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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LOREMAN, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2486

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

4/7/82

x - - - - - - - - - - - - x

D E C I S I O N

This has reference to an appeal from the decision of respondent Commissioner of Internal Revenue holding petitioner Loreman, Inc. liable for the payment of the aggregate amount of ₱552,000.00 as deficiency specific taxes on its importation of "Loreman" brand cigarettes on various dates during the early part of the year 1968.

The facts as stipulated by the parties are, as follows:

> 1. The legal personalities and capacities of each of the parties are admitted;
>
> 2. Petitioner is a corporation organized and existing under the laws

of the Philippines;

3. Petitioner,who was engaged in the business of importation of cigarettes, imported from Hongkong several shipments of "Loreman" brand of cigarettes at various dates during the early part of the year 1968 and paid the import duties and specific taxes levied on such shipments, as follows:

Customs Official Receipts No.	Date	Amount
2515929	2/13/68	₱ 16,000.00
2520357	3/04/68	24,000.00
335495	4/28/68	40,000.00
363143	5/24/68	40,000.00
347547	5/25/68	24,000.00
347695	3/25/68	24,000.00
349865	4/02/68	32,000.00
352196	4/15/68	40,000.00
T O T A L		₱ 240,000.00

and as a result, the said shipments of cigarettes were released from Customs custody;

4. After aforesaid importations, respondent demanded the payment of deficiency specific taxes in the total amount of ₱552,000.00 on the aforesaid shipments as follows:

Demand No.	Date of Demand	Amount
1. STD - 68 - 1 (P. 111, BIR rec.)	July 3, 1968	₱ 92,000.00
2. STD - 68 - 2 (P. 104, BIR rec.)	July 9, 1968	184,000.00
3. STD - 68 - 3 (P. 103, BIR rec.)	July 11, 1968	55,200.00
4. STD - 68 - 6 (P. 269, BIR rec.)	Oct. 18, 1968	220,800.00
		₱552,000.00

5. Warrants of Distraint and Levy and Warrant of Levy on Real Property were duly served on petitioner's officers on January 17, 1969 (pp. 138 and 139, BIR rec.), and petitioner requested a reconsideration of the above-mentioned deficiency assessments in the letter dated January 21, 1969 (Pp. 146-147, BIR rec.);

6. In his letter dated September 26, 1968, respondent recommended to the Provincial Fiscal of Rizal the filing of criminal charge against petitioner's President and Secretary/Treasurer, Manuel P. Gancayco and Lorelli L. Gancayco, respectively, for violation of Section 125 in relation to Section 137(b) (4) of the National Internal Revenue Code, penalized under Section 352 thereof, insofar as aforesaid Demand Nos. STD-68-1, 68-2, 68-3 aggregating ₱331,200.00 were concerned (Pp. 82-86, BIR rec.). The charge, after preliminary investigation by the Provincial Fiscal of Rizal in I.S. Nos. 69-060-69-061, was however, dismissed. (Pp. 157-161, BIR rec.);

7. After the dismissal of the aforesaid criminal charge, the respondent, in his letter dated January 5, 1973, and received by petitioner on January 26, 1973 denied petitioner's request for reconsideration and refused to set aside the above assessments for deficiency specific taxes (pp. 284-287, BIR rec.);

8. The parties submit that the main issue in this case is whether or not the cigarettes imported by petitioner fall under the category of cigarettes wrapped in tin foil or cellophane or packed cartons covered with paraffin or wax, and mechanically packed, thereby justifying the respondent's assessment of deficiency specific taxes; and

9. The parties reserve the right to present additional evidence in support of their respective contentions. (Stipulation of Facts, pp. 59-61, CTA rec.)

The records show that petitioner paid specific taxes on its importation of cigarettes under Section

137 (b) (1) of the Tax Code. The deficiency specific taxes demanded by respondent against petitioner is based under Section 137 (b) (2) (4) of the said Tax Code. (Pp. 103. 104, 111 & 269, BIR rec.)

The sole issue to be resolved, as stipulated by the parties, is whether or not the cigarettes imported fall under the category of cigarettes wrapped in tinfoil or cellophane or packed cartons covered with paraffin or wax paper or in tin cans and mechanically packed so as to fall under Section 137 (b) (2) (4) of the National Internal Revenue Code, thereby justifying the respondent's assessment of deficiency specific taxes against petitioner.

The law involved is Section 137 (b) (2) (4) of the National Internal Revenue Code, prior to its amendment by Republic Act 6110, the pertinent portion of which is hereby quoted for ready reference, as follows:

> "Section 137. Specific Tax On Cigars and Cigarettes. On cigars and cigarettes there shall be collected the following taxes:
>
> (a) Cigars -
>
> x x x x x x x x x
>
> (b) Cigarettes. -
>
> (1) On cigarettes containing Virginia type tobacco and/or flue-cured tobacco of seventy-one millimeters or less in length

weighing one and one-fourth kilos or less per thousand, not wrapped in tin-foil or cellophane nor packed in cartons or in tin cans, on each thousand, eight pesos: Provided, That if the length exceeds one and one-fourth kilos, the tax shall be increased by one hundred per centum.

(2) On cigarettes containing Virginia type tobacco and/or flue-cured tobacco of seventy-one millimeters or less in length weighing one and one-fourth kilos or less per thousand, wrapped in tin foil or cellophane or packed in cartons covered with paraffin or wax paper or in tin cans, on each thousand, twelve pesos: Provided, That, if the length exceeds seventy-one millimeters or if the weight per thousand exceeds one and one-fourth kilos, the tax shall be increased by one hundred per centum.

xxxxx xxxxx xxxxx

(4) If the cigarettes taxable under sub-paragraphs (1), (2) and (3) hereof are mechanically wrapped or packed, the tax shall be increased by one hundred and twenty per centum per thousand cigarettes.

Cigarettes shall be considered as mechanically wrapped or packed when at any stage of the wrapping or packing, a machine or any mechanical contrivance shall have been used.

xxxxx xxxxx xxxxx

Every manufacturer or importer of cigarettes shall file with the Commissioner of Internal Revenue, on the date or dates designated by the latter, a sowrn statement showing the brand or brands of cigarettes manufactured or imported, their corresponding length in millimeters and weight in kilos per thousand cigarettes, whether containing flue-cured tobacco, wrapped in

> cellophane or tin foil, or packed in cartons with paraffin or wax paper, or in tin cans, and whether the cigarettes are mechanically wrapped or packed. In the case of imported cigarettes, the sworn statement required herein shall, in addition to the above information, be accompanied by a verified commercial invoice of the manufacturer of the cigarettes as well as the consular invoice issued by a Philippine Consul, if any, containing the information that Philippine Internal Revenue strip stamps have been affixed to each and every pack of cigarettes and that each pack bears the inscription "For export to the Philippines." (Underlining ours.)

Petitioner maintains that the importations in question was rightly assessed by respondent at ₱8.00 per one thousand sticks under Section 137 (b) (1) of the Tax Code since the cigarettes, subject matter of the importations were "mechanically made", but not mechanically packed or wrapped, so that the assessment for deficiency specific taxes in question is not justified. (Memo. of Petitioner, pp. 114-119, CTA rec.)

Respondent, on the other hand, maintains that the deficiency specific tax assessment against petitioner is justified in accordance with Section 137 (b) (4) of the Tax Code (should be Section 137 (b) (2) (4)), the imported cigarettes having been "mechanically made" and are, therefore, mechanically packed or wrapped. (Memo. of Respondent, pp. 149-150, CTA rec.)

The stand of respondent is not tenable. The records of this case show that when the various shipments of cigarettes imported by petitioner were landed in the Philippines, the necessary documents required for said importation were submitted to the proper authorities and predominant in these documents was the description that the cigarette sticks were"Mechanically made" and wrapped "in aluminum foil without cellophane" and "placed in corrugated cartons" (Exh. E, 12 and 12-A p. 121; Exh. J, 13 and 13-A, p. 122; Exh. 14 and 14-A, p. 123; Exh. U, 16 and 16-A, p. 196; Exh. P, 17 and 17-A, p. 303; Exh. AA-1, p. 42; Exh. BB-a, p. 62; Exh. N-1, p. 55; Exh. F-1, p. 118; Exh. K-1, p. 119; Exh. D-1, p. 127; Exh. I-1, p. 129; Exh. V-1, p. 197; Exh. O-1, p. 202; Exh. Q-1, p. 204; Exh. T-1, p. 207 and Exh. Y-1, p. 208, BIR rec.)

Section 137 (b) (1) provides that if the cigarettes are not wrapped in tin foil or cellophane or packed in cartons, the tax due is ₱8.00 per thousand sticks; if wrapped with tin foil or cellophane or packed in cartons covered with paraffin or wax paper or in tin cans, the tax due pursuant to sub-paragraph (2) of Section

137 (b) is ₱12.00 per thousand cigarettes. If the cigarettes are mechanically wrapped or packed, the tax imposed under said sub-paragraphs (1)& (2) shall be increased by 120 percent. In other words, if the cigarettes under the ₱8.00 class are mechanically packed or wrapped, the tax becomes ₱17.60, and under the ₱12.00 class the tax would be increased to ₱26.40. The deficiency specific tax assessment against petitioner is based in this later classification, that is under Section 137 (b) (2) (4).

The records show, however, that the cigarettes imported by petitioner were "mechanically made", (Exhs. "12-A", "13-A", "14-A", "16-A", and "17-A", Pp. 121, 122, 123, 196 & 303, BIR rec., respectively), but the "cigarettes were handpacked and were wrapped in aluminum foil without cellophane and packed in corrugated cartons." (ITALIC OURS; Resolution, Provincial Fiscal of Rizal, pp. 5-8, CTA rec.; pp. 6-7, Memorandum of Petitioner, pp. 115-116, CTA rec.) The cigarettes most certainly, under this circumstance, could not be classified under sub-paragraph (b) (2) and (4) of Section 137.

As correctly asserted by petitioner, the mechanical packing or wrapping stated in Section 137 (b) (4) of the National Internal Revenue Code cannot be equated with the making of the cigarettes since Section 137 (b) (4) makes reference to the cigarettes taxable under sub-paragraphs (1) (2) and (3) and providing the words "wrapped" or "packed". To do otherwise would then be to substitute the words "wrapped" and "packed" stated in sub-paragraph (1) (2) and (3), with the word "make" or "made" (or the act in which cut tobacco is rolled in the paper bobbins), and we would come out with a not to very sensible provision. But what truly happens when we make the substitution of terms? We come out, for example, with the uncalled for provision "(1) on cigarettes x x x x, <u>not "made" or"rolled" in tin foil or cellophane nor "made" or "rolled" in cartons or in tin cans x x x</u>." Who ever heard of cut tobacco "made" or "rolled" in tin foil, or "made" in cellophane or "made" or "rolled" in cartons or in tin cans? In other words, to interpret the cited provisions thus would only result to absurdity.

The most logical interpretation should be that, the word "wrapped" or "packed" found in said Section 137 (b) (2) (3) and (4) refers to the act of placing cigarettes, made or already rolled in paper bobbins, in cellophane or in tin foil, or packed in cartons with paraffin or wax paper, or in tin cans mechanically. The cigarettes imported by petitioner cannot, therefore, fall under the category of cigarettes "wrapped in tin foil or cellophane" or packed in cartons with paraffin or wax paper or in tin cans (Sec.137 (b) (2) (4) NIRC) and "mechanically wrapped or packed" because there is a great difference in the making of cigarettes and the wrapping and packing of the same.

IN VIEW OF THE FOREGOING, the decision of respondent Commissioner of Internal Revenue appealed from is hereby set aside. Respondent's deficiency tax assessment in the total amount of ₱552,000.00 is hereby cancelled and declared to be without legal force and effect.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, April 7, 1982.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Presiding Judge

Took no part
ALEX Z. REYES
Associate Judge