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REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

LA SUERTE CIGAR & CIGARETTE FACTORY, Petitioner,	C.T.A. E.B. NO. 575 (C.T.A. CASE NOS. 7151,7183, 7245, 7267, 7308, 7326 & 7335)
	Present:
- versus -	ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 04 2011 4:10 pm

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DECISION

UY, J.:

This Petition for Review filed before the Court of Tax Appeals *En Banc* on December 22, 2009 seeks a review of the Decision and Resolution by the Former First Division of this Court (Court in Division)[1] in the consolidated cases of CTA Case Nos. 7151, 7183, 7245, 7267, 7308, 7326 & 7335, all

[1] Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

entitled "La Suerte Cigar & Cigarette Factory, petitioner, vs. Commissioner of Internal Revenue, respondent"[2], to wit:

1) Decision promulgated on July 3, 2009[3] denying herein petitioner's claim for refund of excise taxes for alleged "unmanufactured" tobacco imported in the year 2003 amounting to ONE MILLION THIRTY-TWO THOUSAND ONE HUNDRED SIXTY FIVE PESOS (₱ 1,032,165.00); and

2) Resolution promulgated on December 3, 2009[4] denying herein petitioner's Motion for Partial Reconsideration for lack of merit.

THE FACTS

The factual antecedents of the case are not in dispute.

Petitioner is a corporation organized and existing under the laws of the Philippines, with office address at Km. 14, West Service Road, South Highway, Parañaque.

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) authorized to perform the duties of her office, including *inter alia*, the power to decide disputed assessments or other charges, penalties imposed in relation thereto, pursuant to the provisions of the National Internal Revenue Code (NIRC), as amended. She holds office at the Fourth Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

In the year 2003, petitioner imported various classes of "unmanufactured" tobacco on different dates. As a condition for the release of the imported "unmanufactured" tobacco from the Customs warehouse,

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[2] Ponencia of Associate Justice Lovell R. Bautista, and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.
[3] Docket, pp. 29 to 44.
[4] Docket, pp. 21 to 26.

petitioner was required to pay and actually paid excise taxes under protest. Petitioner immediately filed administrative claims for refund. The importation, the payment of excise taxes, and the filing of administrative claims are detailed as follows:

Class of Imported Unmanufactured Tobacco	Quantity of the Imported Unmanufactured Tobacco	Amount of Excise Tax Paid	Date of Payment of the Excise Tax	Date of Filing of Administrative Claim
<u>C.T.A. Case No. 7151</u>				February 2, 2005
Unmanufactured Canadian FC Tobacco	39,600 kgs.	₱ 29,700.00	20-Feb-03	
Unmanufactured U.S. Burley Tobacco	114,420 kgs.	85,815.00	20-Feb-03	
Total	154,020 kgs.	₱ 115,515.00		
<u>C.T.A. Case No. 7183</u>				March 4, 2005
Unmanufactured Brazilian Burley Tobacco	57,600 kgs.	₱ 43,200.00	31-Mar-03	
Unmanufactured U.S. Burley Tobacco	96,000 kgs.	72,000.00	31-Mar-03	
Unmanufactured U.S. Burley Tobacco	76,800 kgs.	57,600.00	3-Apr-03	
Total	230,400 kgs.	₱ 172,800.00		
<u>C.T.A. Case No. 7245</u>				April 8, 2005
Unmanufactured U.S. Burley Tobacco	96,000 kgs.	₱ 72,000.00	7-May-03	
Unmanufactured U.S. Burley Tobacco	76,800 kgs.	57,600.00	7-May-03	
Total	172,800 kgs.	₱ 129,600.00		
<u>C.T.A. Case No. 7267</u>				June 2, 2005
Unmanufactured Brazilian Burley Tobacco	57,600 kgs.	₱ 43,200.00	9-Jun-03	
Unmanufactured Brazilian F.C. Tobacco	178,200 kgs.	133,650.00	11-Jun-03	
Total	235,000 kgs.	₱ 176,850.00		
<u>C.T.A. Case No. 7308</u>				August 8, 2005
Unmanufactured Brazilian F.C. Tobacco	39,600 kgs.	₱ 29,700.00	11-Aug-03	
Unmanufactured U.S. Burley Strips Tobacco	76,800 kgs.	57,600.00	11-Aug-03	

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Unmanufactured U.S. Burley Strips Tobacco	96,000 kgs.	72,000.00	11-Aug-03	
Unmanufactured Canadian F.C. Tobacco	59,400 kgs.	44,550.00	14-Aug-03	
Total	271,800 kgs.	₱ 203,850.00		
C.T.A. Case No. 7326				September 8, 2005
Unmanufactured Brazilian F.C. Tobacco	39,600 kgs.	₱ 29,700.00	24-Sep-03	
Unmanufactured Brazilian F.C. Tobacco	59,400 kgs.	44,550.00	24-Sep-03	
Total	99,000 kgs.	₱ 74,250.00		
C.T.A. Case No. 7335				October 6, 2005
Unmanufactured U.S. Burley Tobacco	96,000 kgs.	₱ 72,000.00	8-Oct-03	
Unmanufactured U.S. Burley Tobacco	76,800 kgs.	57,600.00	8-Oct-03	
Unmanufactured Malawi Burley T & T Tobacco	39,600 kgs.	29,700.00	13-Oct-03	
Total	212,400 kgs.	₱ 159,300.00		

Petitioner filed seven (7) separate Petitions for Review seeking for the refund of the excise taxes it paid on several importation of alleged unmanufactured tobacco, on the following dates:

CTA Case Number	Amount of Excise Tax Paid	Date Filed
7151	₱ 115,515.00	February 18, 2005
7183	₱ 172,800.00	March 30, 2005
7245	₱ 129,600.00	May 6, 2005
7267	₱ 176,850.00	June 8, 2005
7308	₱ 203,850.00	August 10, 2005
7326	₱ 74,250.00	September 23, 2005
7335	₱ 159,300.00	October 7, 2005

In the separate Answers filed by respondent, similar Special and Affirmative Defenses were raised, as follows:

> "4. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;

5. Petitioner must prove that it paid the excise taxes so alleged;

6. Petitioner must prove that the tobacco it imported is properly classified as unmanufactured tobacco;

7. Petitioner must prove that its imports of allegedly unmanufactured tobacco are not subject to excise tax;

8. Petitioner must prove that the claim was filed within the two (2) year period prescribed in Section 229 of the Tax Code;

9. 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;

10. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation."

On October 25, 2006, the Court in Division granted petitioner's Motions for Consolidation of C.T.A. Case Nos. 7151, 7183, 7245, 7267, 7308, 7326, and 7335.

After trial on the merits, the Court in Division rendered the assailed Decision denying the consolidated Petitions for Review on July 3, 2009.

A Motion for Reconsideration of the assailed Decision was filed by petitioner before the Court *a quo* on July 27, 2009. Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied said Motion for Reconsideration in the Resolution dated December 3, 2009.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated July 3, 2009 and Resolution dated December 3, 2009 of the Court in Division, be reversed and set aside and a new one be issued ordering respondent to issue tax credit certificates in the total amount of ₱ 1,032,165.00 in favor of petitioner.

In the Resolution dated February 3, 2010[5], respondent was directed by the Court *En Banc* to file her comment in this case. Respondent filed her comment on February 26, 2010[6], while petitioner filed its Reply thereto on March 15, 2010.[7]

Thereafter, in the Resolution dated April 26, 2010[8], both parties were directed to file their respective memorandum. On May 31, 2010, petitioner filed its Memorandum[9]; while on June 15, 2010, respondent filed her Manifestation[10], stating that she is adopting her Comment as her Memorandum. Consequently, this case was considered submitted for decision on July 15, 2010.[11]

Hence, this Decision.

THE ISSUE

The sole issue for the Court's consideration is whether the Court in Division erred in ruling that petitioner is not entitled to a refund of excise taxes it paid for the imported tobacco leaves.

In support of the instant Petition for Review, petitioner submits the following arguments:

> "THE FIRST DIVISION SERIOUSLY ERRED IN RULING THAT THE IMPORTED TOBACCO LEAVES ARE 'MANUFACTURED' UNDER SECTION 144 OF THE

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[5] Docket, pp. 47 to 48.
[6] Docket, pp. 55 to 69.
[7] Docket, pp. 70 to 74.
[8] Docket, pp. 82 to 83.
[9] Docket, pp. 84 to 102.
[10] Docket, p. 109.
[11] Resolution dated July 15, 2010; Docket, pp. 113 to 114.

NATIONAL INTERNAL REVENUE CODE (NIRC) AND THEREFORE SUBJECT TO EXCISE TAX CONSIDERING THAT:

A. THE IMPORTED TOBACCO LEAVES ARE NOT INCLUDED IN SECTION 61, CHAPTER V OF REVENUE REGULATIONS NO. V-39.

B. SECTION 43 OF REVENUE REGULATIONS NO. 17-67 IS TANTAMOUNT TO ADMINISTRATIVE LEGISLATION.

C. THE ATRIGs ISSUED BY THE BIR STATES THAT THE IMPORTED TOBACCO LEAVES ARE UNMANUFACTURED AND EXEMPT FROM EXCISE TAXES."[12]

THE COURT EN BANC'S RULING

We find no merit in the instant petition.

Petitioner's imported tobaccos fall under the purview of Section 144(b) of the NIRC of 1997. The same are stemmed leaf tobaccos.

Petitioner asserts that the Court in Division erred in finding that its imported tobacco leaves are taxable under Section 144 of the NIRC of 1997 as manufactured tobacco. It argues that Section 144(a) expressly excludes from its coverage tobacco that had undergone "ordinary mode of drying and curing". According to petitioner, its imported tobacco leaves went through the process of drying simply to prevent them from decaying until they were brought to the factory for processing.

Petitioner further contends that since paragraph (a) of Section 144 of the NIRC of 1997 expressly exempted from its coverage tobacco that had

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[12] Docket, p. 88.

undergone drying, it stands to reason that the said dried tobacco would not be covered by paragraph (b) of the same section.

The reasoning is specious.

For easy reference, Section 144 of the NIRC of 1997 provides as follows:

> "SEC. 144. Tobacco Products. — There shall be collected a tax of seventy-five centavos (P0.75) on each kilogram of the following products of tobacco:
>
> (a) Tobacco twisted by hand or reduced into a condition to be consumed in any manner **other than the ordinary mode of drying and curing**;
>
> (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 excise tax herein provided for under such conditions as may be prescribed in the rules and 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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> On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, Sixty centavos (P0.60)." *(Emphases supplied)*

Except for tobaccos twisted by hand, paragraph (a) of the foregoing provision excludes from the imposition of excise tax at the rate of seventy-five centavos (₱ 0.75) per kilogram those tobaccos which have undergone "the ordinary mode of drying and curing". Thus, not all "dried and cured" tobacco fall under the category which may not be subject to the said imposition, since the tobacco must be "dried and cured" in "the ordinary mode". Otherwise stated, if the drying and curing is not done in the ordinary mode, the tobacco shall be subject to excise tax under said paragraph (a). Nevertheless, to fall under the tax imposition, said tobacco must be "reduced into a condition to be consumed in any manner". For this purpose, to "consume" is to use up.[13] The word "consumption" used in revenue laws may fairly and reasonably be regarded as equivalent to the words, "use, commercial or otherwise".[14]

On the other hand, paragraph (b) of the aforequoted Section 144 imposes the same excise tax on tobacco "prepared or partially prepared", without being pressed or sweetened, regardless of whether the preparation or partial preparation was done by the use of "any machine or instruments".

From the foregoing, it can be said that there is an apparent distinction between paragraph (a) and paragraph (b) of Section 144 of the NIRC of 1997.

Be that as it may, after a careful examination of the evidence of petitioner, particularly the testimony of Mr. Lionel H. Small, the Vice President of petitioner's Leaf and Product Department,[15] We affirm that the subject imported tobaccos are subject to excise tax under said Section 144(b) of the NIRC of 1997.

For easy reference, said testimony is hereby reproduced as follows:

"Q.8.: xxx Can you please tell us what happens when tobacco is first harvested?

A: Freshly harvested tobacco has very high moisture content. Thus, in order to prevent mold growth, the farmers have to dry the

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[13] The Attorney's Pocket Dictionary, © 1981, p. 112.
[14] *Muñoz & Co. vs. Hord*, G.R. No. 4832, January 28, 1909.
[15] Exhibit "E-Consolidated", Division Docket, pp. 306 to 310.

tobacco leaves. This is done via heat in a barn or what is referred to as flue-curing; or via air-shade curing; or via sun drying.

Q.9: After the fresh tobacco leaves are dried, what, if any, is added thereto?

A: Aside from the heat or air, nothing else is applied or added to the tobacco. There are no additives or preservatives used in this process.

Q.10: What happens to the tobacco leaves after they are dried?

A: The only thing that changes in it is the moisture content, which is reduced to roughly eighteen percent (18%).

Q.11: Please tell us, in essence, what is the purpose of drying the leaves?

A: The only purpose of drying the leaves is to reduce the moisture content so as to give the farmers some time flexibility to sell these to the tobacco dealers. Otherwise, molds will grow fast on the leaves and be ruined.

Q.12: At this point, what use can these dried tobacco leaves be to the end-consumers?

A: The end-consumers cannot use the tobacco leaves at this point because they have to undergo processing before they can be smoked.

Q.13: What do the farmers do with the dried tobacco leaves?

A: The farmers sell these leaves to the tobacco dealers.

Q.14: What happens to the tobacco leaves after the farmers sell them to the dealers?

A: Since the dried tobacco leaves bought from the farmers are still whole tobacco leaves, the dealers have to thresh them.

Q.15: What do you mean 'thresh'?

A: Threshing is when the tobacco leaf is cut into three (3) portions and the lamina or the midrib is taken out since the lamina's moisture content is high. Then, the leaf is dried again to a more stable state of about eleven percent (11%) moisture content.

Q.16: What is added to the leaves at this point if any?

A: Aside from the heat, there are no additives or preservatives used in this process.

Q.17: Please tell us the purpose of threshing?

A: Its purpose is only to further reduce the moisture content of the tobacco to extend the storage period of the same.

Q.18: Why do the tobacco dealers have to reduce the moisture content even more?

A: The tobacco leaves remain with the tobacco dealers for about leave (12) months before these are bought by manufacturers. If the moisture content is not controlled, molds will grow on the leaves.

Q.19: At this stage, what is the use of the tobacco leaves to the end-consumers?

A: The end-consumers cannot use the tobacco leaves at this stage as they have not yet undergone the processing needed for them to be consumable.

Q.20: So how would you classify the tobacco leaves at this point?

A: The tobacco leaves are still considered as 'raw leaf tobacco' since in this state, nothing has changed in the tobacco leaves except that the moisture content has been reduced and the lamina removed. No additives or preservatives have been added to them. Besides, the cut portions of the leaves are too big for smoking purposes.

Q.21: What happens after the tobacco leaves are threshed?

A: The tobacco dealers then sell these to the manufacturers like La Suerte.

xxx xxx xxx

Q.24: What does La Suerte do with the threshed tobacco?

A: La Suerte blends the imported tobacco with locally grown tobacco under a process called 'casing.'

Q.25: Can you explain to us what 'casing' involves?

A: This is when the manufacturing process starts. It involves the adding of different flavours to the tobacco, like coco, sugar, honey, licorice, etc.

Q.26: After casing, what does La Suerte do with the tobacco?

A: The tobacco is placed in a shredder and cut into thin strips or what we call 'cut-rag' or 'cut-filler.'

Q.27: What happens to the cut-rag?

A: The cut rag is the end form of the tobacco that is used to make cigarettes or cigars. Thus, in this form, La Suerte now packs it into cigarettes.

Q.28: If a sample of cut-rag is shown to you, will you be able to identify it?

A: Yes.

xxx xxx xxx

Q.30: So, what is the final form of tobacco that La Suerte manufacturers?

A: The final product is the cigarette.

xxx xxx xxx."[16]

Based on the foregoing, the subject imported tobaccos may not fall under the taxing provision of Section 144(a) simply because they are **not** "reduced into a condition to be consumed in any manner". This must be so because it is clear that, before the subject tobaccos were sold to petitioner, they are not yet consumable.

It is likewise clear from Mr. Small's testimony that the process of threshing the tobacco includes the removal or taking out of the lamina or midrib. As correctly observed by the Court in Division, said process is not as simple as it was presented by said witness and not as superficial as petitioner

[16] Docket, pp. 39 to 41.

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argues.[17] The removal of the midrib cannot be treated as an ordinary mode of drying and curing, but entails a partial preparation of the tobacco. In fact, under the law, such removal of the midrib makes the product a stemmed-leaf tobacco. Thus, the same is subject to excise tax under Section 144(b) of the NIRC of 1997.

Section 140 of the NIRC of 1997, defines the term "stemmed-leaf tobacco" and describes the removal thereof without prepayment of excise tax, to wit:

> "SEC. 140. *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 rules and regulations prescribed by the Secretary 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 may be prescribed in the rules and regulations prescribed by the Secretary 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." *(Emphases supplied)*

In *Companía General De Tabacos De Filipinas vs. Court of Appeals, et al.*,[18] the Supreme Court said:

> "We agree with petitioner that both Sections 137[19] and 141[20] of the former Tax Code allowed the sale of stemmed leaf tobacco without any pre-payment of tax. We must stress, however, that a careful reading of the aforementioned provisions show that such sale is qualified by and is subject to 'such conditions as may be prescribed in the regulations of the Department of Finance.' Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence

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[17] Decision, p. 14, Docket, p. 41.
[18] G.R. No. 147361, March 23, 2004.
[19] Now Section 140, NIRC of 1997.
[20] Now Section 144, NIRC of 1997.

said provisions of the Tax Code must be read and interpreted in accordance with said regulations.

Section 20 of Revenue Regulations No. V-39, which specifically lays the rules for tax exemption on tobacco products states:

> Section 20. *Exemption from tax of tobacco products intended for agricultural or industrial purposes.* — (a) Sale of stemmed leaf tobacco, etc. by one factory to another.— Subject to the limitations herein established, products of tobacco entirely unfit for chewing or smoking may be removed free of tax for agricultural or industrial use; and stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse, scraps, cuttings, clippings, and sweeping of tobacco may be sold in bulk as raw materials by one manufacturer directly to another without the prepayment of the specific tax.
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> **Stemmed leaf tobacco,** fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cutting, clippings, and sweeping of leaf tobacco or partially manufactured tobacco or other refuse of tobacco may be transferred from one factory to another under an official L-7 invoice on which shall be entered the exact weight of the tobacco at the time of its removal, and entry shall be made in the L-7 register in the place provided on the page of removals. Corresponding debit entry will be made in the L-7 register book of the **factory receiving** the tobacco under heading 'Refuse, etc., received from other factory', showing date of receipt, assessment and invoice numbers, name and address of the consignor, form in which received, and the net weigth of the tobacco. x x x (Emphasis and underscoring supplied.)

Section 20 must be construed in relation to Section 2(m)(1) of Revenue Regulations No. 17-67 which classifies stemmed leaf tobacco as 'partially manufactured tobacco', and Section 3 thereof which provides for the different designations for persons dealing with tobacco, to wit: L-3, L-4, L-6, L-7, etc. Section 3(h) of Revenue Regulations No. 17-67 describes an L-7 as a 'manufacturer of tobacco products.'

The 2001 case of *Commissioner of Internal Revenue v. La Campana Fabrica de Tabacos, Inc.*[21] held that **the following conditions must be met for stemmed leaf tobacco to be transferred without prepayment of specific tax**, to wit:

[21] G.R. No. 145275, November 15, 2001.

> (a) The transfer shall be made pursuant to an official L-7 invoice on which shall be entered the exact weight of the tobacco at the time of its removal;
> (b) Entry shall be made in the L-7 register in the place provided on the page removals; and
> (c) Corresponding debit entry shall be made in the L-7 register book of the factory receiving the tobacco under the heading 'Refuse, etc., received from the other factory,' showing the date of receipt, assessment and invoice numbers, name and address of the consignor, form in which received, and the weight of the tobacco.
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> **From the foregoing, it is clear that an entity claiming exemption from specific tax under Section 137, must prove that both the entity and the transferee are categorized as L-7 manufacturers since only an L-7 tobacco manufacturer has an L-7 invoice and an L-7 registry book.** Here, petitioner is engaged in the export, domestic sale and re-drying of tobacco leaves, activities which are designated as falling either under L-3R or L-6 under Revenue Regulations No. 17-67. Thus, not being designated as an L-7 tobacco manufacturer, petitioner cannot claim any exemption from payment of the specific tax on its stemmed leaf tobacco. In other words, petitioner, as a non-L-7 tobacco dealer of stemmed leaf tobacco, is liable to pay the specific thereon. Hence, petitioner is not entitled to any refund of the specific taxes paid." *(Emphases supplied)*

Upon a closer examination of the evidence of petitioner vis-à-vis its arguments, We can easily discern that it has not complied, nor has endeavored to show compliance, with the said conditions which must be met for stemmed leaf tobacco to be transferred without prepayment of specific tax. And while petitioner is an L-7 licensee and engaged in the manufacture of cigarettes,[22] it does not show that the tobacco dealers of the subject imported tobaccos are L-7 tobacco manufacturers. Thus, petitioner, being the owner or importer of the said imported tobaccos, is liable to the excise tax due thereon.[23] Such being the case, petitioner is not entitled to the refund of the excise taxes it paid on the subject imported tobaccos.

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[22] Exhibit "F-Consolidated", Division Docket, p. 312.
[23] Section 131(A), NIRC of 1997.

Section 61 of Revenue Regulations No. V-39 is valid.

As for petitioner's contention that imported tobacco leaves are not included in the enumeration under Section 61 of Revenue Regulations (RR) No. V-39, the same has already been sufficiently passed upon by the former First Division of this Court in the assailed Decision. To reiterate, the law itself, or the NIRC of 1997, as amended, provides for a specific provision imposing tax on stemmed leaf tobacco or partially prepared tobacco. Hence, petitioner cannot escape its liability to pay excise taxes on its imported goods.

Section 43 of Revenue Regulations No. 17-67 is not tantamount to administrative regulation.

As regards petitioner's argument that Section 43[24] of RR No. 17-67, particularly on the exclusion of "imported leaf tobacco" from the exemption on the imposition of excise tax, is tantamount to administrative legislation, We find that petitioner is in effect challenging the validity and legality of RR No. 17-67. However, this collateral attack is not allowed on a presumably valid law.

Time and again, We have consistently ruled that validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules.

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[24] "Section 43. *Tobacco exempted from specific tax.*— No specific tax shall be collected on the following:

(a) Leaf tobacco and partially manufactured tobacco, **except imported leaf tobacco**, unless entered in the L-7 official register book.

(b) Manufactured products of tobacco for export and or use by the Armed Forces of the Philippines or the United States Armed Forces, and other entities specifically exempted by law." *(Emphasis supplied)*

Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[25]

Moreover, the Supreme Court has already settled this issue in the *Compania General De Tabacos De Filipinas* case, in this wise:

> "Petitioner's arguments impugning the validity of Revenue Regulations Nos. V-39 and 17-67 deserve scant consideration. First, both regulations were issued pursuant to Section 245[16] (now Section 244) of the Tax Code. The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Such rules and regulations, as well as administrative opinions and rulings, ordinarily deserve to be given weight and respect by the courts. Second, **our scrutiny of Revenue Regulations Nos. V-39 and 17-67 clearly shows that said regulations did not modify or deviate from the text of Sections 137 and 141 but merely implemented and clarified said two provisions by providing certain conditions under which stemmed leaf tobacco may be exempted from prepayment of specific tax.**" *(Emphasis supplied)*

Moreover, the law itself is clear that, in general, "imported articles" are subject to excise tax. Sections 129 and 131(A) of the NIRC of 1997 govern the imposition of excise tax on such imported articles, to wit:

> "SEC. 129. *Goods Subject to Excise Taxes.*— **Excise taxes apply** to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and **to things imported**. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
>
> xxx xxx xxx." *(Emphasis supplied)*
>
> "SEC. 131. *Payment of Excise Taxes on Imported Articles.*—
>
> (A) *Persons liable* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers**, conformably with the regulations of the Department of Finance and **before release of such articles from the customshouse**, or the

[25] *Chevron Philippines, Inc. vs. Commissioner of Customs,* G.R. No. 178759, August 11, 2008, citing *Tan vs. Bausch & Lomb, Inc.*, G.R. No. 148420, December 15, 2005.

person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

xxx xxx xxx." *(Emphasis supplied)*

Thus, contrary to petitioner's contention, the exclusion of "imported leaf tobacco" from the exemption on the imposition of excise tax has a basis in law.

The Authority to Release Imported Goods (ATRIG) issued by respondent cannot be used to claim or to prove its excise tax exemption.

Lastly, petitioner argues that the ATRIGs issued by respondent proves that respondent herself considered petitioner's importation as exempt from payment of excise tax.

This contention is devoid of merit.

Fundamental is the rule that the State cannot be put in estoppel by the mistakes or errors of its officials or agents.[26] Hence, ATRIGs cannot operate against a valid imposition of excise tax on petitioner's importation of tobacco, which are classified, under the law, as stemmed leaf tobacco. This Court, therefore, will not treat tobaccos as "unmanufactured", which the law considers as "partially manufactured", regardless of what are stated in the subject ATRIGs.

Furthermore, a tax refund, which is in the nature of a tax exemption, should be construed *strictissimi juris* against the taxpayer.[27] When exemption

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[26] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.
[27] *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R No. 180043, July 14, 2009.

is claimed, it must be shown indubitably to exist.[28] The burden is upon the taxpayer to prove, **by clear and convincing evidence**, that his claim for exemption has **legal and factual basis**.[29] In this case, not only is the subject ATRIGs unclear and unconvincing, they are also without legal and factual basis, insofar as they are to the effect that the subject imported tobaccos are "unmanufactured".

For all the foregoing, We see no substantial argument to merit a reversal or modification of the assailed Decision dated July 3, 2009 and Resolution dated December 3, 2009, rendered by the Court in Division.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** and accordingly **DISMISSED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[28] *City of Iloilo, et al. vs. Smart Communications, Inc.*, G.R. No. 167260, 27 February 27, 2009.
[29] *The Provincial Assessor of Marinduque vs. Court of Appeals, et al.*, G.R. No. 170532, April 30, 2009.

(On Official Business)

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Official Business)

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice