REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORIENT LEAF TOBACCO COMPANY, INC.
Petitioner,

- versus -

C.T.A. CASE NO.5174

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 29 1998

x - x

DECISION

Before Us for consideration is a judicial claim for refund of specific taxes in the amount of P4,594,167.50 which allegedly have been erroneously and illegally paid by the petitioner on the removal, transfer and sale of its stemmed-leaf tobacco products to various cigar and cigarette manufacturers.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Agoo, La Union. It is principally engaged in the sale of Virginia and Burley tobacco leaves to various local cigar and cigarette manufacturers, particularly La Suerte Cigar Corporation and Sterling Tobacco Corporation.

The case at bar arose in March, 1991 when respondent imposed upon petitioner the payment of specific tax on its stemmed-leaf tobacco prior to any removal, sale or transfer thereof. Petitioner paid said tax under protest and continually did so up to May 14, 1993.

On November 4, 1994, petitioner filed its written claim for refund on even date for abovesaid amount based on Sections 137 and 141 of the Tax Code and Section 20 of Revenue Regulations No. V-39.

On November 16, 1994, petitioner instituted the present appeal, by way of a petition for review, in view of respondent's continued inaction on its claim and in order to interrupt the running of the two-year prescriptive period provided under Section 230 of the Tax Code.

At bar, petitioner reasserts its stance *a quo*. Respondent, on the other hand, interposes the following special and affirmative defenses, to wit:

> 4. Petitioner's claim for tax refund is pending administrative investigation.
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> 5. Section 137 of the National Internal Revenue Code upon which petitioner relies does not grant automatic exemption from taxes as could be gleaned from the following:
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> > "Section 137 - xxx Stemmed leaf tobacco, fine cut short, the refuse of fine cut chewing tobacco, scraps, cutting, 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." (Underscoring supplied)
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> 6. In an action for tax refund the burden of proof is on the taxpayer to establish its right to the refund and it is incumbent upon the herein petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the National Internal Revenue Code;

> 7. Established is the doctrine that claims for tax refund are construed strictly against claimants since it partakes of the nature of an exemption from taxation. (R[e]sins, Inc. vs. Auditor General, 25 SCRA 754, 1968).

Records show that both parties filed their respective memorandum. In it, petitioner contend that based on the provisions of Sections 127 and 137 of the Tax Code and Revenue Regulation No. 17-67, it is evident "that tobacco which are (sic) unfit for consumption and are used as raw material and sold by one manufacturer directly to another may be transferred or removed without payment of specific tax; and that tobacco which are used in the manufacture of other tobacco products on which the excise (specific ad valorem) tax will be paid on the finished product may likewise be transferred or removed without any initial payment of specific tax."

On her part, respondent argued in her memorandum the recent case of **Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc., CA-G.R. SP No.38107(CTA Case No. 4515)**, promulgated on December 29, 1995 in order to prove her point, to wit:

> "Section 141 is a general provision covering all sales of tobacco products enumerated therein by anyone, unlike the specific provision of Section 137 which covers only the sale of tobacco products by one manufacturer directly to another, is so broad and unqualified that it envisages the sale of stemmed leaf tobacco by any manufacturer to another, without making any distinction as to the type of manufacturer.

> We are not swayed by the finding and ratiocination of the Court of Tax Appeals that the stemmed leaf tobacco purchased by Respondent from local suppliers and the stemmed leaf sold by Respondent to Anglo-American Tobacco Corp. were sold in bulk as raw materials in the production of cigars and cigarettes by one manufacturer directly to another and therefore, exempt from the payment of specific tax pursuant to Section 137 of the Tax Code.
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> It will be noted that both Sections 141 and 137 of the NIRC contain a qualificative phrase "under such conditions as may be prescribed in the regulations of the Department of Finance. While the law, by itself, then does not distinguish, nevertheless, it authorizes the making of proper distinctions through the issuances of the Department of Finance. Among such regulations which Petitioner relies upon and which were made the basis of the assailed deficiency assessment are Section 20(a) of Rev. Reg. No. 5-39 (Tobacco Products Regulations, promulgated Sept. 29, 1954 and Sec. 3, Chapter 1 of Rev. Reg. No. 17-67, Tobacco Regulations promulgated April 17, 1969.
>
> x-x-x x-x-x x-x-x

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

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

It is important to point out that this particular case has been submitted for decision as early as February 5, 1996, but in a resolution dated January 16, 1997, this Court decided to hold said decision in abeyance pending final adjudication of a similar issue by the Supreme Court (see Resolution dated January 16, 1997, page 250, CTA records). However, since the Supreme Court has not rendered a decision on a similar issue as of this date, We have decided to rule on this particular controversy in the light of the Court of Appeals decision in the recent case entitled Commissioner of Internal Revenue vs. Fortune Tobacco, CA-SP Nos. 38219 and 40313 dated January 30, 1998, wherein the Honorable Court of Appeals ruled in this wise:

> "There is no disputing the fact that stemmed leaf tobacco is not among the tobacco products expressly mentioned in Section 141.
>
> xxx xxx xxx
>
> Section 137 of the Tax Code earlier cited, expressly defines "stemmed leaf tobacco" and excludes it from payment of the tax when sold in bulk as raw material by one manufacturer directly to another. While this particular section provides for removal of tobacco products without pre-payment of tax, it is significant that the Tax Code defines and classifies stemmed leaf tobacco under its Section 137. When the Revenue Regulations No. 17-67 undertakes to classify stemmed leaf tobacco under Section 141 in a manner different from the way it is treated in Section 137, it is no longer engaged in mere classification. It is already adding something to the law not in consonance with what the law itself specifically provides but contrary to it. It is not only engaged in amendment but in amendment contrary to a specific provision of the same law.

The petitioner argues that Section 137 is for one tax purpose while Section 141 is for another. The fact is that the reason for one provision is also present in the other and must, therefore, be treated in the same light.

Section 141 of the Tax Code specifically excludes "fine cut shorts and refuse, clippings, cuttings, stems and sweepings of tobacco resulting from the handling in stripping of whole leaf tobacco" from the 75 centavos per Kilogram tax when disposed of or sold. The condition in the statute is that the above must be exported or used in the manufacture of other tobacco products. The reason for the exclusion is that the excise tax will eventually be paid on the finished product.

The same reason applies to stemmed leaf tobacco which is intended solely as a raw material in the manufacture of cigarettes and other tobacco products. After the cigarettes are manufactured, excise taxes will be paid. In effect, what the petitioner has provided in the disputed regulation is double taxation-the payment of excise taxes on the raw material and later, the payment of excise taxes on the manufactured product. Double taxation must be specifically and clearly provided by law. It cannot be imposed by administrative rule making body. If specifically excluded under the last paragraph of Section 141, taxes cannot be included under paragraph 2 of the same Section by a mere interpretation of the petitioner.

It is elementary that any taxes not specifically imposed by law cannot be mandated on the strength of an administrative regulation which purports to implement the said law. Only Congress, not the BIR, can provide for additional taxes. Revenue Regulations No. 17-67 is correct when it provides for the procedure in enforcing the statute. It can state the rules, taxation-wise, on securing permits, putting up factories and machineries, procuring raw materials, recording production, and disposing of the finished product. But the petitioner's powers are limited to procedure and implementation and not substantive law which seeks to add new taxes in addition to those specifically taxed under the law. This is especially true when the particular product being taxed by regulation is expressly excluded from taxes in another section of the same law and also in another law. The petitioner is arrogating powers to itself which it does not possess.

The argument that stemmed leaf tobacco used as raw material is exempt from taxation only when it is from one L-7 manufacturer to another L-7 manufacturer suffers from the same infirmity. It is based on the BIR's own Revenue Regulations V-39 which add to the law something which is not there. Using its power of classification, the petitioner has ventured into an amendment and amplification of the basic law.

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

The law defines and exempts certain raw materials on condition that excise taxes will eventually be paid on the finished manufactured product. The BIR has classified these raw materials in a restrictive manner-only from one L-7 to another L-7 when all the law requires is that the excise taxes not collected at the start will eventually be paid once the tobacco product comes out in final form. For a wide variety of raw materials, there is double imposition by the BIR of excise taxes when the law obviously removes taxes at the start of the manufacturing process and imposes them only once-when the process is completed. Again, double taxation is valid but only when it is provided by statute. It cannot be imposed through an interpretative rule.

The petitioner's contention that the classification of stemmed leaf tobacco as "partially manufactured tobacco" under Revenue Regulations No. 17-67 prevails over the definition of the processed tobacco under Rep. Act 698 is fanciful to say the least. Revenue Regulations No. 17-67 is not a basic law. It is simply an implementation of the statutory provision of the Tax Code. A mere regulation of a quasi-legislative agency cannot prevail over the express definition under a law passed by Congress itself. It is elementary that an administrative regulation cannot amend or repeal the express provisions of statutes enacted by Congress. How can the petitioner argue that an administrative regulation prevails over a statute or law?

The petitioner states that Sections 141 and 137 of the Tax Code must be read and construed together. It explains that under Section 141, stemmed leaf tobacco, being partially prepared tobacco is subject to specific tax. However, under Section 137, if the stemmed leaf tobacco is sold in bulk directly from one manufacturer to another in accordance with the conditions prescribed in Section 20(a) of Revenue Regulations No. V-39, it is exempt from specific tax. It is very obvious that it is not the Tax Code which taxes on one hand and exempts from taxes on the other hand the tobacco involved. It is the addition of a definition of partially manufactured tobacco which clashes with the law itself and the regulatory conditions of BIR which restrict the application of the law to an extremely limited class that form the basis of BIR action. The petitioner engages in legislation and then uses its own administrative or quasi-legislative powers to add a certain class of tax which is neither expressed nor contemplated in the basic law.

> **We are aware of the ruling in Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, CA-G.R. No. 38107 issued on December 29, 1995.**
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> We note, however, that this Court in the case of La Suerte 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 constains 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.
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> **WHEREFORE**, the consolidated petitions are hereby **DISMISSED.** The decisions of the Court of Tax Appeals are **AFFIRMED.**
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> **SO ORDERED.**" (Emphasis supplied)

In gist, the Court of Appeals in this recent decision has arrived at the inescapable conclusion after a deliberate and exhaustive analysis of the issues at hand, that Section 137 of the Tax Code is the governing provision insofar as Fortune Tobacco Corporation's case is concerned, hence, no prepayment of excise tax is required. Being similarly situated, petitioner is entitled to the same interpretation given by the Court of Appeals. It should be noted that the aforesaid Fortune case squarely dealt on the ruling arrived at in the La Suerte case invoked by the respondent.

What is left then for this Court to do is merely to ascertain whether petitioner has satisfied the evidentiary requirements of its claim for refund.

A detailed examination of petitioner's exhibits listed below ("A" to "A-60") convinces this Court that it is entitled only to a portion of its claim. The amounts being claimed are hereunder listed, to wit:

GROUP I
(Prescribed)

Amount	Official Receipt/ ATAP No.	Date of Payment	Exhibit
10,800.00	00976896	4-1-91*	A
57,864.00	01626546	5-6-91*	A-1
92,400.00	02463013	8-7-91*	A-2
24,000.00	02463940	12-4-91*	A-3
42,000.00	02483726	1-10-92*	A-4
6,750.00	6813156H	2-21-92*	A-5
10,800.00	6812547H	2-28-92*	A-6
34,155.00	6812558H	3-3-92*	A-7
11,400.00	6812620H	3-16-92*	A-8
24,000.00	0427938L	4-20-92*	A-9
149,700.00	0438148L	4-22-92*	A-10
16,650.00	0428240L	5-6-92*	A-11
328,545.00	0438239L	5-6-92*	A-12
22,800.00	0427972L	5-13-92*	A-13
160,200.00	0438333L	5-29-92*	A-14
83,700.00	0438261L	6-3-92*	A-15
15,000.00	0438269L	6-5-92*	A-16
8,400.00	0438358L	6-10-92*	A-17
51,750.00	0438381L	6-15-92*	A-18

184,800.00	0438398L	6-19-92*	A-19
171,150.00	0760494L	7-6-92*	A-20
157,950.00	0842303L	7-30-92*	A-21
160,200.00	0842369L	8-10-92*	A-22
138,300.00	0842370L	8-10-92*	A-23
86,250.00	0842444L	8-27-92*	A-24
189,600.00	0842508L	9-10-92*	A-25
22,200.00	0760685L	10-4-92*	A-26
11,883.00	00982952	4-17-91*	A-33
26,274.75	01626538	5-3-91*	A-34
74,214.00	01626601	5-15-91*	A-35
74,093.25	01626657	5-28-91*	A-36
27,000.00	01626781	6-25-91*	A-37
150,000.00	0427960L	5-13-92*	A-38
45,300.00	0760455L	5-14-92*	A-39
150,000.00	0438302L	5-21-92*	A-40
21,000.00	0438368L	6-10-92*	A-41
60,000.00	0438378L	6-13-92*	A-42
150,000.00	0438394L	6-18-92*	A-43
78,300.00	0438403L	6-22-92*	A-44
53,100.00	0438418L	6-26-92*	A-45
176,925.00	0438421L	6-29-92*	A-46
81,037.50	0438521L	7-9-92*	A-47
73,200.00	0438574L	7-13-92*	A-48
86,925.00	0438727L	7-15-92*	A-49
42,150.00	0842264L	7-24-92*	A-50
75,000.00	0842445L	8-27-92*	A-51
2,400.00	0842534L	9-14-92*	A-52
48,000.00	01626545	5-6-91*	A-56
13,800.00	6812499H	2-11-92*	A-57
47,400.00	0438307L	5-25-92*	A-58
21,000.00	0438376L	6-12-92*	A-59
3,850,366.50 - *Sub-total*			

GROUP II
(Refundable)

Amount	**Official Receipt/ ATAP No.**	**Date of Payment**	**Exhibit**
103,350.00	003012	5-10-93	A-60
87,900.00	1216727L	11-23-92	A-27
51,750.00	001875	3-31-93	A-28
61,050.00	001877	4-19-93	A-29
135,150.00	003002	4-26-93	A-30
106,950.00	003006	4-6-93	A-31
68,250.00	003009	5-13-93	A-32
60,000.00	1216695L	11-16-92	A-53
8,400.00	1217070L	1-8-93	A-54
60,000.00	1216728L	11-23-92	A-55
742,800.00 - *Sub-total*			

4,593,166.50 - *Grand Total*

It is observed that payments made in Group I from April 1, 1991 to October 4, 1992 amounting to P3,850,366.50 have clearly prescribed beyond the two-year period allowed for claiming refunds from date of payment, as provided under Section 230 of the Tax Code. It appears that this petition for review was filed on November 16, 1994. However, the taxes paid in Group II from November 16, 1992 up to May 10, 1993 amounting to P742,800.00 are well-within the two-year period, hence allowable.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED to REFUND** the amount of **P742,800.00** to the petitioner.

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 this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals