REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE TOBACCO-FLUE CURING and REDRYING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO.5172

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JUN 10 1998

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DECISION

Before Us for consideration is a judicial claim for refund of specific taxes in the amount of P3,256,350.00 which allegedly have been erroneously and illegally paid by the petitioner on the removal, transfer and sale of its stemmed leaf tobacco products to various cigar and cigarette manufacturers.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Balintawak, Quezon City. It is engaged in the flue-curing and redrying of tobacco leaves.

The case at bar arose in the year 1990, when respondent imposed upon petitioner the payment of specific tax on its stemmed leaf tobacco prior to any removal, sale or transfer thereof. Petitioner paid said tax under protest and continually did so up to June 15, 1994.

On October 10, 1994, petitioner filed its written claim for refund on even date for abovesaid amount based on Sections 137 and 141 of the Tax Code and Section 20 of Revenue Regulations No. V-39.

On November 11, 1994, petitioner instituted the present appeal, by way of a petition for review, in view of respondent's continued inaction on its claim and in order to interrupt the running of the two-year prescriptive period provided under Section 230 of the Tax Code.

At bar, petitioner reasserts its stance a quo. Respondent, on the other hand, interposed the special and affirmative defenses that claims for tax refunds are strictly construed against the taxpayer; that in an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action; and lastly, that the taxpayer-petitioner has no cause of action.

Records show that only the petitioner filed its memorandum. In it, petitioner asseverates that based on the provisions of Sections 127 and 137 of the Tax Code and Revenue Regulation No. 17-67, it is apparent that "(1) tobacco which are (sic) unfit for consumption and are used as raw material and <u>sold by one manufacturer directly to another may be transferred or removed without payment of specific tax</u>; and (2) that tobacco <u>which are</u>

used in the manufacture of other tobacco products on which the excise (specific ad valorem) tax will be paid on the finished product may likewise be transferred or removed without any initial payment of specific tax."

The lone issue involved in this case is the validity of respondent's imposition of specific tax on the sale and transfer of petitioner's tobacco to a local cigar and cigarette manufacturer.

After a thorough scrutiny of the facts, the arguments of the parties and the laws and jurisprudence in point, We rule in favor of the petitioner.

This is not a case of first impression. The present controversy has already been settled and passed upon in the recent case entitled Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, docketed as CA-SP Nos. 38219 and 40313 (CTA Case Nos. 4587 and 4616) promulgated on January 30, 1998, wherein the Honorable Court of Appeals ruled in this wise:

> "There is no disputing the fact that stemmed leaf tobacco is not among the tobacco products expressly mentioned in Section 141.
>
> xxx xxx xxx
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> 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 pre-payment of tax, it is significant that the Tax Code defines and classifies stemmed leaf tobacco under its Section 137. When the 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 in 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 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 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.

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 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 the 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 Regulations 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."
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> xxx xxx xxx

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 prepayment of excise tax is required. Being similarly situated, petitioner is entitled to the same interpretation given by the Court of Appeals. What is left then for this Court to do is merely to ascertain whether petitioner has satisfied the evidentiary requirements of its claim for refund.

A detailed examination of petitioner's exhibits listed below ("A" to "W" inclusive) convinces this Court that it has partially proven its claim to wit:

RECEIPT OF PAYMENT (BIR Payment Order No.; BIR Form 2319A-E; or BIR Form 2319A)		DATE	EXH.		AMOUNT
Payment Order No.	C7598252	3-30-90	A	P	45,300.00
	C8032851	4-26-90	B		630.00
	C12623129	6-26-92	C		43,200.00
	C12740778	9- 3-92	D		51,693.00
	C12740786	9- 8-92	E		135,871.50
	C12740853	9-14-92	F		113,550.00
	C12740865	9-29-92	G		70,200.00
	C12740866	9-29-92	H		72,044.25
	C12791537	10-12-92	I		186,041.25
	C12792067	11-17-92	J		116,490.75
BIR Form 2319A-E	SN000456	2-16-93	K		111,711.75
	SN002603	3-10-93	L		11,250.00
	SN004748	6- 2-93	M		152,812.50
	SN005838	6-25-93	N		157,462.50
	SN008472	11- 4-93	O		122,445.00
	SN009567	11-23-93	P		7,462.50
	SN009609	12- 3-93	Q		752,145.00
	SN009670	12-15-93	R		700,282.50
	SN010602	1-18-94	S		7,290.00
	SN010996	2-17-94	T		34,117.50
	SN011258	4-21-94	U		75,000.00
BIR Form 2319A	SN1620203	5-26-94	V		75,000.00
	SN1620209	6-15-94	W		214,350.00
	T O T A L				**₱3,256,350.00**

It is observed that payments made from March 30, 1990 to October 12, 1992 amounting to P718,530.00 have clearly prescribed beyond the two-year period allowed for claiming refunds from date of payment, as provided under

Section 230 of the Tax Code. It appears that this petition for review was filed on November 11, 1994. However, the taxes paid on November 17, 1992 through June 15, 1994 amounting to P2,537,820.00 are well-within the two-year period, hence allowable.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** the amount of P2,537,820.00 to the petitioner immediately.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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