

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NO. 5455

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUN 02 1998



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DECISION

The question that this Petition for Review presents is whether or not petitioner La Suerte Cigar and Cigarette Factory, Inc., (La Suerte for brevity) is entitled to the refund of Two Hundred Twenty Two Thousand Two Hundred Ninety Seven Pesos and Seventy Five Centavos (P222,297.75) allegedly representing specific taxes paid under protest for the month of January, 1995.

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

On six occasions during the month of January of 1995, the Commissioner of Internal Revenue collected from

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La Suerte the aggregate amount of P222,297.75 for specific taxes due on La Suerte's bulk purchases of stemmed leaf tobacco from foreign tobacco manufacturers. La Suerte paid the said amount under protest. The dates of payment, the respective amounts of stemmed leaf tobacco on which the specific tax was paid, the Authority to Accept Payment of Excise Tax (ATAPET) serial numbers as well as the amount of each payment are indicated as follows:

Date	Amount	ATAPET Serial No.	Amount
01/03/95	41,640 kgs.	2046030	31,230.00
01/17/95	79,200 kgs.	2046060	59,400.00
01/17/95	19,800 kgs.	2046056	14,850.00
01/17/95	38,400 kgs.	2046058	28,800.00
01/27/95	59,400 kgs.	2046093	44,550.00
01/27/95	57,957 kgs.	2046095	43,467.75
		T o t a l	<u>P222,297.75</u>

On September 27, 1996, La Suerte, through counsel, filed a claim for refund of specific taxes which it paid on its importations of stemmed leaf tobacco from October 1994 to May 1995 which included the P222,297.75 subject matter of this case.

To toll the running of the two-year prescriptive period, La Suerte filed the instant petition on January 2, 1997.

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The sole issue posed for consideration is whether or not petitioner is entitled to the refund of the specific taxes covering the month of January, 1995, which it paid under protest.

Petitioner presented as documentary evidence the following: several Authority to Accept Payment; Authority to Release Imported Goods; BIR Ruling dated December 12, 1972 and a letter-claim for refund. Respondent, on the other hand, deemed it proper not to submit any evidence as the case involves pure questions of law.

Petitioner anchors its claim on Section 137 of the National Internal Revenue Code (NIRC), which provides:

"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 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."

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In relation thereto, petitioner also relied on Section 1(h) of Revenue Regulations No 17-67 which defines "manufacturer of tobacco" as including "every person whose business it is to manufacture tobacco or snuff or who employs others to manufacture tobacco or snuff, whether such manufacturing is by cutting, pressing (not balancing), grinding, or rubbing (grating) any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or partially manufactured tobacco or snuff or putting up for consumption scraps, refuse, or stems of tobacco resulting from any process of handling tobacco stems, scraps, clippings, or waste by sifting, twisting, screening or by any other process". Petitioner claims that since it utilizes the stemmed leaf tobacco to manufacture cigarettes, it is therefore a manufacturer of tobacco. It is the position of the petitioner that Section 137 of the NIRC is a broad and unqualified provision which covers the sale of stemmed leaf tobacco by any manufacturer to another.

Respondent, for her part, averred that the taxability of petitioner's importation of stemmed leaf tobacco in January of 1995 is governed by Section 141(b) of the NIRC, to wit:



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"Section 141. *Tobacco products.* - There shall be collected a tax of seventy-five centavos on each kiloram of the following products of tobacco:

(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

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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."

Furthermore, respondent asserted that under Revenue Regulations No. 17-67, specifically Section 1 paragraph 1 thereof, stemmed leaf tobacco is considered as partially prepared tobacco which falls within the purview of Section 141 of the NIRC.

The issues raised by the parties are nothing new. The Court of Appeals had already settled and passed upon the same controversy in *Commissioner of Internal Revenue versus Fortune Tobacco Corporation*, CA-SP Nos. 38219 and

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40313 (CTA Case Nos. 4587 and 4616) promulgated on January 30, 1998. And this Court had occasions to rule in several cases involving the same questions of law. Hence, in *La Suerte Cigar and Cigarette Factory, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 5395 promulgated on May 5, 1998; *La Suerte Cigar and Cigarette Factory, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 5418 promulgated on May 12, 1998; *La Suerte Cigar and Cigarette Factory, Inc. vs. Commissioner of Internal Revenue*, CTA Case Nos. 5177, 5189, and 5210 promulgated on May 12, 1998; *La Suerte Cigar and Cigarette Factory, Inc. vs. Commissioner of Internal Revenue*, CTA Case Nos. 5333, 5342, 5379 and 5385 promulgated on May 12, 1998 and *La Suerte Cigar and Cigarette Factory, Inc.*, CTA Case Nos. 5319 and 5327, promulgated on May 12, 1998, this Court favorably granted the petitions.

The Honorable Court of Appeals in the aforementioned cases held, thus:

"There is no disputing the fact that stemmed leaf tobacco is not among the tobacco products expressly mentioned in Section 141. The issue, therefore, is whether or not Revenue Regulations No. 17-67 is valid insofar as it interprets the statutory term "partially

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prepared tobacco" so as to include stemmed leaf tobacco.

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. Juinio, 127 SCRA 342 [1984]).

There are limitations to the rule making power of administrative agencies. When Congress authorizes an administrative body to promulgate rules and regulations to implement given legislation, all that is required is that the regulation must not contravene the statute, but must conform to the standards it prescribed (Tayug Rural Bank vs. Central Bank, 146 SCRA 120 [1986]; Del Mar vs. Philippine Veterans Administration, 52 SCRA 340 [1973]).

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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]).

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



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into unauthorized modification or amendment of the law. Only Congress can do this. Section 2(M)(1) of the 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 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.

The same reason applies to stemmed leaf tobacco which is intended solely as a raw

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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 powers are limited to procedure and implementation and not substantive law which seeks to add new taxes in addition to those 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 Regulation V-39 which add to the law something which is not there. Using its power of classification, the petitioner has ventured

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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 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?

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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 the 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.

We are aware of the ruling in Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc., CA-G.R. SP No. 38107 issued on December 29, 1995.

We note, however, that this Court in the case of La Suerte Cigar failed to take into account the limitations in the exercise of quasi-legislative powers by administrative agencies. True, the law in Sections 141 and 137 of the Tax Code contains the phrase "under such conditions as may be prescribed in the regulations of the Department of Finance." However, the power to prescribe regulations is not a carte blanche giving the BIR full discretionary authority to add to the law. It is not a roving commission. It is subject to established and basic principles of Administrative Law enunciated in scores of Supreme Court decisions. There is no discrepancy between the principles enunciated in this decision and in the La Suerte decision

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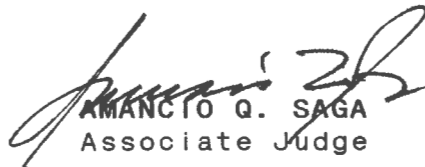
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except that the latter stopped short and did not go into the powers of administrative agencies. If it had gone fully and far enough into the quasi-legislative powers of the Bureau of Internal Revenue, it would have arrived at conclusions fully consonant with our findings."

Accordingly, after an exhaustive review of the evidence presented by the petitioner and finding no cogent reason to deviate from the present jurisprudence on the matter, this Court finds that the petitioner has partially proven its claim for refund. Petitioner failed to submit the document/s necessary to prove that the specific tax of P31,230.00 due on the 41,640 kilograms of imported stemmed leaf tobacco was paid on January 3, 1995.

WHEREFORE, in view of all the foregoing, respondent is hereby ORDERED to REFUND to the petitioner the sum of One Hundred Ninety One Thousand Sixty Seven Pesos and Seventy Five Centavos (P191,067.75) representing erroneously collected specific taxes for the month of January, 1995.

SO ORDERED.


AMANCIO Q. SAGA
Associate Judge

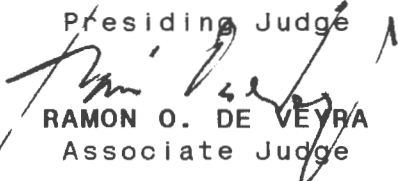


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WE CONCUR:


ERNESTO D. ACOSTA
Presiding Judge


RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals

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