REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE TOBACCO FLUE-CURING AND REDRYING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7377

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

AUG 1 0 2009
10:46 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Exemption from taxation is highly disfavored in law and he who claims an exemption from his share of the common burden in taxation must be able to justify his claim by showing that Congress intended to exempt him by words too plain to be mistaken. An exemption from tax liability cannot be permitted to exist upon vague implications.

THE CASE

This is a Petition For Review filed by Philippine Tobacco Flue-Curing and Redrying Corporation (hereafter "petitioner") praying for the cancellation and withdrawal of the *Assessment Notice* dated January 18, 2005, assessing petitioner of deficiency excise tax in the amount of P1,720,022.47, for the period covering January 1, 2002 to March 31, 2004.

THE PARTIES

Petitioner is a corporation duly organized and existing under Philippine laws, with principal address at 802 A. Bonifacio Street, Balintawak, Quezon City. It is primarily engaged in the business as a tobacco dealer and is classified as an L-6 permittee.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with authority to exercise the functions of said office, including *inter alia*, the power to abate or cancel a tax assessment.

THE FACTS

On July 16, 2004, petitioner received from Deputy Commissioner Estelita C. Aguirre of respondent's Large Taxpayers Service a *Notice of Discrepancy* dated June 22, 2004, which stated a deficiency excise tax amounting to P1,467,247.79, inclusive of penalties.

On August 4, 2004, petitioner, through counsel, sent a Letter, dated August 3, 2004 claiming that there is no legal basis for holding petitioner liable for any alleged deficiency excise tax.

Subsequently, petitioner received respondent's *Preliminary Assessment Notice* (PAN) dated September 28, 2004, which increased the deficiency excise tax liability to P1,536,224.74, detailed as follows:

Volume of Removals of Partially Manufactured Tobacco (in kilograms)	1,364,297
Multiplied by Tax Rate	0.75
Basic Deficiency Excise Tax Due	1,023,222.75
Add: 25% Surcharge	255,805.69
Interest per annum from 5-1-02 to 10-31-04	257,196.30
Total Amount Due	P1,536,224.74

On December 10, 2004, petitioner filed a Protest, dated December 8, 2004, reiterating its position in its Letter, dated August 3, 2004.

On February 7, 2005, petitioner received a Formal Letter of Demand, dated January 19, 2005, with Computation of Deficiency Excise Tax on Removals of Partially Manufactured Leaf Tobacco and Audit Result/Assessment Notice dated January 18, 2005, for deficiency excise tax increased to P1,720,022.47, computed as follows:

Volume of Removals of Partially Manufactured Tobacco (in kgs.)	1,364,297
Multiplied by Tax Rate	0.75
Basic Deficiency Excise Tax	P1,023,222.75
Add: 25% Surcharge	255,805.69
Interest up to 2-28-05	440,994.03
Total Deficiency Excise Tax Due	**P1,720,022.47**

On February 28, 2005, petitioner filed its Protest Letter, dated February 24, 2005. On April 28, 2005, petitioner subsequently filed a Supplement Protest Letter.

Due to respondent's inaction, petitioner filed the present Petition for Review on November 23, 2005.

On January 13, 2006, petitioner received respondent's Final Decision on Disputed Assessment, dated December 20, 2005, finding that petitioner's excise tax liability is in the amount of P1,829,661.96, inclusive of increments, computed as follows:

Volume of removals of partially manufactured leaf tobacco (in kilograms)			1,364,297
Excise tax rate per kilogram		P	0.75
Basic deficiency excise tax			1,023,222.75
Add: 25% Surcharge	P 255,805.69		
20% Interest per annum computed up to January 16, 2006	550,633.52		806,439.21
Total deficiency excise tax		**P**	**1,829,661.96**

In his Answer filed on January 26, 2006, respondent alleged the following:

> "8. The assessment was issued in accordance with existing law and regulations. The factual and legal bases are contained in the subject assessment.
>
> 9. The decision of the Supreme Court in the case of Commissioner of Internal Revenue v. La Campana Fabrica de Tabacos, Inc. ('La Campana' for brevity), G.R. No. 145275, as implemented by Revenue Memorandum Circular No. 18-2002 specifically provides that partially manufactured tobacco is subject to excise tax at the rate of P0.75 per kilogram. La Campana is designated as a manufacturer of the said partially manufactured tobacco. In the said case, the tax at the rate of P0.75 per kilogram is on top of the excise tax imposed on cigarettes using partially manufactured tobacco as raw material. Under existing regulations on tobacco products, L-6 permittees, to which petitioner is classified per its declaration, are those engaged in the hand stripping or threshing whole leaf tobacco for themselves or for other L-6 or L-7 (manufacturers) permittees. Therefore, all removals of partially manufactured tobacco made by petitioner, it being a

producer/manufacturer, are subject to excise tax at the rate of P0.75 per kilogram.

In the more recent La Suerte case, the issue on the taxability of partially manufactured tobacco was likewise resolved in favor of the BIR; thus, putting to rest the question of its taxability and petitioner's tax liability.

10. Pursuant to Section 130 (A) (2) of the National Internal Revenue Code of 1997 ('Tax Code of 1997' for brevity), the term 'manufacturer' does not merely refer to establishments that are engaged in the production of finished products for public consumption but also includes those that produce/manufacture 'partially manufactured tobacco' as in the case of L-6 permittees. As far as excise tax is concerned, the tax is due *before* its removal from the place of production, and the person primarily liable is the manufacturer/producer.

11. Section 140 of the Tax Code of 1997 provides that stemmed leaf tobacco may be sold as raw material by one manufacturer (L-7 permittee) directly to another manufacturer (L-7 permittee) without paying the corresponding tax due thereon. Under existing revenue regulations on tobacco products, the manufacturer who uses stemmed leaf tobacco as raw material is classified as a cigar or cigarette manufacturer; thus, the manufacturer referred to in the said Section of the Tax Code of 1997 is a cigar or cigarette manufacturer and not an L-6 permittee. In addition, the decision promulgated by the Supreme Court in the above-mentioned cases clearly presented the conditions under which stemmed leaf tobacco may be transferred from one factory to another without prepayment of specific tax. Further, Section 144 (b) of the same Code imposes P0.75 on each kilogram of tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened.

12. The basis of the questioned assessment is anchored on decided cases and on the applicable laws, rules,

> regulations and issuances existing at the time the partially manufactured tobacco are removed or transferred. Section 4 of the Civil Code of the Philippines provided that laws, rulings or circulars promulgated shall not be given retroactive application. Thus, petitioner's claim that the exemption from taxation of stemmed leaf tobacco is now resolved under the provision of Section 4 of Republic Act No. 9334 is clearly misplaced. During the deliberations of the Bicameral Conference Committee on several provisions on Alcohol and Tobacco Products House Bill No. 3174 and Senate Bill No. 1854 on 15 December 2004, it was mentioned that the provisions of the said Bills are not *sub judice*, but are *prospective*, and therefore intended as not to affect pending cases. Republic Act No. 9334 which took effect on 01 January 2005 is a new law; it does not clarify an old law. Hence, the provision on the non-taxability of stemmed leaf tobacco in the said law, assuming it applies to the petitioner, is not applicable in the instant case.
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> xxx xxx."

Petitioner presented its Vice-President, Ignacio Luis Tan, and Legal Consultant, Ferdinand D. Macaibay, as witnesses, and documentary evidence, marked as *Exhibits "A"* to *"O"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated June 29, 2007, except for *Exhibit "C"*, which was denied admission for failure to present the original for comparison after petitioner filed a "Motion For Reconsideration (of the Resolution promulgated on 22 January 2007)".

On August 10, 2006, petitioner filed a "Motion to Correct Errors in Petition for Review", which the Court granted in a Resolution dated November 30, 2006.

On the other hand, respondent presented Revenue Officer III, Maria Cristina D. David, as witness, and documentary evidence, marked as *Exhibits "1"* to *"3"*, inclusive of their submarkings, which were all admitted by the Court in its Resolution dated June 2, 2005.

On January 31, 2008, petitioner filed an "Urgent Motion for the Suspension of Collection of the Disputed Tax Liability", to which respondent filed his "Comment to Petitioner's Urgent Motion for the Suspension of Collection of Tax" on February 15, 2008.

On April 9, 2008, petitioner filed an "Urgent Motion to Admit Attached Judicial Affidavit of Witness", with attached Judicial Affidavit (of Mr. Ignacio Luis Tan).

In a Resolution dated June 2, 2008, the Court granted petitioner's "Urgent Motion for the Suspension of Collection of the Disputed Tax Liability" and "Urgent Motion to Admit Attached Judicial Affidavit of Witness". Thereafter, the parties were granted thirty (30) days from notice, within which to file their simultaneous memoranda.

Petitioner filed its Memorandum on August 4, 2008, while respondent filed a "Motion to Admit Memorandum" with attached Memorandum (For Respondent) on July 30, 2008, which the Court granted, and the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY EXCISE TAX ON STEMMED LEAF TOBACCO BASED ON SEC. 144 OF THE NIRC OF 1997.

II

WHETHER OR NOT THE RULING IN THE CASE OF *COMMISSIONER OF INTERNAL REVENUE VS. LA CAMPANA FABRICA DE TABACOS, INC.* IS APPLICABLE TO THIS CASE.

III

WHETHER OR NOT *SEC. 130 (A) (2) OF THE NIRC OF 1997* IS APPLICABLE TO THE PETITIONER.

IV

WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE AMOUNT OF P1,720,022.47 FOR THE PERIOD BEGINNING JANUARY 1, 2002 UP TO MARCH 31, 2004 AS DEFICIENCY EXCISE TAX.

V

WHETHER OR NOT THE HONORABLE COURT OF TAX APPEALS HAS JURISDICTION IN THIS CASE.

THE COURT'S RULING

The petition has no merit.

We deal first with the procedural question of whether the present Petition For Review was filed within the reglementary period prescribed under *Section 228 of the NIRC of 1997, as amended.*

In this regard, *Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended*, provides:

> "**SEC. 228. Protesting of Assessment.** – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> xxx xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the hundred eighty (180)-day

period; otherwise, the decision shall become final, executory and demandable."

In the case at bench, petitioner received on February 7, 2005 the Formal Letter of Demand, dated January 19, 2005 *(Exhibit "H")*, with Computation of Deficiency Excise Tax on Removals of Partially Manufactured Leaf Tobacco *(Exhibit "I")*, and Audit Result/Assessment Notice, dated January 18, 2005 *(Exhibit "J")*. Counting thirty days from receipt thereof, petitioner had until March 9, 2005 within which to protest said Assessment administratively. Petitioner filed its protest, dated February 24, 2005 *(Exhibit "K")* on February 28, 2005, well within the thirty-day period.

From the filing of the protest, petitioner had sixty (60) days or until April 29, 2005 to submit all relevant supporting documents. Considering that petitioner's protest raised a question of law, claiming that it is not liable to pay excise tax, on April 28, 2005 petitioner filed a Supplement Protest *(Exhibit "L")*, in lieu of submission of relevant supporting documents.

In the recent case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc., G.R. Nos. 172045-46, June 16, 2009*, the Supreme Court held:

> "The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by

> the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit"

It is clear from the above ruling of the Supreme Court that the submission of relevant supporting documents is determined by the taxpayer itself. The taxpayer cannot be required to produce documents that it cannot submit. Considering that in this case, the taxpayer's defense raises a question of law, the taxpayer believes that the submission of a supplemental protest is necessary to support the legal basis in disputing the tax assessment against it. Therefore, petitioner's Protest and Supplement Protest are deemed to have substantially complied with *Section 228 of the NIRC of 1997, as amended.*

Counting one hundred eighty (180) days from April 29, 2005, respondent had until October 26, 2005 within which to act on petitioner's protest. Petitioner, therefore, had until November 25, 2005, within which to appeal to this Court.

Petitioner filed the present Petition for Review on November 23, 2005. Clearly, the Petition for Review was filed within the period prescribed under *Section 228 of the NIRC of 1997, as amended.*

Now for the substantive questions, which will be discussed jointly for being interrelated.

Respondent based the deficiency tax assessment of P1,720,022.47 on *Section 144 of the NIRC of 1997, as amended.*

Respondent claims that while *Section 140 of the NIRC of 1997, as amended*, allows the removal of tobacco products without prepayment of tax, said Section is not applicable to the present case.

Respondent further contends that all removals of partially manufactured tobacco under *Section 144*, which covers petitioner's removal of tobacco, are subject to excise tax at the rate of P0.75, and that petitioner cannot avoid tax payment or liability whether under *Section 140 or 144*, considering that it failed to satisfy the prescribed requirements and conditions of both Sections.

On the other hand, petitioner counters that when the NIRC used the term "partially manufactured tobacco" in *Section 144 of the NIRC of 1997, as amended,* and the term "stemmed leaf tobacco", as defined in *Section 140 of the same Code*, said terms should be treated as different items on which taxes are to be levied. In other words, the "partially manufactured tobacco" that *Section 144* subjects to excise tax is not the same as the "stemmed leaf tobacco" which *Section 140* exempts from payment of specific tax. An administrative agency cannot extend, diminish or otherwise amend the general provision of law. Hence, regulations promulgated by the administrative agency which went beyond

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merely interpreting the law should be struck down as unconstitutional, they being unauthorized modifications or amendments of law. Further, the exemption from payment of excise tax under *Section 140 of the NIRC of 1997, as amended*, is broad enough to cover all kinds of tobacco manufacturers without distinction, including both L-6 and L-7 permittees.

The Court agrees with respondent.

Settled is the rule that a claim for refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception *(Paseo Realty and Development Corporation vs. Court of Appeals, et al., G.R. No. 119286, October 13, 2004, 235 SCRA 251)*.

Section 144 of the NIRC of 1997, as amended, provides:

> "**SEC. 144. Tobacco Products.** – There shall be collected a tax of seventy-five centavos (P0.75) on each kilogram of the following products of tobacco:
>
> (a) Tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing;
>
> (b) **Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened**; and
>
> (c) Fine-cut shorts and refuse, scraps, clippings, stems and sweepings of tobacco.
>
> 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,

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> disposed of, or otherwise sold, without prepayment of the excise tax herein provided for under such conditions as may be prescribed in the rules and 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 product.
>
> On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, Sixty centavos (P0.60)." *(Emphasis supplied)*

On the other hand, *Section 140 of the same Code* exempts prepayment from the tax the removal of tobacco products, or sale of the bulk of stemmed leaf tobacco, to wit:

> "Section 140. *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 rules and regulations prescribed by the Secretary of Finance. Stemmed leaf tobacco, fine-cut short, 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 may be prescribed in the rules and regulations prescribed by the Secretary of Finance.
>
> '*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." *(Emphasis supplied)*.

It is clear from both *Sections 140 and 144 of the NIRC of 1997, as amended,* that any exemption from tax payment is dependent on compliance with "such conditions as may be prescribed in the rules and regulations prescribed by the Secretary of Finance."

In the exercise of the said authority by the Secretary of Finance and the Revenue Commissioner to promulgate rules and regulations for the effective enforcement of internal revenue laws, *Revenue Regulations No. 17-67* was issued, defining the term "partially manufactured tobacco", as follows:

> "SEC. 2. Definition of terms:
>
> (m) 'Partially manufactured tobacco. – Includes:
>
> (1) 'Stemmed leaf' – handstripped tobacco, clean, good, partially broken leaf only, free from mold and dust."

Petitioner's contention that the classification of "stemmed leaf tobacco" as "partially manufactured tobacco" is improper since *Revenue Regulations No. 17-67* is an administrative legislation in a prohibited sense is untenable. This issue is not novel, as said issue had already been settled by the Supreme Court in the case of *Compania General de Tabacos de Filipina vs. Court of Appeals, G.R. No. 147361, March 23, 2004, 426 SCRA 210*, and reiterated in the subsequent case of *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc., G.R. No. 139803, September 2, 2005, 469 SCRA 346*. In the case of *Compania General de Tabacos de Filipina vs. Court of Appeals*, the Supreme Court ruled:

"Petitioner's arguments impugning the validity of Revenue Regulations Nos. V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245 (now 244) of the Tax Code. The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, our scrutiny of Revenue Regulations Nos. V-39 and 17-67 clearly shows that said regulations did not modify or deviate from the text of Section 137 (now 140) and 141 (now 144) but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax."

In the case of *Commissioner of Internal Revenue vs. La Campana Fabrica de Tabacos, Inc., G.R. No. 145275, November 15, 2001, 369 SCRA 122*, the Supreme Court further clarified the issue, as follows:

"Section 137 (now Sec. 140) of the Tax Code reads in part:

'**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 sweeping 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 may be prescribed in the regulations of the Department of Finance.

'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.'

Thus, the conditions under which stemmed leaf tobacco may be transferred from one factory to another without prepayment of specific tax are as follows:

(a) The transfer shall be under an official L-7 invoice on which shall be entered the exact weight of the tobacco at the time of its removal.

(b) Entry shall be made in the L-7 register in the place provided on the page removals.

(c) Corresponding debit entry shall be made in the L-7 register book of the factory receiving the tobacco under the heading 'Refuse, etc., received from the other factory,' showing the date of receipt, assessment and invoice numbers, name and address of the consignor, form in which received, and the weight of the tobacco.

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Pursuant to the above ruling, *Revenue Memorandum Circular No. 18-2002* was issued, which reads, as follows:

"REVENUE MEMORANDUM CIRCULAR NO. 18-02

SUBJECT	:	Interpretation of Pertinent Provisions of Section 140 of the National Internal Revenue Code of 1997 by the Supreme Court of the Philippines under G.R. No. 145275
TO	:	All Internal Revenue Officers, Employees and Others Concerned

For the information and guidance of all revenue officials, employees and others concerned, quoted below is Sec. 140 of the National Internal Revenue Code (NIRC) which in pertinent part provides:

'xxx Stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, clippings, stem 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 may be prescribed in the rules and regulations prescribed by the Secretary of Finance.'

The Supreme Court, in interpreting the above provision of law, in the case of CIR vs. La Campana Fabrica de Tabacos, Inc., (G.R. No. 145275 promulgated on November 15, 2001), held that:

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'We agree with the petitioner that the exemption from specific tax of the sale of stemmed leaf tobacco as raw material by one L-7 directly to another L-7 is because such stemmed leaf tobacco has been subjected to specific tax when an L-7 manufacturer purchased the same from wholesale leaf tobacco dealers designated under Section 3, Chapter I, Revenue Regulations No. 17-67 (*supra*) as L-3, L-3F, L-3R, L-4, or L-6, the latter being a stripper of leaf tobacco. These are the sources of stemmed leaf tobacco to be used as raw materials by an L-7 manufacturer which does not produce stemmed leaf tobacco. When an L-7 manufacturer sells the stemmed leaf tobacco purchased from the foregoing suppliers to another L-7 manufacturer as raw materials, such sale is not subject to specific tax under Section 137 (now Section 140), as implemented by Section 20(a) of Revenue Regulations No. V-39.'

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In view of the said Supreme Court decision, all removals of stemmed leaf tobacco by leaf tobacco dealers (i.e. L-3, L-3 ¼, L-3R, L-4, L-6) are subject to the specific tax of P0.75 per kilogram imposed under Section 144 of the NIRC, in addition to the inspection fee imposed under Section 146 of the same Code. However, removals of said leaf tobacco product by an L-7 (a manufacturer of tobacco

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> products), for delivery to another L-7 shall be exempt from such specific tax pursuant to the said Supreme Court decision."

Clearly from the aforequoted ruling, the transferor of the stemmed leaf tobacco must be an L-7 tobacco manufacturer, for only an L-7 permittee has an official L-7 invoice and an L-7 register, and the transferee of the stemmed leaf tobacco must also be an L-7 tobacco manufacturer, for only an L-7 permittee has an L-7 registry book.

There is no dispute that petitioner is an L-6 permittee, as defined in *Section 3(g) of Revenue Regulations No. 17-67, otherwise known as "Tobacco Revenue Regulations on Leaf, Scrap, Other Partially Manufactured Tobacco and Other Tobacco Products; Grading, Classification, Inspection, Shipment, Exportation, Importation and the Manufacturers thereof under the provisions of Act No. 2613, as amended"*, as follows:

> "(g) L-6 – Wholesale leaf tobacco dealer who, exclusively for export, except as otherwise provided for in these regulations, perform the following functions:
>
> (1) Handstripped and/or thresh whole leaf tobacco for themselves or for other L-6 or L-7 permittees;
>
> (2) Re-process partially manufactured tobacco for themselves, or for other L-6 or L-7 permittees;
>
> (3) Sell their partially manufactured tobacco to other L-6 permittees.

xxx xxx."

Considering that petitioner is an L-6 permittee, it is evident that petitioner failed to comply with the prescribed requisites of being an L-7 permittee. Neither is there any evidence that its transferees were L-7 permittees.

Petitioner's contention that in the *La Campana* case the Supreme Court held La Campana, an L-7 permittee-transferee, as the party liable, and not Tobacco Industries of the Philippines, NGC Trading or PTFC, who are all L-6 permittee-transferors, thus, petitioner which is an L-6 permittee-transferor, should also not be held liable for deficiency excise tax, is bereft of merit.

In the *La Campana case (supra)*, the Supreme Court ruled:

> "In the case at bar, the stemmed leaf tobacco purchased by respondent came from Tobacco Industries of the Philippines, NGC Trading and Philippine Tobacco Fluecuring Corporation, who are all L-6 permittees.
>
> Section 137 (now 140) of the Tax Code qualifies the term 'manufacturer' by the phrase 'under such conditions as may be prescribed in the regulations of the Department of Finance.' Under such regulations the term 'manufacturer' refers only to L-7.
>
> We agree with the petitioner that the exemption from specific tax of the sale of stemmed leaf tobacco as raw material by one L-7 directly to another L-7 is because such stemmed leaf tobacco has been subjected to specific tax when an L-7 manufacturer purchased the same from wholesale leaf tobacco dealers designated under Section 3, Chapter I, Revenue Regulations No. 17-67 (*supra*) as L-3,

> L-3F, L-3R, L-4, or L-6, the latter being a stripper of leaf tobacco. These are the sources of stemmed leaf tobacco to be used as raw materials by an L-7 manufacturer which does not produce stemmed leaf tobacco. When an L-7 manufacturer sells the stemmed leaf tobacco purchased from the foregoing suppliers to another L-7 manufacturer as raw material, such sale is not subject to specific tax under Section 137 (now Section 140), as implemented by Section 20(a) of Revenue Regulations No. V-39.
>
> Consequently, respondent's purchases of stemmed leaf tobacco were not exempt from specific tax."

From the foregoing ruling, there is no declaration, nor any implication which exempts an L-6 permittee-transferor, like petitioner herein, from the payment of excise tax. What is clearly provided therein is when an L-7 manufacturer sells the stemmed leaf tobacco to another L-7 manufacturer, such sale is not subject to specific tax under *Section 140 of the NIRC of 1997, as amended.*

Further, *Section 130 of the NIRC of 1997, as amended,* categorically states who are liable for payment of excise tax:

> "SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. –
>
> (A) Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax. –
>
> xxx xxx
>
> (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: xxx."

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From the foregoing, as correctly argued by the respondent, the term "manufacturer" does not merely refer to establishments that are engaged in the production of finished products for public consumption, but also includes those that produce/manufacture "partially manufactured tobacco", as in the case of L-6 permittees. As far as excise tax is concerned, the tax point is before removal of the article from the place of production and the manufacturer/producer of said article is the party primarily liable to pay the excise tax due thereon.

Unlike in the cases of L-3, L-3F, L-3R, L-4 and B-14 who are engaged as "wholesale leaf tobacco dealers" and which include a person who purchases leaf tobacco directly from the tobacco farmers or planters or from other L-3 dealers; petitioner, as an L-6 permittee, is not merely confined to wholesale leaf tobacco dealings, but it may also engage in the function of "handstripping and/or threshing whole leaf tobacco for itself or for other L-6 or L-7 permittees; re-processing partially manufactured tobacco for itself or for other L-6 or L-7 permittees; and selling its partially manufactured tobacco to other L-6 permittees."

Considering that under *Section 130(A)(2)*, the manufacturer or producer of domestic product is liable to pay the excise tax before the removal of domestic product from the place of production and the uncontroverted fact that petitioner is engaged in the "manufacture or partial manufacture of tobacco" since it purchased cured leaf tobacco, removed the stems through the process of threshing, redried the threshed leaf, and then packed the redried products into cardboard cases or hessian bales, clearly shows that it is liable under said *Section 130 (A)(2)*, in relation to *Section 144 of the NIRC of 1997, as amended.* In fact, in the affidavit of petitioner's witness, Ignacio Luis Tan, it was stated that petitioner's purchased cured leaf tobacco after going through that lengthy process is referred to as "partially manufactured," "unmanufactured" or "stemmed" tobacco *(Exhibit "O")*.

Considering further that there is no showing that petitioner has been recognized as an L-7 tobacco manufacturer, thus, it cannot be exempt from the payment of excise tax under *Section 140*.

Thus, petitioner cannot be exempt from the payment of excise tax under *Section 144*.

In sum, the Court finds petitioner liable for deficiency excise tax covering the period from January 1, 2002 to March 31, 2004.

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** the respondent the amount of **ONE MILLION SEVEN HUNDRED TWENTY THOUSAND TWENTY**

TWO and 47/100 PESOS (P1,720,022.47), representing its deficiency excise tax for the period covering January 1, 2002 to March 31, 2004.

In addition, petitioner is hereby **ORDERED TO PAY** a delinquency interest equivalent to twenty percent (20%) per annum on the amount of P1,720,022.47 from March 1, 2005, until full payment thereof, pursuant to *Section 249(C)(3) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice