REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NOS. 5248, 5252 AND 5260

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JUN 26 1998

x - x

DECISION

Petitioner in these three cases poses a single issue before Us: Whether or not petitioner is entitled to the refund of the specific taxes it paid for the period April to June, 1993 on its importations of stemmed leaf tobacco in the total amount of ₱734,378.25.

Petitioner 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.

Reproduced hereunder are excerpts of pertinent facts of each case:

C.T.A. CASE NO. 5248

During the month of April, 1993, respondent collected from petitioner the total amount of ₱208,494.00, representing the specific taxes due on its bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers, broken down as follows:

Date	Amount	ATAPET Serial Number	Amount
04/16/93	13,880 kgs.	002784	₱/10,410.00
04/16/93	39,600 kgs.	002788	29,700.00
04/16/93	79,200 kgs.	002786	59,400.00

04/28/93	30,391 kgs.	004555	22,793.25
04/28/93	55,521 kgs.	004557	41,640.75
04/28/93	59,400 kgs.	004559	44,550.00
Total			P/208,494.00

The said amount was paid by petitioner under protest.

On January 31, 1995, petitioner filed with respondent a claim for refund of specific taxes it paid on importations of stemmed-leaf tobacco covering the period March 5, 1993 to September 16, 1994 (Exh. D), which included the amount of P208,494.00, claimed in the herein petition.

The same was not acted upon by the respondent, hence, on April 17, 1995, petitioner filed with this Court the instant petition for review.

C.T.A. CASE NO. 5252

During the month of May, 1993, respondent collected from petitioner the total amount of P340,032.00 representing the specific taxes due on its bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers, broken down as follows:

Date	Amount	ATAPET Serial Number	Amount
05/10/93	69,537 kgs.	004613	P 52,152.75
05/17/93	79,200 kgs.	004660	59,400.00
05/19/93	97,161 kgs.	004676	33,747.75
05/19/93	79,200 kgs.	004678	59,400.00
05/26/93	83,281 kgs.	004712	62,460.75
Total			P340,032.00

The said amount was paid by petitioner under protest.

On January 31, 1995, petitioner filed with respondent a claim for refund of specific taxes it paid on importations of stemmed-leaf tobacco covering the period March 5, 1993 to September 16, 1994 (Exh. D), which included the amount of P340,032.00, claimed in the herein petition.

The same was not acted upon by the respondent, hence, on May 10, 1995, petitioner filed with this Court the instant petition for review.

C.T.A. CASE NO. 5260

During the month of June, 1993, respondent collected from petitioner the total amount of ₱185,852.25 representing the specific taxes due on its bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers, broken down as follows:

Date	Amount	ATAPET Serial Number	Amount
06/14/93	69,401 kgs.	005464	₱ 52,050.75
06/14/93	31,026 kgs.	005466	23,269.50
06/22/93	118,800 kgs.	005811	89,100.00
05/22/93	28,576 kgs.	005813	21,432.00
Total			₱185,852.25

Petitioner paid the said amounts under protest.

On January 31, 1995, petitioner filed with respondent a claim for refund of specific taxes it paid on importations of stemmed-leaf tobacco covering the period March 5, 1993 to September 16, 1994 (Exh. D), which included the amount of ₱185,852.25, claimed in the herein petition.

The same was not acted upon by the respondent, hence, on June 13, 1995, petitioner filed with this Court the instant petition for review.

Inasmuch as these three (3) cases raise the same and common question of law, they were consolidated in a confirming resolution, dated 01 September 1995.

As grounds for its appeal, petitioner avers that:

I. The collection under Section 141(b) of the Tax Code of the ₱0.75/kilo excise tax on sales of stemmed-leaf tobacco to be used in the manufacture of cigarettes, is erroneous and/or illegal because a) Section 137 is the applicable provision, b) the administrative practice of BIR since 1939 was not to subject stemmed leaf tobacco to excise tax, c) payment of specific tax on stemmed leaf tobacco amounts to double taxation because excise tax is again paid on the finished product, which is, cigarettes, d) Section 141 is a general provision of law and does not apply to stemmed leaf tobacco, e) sale of partially manufactured tobacco is exempt from specific tax under Revenue Regulations. No. 17-67, f) BIR ruling supports La Suerte's position, g) authority on tobacco law states sale from one manufacturer to another exempt from tax, and h) even if La Suerte is originally liable, it can no longer be held liable for specific tax at the present time.

II. Assuming, arguendo, that specific tax was due, the amount collected was erroneous.

On the other hand, respondent did not file an answer to the said petitions for review, thus, upon motion of petitioner, respondent was declared in default in a resolution, dated September 1, 1995, and petitioner was allowed to present its evidence <u>ex parte</u>.

The resolution of these consolidated cases was "held in abeyance" pending "final adjudication" of a similar issue elevated to higher courts. With the recent decision of the Court of Appeals in the appealed case of Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, CA-G.R. SP Nos. 38219 and 40313, promulgated on January 30, 1998 which definitively ruled on said pending issue(s), We have now decided to resolve the matter at hand. The issues in these cases may be simplified into one and, that is, whether or not petitioner is entitled to the refund of the specific taxes it paid, for the period April to June, 1993, on its importations of stemmed leaf tobacco in the total amount of P734,378.25.

The pertinent provisions of law cited by the petitioner for the proper adjudication of the instant cases, are Sections 137 and 141 (b) both of the Tax Code. The same are quoted hereunder for easy reference, to wit:

> "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 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 maybe 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." (Underscoring supplied)

> "**Section 141.** ***Tobacco Products.*** - There shall be collected a tax of seventy-five centavos on each kilogram of the following products of tobacco:
>
> (a) x x x
>
> (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 specific tax herein provided for under such conditions as may be prescribed in the 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.
>
> xxx xxx xxx

As earlier stated, the issue at bar has been extensively discussed and settled by the Court of Appeals in the case of **Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, CA-G.R. SP Nos. 38219 and 40313, dated January 30, 1998**, thus, in consideration of this current decision, We rule in favor of the petitioner. In said case, the Court of Appeals said:

> "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.

It is an elementary principle of Administrative Law that in interpreting or implementing a provision of law, a government agency cannot go beyond the terms and provisions of the basic law. Much less can it go against the law itself. Administrative rules and regulations issued by a particular department or agency must be in harmony with the provision of law and should be for the sole purpose of carrying into effect the statutory provisions which it is construing or implementing. An administrative agency cannot extend, diminish, or otherwise amend the general provision of law (Fernando Juan vs. Musngi, 155 SCRA 133 [1987]; U.S. vs. Tupasi Molina, 29 Phil. 119; Director of Forestry vs. Munoz, 23 SCRA 1183 [1968]; Gonzalo Sy vs. 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]).

xxx xxx xxx

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 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 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 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 nor 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 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."

The Court, however, finds that the amounts of P10,410.00 (ATAPET Serial No. 002784, 4/16/93 Exh. A), P29,700.00 (ATAPET Serial No. 002788, 4/16/93 Exh. A-1), and P59,400.00 (ATAPET Serial No. 002786, 4/16/93 Exh. A-2), must be denied on grounds of prescription. Stated otherwise, petitioner filed the said claim for refund with this Court beyond the two year period required by Section 230 (now Sec. 229) of the Tax Code. The said amounts were paid on April 16, 1993, whereas, the petition for review was filed on April 17, 1995.

IN THE LIGHT OF ALL THE FOREGOING, respondent is hereby **ORDERED** to **REFUND** to herein petitioner the total amount of P634,868.25, representing its erroneously paid specific taxes for the period April to June, 1993, without pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals