REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LA SUERTE CIGAR AND CIGARETTE FACTORY, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 5333, 5342, 5379 & 5385

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 12 1998

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# DECISION

These cases involve claims for refund of alleged erroneously or illegally paid specific taxes in the amounts of ₱74,250.00, ₱437,359.50, ₱219,993.00 and ₱156,892.50 or for the aggregate amount of ₱888,495.00 from March, 1994 to June, 1994.

Petitioner is a domestic corporation engaged in the manufacture of cigars and cigarettes out of stemmed leaf tobacco which it purchases in bulk from both local and foreign tobacco manufacturers. It is thus a manufacturer of tobacco.

On several occasions during the months of March to June, 1994, petitioner purchased and imported stemmed-leaf tobacco from various sellers abroad whereby the

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corresponding excise/specific taxes were subsequently assessed and collected. Petitioner paid the said amounts under protest.

Shortly thereafter, petitioner, through counsel, filed claims for refund of specific taxes paid by it on its importations of stemmed leaf tobacco. Petitioner protested the assessments and collections invoking Section 137 of the National Internal Revenue Code wherein it exempts the sale of stemmed leaf tobacco "by one manufacturer directly to another" from excise tax. As the claims for said refund has not been acted upon, petitioner was compelled to file Petitions for Review before this Court on March 12, 1996 (CTA Case No. 5333), April 2, 1996 (CTA Case No. 5342), May 2, 1996 (CTA Case No. 5379), and June 5, 1996 (CTA Case No. 5385).

In her Answer to the Petition, respondent considered stemmed leaf tobacco as "partially manufactured or prepared tobacco" as provided for in Revenue Regulations 17-67 [Sec. 1(1)]. If so, it is subject to a tax of ₱0.75 for each kilogram (Sec. 141, National Internal Revenue Code). It further averred that Section 137 of the Tax Code pertains to transfer from one L-7 directly to another L-7 but not from an L-6 (stripper or thresher) to L-7. While imported leaf tobacco has never been subject to tax, partially manufactured tobacco is subject to the specific tax of ₱0.75/kg.. Thus, whether or not the stemmed-leaf tobacco imported by petitioner is liable to tax shall depend upon compliance with such conditions.

The issue in these cases is whether or not petitioner is entitled to the refund of the amounts of ₱74,250.00, ₱437,359.50, ₱219,993.00 and ₱156,892.50 or for the total amount of ₱888,495.00 representing specific tax payments alleged to have been erroneously collected by respondent.

Resolution of the issue centers on Sections 137 and 141(b) of the National Internal Revenue Code relied upon by petitioner and respondent, respectively, to wit:

> **"Section 137.** ***Removal of tobacco products without prepayment of tax.*** — Products of tobacco entirely unfit for chewing or smoking may be removed free of tax for agricultural or industrial use, under such conditions as may be prescribed in the regulations of the Department of Finance. Stemmed leaf tobacco, fine cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and sweepings of tobacco may be sold in bulk as raw material by one manufacturer directly to another, without payment of the tax under such conditions as maybe prescribed in the regulations of the Department of Finance.
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> "Stemmed leaf tobacco" as herein used means leaf tobacco which has had the stem or midrib removed. The term does not include broken leaf tobacco."

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> "**Section 141.** ***Tobacco Products.*** - There shall be collected a tax of seventy-five centavos on each kilogram of the following products of tobacco:
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> (a) x x x
>
> (b) Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened; and
>
> xxx xxx xxx
>
> Fine cut shorts and refuse, scraps, clippings, cuttings, stems and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco may be transferred, disposed of, or otherwise sold, without prepayment of the specific tax herein provided for under conditions as maybe prescribed in the regulations promulgated by the Secretary of Finance upon recommendation of the Commissioner if the same are to be exported or to be used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished products."

The records show that petitioner purchased stemmed leaf tobacco products where excise taxes were assessed and collected. It should also be noted that the imported stemmed-leaf tobacco was blended with locally purchased stemmed-leaf tobacco and both were used as raw materials to manufacture petitioner's cigarettes.

Petitioner contends that to tax stemmed leaf tobacco under Section 141 of the Tax Code simply because it is "partially manufactured tobacco would render useless the express grant of exemption to stemmed leaf tobacco under

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Section 137 of the Tax Code; besides, Section 141 does not purport to be the exclusive law on the subject of excise tax deferment".

The present controversy has already been settled and passed upon in the recent cases entitled **Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, docketed as CA-SP Nos. 38219 and 40313 (CTA Case Nos. 4587 and 4616) promulgated on January 30, 1998,** wherein the Honorable Court of Appeals ruled in this wise:

> "There is no disputing the fact that stemmed leaf tobacco is not among the tobacco products expressly mentioned in Section 141.
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> xxx xxx xxx
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> Section 137 of the Tax Code earlier cited, expressly defines "stemmed leaf tobacco" and excludes it from payment of the tax when sold in bulk as raw material by one manufacturer directly to another. While this particular section provides for removal of tobacco products without pre-payment of tax, it is significant that the Tax Code defines and classifies stemmed leaf tobacco under its Section 137. When the Revenue Regulations No. 17-67 undertakes to classify stemmed leaf tobacco under Section 141 in a manner different from the way it is treated in Section 137, it is no longer engaged in mere classification. It is already adding something to the law not in consonance with what the law itself specifically provides but contrary to it. It is not only engaged in amendment but in amendment contrary to a specific provision of the same law.
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> The petitioner argues that Section 137 is for one tax purpose while Section 141 is for

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another. The fact is that the reason for one provision is also present in the other and must, therefore, be treated in the same light.

Section 141 of the Tax Code specifically excludes "fine cut shorts and refuse, clippings, cuttings, stems and sweepings of tobacco resulting from the handling in stripping of whole leaf tobacco" from the 75 centavos per kilogram tax when disposed of or sold. The condition in the statute is that the above must be exported or used in the manufacture of other tobacco products. The reason for the exclusion is that the excise tax will eventually be paid on the finished product.

The same reason applies to stemmed leaf tobacco which is intended solely as a raw material in the manufacture of cigarettes and other tobacco products. After the cigarettes are manufactured, excise taxes will be paid. In effect, what the petitioner has provided in the disputed regulation is double taxation - the payment of excise taxes on the raw material and later, the payment of excise taxes on the manufactured product. Double taxation must be specifically and clearly provided by law. It cannot be imposed by administrative rule making body. If specifically excluded under the last paragraph of Section 141, taxes cannot be included under paragraph 2 of the same Section by a mere interpretation of the petitioner.

It is elementary that any taxes not specifically imposed by law cannot be mandated on the strength of an administrative regulation which purports to implement the said law. Only Congress, not the BIR, can provide for additional taxes. Revenue Regulations No. 17-67 is correct when it provides for the procedure in enforcing the statute. It can state the rules, taxation-wise, on securing permits, putting up factories and machineries, procuring raw materials, recording production, and disposing of the finished product. But the petitioner's power are limited to procedure and implementation and not substantive law which seeks to add new taxes in addition to those

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specifically taxed under the law. This is especially true when the particular product being taxed by regulation is expressly excluded from taxes in another section of the same law and also in another law. The petitioner is arrogating powers to itself which it does not possess.

The argument that stemmed leaf tobacco used as raw material is exempt from taxation only when it is from one L-7 manufacturer to another L-7 manufacturer suffers from the same infirmity. It is based on the BIR's own Revenue Regulations V-39 which add to the law something which is not there. Using its power of classification, the petitioner has ventured into an amendment and amplification of the basic law.

Section 141 taxes fine cut shorts and refuse, scraps, clippings, stems and sweepings but the unnumbered paragraph after Section 141(c) exempts these items if they are used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product.

The law defines and exempts certain raw materials on condition that excise taxes will eventually be paid on the finished manufactured product. The BIR has classified these raw materials in a restrictive manner - only from one L-7 to another L-7 when all that the law requires is that the excise taxes not collected at the start will eventually be paid once the tobacco product comes out in final form. For a wide variety of raw materials, there is double imposition by the BIR of excise taxes when the law obviously removes taxes at the start of the manufacturing process and imposes them only once - when the process is completed. Again, double taxation is valid but only when it is provided by statute. It cannot be imposed through an interpretative rule.

The petitioner's contention that the classification of stemmed leaf tobacco as "partially manufactured tobacco" under Revenue Regulations No. 17-67 prevails over the

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definition of the processed tobacco under Rep. Act 698 is fanciful to say the least. Revenue Regulations No. 17-67 is not a basic law. It is simply an implementation of the statutory provision of the Tax Code. A mere regulation of a quasi-legislative agency cannot prevail over the express definition under a law passed by Congress itself. It is elementary that an administrative regulation cannot amend or repeal the express provisions of statutes enacted by Congress. How can the petitioner argue that an administrative regulation prevails over a statute or law?

The petitioner states that Sections 141 and 137 of the Tax Code must be read and construed together. It explains that under Section 141, stemmed leaf tobacco, being partially prepared tobacco is subject to specific tax. However, under Section 137, if the stemmed leaf tobacco is sold in bulk directly from one manufacturer to another in accordance with the conditions prescribed in Section 20(a) of Revenue Regulation No. V-39, it is exempt from specific tax. It is very obvious that it is not the Tax Code which taxes on one hand and exempts from taxes on the other hand the tobacco involved. It is the addition of a definition of partially manufactured tobacco which clashes with the law itself and the regulatory conditions of BIR which restrict the application of the law to an extremely limited class that form the basis of BIR action. The petitioner engages in legislation and then uses its own administrative or quasi-legislative powers to add a certain class of tax which is neither expressed nor contemplated in the basic law."

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**WHEREFORE,** premises considered, finding the petitions meritorious and in accordance with law, the claims for refund are hereby **GRANTED** and respondent is **ORDERED** to **REFUND** in favor of La Suerte Cigar and

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Cigarette Factory, Inc., the total amount of ₱888,495.00 representing erroneously or illegally paid specific taxes for the period of March 1994 to June 1994.

**SO ORDERED.**

**AMANCIO Q. SAGA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**RAMON O. DE VEYRA**
Associate Judge

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Presiding Judge