REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NO. 5466

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 23 1998

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DECISION

Before Us for consideration is a judicial claim for refund of specific taxes totalling P325,410.00 which allegedly have been erroneously paid by the petitioner on its bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers.

Petitioner is a corporation duly organized and existing under Philippine laws with principal office at Km. 14, West Service Road, Paranaque, Metro Manila. It is engaged in the importation and local purchase of stemmed leaf tobacco which it uses as a raw material in the production and manufacture of cigar and cigarettes.

The facts are simple.

For the month of March 1995, petitioner allegedly paid *under protest* the herein below listed amounts of specific taxes on petitioner's bulk purchases of stemmed leaf tobacco from foreign tobacco manufacturers, as follows:

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Date	Amount	ATAPET[1] Serial No.	Amount
03/02/95	69,401 Kgs.	2044548	52,050.75
03/02/95	59,400 Kgs.	2044545	44,550.00
03/02/95	69,401 Kgs.	2044543	52,050.75
03/03/95	46,540 Kgs.	2045006	34,905.00
03/08/95	83,281 Kgs.	2045021	62,460.75
03/08/95	31,026 Kgs.	2045019	23,269.50
03/10/95	39,191 Kgs.	2045052	29,393.25
03/20/95	35,640 Kgs.	2045050	26,730.00
		TOTAL	P325,410.00

On September 27, 1996 and October 2, 1996, petitioner filed written claims for refund and an amended copy of the same, respectively, covering the period October 1994 up to May 1995 in the aggregate sum of P1,951,151.63 . Petitioner argues therein that the collection under Section 141 (b) of the Tax Code of the P0.75/kilo excise tax on sales of stemmed leaf tobacco was erroneous and/or illegal because such sales are exempt from excise tax when made by a tobacco manufacturer directly to another in accordance with Section 137 of the Tax Code.

Petitioner further elaborated in said written claim that the administrative practice of respondent's Bureau since 1939 was not to subject stemmed leaf tobacco to excise tax; that the payment of specific tax on stemmed leaf tobacco amounts to double taxation because excise tax is again paid on the finished cigarette products; that Section 141 of the Tax Code is a general provision

1 means "Authority To Accept Payment" of Bureau of Internal Revenue Form No. 2319A

of the law and does not apply to stemmed leaf tobacco; that sale of partially manufactured tobacco, like stemmed leaf, is exempt from specific tax under Revenue regulations No. 17-67;; that a ruling of respondent's Bureau supports its position; that an authority on tobacco law by the name of Mr. Lorenzo S. Barredo, then Chief of the Tobacco Inspection Service of respondent's Bureau stated in his book entitled, "Philippine Tobacco Laws, Revenue Regulations on Articles Subject to Specific Taxes" that sale of stemmed leaf tobacco in bulk from one manufacturer to another is exempt from tax, hence, can be withdrawn from the place of production or customs custody without prepayment of specific tax; that even if it is originally liable, it can no longer be held liable for specific tax because under Section 127 of the Tax Code which prescribes the payment of excise tax on the person having possession of the tobacco products in case it has not been paid by the manufacturer or producer before the removal of such products from the place of production, it allegedly was no longer the owner nor the existing possessor of the same; and lastly, that even assuming that the basis for the assessment was correct, the computation of the tax due was nonetheless erroneous.

Petitioner avers ,however, that up to the filing of the instant petition, respondent has not been able to act upon said claim. Hence, petitioner instituted the present appeal, by way of a petition for review, in order to stop the running of the peremptory period of two-years within which to file a judicial claim for refund as provided under Section 230 of the Tax Code, as amended.

At bar, petitioner repleads its stance *a quo*. On the other hand, respondent asserts in his Answer the following special and affirmative defenses, among others, to wit:

SPECIAL AND AFFIRMATIVE DEFENSES

> 6. Under Section 141(b) of the National Internal Revenue Code (NIRC), partially prepared tobacco is subject to specific tax. Since stemmed leaf tobacco is classified as partially prepared tobacco under Section 2(m)(1) of Revenue Regulations No. 17-67, it is subject to specific tax. If the stemmed leaf tobacco is imported, it is subject to specific tax under Section 141(b) in relation to Section 128 of the NIRC.
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> 7. Under Section 137 of the NIRC, as implemented by Section 20(a) of Revenue Regulations No. V-39, stemmed leaf tobacco may be sold in bulk as raw material without prepayment of the specific tax only if the sale thereof is by one L-7 permittee directly to another L-7 permittee. (Commissioner of Internal Revenue vs. La Suerte Cigar & Cigarette Factory, CA-G.R. Sp. No. 38107, December 29, 1995; Commissioner of Internal Revenue vs. La Campana Fabrica de Tabacos, Inc., CA-G.R. Sp. No. 40773, July 22, 1996) Furthermore, the tax exemption under Section 137 of the NIRC applies only to local sales of stemmed leaf tobacco and not to importations thereof.

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9. Imposing specific tax on stemmed leaf tobacco could not amount to double taxation in the prohibited sense even if specific tax is also imposed on the finished product of which stemmed leaf tobacco is an integral part. This is so because the tax is imposed on two different subject matters, namely, (1) stemmed leaf tobacco when sold in bulk as raw material and (2) the finished product, cigarette. (Commissioner of Internal Revenue vs. La Suerte Cigar & Cigarette Factory, CA-G.R. Sp. No. 38107, Resolution dated June 7, 1996)

10. The exemption from specific tax of partially manufactured tobacco under Section 43(a) of Revenue Regulations No. 17-67 applies only to partially manufactured tobacco for export. (Commissioner of Internal Revenue vs. La Campana Fabrica de Tabacos, Inc., supra)

11. The BIR Ruling dated December 12, 1972 that the sale of partially manufactured tobacco by an L-6/L-3R permittee to an L-7 1/2 permittee may also be allowed without prepayment of the specific tax is erroneous. Being a wrong interpretation of the law, said ruling did not give rise to a vested right that can be invoked by petitioner. (Hilado vs. Collector of Internal Revenue, 100 Phil. 288, 295 [1956])

12. It is alleged that the stemmed leaf tobacco was imported by petitioner from abroad. Under Section 128 of the NIRC, petitioner, as the importer or owner thereof, is liable for the specific tax due thereon. On the other hand, Section 127 of the NIRC applies only to domestic products.

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Records show that trial proceedings mainly involved the petitioner's presentation and formal offer of evidence. Both parties did not file their respective memorandum despite notice, extensions and warning.

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The issue confronting Us is whether or not petitioner is legally and factually entitled to its claim for refund.

After a careful scrutiny of the facts, the respective, argumentation of the parties, the cited provisions of laws, rules and regulations and applicable jurisprudence, this Court resolves to peremptorily rule in favor of the petitioner.

The legal milieu of herein case is not one of first impression. The Court of Appeals has already spoken on the matter. Some of the pertinent excerpts of CA-G.R. SP Nos. 38219 and 40313 entitled, **Commissioner of Internal Revenue vs. Fortune Tobacco Corporation**, promulgated on January 30, 1998, which is applicably similar in facts, issues and the disquisitions raised by the parties herein, are hereby reproduced in answer to the contentious issues raised by herein parties, thus:

> 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.

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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 Regulations V-39 which add to the law something which is not there. Using its power of classification, the petitioner has ventured into an amendment and amplification of the basic law.

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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.

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We are aware of the ruling in Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, 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 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."

It is the bounden duty of this Court to recognize and subserve itself to the wisdom arrived at by a superior court such as the Court of Appeals. In gist, the Court of Appeals has arrived at the inescapable conclusion that Section 137 of the Tax Code is the governing provision insofar as Fortune Tobacco Corporation's case is concerned, hence, no pre-payment of excise tax is required. Being similarly situated, petitioner is entitled to the same interpretation given by the Court of Appeals. What is left thus for this Court to do is merely to ascertain whether petitioner has satisfied the evidentiary requirements of its claim for refund.

A thorough and detailed examination of petitioner's evidence consisting of duplicates of Authority to Accept Payment (ATAP) with their corresponding machine validation of payments (Exhibits "A" to "H") convinces this Court that it has proven the entire amount of its claim for refund.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** the amount of ₱325,110.00 to the petitioner immediately. No pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

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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