COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

LA SUERTE CIGAR & CIGARETTE FACTORY, Petitioner, **C.T.A. CASE NO. 7151**

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.
x - x

LA SUERTE CIGAR & CIGARETTE FACTORY, Petitioner, **C.T.A. CASE NO. 7183**

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.
x - x

LA SUERTE CIGAR & CIGARETTE FACTORY, Petitioner, **C.T.A. CASE NO. 7245**

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.
x - x

LA SUERTE CIGAR & CIGARETTE FACTORY, Petitioner, **C.T.A. CASE NO. 7267**

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.
x - x

LA SUERTE CIGAR & CIGARETTE FACTORY, Petitioner, **C.T.A. CASE NO. 7308**

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.
x - x

LA SUERTE CIGAR & CIGARETTE FACTORY, Petitioner,	**C.T.A. CASE NO. 7326**
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

x - x

LA SUERTE CIGAR & CIGARETTE FACTORY, Petitioner,	**C.T.A. CASE NO. 7335**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 03 2009, 10:00am

x -x

DECISION

BAUTISTA, *J.*:

This case is a consolidation of seven separate Petitions for Review, seeking the refund of the amount of **ONE MILLION THIRTY-TWO THOUSAND ONE HUNDRED SIXTY-FIVE PESOS (P1,032,165.00)** paid as excise taxes for alleged "unmanufactured" tobacco imported in the year 2003, broken down as follows:

Case No.	Amount
7151	P 115,515.00
7183	172,800.00
7245	129,600.00
7267	176,850.00
7308	203,850.00
7326	74,250.00
7335	159,300.00
TOTAL	**P 1,032,165.00**

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 is the Commissioner of the Bureau of Internal Revenue (BIR) authorized to perform the duties of his 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. He 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, 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
C.T.A. Case No. 7151				February 2, 2005
Unmanufactured Canadian FC Tobacco	39,600 kgs.	P 29,700.00	20-Feb-03	
Unmanufactured U.S. Burley Tobacco	114,420 kgs.	85,815.00	20-Feb-03	
Total	**154,020 kgs.**	**P 115,515.00**		
C.T.A. Case No. 7183				March 4, 2005
Unmanufactured Brazilian Burley Tobacco	57,600 kgs.	P 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.**	**P 172,800.00**		
C.T.A. Case No. 7245				April 8, 2005
Unmanufactured U.S. Burley Tobacco	96,000 kgs.	P 72,000.00	7-May-03	
Unmanufactured U.S. Burley Tobacco	76,800 kgs.	57,600.00	7-May-03	
Total	**172,800 kgs.**	**P 129,600.00**		

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C.T.A. Case No. 7267				June 2, 2005
Unmanufactured Brazilian Burley Tobacco	57,600 kgs.	P 43,200.00	9-Jun-03	
Unmanufactured Brazilian F.C. Tobacco	178,200 kgs.	133,650.00	11-Jun-03	
Total	**235,000 kgs.**	**P 176,850.00**		
C.T.A. Case No. 7308				August 8, 2005
Unmanufactured Brazilian F.C. Tobacco	39,600 kgs.	P 29,700.00	11-Aug-03	
Unmanufactured U.S. Burley Strips Tobacco	76,800 kgs.	57,600.00	11-Aug-03	
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.**	**P 203,850.00**		
C.T.A. Case No. 7326				September 8, 2005
Unmanufactured Brazilian F.C. Tobacco	39,600 kgs.	P 29,700.00	24-Sep-03	
Unmanufactured Brazilian F.C. Tobacco	59,400 kgs.	44,550.00	24-Sep-03	
Total	**99,000 kgs.**	**P 74,250.00**		
C.T.A. Case No. 7335				October 6, 2005
Unmanufactured U.S. Burley Tobacco	96,000 kgs.	P 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.**	**P 159,300.00**		

On February 18, 2005, petitioner filed before the Court a Petition for Review, praying for a judgment ordering respondent to refund the amount of P115,515.00 for the excise taxes paid on 39,600 kilos of imported unmanufactured Canadian F.C. tobacco and 114,420 kilos of imported unmanufactured U.S. Burley tobacco.[1]

On March 30, 2005, petitioner filed before the Court a Petition for Review to seek refund of the amount of P172,800.00 for the excise taxes paid on 57,600 kilos of imported unmanufactured Brazilian Burley tobacco and 172,800 kilos of imported unmanufactured U.S. Burley tobacco.[2]

[1] C.T.A. Case No. 7151 docket, pp. 1-7.
[2] C.T.A. Case No. 7183, docket, pp. 1-8.

On May 6, 2005, petitioner filed another Petition for Review, praying for refund of the amount of P129,600.00 for the excise taxes paid on 172,800 kilos of imported unmanufactured U.S. Burley Tobacco.[3]

Another Petition for Review was filed by petitioner before this Court on June 8, 2005, to claim refund of the amount of P176,850.00 for the excise taxes paid on 57,600 kilos of imported unmanufactured Brazilian Burley tobacco and 178,200 kilos of imported unmanufactured Brazilian F.C. tobacco.[4]

On August 10, 2005, petitioner filed a Petition for Review to seek refund of the amount of P203,850.00 for the excise taxes paid on 271,800 kilos of imported unmanufactured Brazilian F.C. tobacco, U.S. Burley Strips tobacco and Canadian F.C. tobacco.[5]

On September 23, 2005, petitioner filed a judicial claim for the refund of the amount of P74,250.00 for the excise taxes paid on 99,000 kilos of imported unmanufactured Brazilian F.C. tobacco.[6]

On October 7, 2005, petitioner filed another Petition for Review to claim the refund of the amount of P159,300.00 for the excise taxes paid on 172,800 kilos of imported unmanufactured U.S. Burley Tobacco strips, and 39,600 kilos of imported unmanufactured Malawi Burley T and T tobacco strips.[7]

In his separate Answers[8], respondent raised similarly worded Special and Affirmative Defenses, 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;

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[3] C.T.A. Case No. 7245, docket, pp. 1-7.
[4] C.T.A. Case No. 7267, docket, pp 1-9.
[5] C.T. A. Case No. 7308, docket, pp. 1-9.
[6] C.T.A. Case No. 7326, docket, pp. 1-8.
[7] C.T.A. Case No. 7335, docket, pp. 21-30.
[8] C.T.A. Case No. 7151, docket, p. 51; C.T.A. Case No. 7183, docket, p. 43; C.T.A. Case No. 7245, docket, p. 36; C.T.A. Case No. 7267, docket, pp. 34-35; C.T.A. Case No. 7308, docket, p. .T.A. Case No. 7326, docket, p. 26; and C.T.A. Case No. 7335, docket, p. 7.

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, this Court issued a Resolution granting petitioner's Motions for Consolidation of C.T.A. Case Nos. 7151, 7183, 7245, 7267, 7308, 7326, and 7335.[9]

During trial, petitioner presented testimonial and documentary evidence; while, respondent, through counsel, waived his right to present evidence.[10]

The above-captioned cases were ordered submitted for decision on July 23, 2008, after submission of petitioner's Memorandum on May 8, 2008 and respondent's Memorandum on June 10, 2008.

Submitted for this Court's resolution are the following issues:[11]

1. Whether or not petitioner paid the excise taxes so alleged;

2. Whether or not petitioner's imports of tobacco in question is properly classifiable as unmanufactured tobacco;

3. Whether or not petitioner's imports of allegedly unmanufactured tobacco are not subject to excise tax; and

4. Whether or not petitioner's claim for refund was filed within the two-year prescriptive period prescribed in Section 229 of the NIRC of 1997.

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[9] C.T.A. Case No. 7151, docket, p. 150.
[10] Resolution dated April 10, 2008 (C.T.A. Case No. 7151, docket, p. 605).
[11] Stipulation of Issues, Joint Stipulation of Facts and Issues (C.T.A. Case No. 7151, docket, pp. 83-84; C.T.A. Case No. 7183, docket, pp. 96-97; C.T.A. Case No. 7245, docket, pp. 73-74; C.T.A. Case No. 7267, docket, p. 70; C.T.A. Case No. 7308, docket, pp. 72-73; C.T.A. Case No. 7326, docket, p. 69; C.T.A. Case No. 7335, docket, p. 62).

Issue on Prescription

Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides:

> "**SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Emphasis supplied*)

Below is a table enumerating the pertinent dates as borne by the Records, to wit:

Class of Imported Unmanufactured Tobacco	Date of Payment of the Excise Tax	Date of Filing of Administrative Claim	Date of Filing of Petition for Review
C.T.A. Case No. 7151		February 2, 2005	February 18, 2005
Unmanufactured Canadian F.C. Tobacco	February 20, 2003		
Unmanufactured U.S. Burley Tobacco	February 20, 2003		
C.T.A. Case No. 7183		March 4, 2005	March 30, 2005
Unmanufactured Brazilian Burley Tobacco	March 31, 2003		
Unmanufactured U.S. Burley Tobacco	March 31, 2003		
Unmanufactured U.S. Burley Tobacco	March 31, 2003		
C.T.A. Case No. 7245		April 8, 2005	May 6, 2005
Unmanufactured U.S. Burley Tobacco	May 7, 2003		
Unmanufactured U.S. Burley Tobacco	May 7, 2003		
C.T.A. Case No. 7267		June 2, 2005	June 8, 2005
Unmanufactured Brazilian Burley Tobacco	June 9, 2003		
Unmanufactured Brazilian F.C. Tobacco	June 11, 2003		

C.T.A. Case No. 7308		August 8, 2005	August 10, 2005
Unmanufactured Brazilian F.C. Tobacco	August 11, 2003		
Unmanufactured U.S. Burley Strips Tobacco	August 11, 2003		
Unmanufactured U.S. Burley Strips Tobacco	August 11, 2003		
Unmanufactured Canadian F.C. Tobacco	August 14, 2003		
C.T.A. Case No. 7326		September 8, 2005	September 23, 2005
Unmanufactured Brazilian F.C. Tobacco	September 24, 2003		
Unmanufactured Brazilian F.C. Tobacco	September 24, 2003		
C.T.A. Case No. 7335		October 6, 2005	October 7, 2005
Unmanufactured U.S. Burley StripsTobacco	October 8, 2003		
Unmanufactured U.S. Burley Tobacco	October 8, 2003		
Unmanufactured Malawi Burley T & T Tobacco	October 13, 2003		

Thus, as the claims for refund both in the administrative and judicial level were filed within the two-year period, prescription has not set in.

Payment of Excise Taxes

Petitioner presented testimonial and documentary evidence, proving that it paid excise taxes on the subject imported unmanufactured tobacco:

Tobacco Class	Quantity	Amount Paid	Exhibit	Description
C.T.A. Case No. 7151				
Unmanufactured Canadian F.C. Tobacco	39,600 kgs	P29,700.00	B (7151)	Journal Voucher No. 131977, dated 02-20-2003
			C (7151)	BIR Form 2200-T
			D (7151)	BPI Expresslink Payment Form with Filing Reference No. 080300000042791
			D-1 (7151)	BIR Stamp indicating receipt
			E (7151)	BIR Filing Reference No. 080300000042791
			F (7151)	BIR Tax Payment Confirmation
Unmanufactured U.S. Burley Tobacco	114,420 kgs.	P85,815.00	H (7151)	Journal Voucher No. 131978, dated 02-20-2003
			I (7151)	BIR Form 2200-T
			L (7151)	BIR Tax Payment Confirmation
			J (7151)	BPI Expresslink Payment Form with

				Filing Reference No. 080300000042799
			K (7151)	BIR Filing Reference No. 080300000042799
C.T.A. Case No. 7183				
Unmanufactured Brazilian Burley Tobacco	57,600 kgs.	P43,200.00	B (7183)	Journal Voucher No. 132121, dated 03-31-2003
			C (7183)	BIR Form 2200-T
			D (7183)	BPI Expresslink Payment Form with Filing Reference No. 080300000048601
			E (7183)	BIR Filing Reference No. 080300000048601
			F (7183)	BIR Tax Payment Confirmation
Unmanufactured U.S. Burley Tobacco	96,000 kgs.	P72,000.00	H (7183)	Journal Voucher No. 132123, dated 03-31-2003
			I (7183)	BIR Form 2200-T
			J (7183)	BPI Expresslink Payment Form with Filing Reference No. 080300000048602
			K (7183)	BIR Filing Reference No. 080300000048602
			L (7183)	BIR Tax Payment Confirmation
Unmanufactured U.S. Burley Tobacco	76,800 kgs.	P57,600.00	N (7183)	Journal Voucher No. 132146, dated 04-03-2003
			O (7183)	BIR Form 2200-T
			P (7183)	BPI Expresslink Payment Form with Filing Reference No. 080300000048774
			Q (7183)	BIR Tax Payment Confirmation Filing Reference No. 080300000048774
			R (7183)	BIR Filing Reference No. 080300000048774
C.T.A. Case No. 7245				
Unmanufactured U.S. Burley Tobacco	96,000 kgs.	P72,000.00	B (7245)	Journal Voucher No. 132252, dated 05-07-2003
			C (7245)	BIR Form 2200-T
			D (7245)	BPI Expresslink Payment Form with Filing Reference No. 80300000055119
			E (7245)	BIR Filing Reference No. 80300000055119
			E (7245)	BIR Tax Payment Confirmation
Unmanufactured U.S. Burley Tobacco	76,800 kgs.	P57,600.00	J (7245)	Journal Voucher No. 132251, dated 05-07-2003
			K (7245)	BIR Form 2200-T
			L (7245)	BPI Expresslink Payment Form with Filing Reference No. 80300000055117
			M (7245)	BIR Filing Reference No. 80300000055117
			N (7245)	BIR Tax Payment Confirmation
C.T.A. Case No. 7267				
Unmanufactured Brazilian Burley Tobacco	57,600 kgs.	P43,200.00	B (7267)	Journal Voucher No. 132379, dated 06-09-2003
			C (7267)	BIR Form 2200-T
			D (7267)	BPI Expresslink Payment Form with Filing Reference No. 80300000061127
			E (7267)	BIR Filing Reference No. 80300000061127
			F (7267)	Date June 10, 2003 stamp received by the BIR-Large Taxpayers Assistance Division II
Unmanufactured Brazilian F.C. Tobacco	178,200 kgs.	P133,650.00	H (7267)	Journal Voucher No. 132393, dated 03-11-2003
			I (7267)	BIR Form 2200-T

			J (7267)	BPI Expresslink Payment Form with Filing Reference No. 80300000062255
			K (7267)	BIR Filing Reference No. 80300000062255
			L (7267)	Date June 12, 2003 stamp received by the BIR-Large Taxpayers Assistance Division II
C.T.A. Case No. 7308				
Unmanufactured Brazilian F.C. Tobacco	39,600 kgs.	P29,700.00	A (7308)	Journal Voucher No. 132594, dated 08-11-2003
			B (7308)	BIR Form 2200-T
			C (7308)	BIR Filing Reference No. 080300000073649
			D (7308)	BPI Expresslink Payment Form with Filing Reference No. 080300000073649
			E (7308)	BIR Tax Payment Confirmation
			E-1 (7308)	Date August 12, 2003 stamp received by the BIR-Large Taxpayers Assistance Division II
Unmanufactured U.S. Burley Strips Tobacco	76,800 kgs.	P57,600.00	I (7308)	Journal Voucher No. 132596, dated 08-11-2003
			J (7308)	BIR Form 2200-T
			K (7308)	BIR Filing Reference No. 080300000073643
			L (7308)	BPI Expresslink Payment Form with Filing Reference No. 080300000073643
			M (7308)	BIR Tax Payment Confirmation
Unmanufactured U.S. Burley Strips Tobacco	96,000 kgs.	P72,000.00	Q (7308)	Journal Voucher No. 132598, dated 08-11-2003
			R (7308)	BIR Form 2200-T
			S (7308)	BIR Filing Reference No. 080300000073639
			T (7308)	BPI Expresslink Payment Form with Filing Reference No. 080300000073639
			U (7308)	BIR Tax Payment Confirmation
Unmanufactured Canadian F.C. Tobacco	59,400 kgs.	P44,550.00	Y (7308)	Journal Voucher No. 132620, dated 08-14-2003
			Z (7308)	BIR Form 2200-T
			AA (7308)	BIR Filing Reference No. 080300000075106
			BB (7308)	BPI Expresslink Payment Form with Filing Reference No. 080300000075106
			CC (7308)	BIR Tax Payment Confirmation
C.T.A. Case No. 7326				
Unmanufactured Brazilian F.C. Tobacco	39,600 kgs.	P29,700.00	B (7326)	Journal Voucher No. 132754, dated 09-24-2003
			C (7326)	BIR Form 2200-T
			D (7326)	BPI Expresslink Payment Form with Filing Reference No. 80300000082744
			E (7326)	BIR Filing Reference No. 80300000082744
			F (7326)	BIR Tax Payment Confirmation
Unmanufactured Brazilian F.C. Tobacco	59,400 kgs.	P44,550.00	I (7326)	Journal Voucher No. 132756, dated 09-24-2003
			J (7326)	BIR Form 2200-T
			K (7326)	BPI Expresslink Payment Form with Filing Reference No. 80300000082745
			L (7326)	BIR Filing Reference No. 80300000082745
			M (7326)	BIR Tax Payment Confirmation

C.T.A. Case No. 7335				
Unmanufactured U.S. Burley Strips Tobacco	96,000 kgs.	P72,000.00	C (7335)	Journal Voucher No. 132801, dated 10-08-2003
			D (7335)	BIR Form 2200-T
			E (7335)	BIR Filing Reference No. 080300000083795
			E (7335)	BPI Expresslink Payment Form with Filing Reference No. 080300000083795
			G (7335)	BIR Tax Payment Confirmation
Unmanufactured U.S. Burley Tobacco	76,800 kgs.	P57,600.00	J (7335)	Journal Voucher No. 132799, dated 10-08-2003
			K (7335)	BIR Form 2200-T
			M (7335)	BIR Filing Reference No. 080300000083798
			L (7335)	BPI Expresslink Payment Form with Filing Reference No. 080300000083798
			N (7335)	BIR Tax Payment Confirmation
Unmanufactured Malawi Burley T & T Tobacco	39,600 kgs.	P29,700.00	Q (7335)	Journal Voucher No. 132809, dated 10-13-2003
			R (7335)	BIR Form 2200-T
			S (7335)	BPI Expresslink Payment Form with Filing Reference No. 080300000085402
			T (7335)	BIR Filing Reference No. 80300000085402
			U (7335)	BIR Tax Payment Confirmation

In the absence of convincing proofs to the contrary, the above-enumerated pieces of documentary evidence establish the fact of payment of excise taxes on the subject imports.

Imported tobacco leaves are considered manufactured and subject to Excise Tax

Section 129 of the NIRC of 1997 imposes excise taxes to things imported, 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 valued-added tax imposed under Title IV.
>
> For purposes of this Title, excise taxes herein imposed and based on weight or volume capacity or any other physical unit of measurement shall be referred to as *'specific tax'* and an excise tax herein imposed and based on selling price or other specified value of the good shall be referred to as *'ad valorem tax'*." (*Emphasis supplied*)

In relation thereto, Section 144 of the NIRC of 1997 provides:

> "**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.

On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, Sixty centavos (P0.60)."

The above-quoted Section imposes excise tax on tobacco products. "Product," in the absence of definition in the NIRC, ordinarily means "a thing or substance produced by natural process or manufacture."[12]

As admitted and described in petitioner's Formal Offer of Evidence, the subject imports are threshed tobacco leaves.[13] An examination of the samples of threshed tobacco shows that the tobacco leaves are not in their original state and have undergone a process.[14] This is confirmed by the Vice-President of petitioner's Leaf and Product Department, Mr. Lionel H. Small, who testified as follows:[15]

"**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 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?

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[12] The Oxford Encyclopedic English Dictionary.
[13] Docket, p. 294.
[14] Exhibits "A-Consolidated" and "B-Consolidated."
[15] Exhibit "E-Consolidated".

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.:As 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 by '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 twelve (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 manufactures?

A: The final product is the cigarette.

xxx xxx xxx"

From harvest, tobacco leaves undergo manufacturing process, which includes the separate processes of drying and threshing. Thus, from their original state, tobacco leaves are dried to remove the moisture. After moisture is removed, the threshing begins, whereby the leaves are separated from stems. The threshing process is not as simple as it was presented by the witness and not as "superficial" as petitioner argues. The threshed tobacco leaves are products by themselves or, to say the least, prepared or partially prepared; taxable under Section 144 of the NIRC of 1997. Inasmuch as they have been modified or their natural substances have been changed, so that they may become articles of value or use, such leaves should not, therefore, be considered as "unmanufactured."[16]

Further, contrary to petitioner's claim, the Authorities to Release Imported Goods (ATRIGs) do not operate against the imposition and collection of excise taxes due from petitioner's importation of the tobacco leaves. As previously discussed, Section 129 of the NIRC of 1997 imposes excise taxes to things imported. Revenue Memorandum Order (RMO) No. 35-2002[17] dated October 28, 2002, merely requires every importation to be covered by ATRIG, regardless of whether the importation is subject to excise tax. Pertinent portions of said RMO read:

> "1. An Application for ATRIG (Annex 'A') for value-added tax purposes shall be filed in duplicate with the Revenue District Office (RDO) having jurisdiction over the port of entry. For excise tax purposes, however, the Application for ATRIG shall be filed with the Excise Tax District Office (ETDO) where the taxpayer-importer is registered or required to be registered. The application for ATRIG shall be distributed as follows:
>
> xxx xxx xxx
>
> **Each importation shall be covered by a separate application for ATRIG.** In cases where the importation involves articles of the same kind but are covered by two or more Bills Of Lading issued to the same importer under the same vessel, the consolidated application may be accepted and processed. The application for ATRIG shall be notarized and properly accomplished and signed by the importer or his duly authorized representative with the prescribed documentary stamp affixed thereon.
>
> xxx xxx xxx
>
> 4. **For excise tax purposes, the ATRIG shall be issued for all importations of articles subject to excise tax (whether exempt or taxable), including the raw materials in the production thereof, as well as the machineries, equipment, apparatus or any mechanical contrivances especially used for its assembly/production.** xxx." (*Emphasis supplied*)

[16] To manufacture is to modify or to change natural substances, so that they become articles of value or use (*Words and Phrases*, Permanent ed., 1940, vol. 26, p. 610).

[17] "Prescribing the Guidelines and Procedures in the Processing and Issuance of AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) for Excise and Value-Added Tax Purposes."

There is likewise no merit in petitioner's contention that "Revenue Regulations (RR) V-39[18] Chapter V, as amended, does not include imported tobacco leaf as among the tobacco products on which specific taxes are payable before the same are released from the customhouse" and cited Section 61, Chapter V thereof. Section 2(m) of RR 17-67[19] dated May 2, 1967, has defined "partially manufactured tobacco" to include "stemmed leaf"[20] and "machine scrap tobacco."[21] In relation thereto, Section 43 of RR 17-67 provides:

> "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*)

Tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The taxpayer has the burden of proving that it is in fact covered by the exemption being claimed. In case of doubt, non-exemption is favored.[22] Inasmuch as petitioner failed to discharge its duty of proving its claims, the instant Petitions must fail.

WHEREFORE, the instant Petitions for Review are hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[18] The Tobacco Products Regulations, dated September 29, 1954.

[19] Tobacco Revenue Regulations on leaf, scrap, other partially manufactured tobacco and other tobacco products; grading, classification, inspection, shipments, exportation, importation and the manufacturers thereof under the provisions of Act No. 2613, as amended.

[20] "Handstripped tobacco, clean, good, partially broken leaf only, free from mold and dust."

[21] "**Machine-treshed**, clean good tobacco, not included in any of the above terms, usable in the manufacture of tobacco products." (*Emphasis supplied*)

[22] *Republic of the Philippines, et al. vs. Caguioa, et al.*, G.R. No. 168584, October 15, 2007, 536 SCRA 193.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice