LA SUERTE CIGAR AND CIGARETTE FACTORY,
BATAAN CIGAR AND CIGARETTE FACTORY, INC.,
LA PERLA INDUSTRIES, INC.,
PIONEER TOBACCO CORPORATION,
INSULAR-YEBANA TOBACCO CORPORATION,
LAS BUENAS FABRICA DE CIGARILLOS, INC.,
LA DICHA CIGAR & CIGARETTE FACTORY,
CONSOLIDATED TOBACCO INDUSTRIES OF THE
PHILIPPINES, INC.,
LA CAMPAÑA FABRICA DE TABACOS, INC.,
ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION,
FORTUNE TOBACCO CORPORATION,
BAGUMBUHAY CIGAR AND CIGARETTE FACTORY,
STANDARD CIGARETTE MANUFACTURING CO., INC., and
D.L. TERUEL TOBACCO CO., INC.,
Petitioners,

- versus - C.T.A. CASE NO. 2048

HONORABLE MISAEL P. VERA, in his capacity
as Commissioner of Internal Revenue,
Respondent.

x - x

ALHAMBRA INDUSTRIES, INC.,
LA FLOR DE LA ISABELA, INCORPORADA,
and COLUMBIA TOBACCO COMPANY, INC.,
Petitioners,

- versus C.T.A. CASE NO. 2031

HON. MISAEL P. VERA, in his capacity
as Commissioner of Internal Revenue,
Respondent.

12/15/72

x - x

D E C I S I O N

The two appeals from the decisions of respondent are interrelated to each other. They involve various claims for refund of tobacco inspection fees on tobacco products such as cigars and cigarettes manufactured and removed for domestic sale or consumption imposed and collected by respondent Commissioner of Internal Revenue from petitioners under Revenue Memorandum Circular No. 30-67, dated August 22, 1967, interpreting Section 6(c) of Act No. 2613, as amended by Republic Act No. 31.

C.T.A. Case No. 2048 -

This case involves petitioners' various claims for refund amounting to ₱1,406,877.64, covering the period from September 1967 to August 1969, inclusive, representing tobacco inspection fees imposed and collected by respondent on said tobacco products for domestic sale or consumption under Revenue Memorandum Circular No. 30-67, dated August 22, 1967. The total amount paid, which is the subject of the various claims for refund, is not in dispute, the same being the subject of stipulation between the parties (pp. 52-61, CTA rec.).

C.T.A. Case No. 2031 -

On November 28, 1970, this Court rendered its decision (pp. 122-137, CTA rec., CTA Case No. 2031) in this case denying petitioners' various claims for refund of tobacco inspection fees amounting to ₱199,632.19, covering the period from September 1967 to April 1969, inclusive, which were imposed and collected on petitioners' tobacco products such as cigars and cigarettes for domestic sale or consumption. In effect, this Court upheld respondent's stand that petitioners are liable to the tobacco inspection fees under Revenue Memorandum Circular No. 30-67, in relation to Sec. 6 (c) of Act No. 2613, as amended by Rep. Act No. 31.

Before our decision became final, petitioners filed a motion for reconsideration and prayed that, if denied, the case be reopened for the reception of evidence in support of their argument that no inspection was actually conducted by the Tobacco Inspection Service of the Bureau of Internal Revenue, nor were inspection labels affixed to the tobacco products which would warrant the imposition and collection of the tobacco inspection fees. Despite respondent's spirited opposition, we granted the motion to reopen in our resolution dated September 28, 1971 but denied the motion for reconsideration of our decision.

In the said resolution, we ordered that CTA Cases Nos. 2048 and 2031 be heard jointly because the parties are represented by the same counsel; both cases involve the same legal issue; and the amounts involved in the litigation are not disputed (pp. 210-216, CTA rec., CTA Case No. 2031).

In CTA Case No. 2048, the issues posed for the Court's consideration are the following:

> 1. Whether or not the phrase "tobacco for domestic sale" found in Section 6(c) of Act No. 2613 (Tobacco Inspection Law), as amended by Republic Act No. 31, in relation to Sec. 302 of the Revenue Code, includes tobacco products such as cigars and cigarettes;
>
> 2. Whether or not Revenue Memorandum Circular No. 30-67 of the Bureau of Internal Revenue was validly promulgated; and
>
> 3. Whether or not an inspection was conducted on the tobacco products by the Tobacco Inspection Service of the Bureau of Internal Revenue.

<u>FIRST ISSUE</u>:

In CTA Case No. 2031, the issues raised are similar to the issues involved in CTA Case No. 2048, <u>supra</u>. However, since we have already denied petitioners' motion for reconsideration of our decision based on the first issue, the only questions left for this Court to resolve, with respect to CTA Case No. 2031, are the second and third issues, <u>supra</u>.

What is the meaning of the phrase "tobacco for domestic sale"? Does it include tobacco products such as cigars

> Section 6(c) - To require whenever it shall be deemed expedient, the inspection of and affixture of inspection labels to tobacco removed from the province of its origin to another or other provinces before such removal, or <u>to tobacco for domestic sale or factory use</u>. (Underlining supplied.)

The interpretation of the underlined phrase "tobacco for domestic sale or factory use" found in the amendatory law is the principal issue. Petitioners contended that the word "tobacco" found in Section 6(c) of the law refers to leaf tobacco alone and does not embrace tobacco products such as cigars and cigarettes. Petitioners, therefore, disputed respondent's Memorandum Circular No. 30-67, requiring the inspection of all manufactured products of tobacco intended for domestic sale and the collection of the tobacco inspection fees imposed by Section 302 of the Revenue Code which provides:

> SEC. 302. <u>Inspection Fees</u>.- For inspection made in accordance with this Chapter, there shall be collected a fee of <u>thirty centavos for each thousand cigars</u> or fraction thereof in the lot offered for inspection; <u>three centavos for each thousand cigarettes</u> or fraction thereof in the lot offered for inspection; <u>fifty centavos for each one hundred kilograms of leaf tobacco</u> or fraction thereof in the lot offered for inspection; and <u>one centavo for each kilogram or fraction thereof</u>, of other manufactured tobacco in the lot offered for inspection. (Emphasis supplied)

Respondent vigorously contends that the phrase "tobacco for domestic sale" found in the amendatory law comprehends manufactured cigars and cigarettes for domestic sale and consumption.

Petitioners' contention that the phrase "tobacco for domestic sale" refers to leaf tobacco alone is restrictive, misleading, and against sound statutory construction.

Webster's New International Dictionary 2nd edition, p. 2658, defines <u>tobacco</u> as the leaves of the tobacco plant, prepared by drying and various manufacturing processes, and used either for smoking or chewing, or as snuff, or <u>the manufactured products from tobacco leaves</u>; smoking or chewing tobacco, cigars, cigarettes, etc. collectively.

From the above definition, it is clear that the word "tobacco" refers both to leaf and manufactured tobacco such as cigars and cigarettes. It is to be noted that either Section 6(c) of Act No. 2613 or the amendatory law does not make a distinction as to the meaning of the word "tobacco". Since our law-making body used the word tobacco in a general sense without any qualification, this Court is powerless to give it a restrictive meaning. Thus, it was held;

xx xx xx xx xx

xx xx xx xx xx

Moreover, whenever our Revenue Code uses the term "tobacco", whether as manufacturer or dealer, it refers to tobacco products. Instances of the legislative intent is manifested in the following provisions;

SEC. 194. Words and phrases defined. x x x

(m) x x x x

(o) x x x x

If we were to adopt petitioners' restrictive view of the meaning of tobacco as referring solely to leaf tobacco, then this Court would be declaring the action of our law-making body a mere exercise in futility, thereby rendering nugatory the provisions of Sections 6(a), 6(b), 6(c), and 7 of Act No. 2613, as amended by Republic Act No. 31, which reads as follows;

xxx xxx xxx xxx

From the foregoing provisions, it can be seen that leaf tobacco and tobacco products for export are subject to the tobacco inspection fees.

If Congress of the Philippines really intended to restrict the meaning of the word "tobacco" under Republic Act No. 31, which took effect October 1, 1946, in order to limit the scope of the term tobacco under the law originally passed in 1916 and its implementing Regulations Nos. 17 and 47, it could have easily inserted the word "leaf" to modify "tobacco" contained in the amendatory law. An examination of Sections 6(a), 6(b) and 7, supra, reveals that, if our law-making body intended to limit the coverage of said sections to either leaf or manufactured tobacco, it qualified the word "tobacco" with such antecedent words. In Section 6(c) of Act No. 2613, as amended, no such qualification was made by Congress, thereby showing the broad scope and meaning of the word tobacco. For the Court to adopt petitioners' construction that tobacco means "leaf tobacco" would be engaging in unauthorized judicial legislation by rewritting the law and inserting words and phrases not found in it.

xxx xxx xxx xxx

Even the Philippine Tobacco Board (petitioners are members thereof), after Memorandum Circular No. 30-67 of respondent was promulgated, adopted Resolution No. 2-67 interpreting the phrase "tobacco for domestic sale" as referring to wholesale disposal of tobacco products by cigar and cigarette factories to its dealers while the phrase "tobacco for factory use" meant "imported leaf tobacco" intended for use by cigar and cigarette factories in the manufacture of tobacco products.

Petitioners claimed that before the enactment of Republic Act No. 31, amending Section 6(c) of Act No. 2613, former Collectors and Commissioners of Internal Revenue had never imposed and collected tobacco inspection fees on cigar and cigarettes removed for domestic sale or consumption. It is argued, therefore, that respondent should follow the interpretation of his predecessors who ruled that the word "tobacco" refers to leaf tobacco alone.

The fallacy of petitioners' argument lies in the fact that, long before the last war up to the present time, tobacco inspection fees were collected on manufactured cigars for export and, therefore, the word "tobacco" is not applied to leaf tobacco alone but it also includes tobacco products for export like cigars, chewing tobacco, etc.

Petitioners relied mainly on the explanatory note to the bill which became Republic Act No. 31. They alleged that the word "tobacco" refers to leaf tobacco" <u>for domestic sale or for exportation</u>. The phrase "tobacco for . . . factory use" undoubtedly refers to "leaf tobacco" under the amendatory law (Sec. 6/c/, Republic Act No. 31). Congress, however, omitted the descriptive word "leaf" and used the phrase "tobacco for domestic sale or factory use". Since tobacco products for exportation such as cigars and chewing tobacco are subject to to tobacco inspection fess long before the last war and up to the present time, the deletion or non-inclusion of the descriptive word "leaf" from the controversial phrase "tobacco for domestic sale or factory use" indicates a legislative intent to protect the local consumers of tobacco products. Certainly, our lawmakers cannot be more solicitous of the health and smoking pleasure of foreign consumers of tobacco products than of our own local consumers. Moreover, considering the amendatory law and even under the original law, respondent is not precluded from rectifying the erroneous interpretation of the law made by his predecessors. (Tan Guan v. Court of Tax Appeals, et al., G.R. No. L-23676, April 27, 1967; Philippine American Drug Co. v. Coll. of Int. Rev., G.R. No. L-13032, Aug. 31, 1959.)

xxx xxx xxx xxx

For the foregoing considerations, this Court holds that the word "tobacco" and the phrase "tobacco for domestic sale" found in Section 6 (c) of Act No. 2613, as amended by Republic Act No. 31, includes manufactured tobacco such as cigars and

> cigarettes. The collection, therefore, of the tobacco inspection fees on the cigars and cigarettes removed by the petitioners from their factories for domestic sale is legal and justified.

Moreover, the word "tobacco" found in Section 6(c) of Act No. 2613, supra, was clarified by Section 302 of the Revenue Code, which took effect on July 1, 1939, by expressly authorizing the collection of tobacco inspection fees on cigars, cigarettes, leaf tobacco, and other manufactured tobacco. Consequently, when the phrase "tobacco for domestic sale or factory use" was added to Section 6(c) of Act No. 2613, as amended by Republic Act No. 31, which took effect on October 1, 1946, the meaning and scope of the word "tobacco" are no longer in dispute. At any rate, we are going to to discuss the other issues for the sake of argument.

SECOND ISSUE:

Petitioners argue that Revenue Memorandum Circular No. 30-67 does not have the force and effect of law because it is not a regulation as required by Section 4 (j) of the National Internal Revenue Code, nor has it been published in the Official Gazette, as prescribed in Section 79(B) of the Revised Administrative Code.

It would seem that petitioners have misconstrued an administrative rule ~~of~~ regulation from an administrative interpretation of a law whose enforcement is entrusted to an administrative body. When an administrative agency is authorized by law to promulgate rules and regulations, it practically "makes" a new law out of the law with the force and effect of a valid law. However, when it renders an opinion by means of circular or memorandum, it merely interprets a pre-existing law. To be effective and valid, the regulation must be approved by the proper official designated by law for the purpose and published in the Official Gazette; while an opinion or policy based on the law needs no such approval nor publication for its validity. (Victorias Milling Co., Inc. vs. Social Security System, 4 SCRA 627, 630; see also Romualdez vs. Arca, 27 SCRA 828; Interprovincial Autobus Co. vs. Coll. of Int. Rev., 98 Phil. 290; Geotina vs. Court of Tax Appeals, G.R. No. L-33500, Aug. 30, 1971.) A rule of regulation may be incorporated in the form of a circular (People vs. Jolliffe, 105 Phil. 677), which simply means that the substance and not the form of a regulation is decisive in determining its nature.

For a better appreciation of this particular question, we are tracing the antecedent facts which led to the issuance of Revenue Memorandum Circular No. 30-67, dated August 22, 1967.

Act No. 2613 was passed by the Philippine Legislature on February 4, 1916. Section 6 (c) thereof provided as follows:

> Section 6 (c) - To require, whenever it shall be deemed expedient, the inspection of and affixture of inspection labels to tobacco removed from the province of its origin to another or other provinces before such removal.

On October 1, 1946, Republic Act No. 31 was approved amending, among others, Section 6 (c) of Act No. 2613 as follows:

> Section 6(c) - To require, whenever it shall be deemed expedient, the inspection of and affixture of inspection labels to tobacco removed from the province of its origin to another or other provinces before such removal, or <u>to tobacco for domestic sale or factory use</u>. (Underscoring supplied)

Pursuant to the above provision of law, the Bureau of Internal Revenue, on October 29, 1946, issued General Circular No. V-27, wherein it provided, among others, that only leaf tobaccos for domestic sale or factory use and manufactured tobaccos for export are subject to inspection and payment of the corresponding inspection fees. For reference, the pertinent provisions thereof read as follows:

> SUBJECT: Inspection required for all leaf tobacco for domestic sale or factory use and for all leaf tobacco and the manufactures thereof for export to any foreign country; inspection fee on leaf tobacco increased from ₱0.25 to ₱0.50 per hundred kilos or fraction thereof.
>
> xxx xxx xxx xxx
>
> For the purpose of carrying out the foregoing provisions, the following rules are hereby promulgated, effective October 1, 1946:
>
> 1. All leaf tobacco harvested in the Philippines, whether removed from the place of its origin or not so long as it is intended for domestic sale or factory use, shall be inspected and the corresponding inspection fees assessed and collected. x x x (Pp. 297-200, CTA rec., CTA Case No. 2048.)

On August 22, 1967, Revenue Memorandum Circular No. 30-67, was issued, to become effective on September 1, 1967, amending General Circular No. V-27, the portions thereof, relevant to the issue under consideration, read as follows:

> SUBJECT: Amendment to the "Subject" and "Section 1" of General Circular No. V-27, implementing Sections 6, 7, and 14 of Act No. 2613 (Tobacco Inspection Law), as amended by Republic Act No. 31 which took effect on October 1, 1946.
>
> To All Internal Revenue Officers and Others Concerned:
>
> SUBJECT: Inspection required for all locally produced leaf tobacco and partially manufactured tobacco intended for domestic sale, for factory use or for export; all manufactured products of

> tobacco contemplated in Section 194(m) of the Tax Code intended for domestic sale; and all imported foreign leaf tobacco and partially manufactured tobacco for domestic sale or factory use; the inspection fee shall be as provided in Section 302 of the Tax Code.
>
> SECTION 2. x x x x x x
>
> Sec. 1. All leaf tobacco harvested in the Philippines and partially manufactured tobacco whether removed from the place of its origin or not so long as they are intended for domestic sale, for factory use, or for export; all manufactured products of tobacco contemplated in Section 194(m) of the National Internal Revenue Code intended "for domestic sale"; and all imported foreign leaf and partially manufactured tobacco intended "for domestic sale or factory use", shall be inspected and the corresponding inspection fees assessed and collected. x x x
> (Underscoring supplied)
> (Pp. 37-38, BIR rec., CTA Case No. 2031.)

The reason behind the issuance of Revenue Memorandum Circular No. 30-67 was stated in Resolution No. 2-67, approved on May 31, 1967, of the Philippine Tobacco Board. Its chairman is the respondent Commissioner of Internal Revenue. The herein petitioners, as members of the Manila Tobacco Association, Inc., were represented in the said Board which adopted the said resolution reading as follows:

> xxx xxx xxx xxx
>
> WHEREAS, this original recommendation of Mr. Hernandez was perfectly in accordance with existing law, more particularly Section 1 of Republic Act No. 31 which took effect since September 25, 1946, but perhaps thru oversight by the former Commissioners and officers of the Tobacco Inspection Service the propriety and legality of effecting the inspection of tobacco products for local sales and imported leaf tobacco for factory use might have been overlooked resulting in huge losses of tobacco inspection fees from September 25, 1946 to the present, considering that based upon records of local average sales of cigarettes annually of 19,000,000,000 sticks (native leaf) and 36,000,000,000 sticks (Virginia leaf) used the corresponding tobacco inspection fees at ₱.03 per thousand amounts to ₱1,650,000.00 aside from cigars, the records of annual sales on which are not yet available;
>
> xxx xxx xxx xxx
> (Pp. 35-36, BIR rec., CTA Case No. 2031, underscoring supplied.)

From the foregoing, it can be gleaned that Revenue Memorandum Circular No. 30-67 gives information or instruction "To All Internal Revenue Officers and Others Concerned" requiring, among others, all locally produced leaf and partially manufactured tobacco intended for domestic sale, for factory use and for export and all manufactured products of tobacco under Section 194(m) of the Revenue Code intended for domestic sale shall be inspected and the corresponding inspection fees assessed and collected as required in Section 302 of the same Code. It will thus be seen that Revenue Memorandum Circular No. 30-67 was issued to correct the liberal policy adopted by previous officials of the Bureau of Internal Revenue in the promulgation of General Circular No. V-27. Accordingly, it became necessary for respondent to issue Revenue Memorandum Circular No. 30-67 to interpret and construe the phrase "to tobacco products for domestic sale or factory use" found in Section 6(e) of Act No. 2613, as amended by Republic Act No. 31, thereby arresting huge losses of tobacco inspection fees on tobacco products for domestic sale which were not imposed and collected since the effectivity of General Circular No. V-27. Revenue Memorandum Circular No. 30-67 was, therefore, issued to apprise those concerned of the construction or interpretation which should be accorded to said Act No. 2613, as amended, and which respondent was duty bound to enforce. In other words, the Circular in question is an opinion of the respondent as to how the said law should be construed. In his interpretation, no attempt was made to enlarge or restrict the meaning of the law. He merely gave way to the apparent, ordinary, and correct meaning of the phrase in question.

Comparable in many respects is the case of Victorias Milling Co., Inc. vs. Social Security System, 4 SCRA 627,630, involving a circular issued by the Social Security Commission directing employers-members of the System to take into consideration all bonuses and overtime pay in computing the premiums due it. Petitioner therein protested said circular because it contradicts a previous circular expressly excluding bonus and overtime pay from the definition of the term "compensation" in computing the premium due the System. It was further alleged that the new circular is invalid because it was neither approved by the President of the Philippines nor published in the Official Gazette. The Supreme Court, however, upheld the validity of the new circular since the amendment of the law upon which the old circular was based required the issuance of the new circular. The High Tribunal disposed of the issue in this wise:

> It will thus be seen that whereas prior to the amendment, bonuses, allowances, and overtime pay given in addition to the regular or base pay were expressly excluded, or exempted from the definition of the term "compensation", such exemption or exclusion was deleted by the amendatory law. It thus became necessary for the Social Security Commission to interpret the effect of such deletion or elimination. Circular No. 22 was, therefore, issued to apprise those concerned of the interpretation or understanding of the Commission, of the law as amended, which it was its duty to enforce. It did not add any duty or detail that was not already in the law as amended. It merely stated and circularized the opinion of the Commission as to how the law should be construed.
>
> xxxxx xxxxx xxxxx
>
> We find, therefore, that Circular No. 22 purports merely to advise employers-members of

> the System of what, in the light of the amendment of the law, they should include in determining the monthly compensation of their employees upon which the social security contributions should be base, and that such circular did not require presidential approval and publication in the Official Gazette for its effectivity. (Underscoring supplied)

Moreover, Revenue Memorandum Circular No. 30-67 does not provide a penalty for its violation. It follows, therefore, that circulars, rules or regulations which do not contain a penal sanction, despite the adverse consequences it may have upon those who violate the same, are not required to be publised in order to be valid. (Comm. of Customs vs. Caltex (Phil.), Inc., 23 SCRA 650; Salbuna vs. Sec. of Education, G. R. No. L-14283, Nov. 29, 1960.) The cases cited by petitioners on this point are either not applicable or they involved circular or regulation providing a penalty. Assuming arguendo that Revenue Memorandum Circular No. 30-67 must be promulgated by the Secretary of Finance and publised in the Official Gazette to be valid and effective, nontheless, said requirements of the law have been substantially complied with in this case.

The authority to promulgate rules and regulations is lodged with the Secretary of Finance upon recommendation of the Commissioner of Internal Revenue. The law provides:

> Sec. 338. Authority of Secretary of Finance to promulgate rules and regulations.- The Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, shall promulgate all needful rules and regulations for the affective enforcement of the provisions of this Code. (National Internal Revenue Code)

It is true that no regulation has as yet been promulgated by the Secretary of Finance requiring the inspection fees on locally manufactured cigars and cigarettes for domestic sale. The Secretary of Finance, however, upon the recommendation of the Commissioner of Internal Revenue had approved Revenue Memorandum Circular No. 30-67 requiring, among others, inspection of all manufactured products of tobacco for domestic sale and the collection of inspection fees. The said approval is a substantial compliance of the revenue law.

As to the lack of publication of Revenue Memorandum Circular No. 30-67, Section 79(B) of the Revised Administrative Code relied upon by petitioners provides:

> Sec. 79(B). Power to regulate.-The Department Head shall have the power to regulate, whenever he may see fit to do so, all rules, regulations, orders, circulars, memorandums, and other instructions, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department; but none of said rules or orders shall prescribe penalties for the violation thereof, except as expressly authorized by law. All rules, regulations, orders, or instructions of a general and permanent character promulgated in conformity with this section shall be numbered by each Department consecutively each year, and shall be duly published.
>
> Chiefs of Bureaus or Offices may, however, be authorized to promulgate circulars of information or instructions for the government of the officers and employees in the interior administration of the business of each Bureau or Office, and in such case said circulars shall not be required to be published. (Underscoring supplied)

Petitioners admit that the Circular in question "is but a memorandum circular for purposes of the interior administration of the Bureau of Internal Revenue, NOT a regulation within the contemplation of the aforecited Sections 4 and 33 of the National Internal Revenue Code and Section 79(B) of the Revised Administrative Code." (P. 255, CTA rec., CTA Case No. 2048.) On the basis of petitioners' admission, Circular No. 30-67 need not be published pursuant to the second paragraph of Section 79(B), supra.

The purpose, however, of the law in requiring the publication of rules and regulations is to inform or notify those who may be adversely affected thereby. The purpose behind this requirement has been substantially complied with because, as admitted by petitioners, they were each furnished and served a copy of Revenue Memorandum Circular No. 30-67.

THIRD ISSUE:

Petitioners assailed the legality of the collection of tobacco inspection fees on two grounds, namely: (a) the duties of inspecting tobacco products and affixing inspection labels thereto under Act No. 2613, as amended, are exclusively lodged in the Tobacco Inspection Service of the Bureau of Internal Revenue and not with the revenue agents of the Tobacco and Miscellaneous Tax Division; and (b) the agents of the Tobacco and Miscellaneous Tax Division did not conduct the required inspection but merely made verification for purposes of collecting the specific tax.

The inspection of tobacco products and affixture of inspection labels thereto are requirements imposed by Section 6(c) of Act No. 2613, as amended by Republic Act No. 31, which provides:

> Section 6(c) - To require, whenever it shall be deemed expedient, the inspection of and affixture of inspection labels to tobacco removed from the province of its origin to another or other provinces before such removal, or to tobacco for domestic sale or factory use. (Underscoring supplied)

The same Act, however, authorizes respondent to appoint tobacco inspectors or any officer or employee of the BIR to perform the duty pertaining to the Tobacco Inspection Service. The law provides:

> Section 9. The Collector of Internal Revenue may appoint inspectors of tobacco for the purpose of making the inspection herein required and may also detail any officer or employee of the Bureau to perform such duty . . . . (Underscoring supplied)

In compliance with the inspection requirement of Revenue Memorandum Circualr No. 30-67, interpreting Section 6(c) of Act No. 2613, as amended, *supra*, and in order to avoid possible confusion and disruption of petitioners' business operations thru unnecessary duplication of functions, respondent issued a memorandum, dated October 11, 1967, addressed to "All Manufacturers of Tobacco Products", which was duly served on petitioners, advising them that the "inspection made by the BIR Agents assigned in the factories xx xx xx shall be deemed sufficient compliance with the inspection requirement of said Revenue Memorandum Circular No. 30-67 ...." (p. 26, BIR rec., CTA Case No. 2031).

Under Section 6(c) of Act No. 2613, as amended, *supra*, the inspection and affixture of inspection labels to tobacco products for domestic sale fall within the discretionary powers of the respondent. As therein provided, such inspection and affixture of inspection labels may be required by him whenever he shall deem it expedient, implying that he is not duty bound at all times to perform such duties unless he deems it expedient or convenient. Likewise, for undertaking the required inspection, Section 9 of the said Act authorizes respondent to appoint tobacco inspectors, or he may detail any officer or employee of the Bureau to perform such duty. Consequently, when respondent, in his memorandum of October 11, 1967, supra, considered the inspection made by the revenue agents from the Tobacco and Miscellaneous Division assigned in the tobacco factories as sufficient compliance with the inspection requirement of Revenue Memorandum Circular No. 30-67, he was just exercising an act which the law authorizes him to do. For the same reason, the failure of respondent to affix the inspection labels to tobacco products does not render invalid the collection of the tobacco inspection fees from the petitioners. In both instances, respondent merely exercised a discretion explicitly authorized and sanctioned by law.)

(Petitioners alleged that in the said memorandum, dated October 11, 1967, the declaration that the inspection made by BIR agents as sufficient compliance with the law is illegal because it was not approved by the Secretary of Finance. Said approval is not indispensable in this case since said memorandum is but a mere implementation of Revenue Memorandum Circular No. 30-67 which had already been approved by the said official.)

Petitioners presented testimonial evidence showing that the agents of the Tobacco and Miscellaneous Division assigned in the various tobacco factories were there to inspect the tobacco for purposes of collecting the specific tax and not the tobacco inspection fees.

Upon stipulation of the party litigants and to dispense with the presentation of numerous witnesses, it was agreed that the testimony of Mr. Vicente Chua, Production Manager of La Suerte Cigar and Cigarette Factory, shall be considered as the procedure of inspection followed in the factories of all the petitioners for the period under review. These are the salient features of his testimony: before the cigarettes were removed from the factory, they were invoiced by the revenue agent assigned there to check on the number of cases of cigarettes that were to be removed; revenue agents checked the quantity of cigarettes manufactured, quantity of cigarettes removed, strip stamps affixed; and early in the morning before the start of the operation, the revenue agents checked the cigarette bobbins, strip stamps and saw to it that cigarettes removed were properly recorded in the books (pp. 60-63, t.s.n.).

Also from the testimonies of the other witnesses of petitioners, it was shown that revenue agents and tobacco inspectors were permanently assigned in the tobacco factories (p. 14, t.s.n.); they were provided with an office (p. 21, id.); early in the morning, they opened the machine, assigned the bobbins to be used, and they affixed the seal at 12:00 midnight (pp. 19-20, id.); they saw to it that all raw materials for use in the manufacture of the finished products were duly recorded; and in the process of manufacture, all tobacco products found unfit for sales were segregated by the factory employees thru the supervision of the revenue agents (pp. 20-43, id.).

The foregoing testimonies belie petitioners' assertion that no actual inspection was conducted by agents of the respondent to justify the collection of the tobacco inspection fees. The testimonial evidence sufficiently establish that among the duties of the factory agents and tobacco inspectors are: to check the kinds and quantities of raw materials that enter the factory; the bobbins used; the quantity and genuinness of the strip stamps; the actual quantities of the tobacco products manufactured and removed; and the segregation of old tobacco products found unfit for sales. On the basis of the inspection procedure testified to by petitioners' witness, respondent properly ascertained the inspection fees on tobacco products imposed under Act No. 2613, as amended, in relation to Section 302 of the Revenue Code.

Moreover, Mr. Rodolfo Coloso, Office Manager, Columbia Tobacco Corporation, testified that manufacturers of tobacco products have to accomplish a BIR form captioned "Application For Inspection For Imported Leaf, Partially Manufactured Tobacco Products And Locally Manufactured Tobacco For Local Sale And/Or Factory Use" before paying the inspection fees required by Act No. 2613, as amended. (Exh. A, p. 223, CTA rec., CTA Case No. 2031; pp. 45-47, t.s.n.) In said form, the manufacturers are required to state under oath that they will not remove or attempt to remove tobacco products until the same shall have been duly inspected by the revenue agent. The revenue agent or tobacco inspector assigned in the factory is likewise required to certify therein that he had inspected the tobacco products. In the appealed cases, the form in question is deemed to have been accomplished inasmuch as the tobacco products have already been removed from the factories and the corresponding inspection fees due thereon have been paid. It follows as a logical conclusion that the required inspection of the tobacco products had been made by the revenue agents.

WHEREFORE, the various claims of petitioners for refund of tobacco inspection fees amounting to ₱1,606,509.83 in both appeals, CTA Cases Nos. 2048 and 2031, are hereby denied. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 15, 1972.

Estanislao R. Alvarez

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R. M. Umali

ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña

RAMON L. AVANCEÑA
Associate Judge