-discovery procedure was designed to remedy the conceded inadequacy and cumbersomeness of the pre-trial functions of notice-giving, issue-formulation and fact revelation theretofore performed primarily by the pleadings.
>
> The various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing under Rule 20, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is, to repeat, to enable the parties, consistent with recognized privileges, ***to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent that said trials are carried on in the dark***.[72] (Emphasis supplied, citations omitted)

Specifically, this Court discussed the importance of a motion for production of documents under Rule 27 of the Rules of Court in expediting time-consuming trials:

> This remedial measure is intended to assist in the administration of justice by ***facilitating and expediting the preparation of cases for trial and guarding against undesirable surprise and delay***; and it is designed to simplify procedure and obtain admissions of facts and evidence, thereby ***shortening costly and time-consuming trials***. It is based on ancient principles of equity. More specifically, the purpose of the statute is to enable a party-litigant to discover material information which, by reason of an opponent's control, would otherwise be unavailable for judicial scrutiny, and to provide a convenient and summary method of obtaining material and competent documentary evidence in the custody or under the control of an adversary. It is a further extension of the concept of pretrial.[73] (Emphasis supplied)

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[72] *Republic v. Sandiganbayan,* 281 Phil. 234, 253–254 (1991) [Per J. Narvasa, En Banc]. *See also Security Bank Corporation v. Court of Appeals,* 380 Phil. 299, 308–309 (2000) [Per J. Panganiban, Third Division].

[73] *Solidbank v. Gateway Electronics Corporation,* 576 Phil. 250, 260 (2008) [Per J. Nachura, Third Division], *citing* 27 C.J.S. Discovery 71 (2008).

Consistent with litigation's quest for truth, parties should welcome every opportunity in attaining this objective, such as acting in good faith to reveal material documents.[74]

The scope of discovery must be liberally construed, as a general rule, to serve its purpose of providing the parties with essential information to reach an amicable settlement or to expedite trial.[75] "Courts, as arbiters and guardians of truth and justice, must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits."[76]

Rule 27, Section 1 of the Rules of Court does not provide when the motion may be used. Hence, the allowance of a motion for production of document rests on the sound discretion of the court where the case is pending, with due regard to the rights of the parties and the demands of equity and justice.[77]

In *Eagleridge Development Corporation v. Cameron Granville 3 Asset Management, Inc.*,[78] we held that a motion for production of documents may be availed of even beyond the pre-trial stage, upon showing of good cause as required under Rule 27.[79] We allowed the production of documents because the petitioner was able to show "good cause" and relevance of the documents sought to be produced, and the trial court had not yet rendered its judgment.

In this case, petitioner filed its Motion for Production of Documents after the Court of Tax Appeals Division had rendered its judgment. According to the Court of Tax Appeals Division, the documents sought to be produced were already discussed in the Commissioner's Memorandum dated October 21, 2010 and were already considered by the tax court when it rendered its Decision.[80] If petitioner believed that the evidence in the custody and control of respondent "would provide a better illumination of the outcome of the case," it should have sought their production at the earliest opportunity as it had been already aware of their existence.[81] Petitioner's laxity is inexcusable and is a fatal omission.

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74 *Security Bank Corporation v. Court of Appeals,* 380 Phil. 299, 310 (2000) [Per J. Panganiban, Third Division].

75 *Eagleridge Development Corporation v. Cameron Granville*, 708 Phil. 693, 704 (2013) [Per J. Leonen, Third Division], *citing Fortune Corporation v. Court of Appeals*, 299 Phil. 356, 374 (1994) [Per J. Regalado, Second Division]; *Republic v. Sandiganbayan,* 281 Phil. 234, 254–255 (1991) [Per J. Narvasa, En Banc].

76 Id. at 708.

77 *See Santos v. Phil. National Bank,* 431 Phil. 368 (2002) [Per J. Mendoza, Second Division].

78 G.R. No. 204700, November 24, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/204700.pdf> [Per J. Leonen, Special Third Division].

79 Id. at 5.

80 *Rollo* (G.R. No. 205723), pp. 1039–1043.

81 Id. at 1042.

Under these circumstances, there was indeed no further need for the production of documents and objects desired by petitioner. These pieces of evidence could have served no useful purpose. On the contrary, the production of those documents after judgment defeats the purpose of modes of discovery in expediting case preparation and shortening trials.

We find no reversible error on the part of the Court of Tax Appeals *En Banc* in affirming the Division's denial of petitioner's Motion for Production of Documents.

**II**

These consolidated cases involve the Tax Code provision defining *new brand* as opposed to *variant of brand*, as these two are treated differently for excise tax on fermented liquor.

Effective January 1, 1998, Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, reproduced as Section 143 the provisions of Section 140 of the old Tax Code, as amended by Republic Act No. 8240, governing excise taxes on fermented liquor. Section 143 distinguishes a *new brand* from a *variant of brand*:

> 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 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.

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, 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. (Emphasis supplied)

On January 1, 2005, Republic Act No. 9334[82] took effect, amending Section 143 of the Tax Code to read:

> 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

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[82] 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 (2005).

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 of 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. (Emphasis supplied)

On December 19, 2012, Rep. Act No. 10351, otherwise known as the Sin Tax Law,[83] was promulgated to further amend certain provisions on excise taxes on alcohol and tobacco products. Among the amendments to Section 143 were:

(1) Increase in the excise tax rates and transition from three (3)-tiered to two (2)-tiered tax rates starting January 1, 2014 until December 31, 2016; and to a single tax rate beginning January 1, 2017, irrespective of the price levels at which the products were sold in the market;

(2) All fermented liquors existing in the market at the time of the effectivity of the Act shall be classified according to the net retail prices and the tax rates provided, based on the latest price survey of the fermented liquors conducted by the Bureau of Internal Revenue. However, any downward reclassification is prohibited;

(3) Fermented liquors introduced in the domestic market after the effectivity of the Act shall be initially tax-classified according to their suggested net retail prices until such time that their correct tax bracket is finally determined under a specified period; and

(4) The proper tax classification of fermented liquors, whether registered before or after the effectivity of the Act, shall be determined every two (2) years from the date of effectivity of the Act.

Excise taxes are imposed on the production, sale, or consumption of specific goods. Generally, excise taxes on domestic products are paid by the manufacturer or producer before removal of those products from the place of

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[83] An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes.

production.[84] The excise tax based on weight, volume capacity, or any other physical unit of measurement is referred to as "specific tax." If based on selling price or other specified value, it is referred to as "*ad valorem*" tax.[85]

The excise tax on beer is a specific tax based on volume, or on a per liter basis. Before its amendment, Section 143 provided for three (3) layers of tax rates, depending on the net retail price per liter. How a new beer product is taxed depends on its classification, i.e. whether it is a *variant* of an existing brand or a *new brand*. Variants of a brand that were introduced in the market after January 1, 1997 are taxed under the highest tax classification of any variant of the brand. On the other hand, new brands are initially classified and taxed according to their suggested net retail price, until a survey is conducted by the Bureau of Internal Revenue to determine their current net retail price in accordance with the specified procedure.

## III

Petitioner argues that "San Mig Light," launched in November 1999, is not a *new brand* but merely a low-calorie *variant* of "San Miguel Pale Pilsen."[86] Thus, the application of the higher excise tax rate for variant products is appropriate and respondent should not be entitled to a refund or issuance of a tax credit certificate.[87]

Respondent counters that "San Mig Light" is a *new brand*; the classification of "San Mig Light" as a new and medium-priced brand may not be revised except by an act of Congress;[88] and the Court of Tax Appeals did not err in granting its claim for refund or issuance of tax credit certificate.

The refund claim in CTA Case No. 7405, subject of the Petition docketed as G.R. No. 205723, covers the period from February 2, 2004 to November 30, 2005, while the refund claim in CTA Case No. 7708, subject of the Petition docketed as G.R. No. 205045, covers the period from December 1, 2005 up to July 31, 2007.

We find for respondent.

Parenthetically, the Bureau of Internal Revenue's actions reflect its admission and confirmation that "San Mig Light" is a new brand.

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84 TAX CODE, sec. 130(a)(2).
85 TAX CODE, sec. 129.
86 *Rollo* (G.R. No. 205045), p. 299; *rollo* (G.R. No. 205723), p. 1423.
87 Id. at 313; *rollo* (G.R. No. 205723), pp. 1463–1464.
88 Id. at 341 and 343–350.

When respondent's October 19, 1999 letter requested the registration and authority to manufacture "San Mig Light," to be taxed at ₱12.15 per liter,[89] the Bureau of Internal Revenue granted the request.[90]

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.[91]

The Joint Stipulation of Facts, Documents and Issues in CTA Cases Nos. 7052 and 7053 dated July 29, 2005,[92] 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]).*[93] (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,"[94] classified as "NB" or "new brand registered on or after January 1, 1997":[95]

| BRAND NAME | CLASS | SPECIFICATION | PACKAGE | INTENDED MARKET | | REMARKS | |
|---|---|---|---|---|---|---|---|
| | | | | Domestic Sale | Export | Status | Date of Last Production |
| B. FERMENTED LIQUOR | | | | | | | |
| 1. SAN MIGUEL CORPORATION | | | | | | | |
| .... | | | | | | | |
| "San Mig Light" | NB | 330ml flint bottle | 24 bots | x | x | Active[96] | |

89 *Rollo* (G.R. No. 205723), p. 893.
90 Id. at 894.
91 Id. at 26; *rollo* (G.R. No. 205045), p. 11.
92 *Rollo* (G.R. No. 205723), pp. 411–516. Attached as Annex K of the Petition.
93 Id. at 494.
94 Id. at 960.
95 *Rollo* (G.R. No. 205045), p. 21.
96 *Rollo* (G.R. No. 205723), pp. 959–960.

## IV

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.[97] (Emphasis supplied)

In her Dissenting Opinion, Court of Tax Appeals Associate Justice Cielito N. Mindaro-Grulla discussed that *British American Tobacco v. Camacho*[98] explained the purpose and application of the classification freeze.[99] Her Dissenting Opinion concludes that the classification freeze does not apply when a brand is a *variant* erroneously determined as a *new brand.*[100]

*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.[101] In other words, after a cigarette brand is classified under the low-priced,

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97 Rep. Act No. 9334 (2005), sec. 3.
98 584 Phil. 489 (2008) [Per J. Ynares-Santiago, En Banc].
99 *Rollo* (G.R. No. 205045), pp. 118–120.
100 Id. at 120.
101 *British American Tobacco v. Camacho,* 584 Phil. 489, 504–505 (2008) [Per J. Ynares-Santiago, En Banc].

medium-priced, high-priced, or premium-priced tax bracket based on its current net retail price, its classification is frozen unless Congress reclassifies it.[102]

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."[103] This Court ruled that the classification freeze provision does not violate the constitutional provisions on equal protection.[104]

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.[105]

*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.

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[102] Id. at 517–518.
[103] Id. at 515.
[104] Id. at 545.
[105] Id. at 543.

## V

Before Rep. Act No. 9334 was passed, the Tax Code under Republic Act No. 8240 defined a "variant of a brand" as follows:

> 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.[106]

This definition includes two (2) types of "variants." The first involves the use of a modifier that is prefixed and/or suffixed to a brand root name, and the second involves the use of the same logo or design of an existing brand.

Rep. Act No. 9334 took effect on January 1, 2005 and deleted the second type of "variant" from the definition:

> 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.[107]

Revenue Regulations No. 3-2006, with the subject: "*Prescribing the Implementing Guidelines of 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*" reiterated the deletion of the second type of "variant":

> SEC. 2. DEFINITION OF TERMS. – For purposes of these Regulations, the following words and phrases shall have the meaning indicated below:
>
> . . . .
>
> (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.*** (Emphasis supplied)
>
> For this purpose, the term "root name" shall refer to a letter, word, number, symbol, or character; or a combination of letters, words, numbers, symbols, and/or characters that may or may not form a word; or shall consist of a word or group of words, which may or may not describe the other word or words: *Provided,* That the root name has been originally registered as such with the Bureau of Internal Revenue (BIR).
>
> Examples of root name: "L & M", "βΩ", "10", "Pall Mall", "Blue Ice", "Red Horse", etc.
>
> The term "modifier" shall refer to a word, a number or a

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106 Rep. Act No. 8240 (1997), sec. 3.
107 Rep. Act No. 9334 (2005), sec. 3.

combination of words and/or numbers that specifically describe the root name to distinguish one variant from another whether or not the use of such modifier is a common industry practice. The root name, although accompanied by a modifier at the time of the original brand registration, shall be the basis in determining the tax classification of subsequent variants of such brands.

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

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

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

ILLUSTRATION:

No. 1. –

. . . .

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

ILLUSTRATION:

No. 2. –

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

Petitioner submits that the complete name of "San Mig Light" is "San

Mig Light Pale Pilsen," and Section 143 of the Tax Code, in relation to its Annexes C-1 and C-2, show that the parent brands of San Mig Light are RPT[108] in cans or San Miguel Beer Pale Pilsen in can 330 ml, Pale Pilsen, and Super Dry.[109] It contends that the root name of the existing brand is "Pale Pilsen," and RPT had the highest tax classification at the time "San Mig Light" was introduced.[110] "San Miguel Beer Pale Pilsen" and "San Mig Light" have almost identical labels, and only these two labels bear the same "Pale Pilsen."[111]

Respondent counters that petitioner changed its theory of the case on appeal, and this should not be allowed.[112] It argues that petitioner categorically invoked the second part of the definition of *variant* in Section 143, and this part of the definition has been deleted by Rep. Act No. 9334.[113] Moreover, petitioner made no categorical assertion on the first part of the definition, but only a vague statement that "the root name of the existing brand is 'Pale Pilsen.'"[114] Respondent adds that petitioner "has not specified which type of 'San Mig Light', in bottle or in can, is a variant of 'RPT' in can (San Miguel Beer Pale Pilsen)."[115]

Petitioner, on the other hand, maintains that even during the trial stage, its theory has always been that "San Mig Light" falls under both first and second parts of Section 143, before its amendment by Rep. Act No. 9334.[116]

A change of theory on appeal is generally disallowed in this jurisdiction for being unfair to the adverse party.[117]

Even then, the Court of Tax Appeals *En Banc*, in both assailed Decisions, quoted with approval the First Division's finding that "San Mig Light" does not fall under both first and second parts of the definition of *variant*:

> 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".

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108 "Ring Pull Tab." *See rollo* (G.R. No. 205723), p. 1440.
109 *Rollo* (G.R. No. 205723), p. 1428.
110 Id. at 1429.
111 Id. at 1429 and 1433–1434.
112 *Rollo* (G.R. No. 205045), p. 353.
113 Id. at 352–354.
114 Id. at 354.
115 Id. at 356.
116 *Rollo* (G.R. No. 205723), pp. 1453 and 1457–1458.
117 *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* 535 Phil. 481, 489–490 (2006) [Per J. Chico-Nazario, First Division], *citing Ramos v. Poblete*, 73 Phil. 241, 246 (1941) [Per J. Ozaeta, En Banc]; *Carantes v. Court of Appeals*, 167 Phil. 232, 240 (1977) [Per J. Castro, First Division]; *Mon v. Court of Appeals,* 471 Phil. 65, 73–74 (2004) [Per J. Carpio, First Division].

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." 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.", "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.[118]

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 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 background.

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

[118] *Rollo* (G.R. No. 205723), p. 24.

that of "San Mig Light" is silver.

> Though the "escudo" logo appears on both "Pale Pilsen" bottle 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.[119]

## VI

A *variant* under the Tax Code has a technical meaning. It is determined by the brand (name) or logo of the beer product.

To be sure, all beers are composed of four (4) raw materials: barley, hops, yeast, and water.[120] Barley grain has always been used and associated with brewing beer, while hops act as the bittering substance.[121] Yeast plays a role in alcoholic fermentation, with bottom-fermenting yeasts resulting in light lager and top-fermenting ones producing the heavy and rich ale.[122] With only four (4) ingredients combined and processed in varying quantities, all beer are essentially related variants of these mixtures.

A manufacturer of beer may produce different versions of its products, distinguished by features such as flavor, quality, or calorie content, to suit the tastes and needs of specific segments of the domestic market. It can also leverage on the popularity of its existing brand and sell a lower priced version to make it affordable for the low-income consumers. These strategies are employed to gain a higher overall level of share or profit from the market.

In intellectual property law, a registered trademark owner has the right to prevent others from the use of the same mark (brand) for identical goods or services. The use of an identical or colorable imitation of a registered trademark by a person for the same goods or services or closely related goods or services of another party constitutes infringement. It is a form of unfair competition[123] because there is an attempt to get a free ride on the

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119 Id. at 25–26.

120 *See* Tor-Magnus Enari, *One Hundred Years of Brewing Research*, 101 JOURNAL OF THE INSTITUTE OF BREWING (1995) <http://onlinelibrary.wiley.com/doi/10.1002/j.2050-0416.1995.tb00887.x/epdf> 3 (visited January 15, 2017).

121 *See* Tor-Magnus Enari, *One Hundred Years of Brewing Research*, 101 JOURNAL OF THE INSTITUTE OF BREWING (1995) <http://onlinelibrary.wiley.com/doi/10.1002/j.2050-0416.1995.tb00887.x/epdf> 6–8 (visited January 15, 2017).

122 *See* Tor-Magnus Enari, *One Hundred Years of Brewing Research*, 101 JOURNAL OF THE INSTITUTE OF BREWING (1995) <http://onlinelibrary.wiley.com/doi/10.1002/j.2050-0416.1995.tb00887.x/epdf> 4 (visited January 15, 2017).

123 *Co Tiong Sa v. Director of Patents*, 95 Phil. 1, 5 (1954) [Per J. Labrador, En Banc].

reputation and selling power of another manufacturer by passing of one's goods as identical or produced by the same manufacturer as those carrying the other mark (brand).[124]

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.[125] 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

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[124] *Philippine Nut Industry, Inc. v. Standard Brands, Inc.,* 160 Phil. 581, 591–592 (1975) [Per J. Muñoz Palma, First Division]. *See also Philips Export B.V. v. Court of Appeals,* 283 Phil. 371, 379–380 (1992) [Per J. Melencio-Herrera, Second Division].

[125] *See rollo* (G.R. No. 205045), pp. 30–31, where the Dissenting Opinion of Justice Mindaro-Grulla in the Court of Tax Appeals En Banc's Decision dated September 20, 2012 quoted a portion of the Senate Interpellations on the reason behind taxing a variant of a brand with the highest classification:

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

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)

*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."[126] As discussed in the Court of Tax Appeals Decision, "San Mig Light" should be considered as one brand name.[127]

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.[128] "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."[129]

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."[130] These payments were made in protest as respondent subsequently filed refund claims.

## 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.[131]

Petitioner submits that the Notice of Discrepancy was to remedy the

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126 *Rollo* (G.R. No. 205723), p. 25.

127 Id.

128 *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 130, 139 (1999) [Per J. Purisima, Third Division].

129 *Commissioner of Internal Revenue v. Fortune Tobacco Corp.*, 581 Phil. 146, 168 (2008) [Per J. Tinga, Second Division].

130 TAX CODE, sec. 130 (a)(2) provides:
Section 130. Filing of Return and Payment of Excise Tax on Domestic Products. –
(A) Persons Liable to File a Return on Removal and Payment of Tax. –
. . . .
(2) Time for Filing of Return and Payment of the Tax. – Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production[.]

131 *Rollo* (G.R. No. 205045), p. 305.

"misrepresentation"[132] 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 production, cannot be considered as a confirmation by the BIR of the correctness of such payment.[133]

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.

When respondent launched "San Mig Light" in 1999, it wrote the Bureau of Internal Revenue on October 19, 1999 requesting registration and authority to manufacture "San Mig Light" to be taxed as ₱12.15.

The Bureau of Internal Revenue granted this request in its October 27, 1999 letter. Contrary to petitioner's contention, the registration granted was

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[132] *Rollo* (G.R. No. 205723), pp. 1462–1463.
[133] Id. at 1459.

not merely for intellectual property protection[134] but "for internal revenue purposes only":

> Your request dated October 19, 1999, for the registration of San Miguel Corporation commercial label for beer bearing the trade mark "San Mig Light" Pale Pilsen, for domestic sale or export, 24 bottles in a case, each flint bottle with contents of 330 ml., is hereby granted.
>
> . . . .
>
> Please follow strictly the requirements of internal revenue laws, rules and regulations relative to the marks to be placed on each case, cartons or box used as secondary containers. ***It is understood that the said brand be brewed and bottled in the breweries at Polo, Valenzuela (A-2-21).***
>
> ***You are hereby informed that the registration of commercial labels in this Office is for internal revenue purposes only*** and does not give you protection against any person or entity whose rights may be prejudiced by infringement or unfair competition resulting from your use of the above indicated trademark.[135] (Emphasis supplied)

Because the Bureau of Internal Revenue granted respondent's request in its October 27, 1999 letter and confirmed this grant in its subsequent letters, respondent cannot be faulted for relying on these actions by the Bureau of Internal Revenue.

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.[136]

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,[137] i.e., only when the action or ruling

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134 *Rollo* (G.R. No. 205723), p. 1461.

135 Id. at 894.

136 *Commissioner of Internal Revenue v. Petron Corporation,* 685 Phil. 118, 147 (2012) [Per J. Sereno, Second Division], *citing Secretary of Finance v. Oro*, 610 Phil. 419, 437–438 (2009) [Per J. Brion, Second Division] and *Pilipinas Shell v. Commissioner of Internal Revenue,* 565 Phil. 613, 652 (2007) [Per J. Velasco, Jr., Second Division]; *Commissioner of Internal Revenue v. Benguet Corporation,* 501 Phil. 343, 357–358 (2005) [Per J. Tinga, Second Division].

137 *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* 738 Phil. 335, 353 (2014) [Per J. Peralta, Third Division].

is patently erroneous[138] or patently contrary to law.[139] For the presumption lies in the regularity of performance of official duty,[140] 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.

In *Commissioner v. Algue*:[141]

> It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.
>
> But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[142]

## VIII

The Tax Code includes remedies for erroneous collection and overpayment of taxes. Under Sections 229 and 204(C) of the Tax Code, a taxpayer may seek recovery of erroneously paid taxes within two (2) years from date of payment:

> SEC. 229. *Recovery of tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund

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138 *Cf. ABS-CBN Broadcasting Corp. v. Court of Tax Appeals,* 195 Phil. 33, 43–44 (1981) [Per J. Melencio-Herrera, First Division].

139 *Philippine Bank of Communications v. Commissioner of Internal Revenue,* 361 Phil. 916, 929 (1999) [Per J. Quisumbing, Second Division].

140 RULES OF COURT, Rule 131, sec. 3(m).

141 241 Phil. 829 (1988) [Per J. Cruz, First Division].

142 Id. at 836.

or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening case that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

. . . .

SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may –

. . . .

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided,* That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further,* That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

The Commissioner shall submit to the Chairmen of the Committee on Ways and Means of both the Senate and House of Representatives, every six (6) months, a report on the exercise of his powers under this Section, stating therein the following facts and information, among others: names and addresses of taxpayers whose cases have been the subject of abatement or compromise; amount involved; amount compromised or abated; and reasons for the exercise of power: *Provided,* That the said report shall be presented to the Oversight Committee in Congress that shall be constituted to determine that said powers are reasonably exercised and that the Government is not unduly deprived of revenues.

In G.R. No. 205045, the Court of Tax Appeals *En Banc* ruled that "San Mig Light" is a new brand and not a variant of an existing brand. Accordingly, it ordered the refund of erroneously collected excise taxes on

"San Mig Light" products in the amount of ₱926,169,056.74 for the period of December 1, 2005 to July 31, 2007.[143]

In G.R. No. 205723, the Court of Tax Appeals *En Banc* found proper the refund of erroneously collected excise taxes on "San Mig Light" products in the amount of ₱781,514,772.56 for the period of February 2, 2004 to November 30, 2005.[144] It referred to, and agreed with, the findings of the Court-commissioned Independent Certified Public Accountant Normita L. Villaruz on reaching this amount.[145] The Court of Tax Appeals also found, from the records, that respondent timely filed its administrative claim for refund on December 28, 2005, and its judicial claim on January 31, 2006.[146]

This Court accords the highest respect to the factual findings of the Court of Tax Appeals. We recognize its developed expertise on the subject as it is the court dedicated solely to considering tax issues, unless there is a showing of abuse in the exercise of authority.[147] We find no reason to overturn the factual findings of the Court of Tax Appeals on the amounts allowed for refund.

**WHEREFORE**, the Petitions are **DENIED**. The assailed Decisions and Resolutions of the Court of Tax Appeals *En Banc* in CTA Case Nos. 7052, 7053, 7405, and 7708 are **AFFIRMED**.

**SO ORDERED.**

**MARVIC M.V.F. LEONEN**
Associate Justice

WE CONCUR:

**ANTONIO T. CARPIO**
Associate Justice
Chairperson

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143 *Rollo* (G.R. No. 205045), pp. 24–25.
144 *Rollo* (G.R. No. 205723), pp. 28–31.
145 Id. at 29–31.
146 Id. at 28.
147 *Commissioner of Internal Revenue v. Mirant (Phils) Operations, Corp.*, 667 Phil. 208, 222 (2011) [Per J. Mendoza, Second Division], *citing Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, 628 Phil. 430, 468 (2010) [Per J. Leonardo-De Castro, First Division], *in turn citing Commissioner of internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005) [Per J. Quisumbing, First Division].

**PRESBITERO J. VELASCO, JR.**
Associate Justice

**DIOSDADO M. PERALTA**
Associate Justice

**JOSE CATRAL MENDOZA**
Associate Justice

## ATTESTATION

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

**ANTONIO T. CARPIO**
Associate Justice
Chairperson, Second Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice