REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISLAND REDRYING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4963

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 14 1998

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DECISION

This case stemmed from an assessment issued by the respondent in the amount of P458,896.38 allegedly representing deficiency specific taxes on removals of petitioner's partially manufactured tobacco for the period June 11, 1990 to July 16, 1991.

Petitioner is a domestic corporation engaged in business as a manufacturer and wholesale tobacco dealer. It is a L-3R (wholesale tobacco leaf dealer) and L-6 (manufacturer or wholesale leaf tobacco dealer which strips tobacco exclusively for export) permittee (Exhs. P & P-1).

A letter, dated June 8, 1992 (Exh. S), together with an assessment notice of the same date (Exh. S-1), was sent by the respondent to the petitioner demanding payment of the amount of P458,896.38 for deficiency taxes due upon removal of 421,030 kilograms of partially manufactured tobacco from its redrying plant for the period June 11, 1990 to July 16, 1991, computed as follows:

Total Kilos Removed - (6-11-90 to 7-16-91)	P421,030.00
75% Specific tax due thereon	P315,772.50
Add: 25% surcharge	78,943.12
20% interest (up to 5-28-92)	64,180.76
Total Amount Due & Collectible ...	P458,896.38

An administrative protest or request for reinvestigation and reconsideration was filed by the petitioner on July 14, 1992 (Exh. T) which respondent denied in a letter, dated January 18, 1993 (Exh. U).

The issue thus presented for consideration is whether or not petitioner is liable for the payment of P458,896.38 representing deficiency specific taxes on its removals of partially manufactured tobacco covering the period in question.

Respondent based its assessment on Section 141(b) of the 1991 National Internal Revenue Code (NIRC), as amended, which provides, to wit:

> SEC. 141. *Tobacco Products.* - There shall be collected a tax of seventy-five centavos on each kilogram of the following products of tobacco:
>
> (a) xxx xxxx xxx
>
> (b) Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened.

It is the position of the respondent that under Section 1 of Revenue Regulations No. 17-67, stemmed leaf tobacco has been considered as partially prepared tobacco

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within the ambit of Section 141 of the NIRC. Respondent avers that Section 137 of the NIRC does not grant automatic exemption from tax. Petitioner should comply first with the conditions prescribed in the regulations of the Department of Finance. Respondent further asserts that under Section 137 of the NIRC, as implemented by Section 20(a) of Revenue Regulations No. V-39, in order to be exempt from specific tax, stemmed leaf tobacco must be sold in bulk as raw material by one L-7 directly to another L-7. Considering that petitioner is L-3R and L-6 and there is no showing that the stemmed leaf tobacco was sold to L-7, the exemption under Section 137 does not apply.

Petitioner, on the other hand, does not agreee. It contends that the applicable provision is Section 137 of the 1991 NIRC, which is quoted below:

> SEC. 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 sweeping 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.
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> "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.

Petitioner posits that since Section 137 broadly grants specific tax exemption from tobacco products sold as raw material by one manufacturer directly to another without qualification, it must be considered as covering all manufacturers of tobacco products. Section 194(m) of the NIRC defines "manufacturer of tobacco" as including every person whose business is to manufacture tobacco or snuff, whether such manufacture is by cutting, pressing, grinding, or rubbing any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or putting up for consumption scraps, refuse, or stems of tobacco resulting from any process of handling tobacco stems, scraps, clippings, or waste by sifting, twisting, screening, or by any other process. On the other hand, Revenue Regulations No. 17-67 defines a "manufacturer of tobacco", *viz*:

> (i) "Manufacturer of tobacco" - includes every person whose business is to manufacture tobacco or snuff, or who employs others to manufacture tobacco or snuff, whether such manufacture is by cutting, pressing, (not balancing), grinding, or rubbing (grating) any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco or snuff, or putting up for consumption scraps, refuse, or stems of tobacco resulting from any process of handling tobacco stems, scraps, clippings, or waste by

sifting, twisting, screening, or by any other process.

Petitioner therefore claims that from the above definitions and for being a L-3R and L-6 permittee, it is a manufacturer of tobacco products with respect to stemmed leaf tobacco which is re-dried and baled at its plant, and then sold in bulk as raw material directly to other manufacturers of tobacco, or L-6 and L-7 permittees. It is the assertion of the petitioner that when the law and regulations enumerate and define various classes of manufacturers subject to specific tax and thereafter exempt from specific tax the sale in bulk of stemmed leaf tobacco as raw material by one manufacturer directly to another, this broad and unqualified provision manifestly covers the removals of tobacco redried at petitioner's plant and sold in bulk as raw material to other manufacturers of tobacco.

It bears stressing that this case has been submitted for decision on May 30, 1996 but in a resolution promulgated on May 28, 1997, this Court resolved "to hold in abeyance the decision of this case considering that the same involves a similar issue that has been resolved by the Court of Appeals in the case of Commissioner of Internal Revenue versus La Suerte Cigar and Cigarette Factory, Inc., December 29, 1995, CA-GR SP No. 38107 and which is still pending adjudication before the Supreme

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Court". However, since the said case is not yet terminated as of this date, this Court has decided to rule on the particular controversy in the light of the recent decision promulgated by the Court of Appeals on January 30, 1998 in the case of **Commissioner of Internal Revenue vs. Fortune Tobacco Corporation**, CA-SP Nos. 38219 and 40313, the pertinent portions of which are cited below:

> "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 interprets the statutory term "partially prepared tobacco" so as to include stemmed leaf tobacco.
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> 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. An administrative agency cannot extend, diminish, or otherwise amend the general provision of law (Fernando Juan vs. Musngi, 155 SCRA 133 [1987]; U.S. vs. Tupasi Molina, 29 Phil. 119; Director of Forestry vs. Munoz, 23 SCRA 1183 [1968]; Gonzalo Sy vs. Juinio, 127 SCRA 342 [1984]).
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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

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> 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. It is not only engaged in amendment but in amendment contrary to a specific provision of the same law.
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> We are aware of the ruling in Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc., CA-G.R. SP No. 38107 issued on December 29, 1995.
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> We note, however, that this Court in the case of La Suerte Cigar failed to take into account the limitations in the exervise 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 the Bureau of Internal Revenue, it would have arrived at conclusions fully consonant with our findings."

WHEREFORE, in view of all the foregoing, the petition is granted. Respondent's assessment of

P458,896.38 as deficiency specific taxes for the period June 11, 1990 to July 16, 1991 is hereby ordered cancelled and set aside.

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