LIGGETT & MYERS TOBACCO CO.,
Petitioner,

- versus - C.T.A. CASE NO. 46

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from a decision of the respondent Collector of Internal Revenue denying the claim of the petitioner Liggett & Myers Tobacco Co. for the refund of the sum of ₱17.60 representing alleged overpayment of specific tax on four (4) cartons of L & M King Size Filter Cigarettes containing 40 packages of 800 cigarettes which the petitioner imported from the United States.

The following are the pertinent facts stipulated and submitted by the parties:

"1. That petitioner is a foreign corporation duly licensed to do business in the Philippines and respondent is the Acting Collector of Internal Revenue of the Philippines;

2. That on or about September 28, 1954, petitioner received a shipment of 4 cartons of King Size L & M Filter Cigarettes (40 packages of 800 cigarettes);

3. That the King Size L & M Filter Cigarettes are made of Virginia type tobacco, wrapped in tin foil and cellophane and mechanically wrapped or packed;

4. That the total length of each King Size L & M Filter Cigarettes is 85 millimeters and the average length of the portion thereof containing tobacco is 70 millimeters, while the average length of the filter element of each of said cigarette which does not contain tobacco is 15 millimeters;

5. That the total average weight of King Size L & M Filter Cigarette is 1.2871 kilos per thousand and the average weight of the tobacco content of the aforesaid cigarette is 1.0773 kilos per thousand and the average weight of the filter element of the said number of cigarettes is .2098 kilos;

6. That the Collector of Customs in his capacity as Deputy of the respondent, required the petitioner to pay the amount of ₱35.20 as specific tax on the aforesaid cigarettes at the rate of ₱44.00 per thousand, which amount of ₱35.20 was paid by petitioner under Official Receipts Nos. 136616 and 125370, issued by the Collector of Customs on October 11 and 21, 1954, respectively;

7. That on or about October 18, 1954, petitioner, through counsel, filed in the respondent's office a formal claim for refund of ₱17.60;

8. That on November 22, 1954, the undersigned attorneys received the letter of the Deputy Collector of Internal Revenue dated October 27, 1954, denying petitioner's claim for refund of the amount of ₱17.60;

9. The parties reserve the right to present additional evidence at the trial of the case."

During the trial of the case, the petitioner limited itself to the presentation of Exhibit A, a sample of an L & M King Size Filter cigarette; Exhibit A-1, the same brand of cigarette cut longitudinally showing its filter and tobacco contents; Exhibit A-2, the filter of the same brand of cigarette separated from the tobacco portion; and Exhibit B, which consists of a sample of one package of the same brand of cigarette. The respondent, on the other hand, adopted as his own exhibits, Exhibits A and B of the petitioner, marking them as Exhibits 1 and 2, respectively. His Exhibit 3 is a letter of the Deputy Collector of Internal Revenue addressed to Messrs. Ross, Selph, Carrascoso & Janda, denying the request of the petitioner for refund of the sum of ₱17.60, and his Exhibit 3-A is a letter of the Acting Collector of Internal Revenue addressed to the General Manager of the petitioner company wherein the former opined that the specific tax on cigarettes is based on the over-all length or weight of the cigarettes. No other evidence was presented by the parties.

The main question at issue in this case is whether L & M King Size Filter Cigarettes are subject to the specific tax at the rate of ₱44.00 per thousand cigarettes or to the specific tax at the rate of ₱22.00 only per thousand. More particularly, the query revolves on the interpretation and application of the provisions of section 137 of the National Internal Revenue Code, the pertinent portions of which read as follows:

> "Sec. 137. Specific tax on cigars and cigarettes. - On cigars and cigarettes there shall be collected the following taxes:
>
> x x x x
>
> (b) Cigarettes -
>
> x x x x
>
> (2) On cigarettes containing Virginia type tobacco and/or flue-cured tobacco of seventy-one millimeters or less in length weighing one and one-fourth kilos or less per thousand, wrapped in tinfoil or cellophane or packed in cartons covered with paraffin or wax paper or in tin cans, on each thousand, ten pesos: *Provided*, That if the length exceeds seventy-one millimeters or if the weight per thousand exceeds one and one-fourth kilos, the tax shall be increased by one hundred per centum.
>
> x x x x
>
> (4) If the cigarettes taxable under subparagraphs (1), (2) and (3) hereof are mechanically wrapped or packed, the tax shall be increased by one hundred and twenty per centum per thousand cigarettes."

The petitioner maintains that the filters of the cigarettes in question which are made of white fibrous material without any tobacco and which are attached to the tips of the cigarettes to

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serve as mouth piece and purifier of the smoke and filter of the volatile materials, should be excluded in determining the length and weight of the cigarette for purposes of computing the specific tax due on the imported articles. The theory of the petitioner company is to the effect that the filter attached to the cigarette does not give added quality to the cigarette as it does not increase the smoking pleasure of the smoker, the filter not being an essential part of the cigarette. It is argued that the filter itself could be cut and totally removed from the main body of the cigarette without in any way impairing the utility of the remaining portion thereof. On the other hand, the respondent contends that the filter should be considered in determining the length and weight of the cigarette for purposes of the specific tax because its exclusion finds no basis under the provisions of section 137 of the National Internal Revenue Code which imposes a specific tax on cigars and cigarettes.

We find merit in the contention of the respondent. A casual reading of the provisions of the law involved will readily show that the tobacco contents of a cigarette is not the primordial factor in ascertaining its length and weight for the purposes of the specific tax. It merely states "that if the length exceeds seventy-one millimeters or if the weight per thousand exceeds one and one-fourth kilos, the tax shall be increased by one hundred per centum." The aforesaid provision of our Tax Code imposes a specific tax on cigarettes as a whole without limiting or qualifying what portion of the cigarette is subject to tax and it is not for us to make distinctions if the law does not make any. The word "cigarette" as used in section 137 of the National Internal Revenue Code should be applied in its general and literal sense.

Webster defines "cigarette" as a little roll of finely cut tobacco, enclosed usually in paper, tobacco leaf or corn husk used for smoking. From the standard definition itself of the word cigarette, one could readily infer that the paper or corn husk with which the finely cut tobacco is enclosed is considered a part of the cigarette. In the same way, the modern filters which are attached to the latest brand of cigarettes and forming part of it should be considered a part of the cigarette itself. Otherwise, if we are to follow the view of the petitioner to its logical conclusion, an absurdity would result for we might as well also exclude the paper wrapper of the cigarette in determining the weight thereof.

The petitioner contends further, that in case of doubt or ambiguity as to the meaning of a revenue statute, it should be resolved in favor of the taxpayer. This contention is of course predicated on the assumption that the provisions of subparagraphs (2) and (4) of paragraph (b) of section 137, supra, are not clear and there is doubt as to their correct meaning. Considering that the said provisions do not state or even imply that the tobacco portion of a cigarette shall be the basis of determining the length and weight of the cigarette for purposes of the specific tax, we see no need in delving into the realm of statutory construction. The language of the law is to us clear and unambiguous, and it is within its word, as well as its spirit, that no distinction should be made, for the purposes of the amount of specific tax, of a cigarette provided with a filter and a cigarette without any filter, as long as both of them are cigarettes. The petitioner does not dispute that the

L & M King Size Filter Cigarettes are cigarettes and the package containing them (Exhibit B and Exhibit 2) bears among others, the following notation: "Notice - The manufacturer of the cigarettes herein contained x x x ". We do not believe it would be necessary to state that the articles in question having been designated as "cigarettes", a term certain and definite in its significance and understood by everybody to be such, the law imposing a specific tax on cigarettes should be interpreted in such a way that the filters thereof, being part and parcel of the cigarettes, should be included in determining their actual length and weight.

And even if it be assumed arguendo that the specific tax on cigarettes is a tax on tobacco, as the petitioner avers, and that the legislature, in enacting the law, had in mind that tobaccos, like liquors and amusements, are luxuries of widespread consumption to be taxed at higher rates, so that the tobacco contents thereof should be the basis of determining the amount of specific tax, still we are inclined to believe that the imposition of the higher rate of specific tax on the cigarettes in question is justified. Since the filter serves as a mouthpiece to purify the smoke and collect the condensates of the volatile materials, the smoking public can drive longer smoking pleasure. After all, as the petitioner states, tobaccos, like liquors and amusements, are luxuries of widespread consumption to be taxed at higher rates, and we see no justifiable reason in collecting a lower rate of specific tax on the L & M King Size Filter Cigarettes, when the smoker is afforded the added luxury of enjoying up to the last puff all the tobaccos in his cigarette. Furthermore, to impose the same rate of specific tax on king size filter cigarettes and on regular size cigarettes is to discriminate against the latter because king size cigarettes irrespective of whether they are provided with filters or not, command a higher price in the market.

We do not share the petitioner's view that if cigarettes with filter (King Size) are taxed higher, manufacturers thereof will be deterred or discouraged from continuing with their researches to make cigarettes less injurious to health. The tobacco industry, or any other industry for that matter, should always accept as a solemn responsibility an interest in the health of its consumers paramount to any other consideration. If there is really a definite connection between heavy cigarette smoking and lung cancer, it is incumbent upon cigarette manufacturers to see to it that their goods on the market are not detrimental to the public. And if the placing of filters in cigarettes will in some way minimize the harmful effects of cigarette smoking on health, then the filter should be an indispensable part of the cigarette. Consequently, in the light of whatever innovation brought about by modern science, specially for the health and welfare of the public, our tax laws should therefore be read, interpreted and applied to cope with the new matters and new species that come into existence with the changing modes of the times.

In view of the foregoing, and considering that the L & M King Size Filter Cigarettes are made of Virginia type tobacco, wrapped in tinfoil and cellophane, and mechanically wrapped or packed; that the total length is 85 millimeters — which exceeds 71 millimeters; and that the total weight thereof per thousand cigarettes is 1.2871 kilos -- which exceeds 1-1/4 kilos, we are therefore of the opinion and so hold that the said L & M King Size Filter Cigarettes are subject to the specific tax at the rate of ₱44.00 per thousand cigarettes in accordance with the provisions of subparagraphs (2) and (4) of paragraph (b) of Section 137 of the National Internal Revenue Code. Consequently, the amount of ₱35.20 which the respondent Collector of Internal Revenue collected as specific tax on the shipment of four (4) cartons (800 cigarettes) of L & M King Size Filter Cigarettes which the petitioner Liggett & Myers Tobacco Co. imported, is in order.

WHEREFORE, the appealed decision of the respondent denying the petitioner's claim for refund is hereby affirmed, without special pronouncement as to costs.

SO ORDERED.

Manila, Philippines, May 25, 1955.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

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