Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

LA SUERTE CIGAR AND CIGARETTE FACTORY,
Petitioner,

- versus -

C.T.A. CASE NO. 4617

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
SEP 06 1994

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue denying the protest filed by petitioner La Suerte Cigar and Cigarette Factory regarding the deficiency specific tax assessment issued by respondent covering the purchase of imported and locally produced stemmed-leaf tobacco from June 21, 1989 to November 20, 1990 and the sale of stemmed-leaf tobacco to Associated Anglo-American Tobacco Corporation, in the sum of P11,757,275.25.

The facts are as follows:

Petitioner is a domestic corporation engaged in the production and manufacture of cigar and cigarettes. It imports and purchases locally produced stemmed-leaf tobacco to be used in its manufacture of cigars and cigarettes.

On January 10, 1991, the Bureau of Internal Revenue sent a Pre-Assessment Notice to petitioner, received on January 14, 1991, informing the latter that it has allegedly incurred deficiency specific taxes on its local purchases and importations and on the sale of partially manufactured tobacco pursuant to the provisions of Sections 141(b), 127(a) and 128 of the Tax Code, computed as follows:

		SPECIFIC TAX DUE
a) Partially Manufactured Tobacco from Local Suppliers: TOTAL KILOS RECEIVED: 14,703,644 @ P0.75 =		P 11,027,733.00
b) Partially Manufactured Tobacco from Foreign Suppliers: TOTAL KILOS RECEIVED: 3,794,910 @ P0.75 =	P2,846,182.50	
Less: Specific Tax paid from Sept. 14, 1989 to Nov. 20, 1990 =	2,264,015.25	
Net Specific Tax Due		582,167.25
c) Partially Manufactured Tobacco Sold to Associated Anglo-American Tobacco Corp.: TOTAL KILOS SOLD: 157,200 @ P0.75 =	P 117,900.00	
	29,475.00	147,375.00
TOTAL SPECIFIC TAX DUE:		P11,757,275.25

On January 25, 1991, petitioner filed a protest letter, dated January 22, 1991, requesting for the reconsideration and withdrawal of the pre-assessment notice.

Subsequently, on February 8, 1991, petitioner received from respondent a demand letter, dated January 30, 1991, reiterating the findings of the examiners as indicated in the pre-assessment notice sent to petitioner. A formal protest, dated March 6, 1991, was filed by petitioner with respondent's office on March 8, 1991. Then on May 14, 1991, petitioner received respondent's decision, dated April 29, 1991, denying the protest with finality and upholding the ruling of former Commissioner of Internal Revenue, Efren I. Plana, where he ruled, in a similar case involving the same party, that stemmed-leaf tobacco whether locally purchased or imported is subject to the specific tax of P0.75 per kilo pursuant to Section 141(b) of the Tax Code.

Within the thirty-day period to appeal, petitioner filed with this Court its petition for review on June 13, 1991. Petitioner contends that Section 137 of the Tax Code exempts manufacturer of stemmed-leaf tobacco from the excise tax when it sells and purchase the same in bulk as raw materials to another manufacturer. While respondent invokes the provision of Section 141(b) as basis for the deficiency specific tax assessment still the same provision of law allows the transfer, disposal and selling thereof without the prepayment of the specific tax if the same is exported or used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product. With respect to the importation of stemmed-leaf tobacco, the same is exempt from excise taxes under Republic Act No. 698 [An Act To Limit The Importation Of Foreign Leaf Tobacco] and Republic Act No. 4155 [An Act To Promote And Strengthen The Virginia Tobacco Industry].

Respondent, on the other hand, contends that Section 137 of the Tax Code covers the removal of certain articles tax-free and said provision does not fall squarely in this case. Instead Section 141(b) of the same Code should govern with respect to the imposition of the specific tax on tobacco prepared or partially prepared which includes stemmed-leaf tobacco under Revenue Regulations No. 17-67. Nowhere in Section 141 was stemmed-leaf tobacco mentioned in the enumeration of those not subject to specific tax.

The issue is whether or not petitioner is liable to pay the specific tax on locally purchased and imported stemmed-leaf tobacco used as raw materials in the production and manufacture of cigars and cigarettes and the sale of stemmed-leaf tobacco to another manufacturer, Associated Anglo-American Tobacco Corp. under Sections 141(b), 128 and 127(a) of the Tax Code.

We answer in the negative.

Respondent relies on the provisions of Section 141(b), 127(a), and 128 of the Tax Code as basis for the deficiency specific tax assessment, which we quote hereunder:

> "SEC. 141. *Tobacco Products.* - There shall be collected a tax of seventy-five centavos on each kilogram of the following products of tobacco:
>
> (a) x x x x x x x x x.

(b) Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened; and

(c) x x x x x x x x x.

x x x x x x x x x."

"SEC. 127. ***Payment of excise taxes on domestic products.*** - **(a)** ***Persons liable; time for payment.*** - Unless otherwise especially allowed, excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of production: *Provided*, That the excise tax on locally manufactured petroleum products and indigeneous petroleum levied under Sections 145 and 151(a)(4), respectively, of this Title shall be paid within 15 days from the date of removal thereof from the place of production. Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

x x x x x x x x x."

"SEC. 128. ***Payment of excise taxes on imported articles.*** - **(a)** ***Persons liable.*** - Excise taxes on imported articles shall be paid by the owner or importer to the customs officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempted from tax which are subsequently sold, transferred or exchanged in the Philippines to nonexempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation. The tax due on such article shall constitute a lien on the article itself, superior to all other charges or liens, irrespective of the possessor thereof.

(b) ***Rate and basis of the excise tax on imported articles.*** - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

and its implementing regulation Revenue Regulations No. 17-67, as amended, pertinent portion of which provides:

"REVENUE REGULATIONS NO. 17-67
[as amended by Rev. Regs. Nos. 9-72 (Sept. 27, 1972), 1-73 (Dec. 26, 1972), 5-75 (Nov. 11, 1975), and 1-76 (Nov. 16, 1976)]

SUBJECT: Tobacco Revenue Regulations on leaf, scrap, other partially manufactured tobacco and other tobacco products; grading, classification, inspection, shipments, exportation, importation and the manufacturers thereof under the provisions of Act No. 2613, as amended.

TO : All Internal Revenue Officers and Others Concerned:

Section 1. x x x x x x x x x.

Section 2. Definitions of terms

x x x x x x x x x.

(m) "Partially manufactured tobacco" - includes:

> (1) "Stemmed leaf" - handstripped tobacco, clean, good, partially broken leaf only, free from mold and dust."

We shall discuss each of the items appearing in the pre-assessment notice issued by respondent's office holding petitioner liable for deficiency specific tax.

The first and third items will be discussed jointly. In Item No. 1, respondent assessed the petitioner for specific tax on locally purchased stemmed-leaf tobacco from local suppliers pursuant to Section 141(b) of the Tax Code. Petitioner's purchases of 14,703,644 kilos of local stemmed-leaf tobacco was assessed a specific tax at the rate of P0.75 per kilo or a total of P11,027,733.00. In Item No. 3, respondent assessed petitioner the P0.75 per kilogram specific tax on its sale of 157,200 kilos of stemmed-leaf tobacco from an L-7 account to Associated Anglo-American Tobacco Corporation equal to P117,900.00 plus 25% surcharge of P29,475.00 or a total of P147,375.00.

In refuting the arguments raised by respondent, petitioner insists that the applicable provision of law is Section 137 of the Tax Code, and not Section 141(b), which provides:

> "SEC. 137. ***Removal of tobacco products without prepayment of tax.*** - Products of tobacco entirely unfit for chewing or smoking may be removed free of tax for agricultural or industrial use, under such conditions as may be prescribed in the regulations of the Department of Finance. <u>Stemmed leaf tobacco</u>, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and sweepings of tobacco <u>may be sold in bulk as raw material by one manufacturer directly to</u>

> another, without payment of the tax under such conditions as may be prescribed in the regulations of the Department of Finance.
>
> "Stemmed leaf tobacco", as herein used means leaf tobacco which has had the stem or midrib removed. The term does not include broken leaf tobacco." (Emphasis Ours.)

There is nothing abstract in the language of the said provision. The aforequoted provision is clear and leaves no room for strained interpretation. The language is clear and unequivocal and must be taken to mean exactly what it says. "It is the fundamental duty of the courts to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them". **(People v. Mapa, G.R. No. L-22301, August 30, 1967.)**

The records will show that petitioner's local purchases of stemmed-leaf tobacco were acquired from various manufacturer and the same were used as raw materials for the manufacture of cigars and cigarettes. The working paper prepared by respondent's examiners will show that from June 20, 1989 to November 20, 1990, petitioner purchased stemmed-leaf tobacco from its local suppliers. The summary of said purchases are presented as follows: (Exh. CB-2, p. 90, BIR record)

SUPPLIERS OF LOCAL TOBACCO	ASSESSMENT GUIA NO.	TOTAL KILOS
Telengtan Bros. & Son	L3R - 6774	1,789,450
Orient Leaf	L6 - 104	2,818,727
Trans Manila	L3R - 6614	1,331,700
Phil. Tobacco Flucurring	L6 - 42/	

(PTFC)	L3R - 4536	2,031,550
La Union Tobacco Redrying	L6 - 114	2,381,717
Fieldman Agricultural Tob. (FATC)	L6 - 195	1,458,800
Continental Leaf Tobacco	L6 - 142	2,891,700
TOTAL TOBACCO RECEIVED		14,703,644

By and large the term "manufacturers" as mentioned in Section 137 of the Tax Code can be interpreted to mean both "manufacturer of tobacco" and/or "manufacturer of cigars and/or cigarette" as defined in Revenue Regulations No. 17-67, as amended, to wit:

"**Section 2**. Definition of terms

x x x x x x x x x.

(i) "**Manufacturer of tobacco**" - Includes every person whose business it is to manufacture tobacco or snuff or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing (not baling), grinding, or rubbing (grating) any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco and snuff, or putting up for consumption scraps, refuse, or stems or tobacco resulting from any process of handling tobacco stems, scraps, clippings, or waste or sifting, twisting, screening or by any other process.

(j) "**Manufacturer of cigars and/or cigarettes**" - Includes those persons whose business it is to make or manufacture cigars and/or cigarettes for sale, or who employ others to make or manufacture cigars and/or

> cigarettes for sale; but the term does not include artisans or apprentices employed to make cigars and/or cigarettes from material supplied by the employer, the latter being lawfully engaged in the manufacture of cigars and/or cigarettes.
>
> x x x x x x x x x."

Petitioner's witness, Mr. Antonio Yao, Vice-President for Operations, testified that petitioner's suppliers of stemmed-leaf tobacco are also "manufacturers of tobacco" as defined above. Excerps of Mr. Yao's testimonies are quoted hereunder: (pp. 19-21, T.S.N., Hearing of February 23, 1993)

"ATTY. DEL CASTILLO

Q. Mr. Witness, you stated that transfers of steam (sic) leaf tobacco from your suppliers to La Suerte are exempt from the payment of specific tax under Section 137 of the Tax Code. Is this correct?

A. Yes, sir.

Q. Who are your suppliers specially (sic) during the years 1986 to 1989? From whom did you obtain your steam (sic) leaf tobacco?

A. For local tobacco, we already have six or seven suppliers who are based in Manila and the rest in the province of La Union. We are the majority of the local tobacco industry (sic).

Q. Would (sic) you recall their names?

A. Among which are Continental Leaf Tobacco located at Bacnotan, La Union; Orient Leaf Tobacco located in Agoo; I think, Lancaster Philippines, Inc., in Agoo. Philippine Tobacco

Inc., of Baesa. Yotorko Tobacco Corporation based in Aringay; and there is another one, Trans Manila, Inc., based also in Agoo.

Q. These supplier of yours, are they tobacco manufacturers?

A. They are because they have been issued the BIR license to process tobacco under, what do we call this the L60 (sic), L6R (sic), and some of them with L3 licenses also.

Q. What do they do with the tobacco? Why are they given this licensed to (sic).

A. The license they are issues (sic) is for them to handle the tobacco which is to partially process the tobacco or manufacture the tobacco by taking out the steam (sic) or the mid-reeve (sic) of the tobacco. And then happen under a propo-moisture (sic) content tobacco can be kept for sometime without (sic)

Q. What about your company, is it also a manufacturer of tobacco?

A. Yes, sir. We have a license for manufacturing cigarettes."

Another witness for the petitioner, Mr. Cesar Ong, the Material Control Manager of petitioner, testified that both petitioner and its local suppliers are tobacco manufacturers. Mr. Cesar Ong's testimony states: (pp. 4-6, T.S. N., Hearing of January 29, 1991)

"Q. In the years 1989 and 1990, what line of business was La Suerte engaged in?

A. Cigarette manufacturer.

Q. As a manufacturer of cigarette, do you know what raw materials are used by the petitioner in the manufacture of cigarettes?

A. We use imported tobacco and local stemmed-leaf tobacco.

Q. You stated that among the raw materials that you used are local stemmed-leaf tobacco. Do you know from whom the petitioner purchased local stemmed-leaf tobacco during the years 1989 and 1990?

A. From various tobacco buyers.

Q. Do you know their names?

A. Yes. I can mention some of them like Continental Leaf Tobacco Corporation, Philippine Tobacco Procure (sic) Corporation, Lancaster Philippines, Orient Leaf Tobacco Corporation, La Union Drying (sic) Plant, and others. These are some.

Q. What line of business are these suppliers of stemmed-leaf tobacco engaged in?

A. They are tobacco manufacturers."

Since petitioner's purchases of local stemmed-leaf tobacco came from tobacco manufacturers and the same were used as raw materials in the production of cigars and cigarettes it is therefore clear that it is covered by Section 137 of the Tax Code. Thus, petitioner's purchases of local stemmed-leaf tobacco from various tobacco manufacturers are exempt from the payment of the specific tax.

Furthermore, Section 20(a) of Revenue Regulations No. V-39 [The Tobacco Products Regulations], as amended, even bolsters the provision of Section 137 of the Tax Code considering that stemmed-leaf tobacco was specifically mentioned as an exemption from the payment of the specific tax. Section 20(a) of said regulation provides:

> "Section 20. Exemption from tax of tobacco products intended for agricultural or industrial purposes. - (a) Sale of stemmed leaf tobacco, et., by one factory to another. - Subject to the limitations herein established, products of tobacco entirely unfit for chewing or smoking may be removed free of tax for agricultural or industrial use; and stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse, scraps, cuttings, clippings, and sweeping of tobacco may be sold in bulk as raw materials by one manufacturer directly to another without the prepayment of the specific tax.
>
> Stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cutting, clippings, and sweeping of leaf tobacco or partially manufactured tobacco or other refuse of tobacco may be transferred from one factory to another under an official L-7 invoice on which shall be entered the exact weight of the tobacco at the time of its removal, and entry shall be made in the L-7 register in the place provided on the page for removals. Corresponding debit entry will be made in the L-7 register book of the factory receiving the tobacco under heading "Refuse, etc., received from other factory", showing date of receipt, assessment and invoice numbers, name and address of the consignor, form in which received, and the net weight of the tobacco. This paragraph should not, however, be construed to permit the transfer of materials unsuitable for the manufacture of tobacco products from one factory to another." (Emphasis Ours)

The term "manufacturer of tobacco products" has been defined to include all persons engaged in the manufacture of any of the forms of tobacco such as cigars and cigarettes [Sec. 2(b), Revenue Regulations No. V-39]. When the law and regulations enumerate and define various categories of manufacturers subject to the excise tax and thereafter exempt them if the sale of stemmed-leaf tobacco was made by one manufacturer directly to another then the term "manufacturer" as broadly used should be interpreted to mean "manufacturers of tobacco" and "manufacturers of tobacco products" or "manufacturers of cigars and cigarettes".

The whole concept being that the stemmed-leaf tobacco will not be sold or transferred as is but is sold in bulk to be used as raw materials in the manufacture of tobacco products such as cigars and cigarettes wherein the corresponding excise tax will eventually be paid on these finished products. The rationale, is that the tax incidence is merely postponed for it will later be collected as part of the excise tax on the finished product (cigar and cigarettes). Thus, the purchase of stemmed-leaf tobacco to be used as raw materials by petitioner in its manufacture of cigars and cigarettes is therefore exempt from the payment of the specific tax.

With respect to its sale of stemmed-leaf tobacco with Associated Anglo-American Tobacco Corporation (Item No. 3), petitioner also maintains that it need not pay the specific tax thereon pursuant to Section 137 of the Tax Code. Petitioner has proven that it is a manufacturer of cigars and cigarettes as evidenced by its Mayor's Permit issued by the Mayor of Parañaque, Metro Manila for the years 1989 (Exh. CW, p. 231, CTA record) and 1990 (Exh. CW-1, p. 232, CTA record), stating that it is engaged in business as a Cigarette Manufacturer. Therefore, stemmed-leaf tobacco sold in bulk by petitioner, a manufacturer of cigars and cigarettes, to another manufacturer, Associated Anglo-American Tobacco Corporation, is exempt from the payment of the specific tax. The stemmed-leaf tobacco sold can thus be removed without the prepayment of the specific tax.

This court has observed that while Section 127 of the Tax Code requires that excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of production, the bulk of the assessment herein imposed against the petitioner is on the basis that it is a possessor, having bought the stemmed-leaf tobacco from other tobacco manufacturers or local suppliers. In other words, the law identifies the person or taxpayer primarily liable and yet respondent failed to enforce its collection against them although they are known to the respondent. To show her inconsistency in enforcing the procedure to collect, petitioner is likewise being assessed not as buyer-possessor but this time as manufacturer-seller of stemmed leaf tobacco to Associated Anglo-American Tobacco Corporation. We do not wish to question the way respondent enforces the law, but for the guidance of taxpayers a uniform enforcement of tax laws may be suggested. While it is true that the respondent may collect excise taxes even against a mere possessor, she is first required to collect the same from the manufacturer or producer, as the entity primarily liable to the said tax. To interpret otherwise would render the first portion of Section 127 a mere surplusage which could not have been the intention of the lawmaker. It is only after there is a clear showing that the manufacturer or producer could not pay or failed to pay the excise tax for some valid or justifiable reasons could the respondent run after the possessor. The way respondent enforces the law may not have been the intention of the lawmaker.

While it is true that stemmed-leaf tobacco are classified as "partially manufactured tobacco" under Section 2(m) of Revenue Regulations No. 17-67, as amended, still it will be observed that in Section 43 of the same Revenue Regulation, falling under Chapter XI entitled "Partially manufactured tobacco and tobacco products for export", it provides:

> "**Section 43. Tobacco exempted from specific tax.** - No specific tax shall be collected on the following:
>
> (a) Leaf tobacco and partially manufactured tobacco, except imported leaf tobacco, unless entered in the L-7 official register book.
>
> (b) Manufactured products of tobacco for export and/or use by the Armed Forces of the Philippines or the United States Armed Forces, and other entities specifically exempted by law." (Emphasis Ours.)

It is clear from the above-quoted provision that no specific tax shall be collected on partially manufactured tobacco including stemmed-leaf tobacco.

Thus, even assuming arguendo that stemmed-leaf tobacco falls under the category of partially manufactured tobacco still the same is exempted from the payment of the specific tax under Sec. 43(a) of Revenue Regulations No. 17-67, as amended. There is no showing that the provision of Section 43(a) has been repealed or superseded by another regulation. The respondent has no right to rule otherwise because a revenue regulation issued pursuant to law has the force and effect of law unless found to be contrary to law.

The Secretary of Finance has the authority to promulgate rules and regulations pursuant to Section 245 of the Tax Code. Pertinent portion of Section 245, reads:

> "SEC. 245. ***Authority of Secretary of Finance to promulgate rules and regulations.*** - The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.
>
> x x x x x x x x x."

Revenue Regulations No. 17-67, implementing the provision of Section 141 of the Tax Code was issued by the Secretary of Finance with the recommendation of the Commissioner of Internal Revenue. It is well settled that Revenue Regulations issued by the Secretary of Finance to implement the provisions of the Tax Code, if not contrary to law and in accordance with specified legislative standards, has the force and effect of law. Revenue regulations issued by the Secretary of Finance cannot be changed or interpreted otherwise by the Commissioner of Internal Revenue.

Furthermore, it is an elementary rule in statutory construction that a statute must be read or construed as a whole or in its entirety. All parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all the others, and in harmony with the whole. **(St. Martin, et. al. v. Iberville Parish, et. al., 212 La. 886, cited in MARTIN's Statutory Construction, p. 132.)** Under this rule, that construction is favored which will render every word operative rather than one which makes some words idle and nugatory. **(Shimonek v. Tillanan, 1 P. 2d, 154; ibid.)** Thus, courts are duty bound to adopt a construction that will give effect to every part of a statute, if at all possible, following the maxim *"ut magis valeat quam pereat"* (that construction is to be sought which gives effect to the whole statute). **(Almeda v. Florentino, G.R. No. L-23800, December 21, 1965.)**

In the case at bar, there being no conflict with the provisions of Sections 2(m) and 43(a) of Revenue Regulations No. 17-67, as amended, the local purchases of stemmed-leaf tobacco classified as partially manufactured tobacco are therefore exempt from the specific tax.

Anent the second item, regarding the alleged deficiency specific tax on imported stemmed-leaf tobacco in the amount of P582,167.25, respondent applied the provisions of Sections 128 and 141(b) of the Tax Code.

At this juncture, petitioner pointed that it imported foreign leaf tobacco from various manufacturers of tabacco from the United States of America. These were properly recorded in its L-

7 (see Exhs. DA up to DS-4, inclusive; and Exhs. DA-01 through DS-3j, inclusive) and L-7-1/2 (see Exhs. FA to FP, inclusive) registers.

Section 137 of the Tax Code does not make any distinction whether the sale of stemmed-leaf tobacco by a manufacturer to another is imported or local. What is essential is that the sale of stemmed-leaf was made by a manufacturer directly to another to be used as raw material in its production in order that the same may be removed without the payment of the excise tax.

There appears to be no distinction as to the term "manufacturer" as mentioned in Section 137 of the Tax Code. The manufacturer that supplies stemmed-leaf tobacco may either be foreign or local suppliers. Where the law does not distinguish we should not distinguish. There is nothing cryptic nor abstract in the language of the said provision as would pose an ambiguity in its application. We should ensure the continued application of said provision as it is in all fours with the case at bar.

So it appears, respondent for her part failed to controvert or rebut petitioner's submission that the subject purchase of stemmed-leaf tobacco were made from various tobacco "manufacturers". In fact, respondent failed to present any evidence to support her case. Her counsel waived the right cross examine petitioners' witnesses. Instead, she submitted this case for decision on the basis of the records and the pleadings. Neither did she submit any memorandum brief to guide this Court. The Court is left without any recourse but to take cognizance of the evidence presented by petitioner. Thus, we

~~4617~~ 12

believe that the purchases of stemmed-leaf tobacco made by petitioner from local and foreign suppliers are transactions between "manufacturers" covered by the exemption from the payment of the specific tax pursuant to Section 137 of the Tax Code.

It was established by petitioner that its foreign suppliers of stemmed-leaf tobacco are also "manufacturers of tobacco". Testimonial and documentary evidence were presented by petitioner to show that its foreign suppliers, namely: Universal Leaf Tobacco Co. (Exhs. D, D-2, D-4, D-7, D-10 and D-12); Austin Company Incorporated (Exhs. D-1, D-3, D-11 and D-17); JAS. I. Miller Tobacco Co., Inc. (Exhs. D-5, D-9, D-13, D-14 and D-16); A.C. Monk & Company, Inc. (Exhs. D-6 and D-15) and Carolina Leaf Tobacco Co., Inc. (Exh. D-8) are listed in the World Tobacco Directory such as the Tobacco Reporter (see Exhs. GH, GH-1 and GH-2).

As a rule no specific tax shall be collected on leaf tobacco and partially manufactured tobacco (which includes stemmed-leaf tobacco), except imported leaf tobacco, unless entered in the L-7 official register book [Sec. 43(a) of Rev. Regs. No. 17-67, as amended]. Thus, while it is true that imported leaf tobacco is subjected to the specific tax still the same is exempted if entered in the L-7 official register book. For its part, petitioner has amply proven that the imported tobacco were properly recorded in its L-7 and L-71/2 official register book (see Exhs. DA to DS-4; DA-01 to DS-3j; FA to FP, all inclusive). Having complied with the requirement of Section 43(a) of Revenue Regulations No. 17-67, as amended, We seee no reason why petitioner should not be exempted from the payment of the specific tax in question.

WHEREFORE, in view of the foregoing, We find the petition for review meritorious and the same is hereby **GRANTED.** Respondent's decision dated April 29, 1991 is hereby set aside and the formal assessment for deficiency specific tax in the sum of ₱11,757,275.25 subject of respondent's letter, dated January 30, 1991, is deemed cancelled.

No pronouncement as to costs of suit.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(See Separate Concurring Opinion)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

This is to certify that the above decision was reached after due consultation among 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