

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LA SUERTE CIGAR AND CIGARETTE
FACTORY, INC.,

Petitioner,

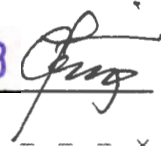
- versus -

C.T.A. CASE NOS. 5319
and 5327

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 12 1998



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DECISION

These cases involve claims for refund in the amounts of Three Hundred Fifty Nine Thousand Three Hundred Sixteen Pesos (P359,316.00) (CTA Case No. 5319) and Two Hundred Fifty Three Thousand Four Hundred Ninety Pesos and ²⁵/₁₀₀ (P253,490.25) (CTA Case No. 5327), allegedly representing specific taxes paid under protest during the months of January and February, 1994.

Petitioner, La Suerte Cigar and Cigarette Factory, Inc. (La Suerte, for brevity) is a domestic corporation engaged in the manufacture of cigarettes out of stemmed-leaf tobacco which it purchases in bulk from both local and foreign tobacco manufacturers.

On several occasions during the months of January and February, 1994, the Commissioner collected from La Suerte the aggregate amount of P612,806.25 for specific taxes due on the latter's bulk purchases of stemmed-leaf

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tobacco from foreign tobacco manufacturers. La Suerte paid the said amounts under protest. The dates of payment, the respective weight/description of stemmed-leaf tobacco on the basis of which the specific taxes were paid, the Authority to Accept Payment of Excise Tax (ATAPET) Serial Number as well as the amount of each payment are as follows:

<u>Date</u>	<u>Description</u>	<u>ATAPET Serial Number</u>	<u>Amount</u>
01/07/94	59,400 kgs.	010458	P 44,550.75
01/12/94	55,521 kgs.	010477	41,640.75
01/12/94	39,600 kgs.	010478	29,700.00
01/17/94	46,539 kgs.	010493	34,904.25
01/19/94	69,401 kgs.	010611	52,050.75
01/19/94	158,400 kgs.	010609	118,800.00
01/20/94	31,026 kgs.	010621	23,269.50
01/31/94	19,200 kgs.	010657	14,400.00
02/11/94	31,026 kgs.	010967	23,269.50
02/11/94	69,401 kgs.	010965	52,020.75
02/22/94	39,600 kgs.	011022	29,700.00
02/22/94	39,600 kgs.	011020	29,700.00
02/22/94	59,400 kgs.	011018	44,550.00
02/28/94	19,800 kgs.	011045	14,850.00
02/28/94	79,200 kgs.	011048	<u>59,400.00</u>
		Total	P612,806.25

On January 31, 1995, through a letter dated January 26, 1995, La Suerte filed, through counsel, a letter-claim for the refund of specific taxes paid by La Suerte on its importations of stemmed leaf tobacco which included the amounts aforestated.

As no action was taken by herein respondent on the subject claims for refund, La Suerte filed the instant

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petitions on January 5, 1996 (CTA Case No. 5319) and February 9, 1996 (CTA Case No. 5327).

The lone issue for determination is whether or not petitioner is entitled to the refund of the specific taxes which it paid under protest during the months of January and February, 1994 in the total amount of P612,806.25.

Petitioner, in claiming that it is not liable for the payment of excise tax for its importation and local purchases of stemmed leaf tobacco, relied on Section 137 of the NIRC, which in part reads as follows:

"Section 137.- x x x 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 may be prescribed in the regulations of the Department of Finance. (Underscoring supplied)

And in order to support its case, petitioner presented the various Authority to Accept Payment For Excise Taxes to prove that it paid the specific taxes subject of the claims for refund (Exhibits D-D7, E-E6); the letter-claim for refund filed with the office of herein respondent (Exhibit F) and the various Authority to Release Imported Goods to prove that the standard form being utilized by the BIR to authorize the release of imported goods from

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the custody of the Bureau of Customs did not mention specific taxes as among the fees and taxes that had to be paid in order to secure the said release (Exhibits G, H and I).

Respondent, on the other hand, raised the proposition that the liability of petitioner to pay the deficiency excise tax is governed by Section 141 of the NIRC, to state:

"**Section 141.** - There shall be collected a tax of P0.75 on each kilogram in the following products of tobacco:

xxx

xxx

xxx

(b) Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened."

Likewise, she averred that under Revenue Regulations No. 17-67, particularly Section 1, par. 1, a stemmed-leaf tobacco has been considered a partially prepared tobacco within the ambit of Section 141 of the NIRC, aforequoted.

On July 17, 1997 respondent manifested that since the issues involved are purely legal and that there are no BIR records available, she is submitting the case for decision.

In the light of the decision of the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs.**

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Fortune Tobacco Corporation, CA-G.R. SP Nos. 38219 and 40313, dated January 30, 1998. We find for the petitioner. In said case, the Court of Appeals ruled that there is no dispute that stemmed leaf tobacco is not among the tobacco products expressly mentioned in Section 141 so that the issue now is whether or not Revenue Regulation No. 17-67 is valid insofar as it interprets the statutory term "partially prepared tobacco" so as to include stemmed leaf tobacco. The Court of Appeals further ruled, thus:

"It is an elementary principle of Administrative Law that in interpreting or implementing a provision of law, a government agency cannot go beyond the terms and provisions of the basic law. Much less can it go against the law itself. Administrative rules and regulations issued by a particular department or agency must be in harmony with the provision of law and should be for the sole purpose of carrying into effect the statutory provisions which it is construing or implementing. An administrative agency cannot extend, diminish, or otherwise amend the general provision of law (Fernando Juan vs. Musngi, 155 SCRA 133 [1987]; U.S. vs. Tupasi Molina, 29 Phil. 119; Director of Forestry vs. Munoz, 23 SCRA 1183 [1968]; Gonzalo Sy vs. Central Bank, 70 SCRA 570 [1976]; Bautista vs. Juinio, 127 SCRA 342 [1984])."

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In case of discrepancy between the basic law and a rule or regulation issued to implement it, the basic law prevails. The regulation cannot go beyond the provisions and terms of the basic law (Shell Philippines Inc. vs. Central Bank, 162 SCRA 628 [1988]).

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After a careful study of all aspects of the law and the revenue regulation involved in this case, We come to the conclusion that the Commissioner of Internal Revenue has not engaged in mere interpretation but has gone into unauthorized modification or amendment of the law. Only Congress can do this. Section 2(M)(1) of Revenue Regulations No. 17-67 is, therefore, ultra vires and invalid.

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 prepayment of tax, it is significant that the Tax Code defines and classifies stemmed leaf tobacco under its Section 137. When 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.

The petitioner argues that Section 137 is for one tax purpose while Section 141 is for 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 or 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.

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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. x x x

xxx

xxx

xxx

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

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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 definition of 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.

The aforequoted Fortune Tobacco case acknowledges the ruling of the Court of Appeals in **Commissioner of**

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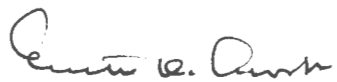
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Internal Revenue vs. La Suerte Cigar and Cigarette Factory, CA G.R. SP No. 38107 dated December 29, 1995, but declared that the latter case "failed to take into account the limitations in the exercise of quasi-legislative powers by administrative agencies" and that "the power to prescribe regulations is not a carte blanche giving the BIR full discretionary authority to add to the law." To further reconcile the differences between the two cases both decided by the Court of Appeals, the decision in the Fortune Tobacco case stated, thus:

"There is no discrepancy between the principles enunciated in this decision and in the La Suerte decision except that the latter stopped short and did not go into the powers of administrative agencies. If it had gone fully and far enough into the quasi-legislative powers of Bureau of Internal Revenue, it would have arrived at conclusions fully consonant with our findings."

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** to petitioner the sum of P612,806.25, representing erroneously collected specific taxes.

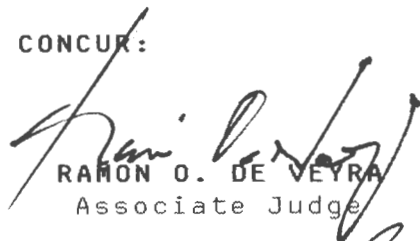
SO ORDERED.

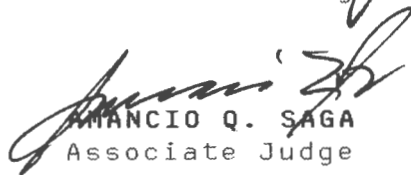

ERNESTO D. ACOSTA
Presiding Judge

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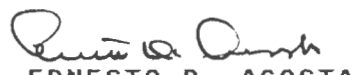
WE CONCUR:


RAMON O. DE VEYRA
Associate Judge


MANICIO Q. SACA
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