REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

FORTUNE TOBACCO CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 7368**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 0 9 2007

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Is imported stemmed-leaf tobacco considered in law as partially prepared tobacco and therefore subject to an excise tax at the rate of 75 centavos per kilogram pursuant to *Section 144 of the NIRC of 1997, as amended*?

THE CASE

This issue is before Us in this Petition For Review filed by Fortune Tobacco Corporation (hereafter "petitioner"), which seeks the reversal in part of the Decision dated September 23, 2005, rendered by the OIC Commissioner of Internal Revenue, relative to the protest of the petitioner against Assessment Notices Nos. IT-0100048 and XS 01-00042, for income and excise tax deficiencies, respectively, for taxable year 2001, which found petitioner liable for deficiency excise tax, the dispositive portion of which reads as follows:

> "**IN VIEW WHEREOF**, this Office resolves as it hereby resolves to **CANCEL** and **WITHDRAW** Assessment Notice Nos. IT-01-00048 demanding payment of the amount of P19,104,448.56 as deficiency income tax for the year 2001. Assessment Notice No. XS-01-00042 involving the amount of P17,942,452.84 as deficiency excise tax for the year 2001 is hereby **AFFIRMED** in all respects. Consequently, FTC is hereby ordered to pay the above-stated amount to the Large Taxpayers Service, Collection Enforcement Division, BIR National Office, Diliman, Quezon City within thirty (30) days from receipt hereof, otherwise, the collection thereof shall be effected through the summary remedies provided by law.
>
> This constitutes the **FINAL DECISION** of this Office on the matter."

THE FACTS

In their "Joint Stipulation of Facts and Documents", the parties stipulated as follows:

> 1. Fortune Tobacco is a corporation duly organized and existing under the laws of the Republic of the

270

Philippines with principal office at Parang, Marikina City and is engaged in the manufacture and production of cigarette products.

2. The Commissioner of Internal Revenue (the "BIR") is the head of the Bureau of Internal Revenue, the government agency charged with, among others, the collection of internal revenue taxes.

3. Previously, Fortune Tobacco received from the BIR a Formal Letter of Demand dated February 2, 2004, demanding payment of the amounts of P19,104,448.86 and P17,948,452.84 representing respectively, deficiency income tax on disallowed donation in the amount of P43,472,000.00 and P17,942,452.84 as excise tax on Fortune Tobacco's importation of 16,693,292 kilos of leaf tobacco at P.75 kilo for taxable year 2001.

4. Together with said BIR letter-demand were Audit Result/Assessment Notice IT-01-00048 for deficiency income tax and Audit Result/Assessment Notice XS-01-00042 for non-payment of excise tax of Fortune Tobacco's imported leaf tobacco in the amount of P17,948,452.84. Both assessment notices were dated and issued on 19 February 2004.

5. Fortune Tobacco sought reconsideration from the BIR per its letter dated 15 March 2004. In said letter, Fortune Tobacco disputed the BIR's demand for payment of the deficiency income and excise taxes as being contrary to law and existing jurisprudence.

6. In relation to the excise treatment of its imported tobacco, Fortune Tobacco has consistently maintained that these imported leaf tobacco cannot be considered under the law as partially prepared tobacco as contemplated by Section 144, NIRC of 1997 and therefore

271

not subject to an excise tax of .75 per kilo as provided for by law and regulation.

7. While, on the other hand, the BIR has consistently maintained that imported leaf tobacco is "partially prepared tobacco" as contemplated by Section 144, NIRC of 1997, the implementing rules and regulations, as well as revenue memorandum as issued by the Department of Finance and the Bureau of Internal Revenue.

8. Thereafter, on 19 October 2005, Fortune Tobacco received the Decision of the Commissioner of Internal Revenue whereby it granted its request for the cancellation of the income tax aspect of the Formal Letter of Demand, but DENIED and reiterated the demand for payment of the alleged deficiency excise tax of P17,943,252.84 on its imported leaf tobacco.

9. Fortune Tobacco filed a petition for review seeking to reverse and set aside "IN PART" the Assessment Decision promulgated on 23 September 2005 by the Commissioner (Officer-in-Charge), Bureau of Internal Revenue relative to the protest filed on 18 March 2004 by Fortune Tobacco against Assessment Notices Nos. IT-010048 and XS 01-00042 allegedly for income and excise tax deficiency for taxable years 2001 and the same was filed within the thirty (30) day reglementary period to contest the denial of the assessment made upon Fortune Tobacco and the said Decision is a FINAL DECISION by no less than the Commissioner, Bureau of Internal Revenue.

10. The Commissioner per its Decision promulgated 23 September 2005 admitted that, Fortune Tobacco in the past was able to secure a favorable decision before the Court of Tax Appeals in CTA Case No. 4616, October 6, 1994 and the Court of Appeals in CA-GR SP Nos. 38219 and 40313, January 30, 1998 involving the same

272

> parties, same subject matter and same issues but the matter is still pending resolution by the Supreme Court En Banc under G.R. Nos. 136328, 136329 and 144942.
>
> 11. On the other hand, the BIR has been able to get a favorable ruling from the Supreme Court in a similarly situated case and subject matter entitled Commissioner of Internal Revenue vs. La Campana Fabrica de Tabacos, Inc. G.R. No. 145275, November 21, 2001.
>
> 12. These Supreme Court cases in part are for the determination whether or not imported leaf tobacco is considered in law as partially prepared tobacco which is subject to an excise tax of .75 per kilo pursuant to Section 144, NIRC of 1997."

In his answer, respondent denied the material allegations of the petition and averred that the applicable provisions of law are *Sections 140 and 144 of the NIRC of 1997, as amended;* that the legislature provided a clear grant of power for the Secretary of Finance to issue rules and regulations to provide the conditions or parameters to determine exempted transactions thereto and corollarily, those transactions are subject to excise tax; those conditions were provided for by the Department of Finance in Revenue Regulations Nos. V-39 and 17-67; it is a settled issue that the exemption from specific tax on the sale of stemmed-leaf tobacco as raw material is, by one L-7 directly to another L-7, as held by the Supreme Court in the cases of *Commissioner of*

273

Internal Revenue vs. La Campana Fabrica de Tabacos, Inc., 369 SCRA 118, Compania General de Tabacos de Filipinas vs. Court of Appeals, 426 SCRA 203, and Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc., 469 SCRA 339.

For failure of the counsel for petitioner to appear at the scheduled pre-trial, despite notice, upon motion of counsel for respondent, petitioner was declared non-suited and the case was dismissed in a Resolution dated April 5, 2006.

On April 26, 2006, petitioner filed a "Motion for Reconsideration" of the Resolution dated April 5, 2006, which the Court granted in its Resolution dated July 14, 2006.

For failure of the counsel for petitioner to appear at the scheduled initial presentation of the evidence for the petitioner despite notice and warning, the case was dismissed in a Resolution dated November 15, 2006.

On November 27, 2006, petitioner filed a "Motion for Reconsideration" of the Resolution dated November 15, 2006, which the Court granted in a Resolution dated December 19, 2006 and the case was reinstated.

Upon joint motion of the parties to dispense with trial on the ground that the issues raised in the petition are purely legal, petitioner was granted thirty (30) days from December 7, 2006 within which to file its memorandum, while respondent was granted twenty (20) days from notice to file his memorandum. Thereafter, the case shall be deemed submitted for decision.

Both parties having filed their respective memoranda, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for the Court's consideration:

I

WHETHER OR NOT IMPORTED STEMMED-LEAF TOBACCO IS CONSIDERED IN LAW AS PARTIALLY-PREPARED TOBACCO AND THEREFORE PURSUANT TO SECTION 144, NIRC OF 1997 SUBJECT TO AN EXCISE TAX OF 75 CENTAVOS PER KILOGRAM.

II

WHETHER OR NOT THE ASSESSMENT FOR 2001 DEFICIENCY EXCISE TAX IN THE AMOUNT OF P17,942,452.84 IS VALID.

Decisive Issue

The decisive issue posed for resolution of the Court is whether or not imported stemmed-leaf tobacco is considered in law as partially-prepared tobacco, and therefore pursuant to *Section 144 of the NIRC of 1997, as amended*, subject to an excise tax of 75 centavos per kilogram.

Petitioner Fortune Tobacco's Theory

Petitioner argues that the BIR is not legally justified in assessing the P0.75 centavo excise tax per kilogram of the imported stemmed-leaf tobacco considering that:

1) Stemmed-leaf tobacco is not included in the enumeration of products, subject to tax under *Section 144*;

2) Stemmed-leaf tobacco cannot be deemed as "partially prepared" tobacco under *Section 144*;

3) *Section 144* itself provides that certain products therein enumerated may be sold without payment of tax if to be used in the manufacture of other products; and

4) *Section 140 of the 1997 Tax Code* categorically exempts from the excise tax stemmed-leaf tobacco when sold in bulk as raw materials by one manufacturer directly to another.

276

Invoking *R.A. No. 698, as amended by R.A. No. 1194,* petitioner further argues that processed tobacco is defined as leaf tobacco which is either blended, cased, flavored, ready cut, or cut-fillers ready for manufacturing purposes, but shall not include tobacco leaf, only the stem of which is removed. Petitioner submits that viewed in the context of the provisions of the Tax Code and other related laws, stemmed-leaf tobacco, particularly if imported, is not covered by *Section 144 of the Tax Code.* Thus, it posits that *Revenue Regulations. No. 17-67*, by including the stemmed-leaf in the definition of "partially manufactured tobacco", becomes an administrative legislation in a prohibited sense.

Finally, *invoking R.A. No. 9334*, which took effect on January 1, 2005, petitioner asserts that stemmed-leaf tobacco is now expressly included as among the tobacco products, which may be disposed of or sold without pre-payment of the excise tax therein, provided the same are to be used in the manufacture of tobacco products on which the excise tax will eventually be paid on the finished products.

Respondent Commissioner's Theory

On the other hand, respondent Commissioner of Internal Revenue counter-argues that stemmed-leaf tobacco, whether imported or not, is considered as partially prepared tobacco by law, thus subject to excise tax; that petitioner's purchase of stemmed-leaf tobacco is not covered by the exemption provided by law and jurisprudence, and the validity of *Revenue Regulations. No. 17-67* is a settled issue.

THE COURT'S RULING

We deny the petition.

Decisive Issue Raised Herein Had Already Been Resolved By The Supreme Court In The Affirmative

There is nothing novel in this case, as the decisive issue raised herein had, in a number or so of cases, been previously ruled by the Supreme Court in the affirmative.

In the case of *Commissioner of Internal Revenue vs. La Campana Fabrica de Tabacos, Inc., 369 SCRA 122-125*, the Supreme Court ruled:

> "The issue raised is whether respondent is liable for deficiency specific tax under Section 141(b) of the Tax Code in the amount of P2,785,338.75 on purchases of stemmed leaf tobacco for the period January 1, 1986 to June 30, 1989.
>
> The Court's Ruling
>
> We reverse the decision of the Court of Appeals.
>
> Section 137 (now Sec. 140) of the Tax Code reads in part:

'SECTION 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.

'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.'

Thus, the conditions under which stemmed leaf tobacco may be transferred from one factory to another without prepayment of specific tax are as follows:

(a) The transfer shall be under 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.

(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.

Parenthetically, under Revenue Regulations No. 17-67, otherwise known as 'Tobacco Regulations on Leaf, Scrap, Other Partially Manufactured Tobacco and Other

aae

279

Tobacco Products; Grading, Classification, Inspection, Shipments, Exportation, Importation and the Manufacture thereof under the provisions of Act No. 2613, as amended,' leaf tobacco dealers and manufacturers of tobacco products are administratively designated as follows:

'CHAPTER I
ADMINISTRATIVE DESIGNATION, SCHEDULES, PARAGRAPH AND ASSESSMENT NUMBER

xxx xxx xxx

Section 3.

(a) L-3 — Wholesale leaf tobacco dealer.

(b) L-3F — Wholesale leaf tobacco dealer. Issued only in favor of Farmer's Cooperative Marketing Association (FaCoMas) duly organized in accordance with law.

xxx xxx xxx

(c) L-3R — Wholesale leaf tobacco dealers. Issued only in favor of persons or entities having fully equipped Redrying Plants.

(d) L-3¼ — Buyers for wholesale leaf of tobacco dealers.

(e) L-4 — Wholesale leaf tobacco dealers. Issued only in favor of persons or entities having flue-curing barns, who may purchase or receive green Virginia Leaf Tobacco from bona fide tobacco planters only, or handle green leaf of their own production, which tobacco shall be sold or transferred only to holders of L-3 and L-3R permits after fluecuring the tobacco.

aue

(f) L-5 — Tobacco planters selling to consumers part or the whole of their tobacco productions.

(g) L-6 — Wholesale leaf tobacco dealers who, exclusively for export, except as otherwise provided for in these regulations perform the following functions:

(1) Handstripped and/or thresh whole leaf tobacco for themselves or for other L-6 or L-7 permittees;

(2) Re-process partially manufactured tobacco for themselves, or for other L-6 or L-7 permittees;

(3) Sell their partially manufactured tobacco to other L-6 permittees;

(h) L-7 — Manufacturers of tobacco products. (L-7¼ designates all auxiliary registered book [bale books], for manufacturers of tobacco products)

(i) B-14 — Wholesale leaf tobacco dealers (Privilege tax receipt).

(j) B-14(a) — Retail leaf tobacco dealers (Privilege tax receipt).

Thus, under Sec. 3(h) of Revenue Regulations No. 17 67, L-7 refers to 'Manufacturers of tobacco products.' Hence, the transferor of the stemmed leaf tobacco must be an L-7 tobacco manufacturer. This is so because obviously only an L-7 tobacco manufacturer has an official L-7 invoice and an L-7 register and the transferee of the stemmed leaf tobacco must also be an L-7 tobacco manufacturer because, to repeat, only an L-7 tobacco manufacturer has an L-7 registry book.

In the case at bar, the stemmed leaf tobacco purchased by respondent came from Tobacco Industries of the Philippines, NGC Trading and Philippine Tobacco Fluecuring Corporation, who are all L-6 permittees.

Section 137 (now 140) of the Tax Code qualifies the term 'manufacturer' by the phrase 'under such conditions as may be prescribed in the regulations of the Department of Finance.' Under such regulations the term 'manufacturer' refers only to L-7.

We agree with the petitioner that the exemption from specific tax of the sale of stemmed leaf tobacco as raw material by one L-7 directly to another L-7 is because such stemmed leaf tobacco has been subjected to specific tax when an L-7 manufacturer purchased the same from wholesale leaf tobacco dealers designated under Section 3, Chapter I, Revenue Regulations No. 17-67 (supra) as L-3, L-3F, L-3R, L-4, or L-6, the latter being also a stripper of leaf tobacco. These are the sources of stemmed leaf tobacco to be used as raw materials by an L-7 manufacturer which does not produce stemmed leaf tobacco. When an L-7 manufacturer sells the stemmed leaf tobacco purchased from the foregoing suppliers to another L-7 manufacturer as raw material, such sale is not subject to specific tax under Section 137 (now Section 140), as implemented by Section 20(a) of Revenue Regulations No. V 39.

Consequently, respondent's purchases of stemmed leaf tobacco were not exempt from specific tax."

The Supreme Court reiterated the above ruling in the subsequent case of *Compania General de Tabacos de Filipinas vs. Court of Appeals, 426 SCRA 209-210,* as follows:

"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.* held that the following conditions must be met for stemmed leaf tobacco to be transferred without prepayment of specific tax, to wit:

(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.

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 tax thereon. Hence, petitioner is not entitled to any refund of the specific taxes paid."

Then, in the recent case of *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc., 469 SCRA 346*, the Supreme Court adopted the same ruling and ruled:

> "In the present case, there is no showing that respondent has been categorized as L-7 tobacco manufacturer. It bears stressing that apparent from Section 20 of Revenue Regulations No. V-39 is the fact that the sale of stemmed-leaf tobacco in bulk as raw material is from one L-7 directly to another L-7. This is not obtaining here."

Pursuant to the aforequoted decisions of the Supreme Court, it is clear that petitioner is not exempt from payment of excise taxes on its imported leaf tobaccos. As ruled by the Supreme Court in the aforecited cases, stemmed-leaf tobacco is classified as 'partially manufactured tobacco' and in order to be exempt from payment of excise taxes, the sale of stemmed-leaf tobacco is "from one L-7 directly to another L-7". In the case at bench, there is no showing that petitioner has been categorized as L-7 tobacco manufacturer. Neither is there a showing that the transferor

ohl

(281)

is an L-7 manufacturer. Petitioner therefore cannot claim exemption from payment of excise tax on its imported stemmed-leaf tobacco.

Judicial decisions of the Supreme Court applying and interpreting the law shall form part of the legal system of the Philippines *(Article 8, New Civil Code)*. Equally settled it the rule that only decisions of the Supreme Court are authoritative and precedent setting. Those of the inferior courts and the appellate courts are merely persuasive. It bears stressing that the Supreme Court ruling in the aforesaid cases have not been superseded nor modified. Indeed, it is the duty of the judges to apply the law as interpreted by the Supreme Court *(Secretary of Justice vs. Catolico, 68 SCRA 62; Albert vs. CFI, 23 SCRA 968)*.

R.A. No. 698 Cannot Be Used In Defining Stemmed-Leaf Tobacco

Petitioner's invocation of *R.A. No. 698, as amended by R.A. No. 1194*, which defined processed tobacco as "leaf tobacco, which is either blended, cased, flavored, ready cut, or cut-fillers ready for manufacturing purposes, but shall not include tobacco leaf, only the stem of which is removed", as to exclude imported stemmed-leaf tobacco from the coverage of *Section 144 of the NIRC of 1997, as amended*, is untenable.

R.A. No. 698, entitled "An Act to Limit The Importation of Foreign Leaf Tobacco", and its amendatory law, *R.A. No. 1194*, entitled "An Act To Amend Republic Act Numbered Six Hundred Ninety-Eight, Entitled 'An Act To Limit The Importation of Foreign Leaf Tobacco'," which took effect on May 1952 and October 1954, respectively, provided for the limitations on the importation of foreign leaf tobaccos, and not on the imposition of excise tax. Whereas, *Section 1 of Revenue Regulations No. V-39* specifically states that it was promulgated "relative to the enforcement of the provisions of Title IV of the National Internal Revenue Code in so far as they affect the manufacture or importation of, and the collection and payment of the specific tax on, manufactured tobacco or products of tobacco". While *Section 1 of Revenue Regulations No. 17-67* provides that it was promulgated relative to the enforcement of the provisions of *Act No. 2613* 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. Hence, based on the foregoing, it is clear that *R.A. No. 698, as amended by R.A. No.*

286

1194, cannot be invoked in defining partially prepared or partially manufactured tobacco.

Revenue Regulations Nos. 17-67 and V-39 Are Not Administrative Legislations In Prohibited Sense

Petitioner's contention that *Revenue Regulations No. 17-67* is an administrative legislation in a prohibited sense is devoid of merit. This issue has already been settled by the Supreme Court in the case of *Compania General de Tabacos de Filipinas vs. Court of Appeals, 426 SCRA 210*, which was reiterated in the subsequent case of *Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc., 469 SCRA 346.*

In the case of *Compania General de Tabacos de Filipinas vs. Court of Appeals (supra)*, the Supreme Court held:

> "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 (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

287

> Nos. V-39 and 17-67 clearly shows that said regulations did not modify or deviate from the text of Sections 137 (now 140) and 141 (now 144) 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."

Pursuant to the aforecited decisions of the Supreme Court, *Revenue Regulations Nos. 17-67* and *V-39* are not administrative legislations in prohibited sense, but only clarified and implemented *Sections 140 and 144 of the NIRC of 1997, as amended.*

R.A. No. 9334 Does Not Apply To The Instant Case, But The Provisions Of The NIRC of 1997, As Amended And Its Implementing Regulations

Petitioner's reliance on *R.A. No. 9334,* otherwise known as "An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as Amended", is misplaced. First, *R.A. No. 9334* took effect only on January 1, 2005. In the case at bar, the deficiency excise tax assessment against the petitioner is for taxable year 2001. Thus, the applicable provisions are *Sections 140 and 144 of the NIRC of 1997, as amended,*

288

and its implementing revenue regulations, not *R.A. No. 9334*. Basic is the rule that laws shall have no retroactive effect, unless the contrary is provided *(Article 4 of the New Civil Code)*. *Nova constitutio futuris formam imponere debet non praeteritis.* A new state of the law ought to affect the future, not the past. Any doubt must generally be resolved against the retroactive operation of laws, whether these are original enactments, amendments or repeals *(Mighty Corporation, et al. vs. E. & J. Gallo Winery, et al., 434 SCRA 491)*.

Further, *Section 4 of R.A. No. 9334* provides:

> "SEC. 4. Section 144 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:
>
> SEC. 144. Tobacco Products. – There shall be collected a tax of One peso (P1.00) on each kilogram of the following products of tobacco:
>
> xxx xxx.
>
> (c) xxx xxx.
>
> Stemmed leaf tobacco, tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened, xxx shall be transferred, disposed of, or otherwise sold without any prepayment of the excise tax herein provided for, if the same are to be exported or to be used in the manufacture of

ell

289

> cigars, cigarettes, or other tobacco products on which the excise tax will eventually be paid on the finished product, under such conditions as may be prescribed in the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

It is clear from the aforequoted provision that stemmed-leaf tobacco prepared or partially prepared may be exempt from payment of excise tax under such conditions as may be prescribed in the rules and regulations promulgated by the Secretary of Finance. As clearly worded, the exemption from payment of excise tax granted by *R.A. No. 9334* is not automatic, but subject to certain conditions. There is no showing that petitioner has complied with the prescribed conditions. It is a doctrinal rule in taxation that laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power *(Lung Center of the Philippines vs. Quezon City, 433 SCRA 133).*

Second Issue

The Formal Letter of Demand and BIR Decision Complied With Section 228 of the NIRC of 1997, As Amended, And Revenue Regulations No. 12-99

We rule for the respondent.

290

Section 228 of the NIRC of 1997, as amended, provides:

"SEC. 228. Protesting of Assessment. – xxx

xxx xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void.

xxx xxx."

Corollary thereto, *Sections 3.1.4 and 3.1.6 of Section 3 of Revenue Regulations No. 12-99* provide:

"SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* –

xxx xxx

3.1.4 *Formal Letter of Demand and Assessment Notice.* – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the laws, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. xxx

xxx xxx.

3.1.6 *Administrative Decision on Disputed Assessment.* – The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall

291

> be void, in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his final decision."

Pursuant to the foregoing law and regulations, the formal letter of demand and assessment notice should state the facts, the laws, rules and regulations, or jurisprudence on which the assessment is based. Similarly, the decision must state the same requirements; in addition, it should state that it is the Commissioner's or his duly authorized representative's final decision.

Upon a careful review of the evidence on record, the Court finds that the Formal Letter of Demand dated February 2, 2004 sufficiently complied with the above prescribed requirements. The deficiency excise tax was assessed on the basis of *Section 144 of the NIRC of 1997, as amended.* Attached to said formal letter of demand is the details of discrepancy, which contains the factual and legal bases of the excise tax assessment. In the said details of discrepancy, it was fully explained that the deficiency excise tax was computed on the basis of petitioner's importation of 16,693 kilos of leaf tobacco, at the rate of P0.75 per kilo.

Likewise, the BIR Decision dated September 23, 2005 laid down the factual basis of the deficiency excise tax assessment, discussed petitioner's contention and provided for a ruling, citing the applicable laws and jurisprudence. Lastly, it clearly stated that it constitutes the final decision of the OIC Commissioner of Internal Revenue.

Accordingly, the Formal Letter of Demand dated February 2, 2004 and Decision dated September 23, 2005 sufficiently met the prescribed requirements of *Sections 228 of the NIRC of 1997, as amended*, in relation to *Revenue Regulations No. 12-99.*

For all the foregoing, the Court finds the Decision dated September 23, 2005 of the OIC Commissioner of Internal Revenue is not flawed by reversible error, but on the contrary, conforms to the evidence on record and applicable laws and jurisprudence. We, therefore, affirm the same.

However, considering that there was no compromise agreement between the parties, the compromise penalty of P25,000.00 imposed by respondent is hereby deleted.

On the other hand, pursuant to *Section 249(A) of the same Code*, the twenty percent (20%) deficiency interest originally computed by respondent shall be adjusted to cover the period until November 18, 2005 (30th day from petitioner's receipt of respondent's decision on the protest). Accordingly, petitioner is liable to pay the respondent the

(293)

amount of P22,239,346.14 representing deficiency excise taxes for taxable year 2001 and deficiency interest, computed as follows:

Taxable base per Return		-
Add:	Adjustments	
	Non-remittance of excise tax per Section 114 of NIRC on importation of Leaf Tobaccos (in kilos)	16,693,292
Tax Rate per Kilo		0.75
Total		P12,519,969.00
Add:	20% Interest (Jan. 1, 2002 – Nov. 18, 2005)	9,719,377.14
Total Amount Due		P22,239,346.14

In addition, petitioner is liable to pay 20% delinquency interest per annum on the total amount due of P22,239,346.14 computed from November 19, 2005 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

WHEREFORE, premises considered, the present Petition For Review is hereby **DISMISSED** for lack of merit. With the above modifications, the Decision dated September 23, 2005 of the OIC Commissioner of Internal Revenue is hereby **AFFIRMED** in all other respects. Accordingly, petitioner is ordered to pay the respondent the total amount of Twenty Two Million Two Hundred Thirty Nine Thousand Three Hundred Forty Six and 14/100 Pesos (P22,239,346.14), representing the total deficiency excise taxes for taxable year 2001 and deficiency interest, plus twenty percent (20%) delinquency interest thereon per annum, computed from November 19, 2005 until fully paid, pursuant to *Section 249 (C)(3) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

295

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice