REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NO. 5482

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 09 1999

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DECISION

This case involves a claim for refund of alleged erroneously or illegally collected specific taxes in the amount of ₱175,909.50 during the month of April 1995.

Petitioner is a corporation duly organized and existing under Philippine laws. It is engaged in the manufacture of cigarettes out of stemmed-leaf tobacco which it purchases in bulk from both local and foreign tobacco manufacturers.

This case started when the Commissioner of Internal Revenue collected from the Petitioner the amount of One Hundred Seventy Five Thousand Nine Hundred Nine Pesos and Fifty Centavos (₱175,909.50) for specific taxes allegedly due on the Petitioner's bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers which the company paid under protest.

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On September 27, 1996 and October 2, 1996, Petitioner, through counsel, filed a claim for refund of specific taxes with the BIR, invoking Section 137 of the National Internal Revenue Code, which provides that the sale of stemmed-leaf tobacco by one manufacturer directly to another is exempt from the payment of excise (specific) taxes.

In defense of its assessments, Respondent advanced the arguments, among others, that under Section 141(b) of the Tax Code, partially prepared tobacco is subject to specific tax; that stemmed leaf tobacco is classified as partially prepared tobacco under Section 2(m)(1) of Revenue Regulations No. 17-67, and such being the case, it is subject to a tax of ₱0.75 for each kilogram (Section 141, National Internal Revenue Code). Respondent further averred that under Section 137 of the Tax Code, as implemented by Revenue Regulations No. V-39, stemmed-leaf tobacco may be sold in bulk as raw materials without prepayment of the specific tax only if the sale thereof is by one L-7 permittee directly to another L-7 permittee.

The sole issue in this case is whether or not imported stemmed leaf tobacco is exempt from excise (specific) tax, thus, entitling Petitioner to the refund of the amount of ₱175,909.50.

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Pertinent to the resolution of this case are Sections 137 and 141 of the 1995 National Internal Revenue Code relied upon by Petitioner and Respondent, respectively, to wit:

> "**Section 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. Stemmed leaf tobacco, fine cut shorts, 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 maybe 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."
>
> "**Section 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
>
> (b) Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened; and
>
> (c) Fine-cut shorts and refuse, scraps, clippings, cuttings, stems and sweepings of tobacco.
>
> Fine-cut shorts and refuse, scraps, clippings, cuttings, stems and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco may be transferred, disposed of, or otherwise sold, without prepayment of the specific tax herein

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> provided for under such conditions as may be prescribed in the regulations promulgated by the Secretary of Finance upon recommendation of the Commissioner if the same are to be exported or to be used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product.
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Petitioner stresses in its Petition for Review that Section 137 broadly grants specific tax exemption for tobacco sold as raw material "by one manufacturer directly to another" without distinction, thus, its importation of stemmed leaf tobacco should not be subjected to specific taxes. Respondent, on the other hand, buttressed the view that stemmed leaf tobacco is partially prepared tobacco, hence, it falls within the ambit of Section 141(b), thus, making it subject to an excise tax of ₱0.75 on each kilogram thereof.

We find for the Petitioner.

It is to be admitted that this Petition for Review filed by the Petitioner is without an element of novelty.

The issue at bar has been settled by the Court of Appeals in the case entitled **Commissioner of Internal vs. Fortune Tobacco Corporation, CA-G.R. SP Nos. 38219 and 40313, dated January 30, 1998,** where the said Court emphatically ruled, 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

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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.

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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. x x x

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.

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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.

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The argument that stemmed leaf tobacco used as raw material is exempt from taxation only when it is from one L-7 manufacturer to another L-7 manufacturer suffers from the same infirmity. It is based on the BIR's own Revenue Regulations V-39 which add to the law something which is not there. x x x

Section 141 taxes fine cut shorts and refuse, scraps, clippings, stems and sweepings but the unnumbered paragraph after Section 141(c) exempts these items if they are used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product.

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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

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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 nor contemplated in the basic law.

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."

In the light therefore of the foregoing pronouncements and factual background of this case, this Court finds no reason to deviate from, much less to disregard settled doctrine, to which We have consistently and repeatedly adhered to.

IN VIEW THEREOF, Respondent is hereby **ORDERED** to **REFUND** to herein Petitioner the total amount of ONE HUNDRED SEVENTY FIVE THOUSAND NINE HUNDRED NINE PESOS AND FIFTY CENTAVOS (₱175,909.50), representing its erroneously paid specific taxes for the month of April 1995.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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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

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