REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NOS. 5177
5189 & 5210

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 12 1998

x - x

DECISION

Before Us for consideration are three consolidated cases of a judicial claim for refund of specific taxes totalling P772,361.25 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 antecedent facts are as hereunder stated.

On various dates, petitioner paid under protest the herein below listed amounts of specific taxes which were the subject of assessments covering the months of

148

December, 1992 (CTA Case No. 5177); January, 1993 (CTA Case No. 5189); and March, 1993 (CTA Case No. 5210) allegedly due on petitioner's bulk purchases of stemmed leaf tobacco from foreign tobacco manufacturers pursuant to Section 141 (b) of the Tax Code, as follows:

December 1992

Date	Volume	Confirmation Receipt No.	Payment Order No.	Amount
12/07/92	31,206 kgs.	B24422842	C12945484	₱ 23,269.50
12/07/92	31,206 kgs.	B24422844	C12945482	23,269.50
12/18/92	41,640 kgs.	B24766016	C12945764	31,230.00
12/18/92	118,800 kgs.	B24766014	C12945762	89,100.00
12/28/92	55,521 kgs.	B24422847	C12945931	41,640.75
12/28/92	69,401 kgs.	B24422890	C12945934	52,050.75
			T o t a l	₱260,560.50

January 1993

Date	Volume	Confirmation Receipt No.	Payment Order No.	Amount
15/01/93	69,401 kgs.	B24422902	C13018832	₱ 52,050.75
21/01/93	118,800 kgs.	B24422910	C13019069	89,100.00
28/01/93	31,026 kgs.	B24422924	C13019258	23,269.50
28/01/93	2,155 kgs.	B24422926	C13019257	1,616.25
28/01/93	25,832 kgs.	B24422926	C13019257	19,374.00
			T o t a l	₱185,410.50

March 1993

Date	Volume	Confirmation Receipt No.	Payment Order No.	Amount
03/05/93	31,026 kgs.		000530	₱ 23,269.50
03/05/93	41,640 kgs.		000529	31,230.00
03/05/93	79,200 kgs.		000528	59,400.00
03/26/93	79,200 kgs.		002698	59,400.00
03/26/93	79,200 kgs.		002697	59,400.00
03/26/93	41,640 kgs.		002694	31,230.00
03/26/93	83,281 kgs.		002692	62,460.75
			T o t a l	₱326,390.25

149

Thereafter, petitioner allegedly filed a written claim for refund for each of the above-stated aggregate amounts with the respondent on December 2, 1994 for CTA Case No. 5177 and on December 29, 1994 for both CTA Case Nos. 5189 and 5210. Petitioner argues therein that the collection under Section 141 (b) of the Tax Code of the ₱0.75/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 claims 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 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 even if effective, Revenue Regulations No. V-39 did not provide for specific tax on stemmed-leaf tobacco; 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.

As it turned out, however, petitioner avers that respondent has not been able to act upon said claims. Hence, petitioner instituted the instant 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

NI

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 her Answer the following special and affirmative defenses, among others, to wit:

> xxx xxx xxx
>
> 5. The taxability of petitioner's importation of stemmed-leaf tobacco for 1992 is governed by the provisions of Section 141 of the National Internal Revenue Code, which provides:
>
> > "Section 141. - There shall be collected a tax of ₱0.75 on each kilogram in the following products of tobacco:
> >
> > x x x
> >
> > (b) Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened."
>
> 6. Under Revenue Regulations No. 17-67 particularly Section 1 paragraph 1 thereof, stemmed leaf tobacco is considered as partially prepared tobacco within the ambit of Section 141 of the National Internal Revenue Code.
>
> 7. Section 137 of the National Internal Revenue Code, on which petitioner relies does not grant automatic exemption from taxes on importation of stemmed leaf tobacco, as could be gleaned from the following:
>
> > "Section 137. - x x x Stemmed leaf tobacco, fine-cut short, 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."

8. Whether or not the stemmed leaf tobacco imported by petitioner is liable to tax depends upon compliance with the conditions stated in the regulations of the Department of Finance and it has not shown with such conditions.

9. Transfer or sale of stemmed leaf tobacco is subject to specific tax unless there is an express grant of exemption from payment of such tax. Petitioner was not granted any such exemption by respondent. Well settled is the rule that any person claiming tax exemption must positively point out the provision of law granting such exemption and not merely rely on inference (Union Garment Co. vs. CIR, 20 SCRA 1956).

xxx xxx xxx

In her memorandum, respondent subscribed to the view of the petitioner that under Section 137 of the Tax Code, stemmed leaf tobacco may be sold without prepayment of the specific tax only if the sale or purchase is made by one manufacturer directly to another but qualified otherwise that such manufacturers of tobacco products should be both "L-7" permittees as classified under Revenue Regulations No. 17-67 in order to be exempt from the particular specific tax. Contending that the stemmed leaf tobacco purchased by petitioner from various foreign

N3

sellers/suppliers were not clearly shown to be "L-7" permittees, such tobacco is not exempt from payment of specific tax.

In addition, respondent buttressed her point by citing in her memorandum the recent Court of Appeals' case of **Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc., CA-G.R. SP No. 38107, promulgated on December 25, 1995** (docketed before this Court as CTA Case No. 4515 and on appeal by herein petitioner before the Supreme Court under G.R. No. 125346) which dealt on the same parties and issues involved at bar. In said case, the Court of Appeals upheld respondent's contention regarding "L-7" permittees, as prescribed in Revenue Regulations Nos. V-39 and 17-67, when it gave great weight on the qualificative phrase "under such conditions as may be prescribed in the regulations of the Department of Finance", which is found in both the questioned Sections 141 and 137 of the Tax Code.

The issue confronting Us is whether or not petitioner is entitled to its claims for refund based on its disquisition and the evidence it has submitted.

After a careful scrutiny of the facts, the respective argumentation of the parties, the cited

N4

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 cases are not of first impression. The Court of Appeals has already spoken on the matter. 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:

> "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 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. Central Bank, 70 SCRA 570 [1976]; Bautista 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 a 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]).

xxx xxx xxx

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

157

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 f 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

N8

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?

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 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 not contemplated in the basic law.

N9

> 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

160

Court to do is merely to ascertain whether petitioner has satisfied the evidentiary requirements of its claims for refund.

A thorough and detailed examination of petitioner's exhibits ("A" to "I" inclusive) convince this Court that it has partially proven its claims. It is observed that respondent has admitted in her Answer under CTA Case No. 5177, the fact of having collected from the petitioner the amount of ₱260,560.50. However, in CTA Case No. 5210, this Court notes that petitioner failed to submit a copy of its written claim for refund covering the month of March, 1993. Consequently, this Court has to deny said claim even if the various legal issues put forth by petitioner are deemed tenable, because Section 230 of the Tax Code mandatorily requires the filing of a written claim for refund with respondent's Bureau before a claim for refund may be given judicial recognition. Also, in CTA Case No. 5189, petitioner failed to present a copy of its confirmation receipts with numbers B24422924 and B24422926 or in lieu thereof, any acceptable copy to that effect, in order to prove such specific claims. Hereunder thus, are the specific amounts deemed refundable, to wit:

141

The entire claim for December, 1992 under CTA Case No. 5177	₱260,560.50
Add: Confirmation receipt nos. (under CTA Case No. 5189)	
B24422902	52,050.75
B24422910	89,100.00
	₱401,711.25

WHEREFORE, in view of the foregoing, the instant Petitions for Review are hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** the amount of **₱401,711.25** to the petitioner immediately. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above 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

16