REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORTUNE TOBACCO CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 6612

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 04 2003

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DECISION

This case involves a claim for refund in the amount of P355,385,920.00 allegedly representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002.

The facts of the case are undisputed:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at Fortune Avenue, Parang, Marikina City.

Petitioner is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to Republic Act (RA) No. 8240, to wit:

Brand	Tax Rate
Champion M 100	P 1.00
Salem M 100	P 1.00
Salem M King	P 1.00
Camel F King	P 1.00
Camel Lights Box 20's	P 1.00
Camel Filters Box 20's	P 1.00
Winston F King	P 5.00
Winston Lights	P 5.00

390

Immediately prior to January 1, 1997, the above-enumerated cigarette brands were subject to ad valorem tax (AVT) pursuant to then Section 142 of the Tax Code of 1977, as amended, which provides:

> "SEC. 142. ***Cigars and cigarettes.***
>
> "(a) ***Cigars***. – There shall be levied, assessed and collected on cigars a tax of ten percent (10%) of the constructive manufacturer's or importer's wholesale price, whichever is higher.
>
> "(b) ***Cigarettes by hand***. – There shall be levied, assessed, and collected on cigarettes packed by hand a tax of fifteen percent (15%) of the constructive manufacturer's wholesale price, whichever is higher.
>
> "(c) ***Cigarettes packed by machine***. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below based on the constructive manufacturer's wholesale price or the actual manufacturer's wholesale price, whichever is higher.
>
> "(1) On locally manufactured cigarettes which are currently classified and taxed at fifty-five percent (55%) or the exportation of which is not authorized by contract or otherwise, fifty-five percent (55%) provided that the minimum tax shall not be less than Five pesos (P5.00) per pack.
>
> "(2) On other locally manufactured cigarettes, forty-five percent (45%) provided that the minimum tax shall not be less than Three pesos (P3.00) per pack.
>
> "Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.
>
> "When the registered manufacturer's wholesale price or the actual manufacturer's wholesale price whichever is higher or existing brands of cigarettes, including the amounts intended to cover the taxes, of cigarettes packed in twenties does not exceed Four pesos and eighty centavos (P4.80) per pack, the rate shall be twenty percent (20%).
>
> "(d) ***Imported cigarettes***. – If the cigarettes are of foreign manufacture, regardless of the contents per pack, there shall be levied, assessed and collected a tax of fifty-five percent (55%) of the constructive

381

importer's wholesale price or the actual importer's wholesale price, whichever is higher.

"For purposes of this section, the term '***constructive manufacturer's or importer's wholesale price***' shall mean the price including the amount intended to cover the tax imposed in paragraphs (a), (b), (c) or (d) hereof and the amount intended to cover the value-added tax imposed under Title IV of this Code at which locally manufactured or imported cigars or cigarettes are offered for sale to the wholesalers or distributors as fixed by the manufacturer or importer and registered with the Bureau of Internal Revenue plus a mark up of twenty percent (20%) of such price. The term 'actual manufacturer's or importer's wholesale price' shall mean the price at which the purchaser actually pays or is obligated to pay to the manufacturer or importer in consideration of the sale, barter, or exchange of cigars and cigarettes.

"The twenty percent (20%) mark up and the minimum taxes provided in this section shall be automatically increased in 1996 by ten percent (10%)."

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On January 1, 1997, RA No. 8240 took effect whereby a shift from the ad valorem tax (AVT) system to the specific tax system was made and subjecting the aforesaid cigarettes brands to specific tax under Section 142 thereof, now renumbered as Sec. 145 of the Tax Code of 1997, pertinent provisions of which are quoted thus:

"Sec. 145. ***Cigars and Cigarettes*** –

"(A) ***Cigars.*** – There shall be levied, assessed and collected on cigars a tax of One peso (P1.00) per cigar.

"(B) ***Cigarettes Packed by Hand***. – There shall be levied, assessed and collected on cigarettes packed by hand a tax of Forty centavos (P0.40) per pack.

"(C) ***Cigarettes Packed by Machine***. – There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

382

"(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (P10.00) per pack, the tax shall be Twelve pesos (P12.00) per pack;

"(2) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (P6.50) but does not exceed Ten pesos (P10.00) per pack, the tax shall be Eight pesos (P8.00) per pack;

"(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (P5.00) but does not exceed Six pesos and fifty centavos (P6.50) per pack, the tax shall be Five pesos (P5.00) per pack;

"(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (P5.00) per pack, the tax shall be One peso (P1.00) per pack;

"Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.

"**The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996**. *Provided, however*, That in cases where the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

"Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

"**The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3), and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000**.

"New brands shall be classified according to their current net retail price.

"For the above purpose, '***net retail price***' shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the

383

amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the '***net retail price***' shall mean the price at which the cigarette is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

"The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in *Annex 'D'*, shall remain in force until revised by Congress.

"'***Variant of a brand***' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

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To implement the provisions for a twelve percent (12%) increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, upon recommendation of the respondent Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99 dated December 16, 1999, which provides the increase on the applicable tax rates on cigar and cigarettes as follows:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO JAN. 1, 2000	NEW SPECIFIC TAX RATE EFFECTIVE JAN. 1, 2000
145	(A)	P1.00/cigar	P1.12/cigar
	(B) Cigarettes packed by machine		
	(1) Net Retail Price (excluding VAT & Excise) Exceeds P1.00 per pack	P12.00/pack	P13.44/pack
	(2) Net Retail Price (excluding VAT & Excise) is P6.51 up to P10.00 per pack	P 8.00/pack	P 8.96/pack
	(3) Net Retail Price (excluding VAT & Excise) is P5.00 to P6.50 per pack	P 5.00/pack	P 5.60/pack
	(4) Net Retail Price (excluding VAT & Excise) is below P5.00 per pack	P 1.00/pack	P 1.12/pack

384

Revenue Regulations No. 17-99 dated December 16, 1999, likewise, provides in the last paragraph of Section 1 thereof "That the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fragmented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000 xxx"

For the period covering January 1 to December 31, 2002, the petitioner paid advance specific tax deposits in the total amount of P11,475,000,000.00 (*SCHEDULE I and copies of the official receipts of payment, Annexes "C-1" to "C-146" of the Stipulation of Facts, Documents and Issues*)

For the period covering January 1 to December 31, 2002, petitioner, likewise, paid specific taxes on all its brands manufactured and removed in the total amount of P11,359,578,560.00 (*SCHEDULE I and the "Statements of Productions and Removals with corresponding Specific Tax Payment", Annexes "C" & "D-1" to "D-12" of the Stipulation of Facts, Documents and Issues, respectively*).

On February 3, 2003, petitioner filed a claim for tax credit or refund under Section 229 of the NIRC for erroneously or illegally collected specific taxes covering the period January 1 to December 31, 2002 in the total amount of P355,385,920.00 (*SCHEDULE II and the "Comparative Reports – Amount of Specific Tax Based on Actual Tax Paid vs. Amount of Specific Tax Due Based on Basic Tax plus 12%., Annexes "E-a" & "E-1" to "E-12" of the Stipulation of Facts, Documents and Issues, respectively*).

385

Due to the inaction of the respondent on the aforesaid claim, petitioner filed the instant Petition for Review with this court on March 12, 2003 pursuant to Section 229 of the Tax Code.

Respondent, in his Answer filed on April 10, 2003, interposed the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
>
> 5. The amount of P355,385,920.00 being claimed by petitioner as alleged overpaid excise tax for the period covering January 1, 2002 to December 31, 2002 was not properly documented;
>
> 6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation;
>
> 9. The last paragraph of Section 1 of Revenue Regulations No. 17-99 is a valid implementing regulation which has the force and effect of law."

As jointly stipulated by the parties, the issues to be resolved in the case at bar are:

1. Whether or not the last paragraph of Section 1 of Revenue Regulations No. 17-99 is in accordance with the pertinent provisions of Republic Act 8240, now incorporated in Section 145 of the Tax Code of 1997; and

2. Whether or not the petitioner is entitled to a refund of P355,385,920.00 as alleged overpaid excise tax for the period from January 1 to December 31, 2002.

386

We now rule on the validity of Revenue Regulations No. 17-99. In as much as the main point of contention is the last paragraph of the said revenue regulations and its relation to the other provisions, we quote the same, thus:

> "**Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine**, distilled spirits, wines and fermented liquors **shall not be lower than the excise tax that is actually being paid prior to January 1, 2000**." (Emphasis supplied)

Petitioner argues that the aforequoted paragraph of Revenue Regulations No. 17-99 has no basis in law and is, therefore, an illegal extension for an indefinite period of time of the three-year transitory provisions of R.A. 8240, now incorporated in Section 145 of the Tax Code of 1997. According to petitioner, the three-year period within which it is to be operative reckoned from January 1, 1997, the date when R.A. 8240 took effect, expired on December 31, 1999 and thereafter, effective January 1, 2000, the correct base of the 12% increase are the rates prescribed under paragraphs (1), (2), (3), and (4) of Section 145 of the Tax Code of 1997. Petitioner further maintains that the questioned provisions of Revenue Regulations No. 17-99 is an administrative legislation since there is nothing under the provisions of Section 145 which authorizes the BIR to impose by way of regulations "*that the new specific tax rate for any existing brand of cigar, cigarettes packed by machine x x x not be lower than the excise tax that is actually being paid prior to January 1, 2000.*" Being entirely a creation of the respondent, and having no basis in said Section 145 itself which the questioned provisions of Revenue Regulations No. 17-99 meant to carry into effect, petitioner concluded that the said revenue regulations cannot be accorded validity.

387

Respondent, however, counters that the last paragraph of Section 1 of Revenue Regulations No. 17-99 is in accordance with the legislative intent of R.A. 8240, i.e., to increase more revenues for the government. Also, respondent avers that RR 17-99 is a mere continuum of the implementing process set in motion by RR 1-97 and that the BIR, as an administrative agency, is duty bound to carry out the congressional policy of regulating specified activities. According to respondent, Revenue Regulations No. 17-99 was issued by authority of Section 244 in relation to Section 4 of the 1997 Tax Code, which provides:

> "Sec. 244. 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.
>
> Sec. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. — The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

Respondent further contends that administrative legislation is not illegal per se and the general prohibition on non-delegation of legislative power admits of certain exceptions. Respondent posits the view that administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress and as long as certain guidelines are met and what is being delegated is not the discretion as to what the law shall be but only the discretion as to its execution, then the same is permissible.

We rule in favor of petitioner.

388

This case is not one of first impression. In previous similar cases docketed as ***CTA Case Nos. 6365 and 6383***, both entitled ***Fortune Tobacco Corporation vs. Commissioner of Internal Revenue, and promulgated on October 21, 2002***, this court passed upon the same issue and ruled:

> "At first glance, the said regulation appears to be simply implementing the provisions of Section 142, R.A. 8240, now incorporated in the Tax Code of 1997 as Section 145, the pertinent provisions of which state:
>
> xxx xxx xxx
>
> > "The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996: Provided, however, That in cases were the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.
> >
> > xxx xxx xxx
> >
> > "The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.
> >
> > "The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex `D,' shall remain in force until revised by Congress."
>
> However, a more thorough analysis of the same proves that the questioned regulation does not merely implement but actually results to an unauthorized "administrative legislation." Clearly, the aforequoted provisions merely mandate that the three-year transition period within which it is to be operative, starting from January 1, 1997, the date when R.A. 8240 took effect, expired on December 31, 1999. During the said three-year period the tax shall not be lower than the tax imposed for each

389

brand on October 1, 1996. Thereafter, effective January 1, 2000, a 12% increase would take effect using as tax base the figures provided in Section 145, subsection C, paragraphs (1), (2), (3) and (4) of R.A. 8424, otherwise known as the Tax Code of 1997.

While we may agree with the respondent that administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress, the same does not hold true in the present case. The BIR, in issuing Revenue Regulations No. 17-99, went beyond the legal parameters that defined the boundaries of its authority.

In ***Teoxon vs. Members of the Board of Administrators, Philippine Veterans Administration,*** 33 SCRA 585, the Supreme Court defined the parameters of this rule-making power of an administrative agency in this wise:

> **"The power of administrative officials to promulgate rules in the implementation of the statute is necessarily limited to what is provided for in the legislative enactment**. It cannot be otherwise as the Constitution limits the authority of the President, in whom all executive power resides, to take care that the laws be faithfully executed. **No lesser administrative executive office or agency then can, contrary to the express language of the Constitution, assert for itself a more extensive prerogative. An administrative agency cannot amend an act of Congress**". (Emphasis supplied)

And in the case of ***Philippine Bank of Communications vs. Commissioner of Internal Revenue***, 302 SCRA 241, the Highest Tribunal ruled on the nature of revenue memorandum circulars, thus:

> "It bears repeating that Revenue memorandum circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. **Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override,**

390

instead of remaining consistent and in harmony with, the law they seek to apply and implement." (Emphasis supplied)

Adopting the argument of respondent and declaring the questioned regulation as valid would put to naught the provisions of Section 145 of the Tax Code of 1997, particularly the directive that, "The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof shall be increased by twelve percent (12%) on January 1, 2000." This is in lieu of the tax rate being imposed prior to January 1, 2000. It is worthy to emphasize that with respect to the initial increase of excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240, Section 145 clearly provides that the excise tax shall not be lower than the tax, which is due from each brand on October 1, 1996. Such qualification is wanting as to the increase by 12% on January 1, 2000 in the rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) of the same section. Thus, the inevitable conclusion would be to impose the new rates of excise tax under paragraphs (1) to (4) which is increased by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000.

The rule in this jurisdiction is that the intent of the legislature is to be ascertained from the very language of the statute. Verba legis non est recedendum, or from the words of the statute there should be no departure. The law, needless to state, is clear and would not need a revenue regulation to clarify certain provisions nor impose a burden not found in the piece of legislation it is supposed to implement. This cannot be done nor authorized to be done by a mere department or agency of the government (***Animos vs. Philippine Veterans Affairs Office, et. al., 174 SCRA 214***). Any regulation, such as Revenue Regulations No. 17-99, that stretches this authority amounts to unauthorized legislation.

In view of the foregoing, Revenue Regulations No. 17-99 is deemed invalid."

Further, in resolving the same issue in a "Consolidated Motion for Reconsideration" filed by petitioner in ***CTA Case Nos. 6365 & 6383***, *supra*, this court reaffirmed its position that the last paragraph of Section 1 of Revenue Regulations No. 17-99 is contrary to the pertinent provisions of Section 145 of the 1997 Tax Code, thus:

"x x x the rule in this jurisdiction is that the intent of the legislature is to be ascertained from the very language of the statute. It is the court's

391

duty to give the statute the interpretation its language calls for.The courts may not speculate as to the probable intent of the legislature apart from the words. ***(Hondoras vs. Soto, 8 Am. St. Rep. 744, cited on p. 61, Handbook on Statutory Construction, Martin, 1972 Ed.)***

At this point, the oft-repeated rule that "when the language of the law is clear and unequivocal the law must be taken to mean exactly what it says", deserves reiteration ***(IBAAEU vs. Inciong, 132 SCRA 663; The Chartered Bank Employees Association vs. Ople, 138 SCRA 273)***. Section 145 of the 1997 Tax Code provides in pertinent part: "The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996: xxx" A three (3)-year limitation period is provided wherein the new specific tax to be imposed is not less than the previous ad valorem tax.

Section 145 is clear and would not need a revenue regulation to clarify certain provisions nor impose a burden not found in the piece of legislation it is supposed to implement. This cannot be done nor authorized to be done by a mere department or agency of the government ***(Animos vs. Philippine Veterans Affairs Office, et al., 174 SCRA 214).*** Any regulation, such as Revenue Regulations No. 17-99, that stretches this authority amounts to unauthorized legislation."

We proceed to the second issue. The records, including the Stipulation of Facts, Documents and Issues of the parties disclose that the refundable amount was no longer disputed.

Significant are the stipulations in the Stipulation of Facts, Documents and Issues, where the parties admitted, among others, the due execution and/or authenticity of the following documents:

1. Copies of the official receipts of excise tax deposit of petitioner for the months covering from January 1 to December 31, 2002 which are attached to and made a part of the Stipulation as Annexes "C-1" to "C-146";

2. Copies of BIR "Statement of Production and Removals with Corresponding Specific Tax Payments", which are attached to and made a part of the Stipulation as Annexes "D-1" to "D-12".

392

Likewise, the parties admitted the mathematical accuracy of the following documents:

1. Copies of "Comparative Reports-Amount of Specific Tax Based on Actual Tax Paid vs. Amount of Specific Tax Based on Basic Tax Rate Plus 12%";

2. Copies of the January 1 to December 31, 2002 Summaries of advance excise tax deposits; taxes applied (debited); and running balances.

The aforementioned official receipts showed that petitioner paid advance excise taxes starting from January 2, 2002 to December 27, 2002 in the aggregate sum of P11,475,000,000.00, broken down as follows:

Annexed to the Stipulation of Facts as	Year 2002	Excise Tax Deposit
C-1 to C-14	January	P 1,050,000,000.00
C-15, C-18 to C-28	February	900,000,000.00
C-29 to C-40	March	900,000,000.00
C-41 to C-53	April	975,000,000.00
C-54 to C-67	May	1,050,000,000.00
C-68 to C-80	June	1,050,000,000.00
C-81 to C-94	July	1,050,000,000.00
C-95 to C-105	August	825,000,000.00
C-106 to C-117	September	975,000,000.00
C-118 to C-128	October	900,000,000.00
C-129 to C-139	November	975,000,000.00
C-140 to C-148	December	825,000,000.00
		P 11,475,000,000.00

In its "Summaries of Advance Excise Tax Deposits; Taxes Applied (Debited); and Running Balances" for the subject period, petitioner had excise tax deposit balance as of January 1, 2002 of P23,820,776.34 bringing its accumulated advance excise tax payments as of December 31, 2002 to P11,498,820,776.34 (P23,820,776.34 plus P11,475,000,000.00).

393

Based on petitioner's "Statements of Productions and Removals with Corresponding Specific Tax Payments" for the period January to December 2002 prepared by the BIR representative, petitioner was actually charged specific taxes totalling P11,359,578,560.00 on all brands it manufactured and removed from place of producton for the same period, detailed as follows:

Annexed to the Stipulation of Facts as	Year 2002	Actual Specific Tax Paid
D-1	January	P 1,003,142,080.00
D-2	February	881,041,985.00
D-3	March	868,165,430.00
D-4	April	982,618,645.00
D-5	May	1,051,616,305.00
D-6	June	1,057,485,745.00
D-7	July	1,001,896,230.00
D-8	August	927,071,635.00
D-9	September	888,818,665.00
D-10	October	894,301,235.00
D-11	November	949,174,390.00
D-12	December	854,246,215.00
		P11,359,578,560.00

The above specific tax payments of P11,359,578,560.00 were computed based on the provisions of Section 1 of Revenue Regulations No. 17-99 wherein the specific tax rate which was applied on each brand of petitioner's products was the higher rate between the ad valorem tax due as of October 1, 1996 and the specific tax rate under Section 145 increased by 12%. Consequently, petitioner paid specific taxes on the following brands, which were higher than the specific tax rates prescribed under paragraphs (3) & (4) of Section 145 increased by 12%:

394

Brand	Actual Specific Tax Paid Per RR No. 17-99		Basic Specific Tax Rate under Section 145 plus 12%	
	Per Case	Per Pack	Per Case	Per Pack
Champion M 100	P 1,650.00	P 3.30	P 560.00	P 1.12
Camel F King	2,750.00	5.50	560.00	1.12
Salem M King	2,750.00	5.50	560.00	1.12
Winston F King	2,925.00	5.85	2,800.00	5.60
Winston Lights	2,925.00	5.85	2,800.00	5.60

The foregoing prove that petitioner had overpaid the specific taxes due on its volume of removals for the aforementioned brands for the period of January to December 2002 in the total amount of P355,385,920.00, broken down as follows:

Brand	Volume of Removals (in cases)	Actual Specific Tax Paid Per RR No. 17-99	Specific Tax Due Based on Basic Rate Under Section 145 Plus 12%	Overpayment
Champion M 100	42,968	P 70,897,200.00	P 24,062,080.00	P 46,835,120.00
Camel F King	79,770	219,367,500.00	44,671,200.00	174,696,300.00
Salem M King	200	550,000.00	112,000.00	438,000.00
Sub-total	122,938	P 290,814,700.00	P 68,845,280.00	P 221,969,420.00
Winston F King	1,027,876	P 3,006,537,300.00	P 2,878,052,800.00	P 128,484,500.00
Winston Lights	39,456	115,408,800.00	110,476,800.00	4,932,000.00
Sub-total	1,067,332	P 3,121,946,100.00	P 2,988,529,600.00	P 133,416,500.00
Grand total:	1,190,270	P 3,412,760,800.00	P 3,057,374,880.00	P 355,385,920.00

IN VIEW OF THE FOREGOING, the Petition for Review is **GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of

395

P355,385,920.00 representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

(w/ Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

C E R T I F I C A T I O N

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FORTUNE TOBACCO CORPORATION
Petitioner,

- versus - **C.T.A. CASE NO. 6612**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
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apportionment

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DISSENTING OPINION

My esteemed colleagues voted for the granting of petitioner's claim for refund in the total amount of P355,385,920.00. I wish to register my dissent to the foregoing conclusion.

The majority ruled that the Bureau of Internal Revenue (BIR) went beyond the legal parameters that defined the boundaries of its authority when it issued Revenue Regulations No. 17-99, particularly the last paragraph of Section 1 thereof, which states that:

> "**Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine,** distilled spirits, wines and fermented liquors **shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.**" (*emphasis supplied*)

This declaration was based on the findings that the said Revenue Regulation amounts to an unauthorized "administrative legislation" as there is nothing in Section 145 of the National Internal Revenue Code (NIRC) of 1997, which it supposedly implements, that authorizes or justifies the BIR to impose by way of regulations that the new specific

397

tax rate for any existing brand of cigars, cigarettes packed machine x x x shall not be lower than the existing tax that is actually being paid prior to January 1, 2000. Thus, it cannot be accorded validity.

Respondent, however, contends that the last paragraph of Section 1 of Revenue Regulations No. 17-99 is in accordance with the legislative intent of Republic Act No. 8240 and Section 145 of the NIRC, which is to increase revenues by increasing the rates of excise tax on,among others, cigars and cigarettes.

I agree with the respondent. It is to be noted that in this petition for review, there are two issues of contention, namely: (1) the supposed lack of authority of the BIR to issue Revenue Regulations No. 17-99 and in connection with this (2) the validity of the same.

The BIR, as an administrative agency responsible for revenue collection and enforcement, is duty-bound to carry out the congressional policy of regulating specified activities and to raise revenues through proper collection of due taxes. This mandate is specifically provided in **Section 244** in relation to **Section 4** of the **National Internal Revenue Code of 1997**, which states thus:

> "**Section 244. 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 provision of this Code.** *(Emphasis supplied)*
>
> "**Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** -- The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

A similar authority is provided in **Section 10 of the said Republic Act 8240**, to wit:

> "The Secretary of Finance shall, upon the recommendation of the Commissioner of the Internal Revenue, promulgate the necessary rules and regulations for effective implementation of this Act."

Based on the aforequoted provisions, the general prohibition on non-delegation of legislative power allows certain exceptions. Thus, the BIR exercising "administrative legislation" is not illegal *per se*. Administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress. This exercise of discretion is permissible provided what is being delegated is not the discretion as to what the law shall be but only the discretion as to its execution.

The reasons behind this are as follows:

1. It relieves the legislature of a great burden of work in respect to which it has no special competence, and thus, enables it more largely to direct its attention to matters of general import;

2. It entrusts the drafting of detailed provisions, which are usually of a highly technical character to the agencies most familiar with the conditions to be met and which have the responsibility for their enforcement; and

3. It makes possible the prompt modification of a provision as soon as experience demonstrates that it is unsatisfactory. **(Administrative Law -- A Text, pages 27-28, Neptali Gonzales)**

This is especially true in the case at bar. The promulgation of R.R. No. 17-99, particularly the last paragraph of Section 1, is within the prerogative of the administrative agency concerned. The agency is not bound to merely repeat or reproduce the words of the statute if in the exercise of its discretion the law cannot be executed as what Congress

399

intends it to be. To hold and believe otherwise would reduce the rule-making powers to a purely mechanical act and render it meaningless.

Moreover, this power has been clearly delegated by Congress to the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, as discussed in the Senate during the interpellation of Senator Enrile by Senator Drilon, to wit:

> "Senator Drilon: In this particular case, Mr. President, the Congress would, in effect, be delegating to the Department of Finance the power to increase taxes.
>
> "Senator Enrile: In a sense, yes, Mr. President, but there is nothing that will prevent Congress from withdrawing that delegation if it wants to do this. We thought that we have to entrust this function to the tax administrators so that they can plan and they can move on." *(Interpellations-H.No. 7918, Records of the Senate, Vol. II, No. 33)*

The aforementioned delegation of power to the Department of Finance has been confirmed even if the validity of the same will be questioned before the courts. Sen. Drilon brought this up during the interpellation of Sen. Enrile, to wit:

> "Senator Drilon: This is what I am concerned of under this system. I cannot imagine that a taxpayer affected by the new rates that will be imposed by the Secretary of Finance in accordance with his authority under this law would not go to court, raise issues on the new rates, and therefore tie up the hands of the government. The old rates will be in effect while this case is pending."
>
> x x x x x x x x x
>
> "Senator Enrile: As I said, the way I see it, since there is no reason why we could not deal with this problem directly in 1998 or before 1999, there is no harm in leaving this provision in this measure to give the Executive Department the means to do it. We can readjust the rate in 1997, if we want it. We can readjust it in 1998. But if we do not want to do it, then we leave it to the department. x x x" (*Interpellations H. No. 7198, Records of the Senate, page 269, Wednesday, (October 16, 1996*)

460

Clearly from the foregoing, the BIR is given the mandate to issue the necessary regulations in implementing the provisions of the NIRC, Section 145 included.

After settling the issue of authority we now go to the issue of correctness of the interpretation and validity of the regulation.

A review of the history of the last paragraph of Section 1 of Revenue Regulations No. 17-99 reveals that it traces its origin to Revenue Regulations No. 1-97 that implemented Republic Act No. 8240. Subsequently, R.A. No 8240 has been incorporated in Section 145 of the 1997 Tax Code.

The legislative intent and purpose in enacting R.A. No. 8240 and Section 145 of the 1997 Tax Code may be gleaned from the congressional records. A perusal of the Sponsorship Speech of Senator Juan Ponce Enrile *(Sponsorship Speech of Sen. Enrile, Records of the Senate, Volume II, No. 32, October 15, 1996)* of **Senate Bill No. 7198** (which became R.A. No. 8240) and his answers to the interpellations disclosed that said bill was the most important component of the Comprehensive Tax Reform Program (CTRP) through which the government expects to raise as much as P6 Billion in additional revenue to finance its economic development requirements and progress annually, to wit:

> "The guiding principles of the excise tax reform that we are presenting, Mr. President, are the following: x x x
>
> "First, **to evolve a tax structure which will promote fair competition among the players in the industries concerned and generate buoyant and stable revenues for government.**
>
> "Second, to ensure that the tax burden is equitably distributed not only amongst the industries affected but equally amongst the various markets that are going to be affected by this excise tax on distilled spirits, fermented liquor, cigars and cigarettes.

x x x x x x x x x

"Third, **to simplify the tax administration and compliance with the tax laws that we are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion."** (*Emphasis supplied*)

From the foregoing, among the guiding principles of the bill are to evolve a tax structure which will generate buoyant and stable revenues and to simplify tax administration in order to minimize losses arising from tax avoidance and tax evasion schemes. As stated, the legislative intent of the subject statutes is to increase the rates of excise tax on, among others, cigars and cigarettes, in order to collect more revenues in the process.

Clearly, the Decision of the majority failed to consider the *raison d'être* of the law when this court interpreted the provisions of R.A. No. 8240 and Section 145 , NIRC literally. In the case of ***Commissioner of Internal Revenue vs. S.C. Johnson and Sons, Inc. et. al.***, G.R. No. 127105, June 25, 1999, the Supreme Court precisely cautioned against such literal interpretation in this wise:

"We are unable to sustain the position of the Court of Tax Appeals, which was upheld by the Court of Appeals, that the phrase "paid under similar circumstances" in Article 13 (2) (b), (iii) of the RP-US Tax Treaty should be interpreted to refer to payment of royalty and not to the payment of the tax, for the reason that the phrase "paid under similar circumstances" is followed by the phrase "to a resident of a third state". The respondent court held that "Words are to be understood in the context in which they are used", and since what is paid to a resident of a third state is not a tax but a royalty, "logic instructs" that the treaty provision in question should refer to royalties of the same kind paid under similar circumstance.

The above construction is based principally on syntax or sentence structure but fails to take into account the purpose animating the treaty provisions in point x x x.

402

x x x x x x x x x

In one case the Supreme Court pointed out that the laws are not just mere compositions, but have the ends to be achieved and that the general purpose is a more important aid to the meaning of the law than any rule which grammar may lay down. It is the duty of the courts to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose x x x." *(Emphasis supplied)*

In the light of the foregoing admonition of the Supreme Court, it is the duty of this court in interpreting the provisions of the said statutes, "to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose". This certainly is more important than looking at rules of grammar to aid it in arriving at proper legal interpretations. And statutes should be literally construed only when the language of the law is clear and unequivocal (***IBAAEV vs. Inciong***, *132 SCRA 603*; ***Chartered Bank Employees Association vs. Ople***, *138 SCRA 273*).

The Highest Tribunal, in the case of ***Paras vs. Comelec***, *76 SCAD 40, 264 SCRA 49*, explained that literal construction is not favored, thus:

"Moreover, Petitioner's too literal interpretation of the law leads to absurdity which we cannot countenance. Thus, in a case, the court made the following admonition:

"We admonish against a too literal reading of the law as this is apt to constrict rather than to fulfill its purpose and defeat the intention of its authors. The intention is usually found not in the letter that killeth but in the spirit that vivifieth x x x."

"The spirit, rather than the letter, of a law determines its construction; hence, a statute, as in this case, must be read according to its spirit and intent."

403

In the Decision before us, the court opined that the inevitable conclusion would be to impose the new rates of excise tax under paragraphs (1) to (4) which is to increase by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000. However, as emphatically pointed out by respondent this would defeat the very purpose of the law.

To illustrate, under Section 4 of Revenue Regulations No. 1-97 implementing the provisions of R.A. No 8240, the specific tax rates as of January 1, 1997 of some cigarette brands involved in this case are as follows:

Brands	Specific Tax Rate
Champion M 100	P3.30
Salem M 100	P6.96
Salem M King	P5.50

On the other hand, under Section 142 (*now 145*) of the Tax Code, the tax rate on the aforesaid brands starting January 1, 2000 is P1.00 plus 12% thereof, or P1.12, which is much lower than the rates prior to January 1, 2000.

Adopting the argument of respondent and declaring the questioned regulation as valid would not put to naught the provisions of Section 145 of the Tax Code of 1997, particularly the directive that, "The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof shall be increased by twelve percent (12%) on January 1, 2000." On the contrary, it would harmonize and give the law a clearer meaning.

When Congress deemed it proper to restructure the taxation of these so-called "sin products," it did so in order to generate more revenues and to deter the consumption of

404

alcohol and cigarettes. Never did Congress contemplate to substantially decrease the tax to be collected for these products. In fact, Congress had the foresight to meet and consider the rising cost of goods and inflation by mandating a 12% increase on the specific tax rates, three years from the effectivity of R.A. 8240 or on January 1, 2000.

For the court to rule that the applicable rates would be the new rates of excise tax under paragraphs (1) to (4), which is to increase by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000, would create an absurd situation where despite an increase on the tax rates, it will also entail a sudden drop in collection. It implies that after January 1, 2000, a new tax regime will apply wherein the rates stated in Section 145 (C) (4) shall govern and the other pertinent provision of Section 145 will automatically cease and expire. Parts of a statute should not be viewed in isolation. A cardinal rule of statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole, and not of an isolated part or a particular provision alone (***Aboitiz Shipping Corporation, et. al., vs. City of Cebu, et. al.,*** 13 SCRA 449).

In fact, other provisions of the same Section 142 (now Section 145), clearly indicate such intention to increase the tax rates. It even provided a transition period to cushion such increase, which we quote as follows:

> "The specific tax from any brand of cigarettes within the next three (3) years of effectivity of this act shall not be lower than the tax which is due from each brand on October 1, 1996; Provided, however, that in cases where the specific tax rates imposed in paragraphs (1), (2), (3) and (4) herein above will result in an increase in excise tax of more than seventy percent (70%) for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998."

405

From the aforequoted provision, the specific tax for any brand of cigarettes within the next three (3) years of effectivity of said act shall not be lower than the tax which is due from each brand on October 1, 1996. However, the increase in excise tax shall take effect in two tranches if the increase is more than 70% for a brand of cigarettes. Come January 1, 2000, the rate of specific tax in cigars and cigarettes shall be increased by 12%. Clearly, the intention is to increase the tax rate. It will be absurd if we will interpret otherwise, that while the law wants to cushion the increase in the next three years from the effectivity of R.A. No. 8240, it will suddenly drop the tax rate in the following year. To prevent such a situation and to express the law's real intention, the promulgation of the Secretary of Finance of the controversial provision under Revenue Regulations No. 17-99 was done to implement the 12% increase of the excise tax on cigars and cigarettes, among others, beginning January 1, 2000.

In sum, Revenue Regulations No. 17-99 is in accordance with the law. To rule otherwise would go against clear legislative intention.

IN VIEW OF ALL THE FOREGOING, I vote to deny the claim for refund in the amount of P355,385,920.00.

ERNESTO D. ACOSTA
Presiding Judge

466