REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LA SUERTE CIGAR AND CIGARETTE FACTORY, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 5461**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 17 1998

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D E C I S I O N

This case involves a claim for refund in the amount of Three Hundred Eighty Two Thousand Nine Hundred Fifty Six and 38/100, (₱382,956.38) representing specific taxes paid under protest during the month of February, 1995.

Petitioner La Suerte Cigar and Cigarette Factory, Inc. (La Suerte, for brevity) is a domestic corporation engaged in the manufacture of cigarettes out of stemmed-leaf tobacco which it purchases in bulk from both local and foreign tobacco manufacturers.

From February 1 to 15, 1995, herein respondent collected from La Suerte the aggregate amount of P382,956.38 for specific taxes allegedly due on the

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latter's bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers. La Suerte paid the said amount under protest. The dates of payment, the respective weight/description of the stemmed-leaf tobacco purchased on the basis of which the specific taxes were paid, the Authority to Accept Payment of Excise Tax (ATAPET) Serial Number as well as the amount of each payment are as follows:

Date	Description	ATAPET Serial Number	Amount
02/01/95	41,640 kgs.	2044464	P 31,230.00
02/01/95	46,539 kgs.	2044462	34,904.25
02/01/95	31,026 kgs.	2044461	23,269.50
02/01/95	79,200 kgs.	2044459	59,400.00
02/01/95	27,760 kgs.	2044457	20,820.00
02/10/95	79,200 kgs.	2044490	59,400.00
02/14/95	38,400 kgs.	2044502	28,800.00
02/14/95	78,076 kgs.	2044501	58,557.00
02/14/95	19,367 kgs.	2044499	14,524.88
02/15/95	69,401 kgs.	2044509	52,050.75
		T O T A L	**P382,956.38**

On September 27, 1996 and October 2, 1996, through a letter dated September 19, 1996, La Suerte filed with the Commissioner of Internal Revenue and with Revenue District No. 52, respectively, a claim for the refund of specific taxes paid by La Suerte on its importations of stemmed leaf tobacco from October 1994 to May 1995, which included the amounts aforestated.

As no action was taken by herein respondent on its claim for refund, La Suerte filed the instant petition on January 31, 1997.

The lone issue for determination is whether or not petitioner is entitled to the refund of the specific taxes which it paid under protest during the month of February, 1995 in the total amount of P382,956.38.

Petitioner, in claiming that it is not liable for the payment of excise tax for its importation and local purchases of stemmed leaf tobacco, relied on Section 137 of the NIRC, which in part reads as follows:

> "**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 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. (*Underscoring supplied*)

And to support its case, petitioner presented the following documents:

(1) letter-claim for refund filed with the office of herein respondent and with Revenue District No. 52 (Exhibit "A");

(2) an Authority to Release Imported Goods dated April 3, 1989 (Exhibit "B") to prove that the standard form being utilized by the BIR prior to the latter part of 1989 is to authorize the release of imported goods from the custody of the Bureau of Customs without mention of specific taxes as among the taxes that had to be paid in order to secure the said release;

(3) an Authority to Release Imported Goods dated November 3, 1994 (Exhibit "C") where specific taxes were imposed; and

(4) BIR Ruling dated December 12, 1972 (Exhibit "D") to prove that the then Commissioner of Internal Revenue issued a ruling to the effect that the sale or transfer of partially manufactured tobacco by an L-6 permittee to another L-6 permittee who is also an L-3R permittee may be allowed without prepayment of specific tax.

Respondent, on the other hand, raised the proposition that the liability of petitioner to pay the deficiency excise tax is governed by Section 141 of the NIRC, to state:

> "**Section 141.** - There shall be collected a tax of ₱0.75 on each kilogram of the following products of tobacco:
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> (b) Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened."

Likewise, she averred that under Revenue Regulations No. 17-67, particularly Section 1, par. 1, a stemmed-leaf tobacco has been considered a partially prepared tobacco within the ambit of Section 141 of the NIRC, aforequoted.

On March 23, 1998 respondent manifested that since the issues involved are purely legal, she is submitting the case for decision.

The Court of Appeals, in the case entitled Comissioner of Internal Revenue vs. Fortune Tobacco Corporation, CA-G.R. Sp. Nos. 38219 and 40313, dated January 30, 1998, ruled:

> "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

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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. Central Bank, 70 SCRA 570 [1976]; Bautista vs. Juinio, 127 SCRA 342 [1984]).

There are limitations to the rule making power of administrative agencies. When Congress authorizes an administrative body to promulgate rules and regulations to implement a given legislation, all that is required is that the regulation must not contravene the statute, but must conform to the standards it prescribed (Tayug Rural Bank vs. Central Bank, 146 SCRA 120 [1986]; Del Mar vs. Philippine Veterans Administration, 52 SCRA 340 [1973]).

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In case of discrepancy between the basic law and a rule or regulation issued to implement it, the basic law prevails. The regulation cannot go beyond the provisions and terms of the basic law (Shell Philippines Inc. vs. Central Bank, 162 SCRA 628 [1988]).

After a careful study of all aspects of the law and the revenue regulation involved in this case, We come to the conclusion that the Commissioner of Internal Revenue has not engaged in mere interpretation but has gone into unauthorized modification or amendment of the law. Only Congress can do this. Section 2(M)(1) of Revenue Regulations No. 17-67 is, therefore, ultra vires and invalid.

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 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

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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 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

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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

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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.

We are aware of the ruling in Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, CA-G.R. SP No. 38107 issued on December 29, 1995.

We note, however, that this Court in the case of La Suerte Cigar failed to take into account the limitations in the exercise 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

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> 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 Bureau of Internal Revenue, it would have arrived at conclusions fully consonant with our findings."

Clearly then from the above-quoted decision, petitioner is legally entitled to the refund sought.

The problem, however, lies in the evidence submitted by petitioner. Nothing was presented to prove that petitioner had indeed, paid the specific taxes subject of the claims for refund such as the Authority to Accept Payment for Excise Taxes. The Court cannot rely solely on the enumeration of the specific taxes paid stated in petitioner's letter-claim for refund. Without any proof of payment, there is no way by which the Court could ascertain the veracity of the amounts being claimed as refund. Likewise, while respondent in her Answer admitted the allegation in paragraph 3 of the petition that the Commissioner of Internal Revenue collected from La Suerte the amount of P382,956.38 as specific taxes due on bulk purchases of stemmed leaf tobacco from foreign tobacco manufacturers or suppliers in February 1995, she made a conflicting statement to the effect that "whether or not the aforestated amount allegedly representing payment of specific taxes on imported tobacco sometime during February 1995 were actually received by the government is yet subject to verification."

> "Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed ***strictissimi juris*** against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption in his favor and he must be able to justify his claim by the clearest grant of organic or statute law and cannot be permitted to exist upon vague implications (*Asiatic Petroleum Co. v. Lianes, 49 Phil. 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Reagan v. Commissioner, 30 SCRA 968; Asturias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617; Davao Light and Power Co. Inc. v. Commissioner of Customs, 44 SCRA 122*)."

WHEREFORE, in the light of all foregoing, petitioner's claim for refund is hereby **DENIED** for insufficiency of evidence. No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above 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

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