REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CONTINENTAL LEAF TOBACCO (PHILS.) INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5138

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: AUG 11 1998

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DECISION

This case involves a claim for refund of alleged erroneously or illegally paid specific taxes in the amount of P96,800.00 during the month of August 1992.

Petitioner is a corporation duly organized and existing under Philippine laws. It is engaged in the manufacture of tobacco, by removing the stems from its whole leaf, and the sale of partially manufactured tobacco in bulk to other tobacco manufacturers, in particular, manufacturers of cigarettes, which they use as a raw material in the production and manufacture of cigars and cigarettes. It is thus a manufacturer of tobacco.

During the month of August, 1992, petitioner sold stemmed-leaf tobacco to other tobacco manufacturers whereby the sum of P96,800.00 for specific taxes allegedly due were subsequently assessed and collected by respondent.

On July 15, 1994, petitioner, through counsel, filed a claim for refund of specific taxes with the

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Commissioner of Internal Revenue in the amount of P96,800.00 In said letter, petitioner challenged the collection of specific taxes by invoking Section 137 of the National Internal Revenue Code where it is provided that the sale of stemmed-leaf tobacco "by one manufacturer directly to another" is exempt from the payment of excise (specific) taxes.

As the claim for said refund has not been acted upon by respondent, petitioner was constrained to file this Petition for Review before this Court on August 11, 1994.

In her Answer, respondent considered stemmed-leaf tobacco as "partially manufactured or prepared tobacco" as provided for in Revenue Regulations 17-67 (Section 1(i), and as such, subject to a tax of P0.75 for each kilogram in accordance with Section 141 of the Tax Code. She further avers that Section 137 of the Tax Code pertains to transfer from one L-7 directly to another L-7 but not from an L-6 (stripper or thresher) to L-7. She claims that while imported leaf tobacco has never been subject to tax, partially manufactured tobacco is subject to specific tax of P0.75/Kg. Thus, it is her stand that whether or not stemmed leaf tobacco sold by petitioner is liable to tax depends upon compliance with such conditions.

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The sole issue in this case is whether or not the sale of stemmed leaf tobacco is exempt from excise (specific) tax, hence, entitling petitioner to the refund of the aforementioned amount.

Resolution of the issue centers on Section 137 and 141(b) of the National Internal Revenue Code relied upon by petitioner and respondent, respectively, to wit:

> "Section 137. x x x Stemmed leaf tobacco, fine cut shorts, the refuse of fine cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and sweepings of tobacco maybe 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. (Underscoring supplied)
>
> "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.-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 instrument or without being pressed or sweetened."
>
> Fine cut shorts and refuse, scraps, clippings, cuttings, stems, and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco maybe transferred, disposed of, or otherwise, sold, without prepayment of the specific

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> tax herein provided for under conditions as maybe prescribed in the regulations promulgated by the Secretary of Finance upon recommendation of the Commissioner of the same are to be exported or to be used in the manufacture of other tobacco products on which the excise tax will even finally be paid on the finished products."

The records show that petitioner sold stemmed leaf tobacco products whereon they were assessed and collected excise taxes. Petitioner contends that to tax stemmed leaf tobacco under Section 141 of the Tax Code simply because it is partially manufactured tobacco would render useless the express grant of exemption to stemmed leaf tobacco under Section 137 of the Tax Code besides Section 141 does not purport to be the exclusive law or deferment of excise taxes.

This is not a case of first impression. The Honorable Court of Appeals had occasion to rule on this controversy in the recent case of Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, docketed as CA-G.R. SP Nos. 38219 and 40313 (CTA Case Nos. 4587 and 4616) promulgated on January 30, 1998. The pertinent portions of the decision in said case read as follows:

> "There is no disputing the fact that stemmed leaf tobacco is not among the tobacco products expressly mentioned in Section 141.
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> x x x x x x x x x

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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 in a manner different from the way it is treated in Section 137, it is no longer engaged in mere classification. It is already adding something to the law not in consonance with what the law itself specifically provides but contrary to it. It is not only engaged in amendment but in amendment contrary to a specific provision of the same law.

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

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

The same reason applies to stemmed leaf tobacco which is intended solely as a raw material in the manufacture of cigarettes and other tobacco products. After the cigarettes are manufactured, excise taxes will be paid. In effect, what the petitioner has provided in the disputed regulation is double taxation-the

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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 that the law requires is that the excise taxes not collected at the start will eventually be paid once the tobacco product comes out in final form. For a wide variety of raw materials, there is double imposition by the BIR of excise taxes when the law obviously removes taxes at the start of the manufacturing process and imposes them only once-when the process is completed. Again, double taxation is valid but only when it is provided by statute. It cannot be imposed through an interpretative rule.

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

> The petitioner states that Sections 141 and 137 of the Tax Code must be read and construed together. It explains that under Section 141 stemmed leaf tobacco, being partially prepared tobacco is subject to specific tax. However, under Section 137 if the stemmed leaf tobacco is sold in bulk directly from one manufacturer to another in accordance with the conditions prescribed in Section 20(a) of Revenue Regulation No. V-39, it is exempt from specific tax. It is very obvious that it is not the Tax Code which taxes on one hand and exempts from taxes on the other hand the tobacco involved. It is the addition of a definition of partially manufactured tobacco which clashes with the law itself and the regulatory conditions of BIR which restrict the application of the law to an extremely limited class that form the basis of BIR action. The petitioner engages in legislation and then uses its own administrative or quasi-legislative powers to add a certain class of tax which is neither expressed not contemplated in the basic law.
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> x x x x x x x x x

It appears that the case at bar is likened under similar facts and circumstances obtaining in the aforequoted case of Commissioner of Internal Revenue vs. Fortune Tobacco Corporation and with the same principal question to contend with, We therefore adopt the aforesaid ruling.

As we have already affirmed the legal basis of petitioner's claim for refund, We now go to the factual aspect of this case.

The records show that petitioner offered in evidence the BIR Official Receipt No. 0762414 issued by the BIR Regional Office in La Union and a Tax Payment Order also issued by the same regional office (Exhibits "A" and "B"). These two documents satisfactorily prove the fact of payment made by petitioner of specific taxes during the month of August , 1992. However, the amount of specific taxes paid as indicated in the BIR Official Receipt (Exhibit "A") is only P72,600.00 which is less than the amount being claimed for refund in the sum of P96,800.00, thus this Court shall limit the award to what was proven by the evidence.

WHEREFORE, premises considered, finding the petition meritorious and in accordance with law, the same is hereby **GRANTED** and respondent is **ORDERED** to **REFUND** in favor of Continental Leaf Tobacco Phils., Inc., the amount of P72,600.00 representing erroneously or illegally paid specific taxes for the month of August, 1992.

No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

RAMON O. DE VEYRA
Associate 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