REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-Versus-

FORTUNE TOBACCO CORPORATION,
Respondent.

CTA E.B. No. 228
(CTA CASE No. 7015)

Members:

Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, JJ.

Promulgated:
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D E C I S I O N

CASTAÑEDA, JR., J.:

STATEMENT OF THE CASE

Before this Court is an appeal from the Decision and the Resolution of the Court of Tax Appeals First Division (Court in Division) dated May 26, 2006 and November 15, 2006, respectively, in CTA CASE No. 7015 entitled *"Fortune Tobacco Corporation vs. Commissioner of Internal Revenue,"* ordering herein petitioner (then respondent) to refund to respondent (then petitioner) the amount of P490,991,365.00 representing overpayment of excise taxes for the period January 1, 2003 to May 31, 2004 and the assailed resolution denied for lack of merit petitioner's motion for reconsideration.

The dispositive portion of the assailed Decision reads, as follows:

> **IN VIEW OF THE FOREGOING**, petitioner's claim for refund is hereby **GRANTED**. Accordingly, the Court **ORDERS** respondent **TO REFUND** petitioner the amount of FOUR HUNDRED NINETY MILLION NINE HUNDRED NINETY ONE THOUSAND THREE HUNDRED SIXTY FIVE PESOS (P490,991,365.00), representing petitioner's overpayment of excise taxes for the period January 1, 2003 to May 31, 2004.
>
> **SO ORDERED.**

STATEMENT OF THE FACTS

As found by the Court in Division, the following are the facts of this case:

> Petitioner is a domestic corporation duly organized and existing under and by virtue of the Republic of the Philippines, with principal address at Fortune Avenue, Parang, Marikina City.
>
> Respondent is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of the said office, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, with office address at the Bureau of Internal Revenue ("BIR"), BIR Road, Diliman, Quezon City.
>
> Petitioner is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to Republic Act (R.A.) No. 8240, to wit:

Brand	Tax Rate
Champion M 100	P1.00
Salem M 100	P1.00
Salem M King	P1.00
Camel F King	P1.00
Camel Lights Box 20's	P1.00
Camel Filters Box 20's	P1.00
Winston F King	P5.00
Winston Lights	P5.00

> Immediately prior to January 1, 1997, the above-enumerated cigarette brands were subject to *ad valorem* tax pursuant to then Section 142 of the Tax Code of 1977, as amended.
>
> On January 1, 1997, however, R.A. No. 8240 took effect amending Section 142 of the 1977, as amended, (renumbered as Section 145 in the National Internal

Revenue Code of 1997) subjecting the above cigarettes brands to specific tax. We quote:

SEC. 4. Section 142 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 142. *Cigars and cigarettes.* -- (a) *Cigars.* – There shall be levied, assessed and collected on cigars a tax of One peso (P1.00) per cigar.

(b) *Cigarettes packed by hand.* - There shall be levied, assessed and collected on cigarettes packed by hand a tax of Forty centavos (0.40) per pack.

(c) *Cigarettes packed by machine.* There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (P10.00) per pack, the tax shall be Twelve pesos (P12.00) per pack;

(2) If the net retail price (excluding the excise tax and the value-added tax) exceeds Six pesos and fifty centavos (P6.50) but does not exceed Ten pesos (P10.00) per pack, the tax shall be Eight pesos (P8.00) per pack;

(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (P5.00) but does not exceed Six pesos and fifty centavos (P6.50) per pack, the tax shall be Five pesos (P5.00) per pack;

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (P5.00) per pack, the tax shall be One peso (P1.00) per pack.

Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of this Act shall be taxed under the highest classification of any variant of that brand.

The specific tax from any brand of cigarettes within the next three (3) years of effectivity of this Act shall not be lower than the tax which is due from each brand on October 1, 1996: Provided, however, That in cases where the specific tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent(70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

<u>The rates of specific tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.</u>

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New brands shall be classified according to their current net retail price.

For the above purpose, net retail price shall mean the price at which the cigarette is sold on retail in 20 major supermarkets in Metro Manila(for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed only outside Metro Manila, the net retail price shall mean the price at which the cigarette is sold in five major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex 'D' of this Act, shall remain in force until revised by Congress.

Variant of a brand shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

xxx xxx xxx"

On January 1, 2000, then Secretary of Finance Edgardo B. Espiritu, upon the recommendation of then Commissioner of Internal Revenue Beethoven L. Rualo, issued Revenue Regulations No, 17-99 to implement the 12% increase of the excise tax on distilled spirits, wines, fermented liquors and cigars and cigarettes packed by machine by January 1, 2000.It reads:

SECTION 1. New Rates of Specific Tax. The specific tax rates imposed under the following sections are hereby increased by twelve percent (12%) and the new rates to be levied, assessed, and collected are as follows:

SECTION	**DESCRIPTION OF ARTICLES**	**PRESENT SPECIFIC TAX RATE PRIOR TO 01-01-2000**	**NEW SPECIFIC TAX RATE EFFECTIVE 01-01-2000**
145	(A)	P1.00/cigar	P1.12/cigar
	(B) Cigarettes packed by machines		
	(1) Net Retail Price (excluding VAT & Excise) Exceeds P1.00 per pack	P12.00/pack	P13.44/pack
	(2) Net Retail Price (excluding VAT & Excise) is P6.51 up to P10.00/pack	P8.00/pack	P8.96/pack
	(3) Net Retail Price (excluding VAT & Excise) is P5.00 to P6.50 per pack	P5.00/pack	P5.60/pack
	(4) Net Retail Price (excluding VAT & Excise) is below P5.00/pack	P1.00/pack	P1.12/pack

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Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.

In view of the said revenue regulations, the petitioner paid advance excise tax deposits in the total amount of P11,150,000,000.00 for the period covering January 1 to December 31, 2003, as indicated in the Schedule I below:

SCHEDULE I
Excise Tax Deposit Payments

Period Covered
[January 1-31 December 2003]

January	P1,100,000,000.00
February	750,000,000.00
March	1,050,000,000.00
April	900,000,000.00
May	975,000,000.00
June	975,000,000.00
July	900,000,000.00
August	750,000,000.00
September	775,000,000.00
October	925,000,000.00
November	1,050,000,000.00
December	1,000,000,000.00
TOTAL AMOUNT OF DEPOSITS-	P11,150,000,000.00

For the period covering January 1 to May 31, 2004, petitioner likewise paid advance excise tax deposits on all its brands manufactured and removed in the total amount of P4,900,000,000.00:

SCHEDULE II
Excise Tax Deposit Payments

Period Covered
January 1 to May 31, 2004

January	P1,000,000,000.00
February	975,000,000.00
March	1,100,000,000.00
April	850,000,000.00
May	975,000,000.00
TOTAL AMOUNT OF DEPOSITS-	P4,900,000,000.00

On June 14, 2004, petitioner filed with the respondent, through the Large Taxpayers Service of the BIR, a claim for tax credit or refund under Section 229 of the Tax Code for erroneously and/or illegally collected excise taxes in the amount of P490,991,365.00 for the period January 1, 2003 to May 31, 2004, computed as follows:

Excise Tax Overpayment
Period Covered
January 1 – December 31, 2003

BRAND	Volume of Removals (in cases)	Actual Specific Tax paid per case	Amount of Specific Tax Paid	Basic Tax Rate per case	Specific Tax Due per case	Difference Overpayment
P1.00 to P1.12						
Champion M.100	41,126	1,650.00	P67,857,900.00	560.00	P23,030,560.00	P44,827,340.00
Camel F. King	75,568	2,750.00	207,812,000.00	560.00	42,318,080.00	165,493,920.00
Sub-total	116,694		275,669,900.00		65,348,640.00	210,321,260.00
5.00 to 5.60						
Winston F. King	1,006,438	2,925.00	2,943,831,150.00	2,800.00	2,818,026,400.00	125,804,750.00
Winston Lights	54,879	2,925.00	160,521,075.00	2,800.00	153,661,200.00	6,859,875.00
Sub-Total	1,061,317		3,104,352,225.00		2,971,687,600.00	132,664,625.00
Grand Total	**1,178,011**		**P3,380,022,125.00**		**P3,037,036,240.00**	**P342,985,885.00**

Excise Tax Overpayment
Period Covered
January 1- May 31, 2004

BRAND	Volume of Removals (in cases)	Actual Specific Tax paid per case	Amount of Specific Tax Paid	Basic Tax Rate per case	Specific Tax Due per case	Difference Overpayment
P1.00 to P1.12						
Champion M.100	14,811	1,650.00	P24,438,150.00	560.00	P 8,294,160.00	P16,143,990.00
Camel F. King	35,471	2,750.00	97,545,250.00	560.00	19,863,760.00	77,681,490.00
Sub-total	50,282		121,983,400.00		28,157,920.00	93,825,480.00
5.00 to 5.60						
Winston F. King	409,101	2,925.00	1,196,620,425.00	2,800.00	1,145,482,800.00	51,137,625.00
Winston Lights	24,339	2,925.00	71,191,575.00	2,800.00	68,149,200.00	3,042,375.00
Sub-Total	433,440		1,267,812,000.00		1,213,632,000.00	54,180,000.00
Grand Total	**483,722**		**P1,389,795,400.00**		**P1,241,789,920.00**	**P148,005,480.00**

Without waiting for the respondent's action on its administrative claim for refund/tax credit, petitioner filed the present action a few days after on June 29, 2004.

While the case is pending, the parties agreed for the BIR to verify the amount paid by petitioner and to acknowledge receipt of the excise tax payments covering the period claim for refund. Consequently, the BIR's Large Taxpayers Document and Quality Assurance Division issued a Certification dated 26 January 2005 signed by its Chief, Ms. Beatriz S. Pelino, showing that, for the period January 1, 2003 to May 31, 2004, petitioner paid the excise taxes on its cigarette products withdrawn from its plants in the total amount of Sixteen Billion Seventy Three Million Eight Hundred Seventy Four Thousand Five Pesos and Seventy Three Centavos (PhP16,073,874,005.73).

In the Decision dated May 26, 2006, the Court in Division granted respondent's (then petitioner) claim for refund.

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In its Resolution dated November 15, 2006 the Court in division denied petitioner's (then respondent) "Motion for Reconsideration" filed on June 15, 2006.

Hence, this case.

STATEMENT OF THE ISSUE

WHETHER OR NOT RESPONDENT IS ENTITLED TO A TAX REFUND/CREDIT IN THE AMOUNT OF P490,991,365.00 ALLEGEDLY REPRESENTING OVERPAID EXCISE TAX FOR THE PERIOD 1 JANUARY 2003 TO 31 MAY 2004.

GROUND FOR PETITION

THE FIRST DIVISION ERRED IN DECLARING THAT THE LAST PARAGRAPH OF SECTION 1 OF REVENUE REGULATIONS No. 17-99 IS AN INVALID REGULATION.

PETITIONER'S ARGUMENTS/DISCUSSION

Petitioner avers that the Court in division's literal interpretation of paragraph 5 of Section 145 of the NIRC of 1997 subverts the legislative purpose for the enactment of Republic Act (R.A.) No. 8240 which is to increase the collection of taxes.

Petitioner also avers that at the very least, paragraph 5 of Section 145 of the Tax Code of 1997 admits of several interpretations; hence, the one that will avoid inconvenience and absurdity should be adopted.

Petitioner further avers that tax refund is in the nature of a tax exemption; hence, it must be strictly construed against the taxpayer like herein respondent.

Petitioner argues that the basis why respondent's obligation to pay excise tax should have been increased by 12%, in this manner:

> In the case at bar, the particular complexity is that before the shift to specific tax, existing brands in October 1996 were subject to *ad valorem tax.* A three-year period was placed in the law to ensure that these brands pay the ad valorem taxes they used to pay as a "minimum". A 12% increase was made effective beginning January 1, 2000. Such 12% increase is based on the taxes applicable to the brands at the end of the three-year period, i.e., either based on the specific tax of the new law or the ad valorem tax they used to pay, whichever is higher. While there are admittedly several interpretations that can be made, leading to a determination that the said provision of law is ambiguous, the interpretation that the 12% increase is based on the taxes applicable to the brands at the end of the three-year period is the most logical and reasonable, being in consonance with the clear intent of Republic Act No. 8240 which is to raise revenue.

Petitioner alleges that the Congressional intent in providing the three-year transitory period is merely to cushion the impact of the increase in excise tax rates. It was never meant to give respondent, or any player for that matter, the tax planning opportunity to lower the excise taxes they had to pay beginning January 1, 2001.

Petitioner also avers that the respondents should not be allowed to profit from the mistakes of the Government.

According to petitioner, the interpretation of the Bureau of Internal Revenue (BIR) of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain.

Moreover, petitioner submits that the BIR, as the administrative agency responsible for revenue collection and enforcement, is duty-bound to raise revenues through proper collection of taxes and, as such, it is given a special mandate to issue the necessary regulations in implementing the provisions of the NIRC of 1997.

RESPONDENT'S COMMENT

Respondent maintains its legal position that the last paragraph of Section 1, Revenue Regulations 17-99 should be considered usurpation by the BIR and the Secretary of Finance of the legislative power of Congress and should be struck down as "unauthorized legislative administration."

RELIEF

Petitioner respectfully prayed to this Court to reconsider and set aside the Court in division's Resolution promulgated on November 15, 2006 and to render another one denying respondent's claim for refund.

THIS COURT'S RULING

We deny the petition.

A careful reading of the issues and arguments raised by petitioner reveal that these are mere reiterations of what have been considered and passed upon by the Court in division in the assailed decision and resolution. Be that it may, pertinent issues need to be emphasized.

The main issue in this case is whether the last paragraph of Section 1 of RR No. 17-99 unduly limits paragraph 5 of Section 145 of the Tax Code of 1997 and thereby tantamount to unauthorized administrative legislation. The answer is in the affirmative.

Paragraph 5 of Section 145 of the Tax Code of 1997 reads, as follows:

> SEC.145. *Cigars and cigarettes.* –
>
> xxx xxx xxx
>
> The rates of specific tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.
>
> xxx xxx xxx

Implementing the above-mentioned provision is Section 1 of RR No. 17-99 which provides that:

> SECTION 1. New Rates of Specific Tax. The specific tax rates imposed under the following sections are hereby increased by twelve percent (12%) and the new rates to be levied, assessed, and collected are as follows:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO 01-01-2000	NEW SPECIFIC TAX RATE EFFECTIVE 01-01-2000
145	(A)	P1.00/cigar	P1.12/cigar
	(B) Cigarettes packed by machines		
	(1) Net Retail Price (excluding VAT & Excise) Exceeds P1.00 per pack	P12.00/pack	P13.44/pack
	(2) Net Retail Price (excluding VAT & Excise) is P6.51 up to P10.00/pack	P8.00/pack	P8.96/pack
	(3) Net Retail Price (excluding VAT & Excise) is P5.00 to P6.50 per pack	P5.00/pack	P5.60/pack
	(4) Net Retail Price (excluding VAT & Excise) is below P5.00/pack	P1.00/pack	P1.12/pack

> xxx xxx xxx
>
> Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000. *(Underline Supplied)*

Comparing the law and the implementing regulation above-quoted reveal that the latter unduly limits the law it seeks to implement because the last paragraph provides for a limitation not found in the law. It is clear in paragraph 5, Section 145 of the Tax Code of 1997 that on January 1, 2000, the rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) thereof shall be increased by 12%. It does not say that the rates "should not be lower than the excise tax that is actually being paid prior to January 1, 2000."

In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because said rule or regulation cannot go beyond the terms and provisions of the latter.[1] Hence, in this case, the law should prevail.

"It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application (*Cebu Portland Cement Co. vs. Municipality of Naga,* 24 SCRA 708 [1968])."[2]

Petitioner's argument that since tax refund is in the nature of a tax exemption; hence, it must be strictly **construed** against the taxpayer like herein respondent is inapplicable in this case. Paragraph 5 of Section 145 of the Tax Code of 1997 is explicit and unambiguous. Hence, construction is not allowed.

Based on the foregoing discussions, it is already settled that paragraph 5 of Section 145 of the Tax Code of 1997 is clear. Hence, petitioner's argument that the literal interpretation of paragraph 5 of Section 145 of the Tax Code of 1997 subverts the legislative purpose for the enactment of RA No. 8240 which is to increase the collection of taxes is bereft of merit.

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[1] *People vs. Lim*, No. L-14432, July 26, 1960 (108 Phil 109).

[2] *Rizal Commercial Banking Corp. vs. Intermediate Appellate Court, et al.*, GR No. 74851, December 9, 1999 (320 SCRA 279).

The ruling that the last paragraph of Section 1 of Revenue Regulations (RR) No. 17-99 is an unauthorized administrative legislation and, therefore, invalid was already settled in the March 5, 2005 Resolution[3] of the Court of Appeals affirming its September 28, 2004 Decision[4] in the consolidated petitions for review both entitled "*Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*" and docketed separately as CA G.R. SP NO. 80675 and CA G.R. SP NO. 83165.

In CA G.R. SP NO. 80675, the Court of Appeals affirmed the Court of Tax Appeals' Resolutions dated November 4, 2003 and March 17, 2004 in C.T.A. CASE Nos. 6365 and 6383[5].

In CA G.R. SP NO.83165, the Court of Appeals affirmed the December 4, 2003 Decision and the March 17, 2004 Resolution of the Court of Tax Appeals in C.T.A. CASE No. 6612[6].

We agree with the Court in division's ruling that "Unless the Supreme Court rules otherwise, the Court has no reason to depart from the pronouncements made and judgments rendered in said C.T.A. cases, to quote:

> At first glance, the said regulation appears to be simply implementing the provisions of Section 142, R.A. 8240, now incorporated in the Tax Code of 1997 as Section 145, the pertinent provisions of which state:
>
> xxx xxxx xxx
>
> "The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996: Provided, however, That in cases where the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of

[3] Original Docket, Pages 506-511.
[4] *ibid.*, Pages 470-504.
[5] Decisions in C.T.A. Case Nos. 6365 and 6383 were separately promulgated on October 21, 2002.
[6] Decision in C.T.A. Case No. 6612 was promulgated on December 4, 2003.

more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

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"The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.

"The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D", shall remain in force until revised by Congress."

However, a more thorough analysis of the same proves that the question regulation does not merely implement but actually results to an unauthorized "administrative legislation". Clearly, the aforequoted provisions merely mandate that the three-year transition period within which it is to be operative, starting from January 1, 1997, the date when R.A. 8240 took effect, expired on December 31, 1999. <u>During the said three-year period the tax shall not be lower than the tax imposed for each brand on October 1, 1996. Thereafter, effective January 1, 2000, a 12% increase would take effect using as tax base the figures provided in Section 145, subsection (C), paragraphs (1), (2), (3) and (4) of R.A. 8424, otherwise known as the Tax Code of 1997.</u>

While we may agree with the respondent that administrative agencies in the exercise of their rule-making power can formulate rules and regulations in order to achieve the declared policies as laid down by Congress, the same does not hold true in the present case. The BIR, in issuing Revenue Regulations No. 17-99, went beyond the legal parameters that defined the boundaries of its authority.

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Adopting the argument of the respondent and declaring the questioned regulation as valid would put to naught the provisions of Section 145 of the Tax Code of 1997, particularly the directive that, " The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof shall be increased by twelve percent (12%) on January 1, 2000." This is in lieu of the tax rate being imposed prior to January 1, 2000." It is worthy to emphasize that with respect to the initial increase of excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240, Section 145 clearly provides that the excise tax **shall not be lower than the tax, which is due from each brand on October 1, 1996.** <u>Such qualification is wanting as to the increase by 12% on January 1, 2000 in the rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) of the same section. Thus, the inevitable conclusion would be to impose the new rates of excise tax under paragraphs (1) to (4) which is increased by 12%, even if it may be lower than the amount of tax being paid prior to January 1, 2000.</u> (Underscoring supplied)."

It is noteworthy to quote a portion of the CA Decision, *supra.*, which affirmed the CTA cases mentioned above, as follows:

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At this juncture, We reiterate the oft-repeated rule that administrative regulations must be in harmony with the provisions of the law. In case of discrepancy between the basic law which is Republic Act 8240 and Revenue Regulation 17-99, an implementing rule or regulation, the former prevails.

Administrative agencies may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. They are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the same.

They should not, by construction, revise even the most arbitrary and unfair action of the legislature, nor rewrite the law to conform with what they think should be the law. And where a provision of law limits its application to certain transactions, it cannot be extended to other transactions by interpretation. To do any of such things would be to do violence to the language of the law and to invade the legislative sphere. ***(Rolando N. Canet vs. Mayor Julieta A. Decena, G.R. No. 155344, January 20, 2004)***.

In the case at bar, Revenue Regulation No. 17-99 inserted into Republic Act 8240 a provision which is not there- either in letter or in spirit. It created a clear inconsistency with the provision of Section 145 of the 1997 Tax Reform Act, as the said law did not contemplate the increase in tax rate as understood by the petitioner. Being tantamount to an act of administrative legislation, We agree with the CTA's conclusion that the assailed provision of Revenue Regulation 17-99, ought to be nullified.

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Based on the above discussions, it is already settled that there is unauthorized administrative legislation in the last paragraph of Section 1 of RR No. 17-99, and having no dispute as to the assessment, We agree that respondent is entitled to a tax refund/ credit in the amount of P490,991,365.00 allegedly representing overpaid excise tax for the period 1 January 2003 to 31 May 2004. Having ruled on the main issue, it is, therefore, unnecessary to discuss the other arguments advanced by petitioner.

WHEREFORE, premises considered, the petition for review is hereby **DENIED** for lack of merit. Accordingly, We **AFFIRM** the Decision and the

Resolution of the First Division of this Court dated May 26, 2006 and November 15, 2006, respectively.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

We concur:

(With dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

FORTUNE TOBACCO CORPORATION,
Respondent.

CTA EB No. 228
(CTA Case No. 7015)

Members:

ACOSTA, ***Chairman,***
BAUTISTA, and
CASANOVA, ***JJ.***

Promulgated:
JUL 1 2 2007

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DISSENTING OPINION

Long-settled is the principle that the Bureau of Internal Revenue, as an administrative agency responsible for revenue collection and enforcement, is obligated to carry out the congressional policy of regulating specified activities and increase revenues through proper collection of due taxes. This authority is specifically provided in **Section 244** in relation to **Section 4 of the National Internal Revenue Code of 1997** and **Section 10 of Republic Act No. 8240**, which state thus:

> "**Section 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. — The Secretary of Finance**, upon recommendation of the Commissioner, **shall promulgate all needful rules and regulations for the effective enforcement of the provision of this Code**."

> "**Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** — The power to interpret the provisions of this Code and other laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

Section 10 of said **Republic Act 8240** provides:

> "The Secretary of Finance shall, upon the recommendation of the Commissioner of the Internal Revenue, **promulgate the necessary rules and regulations for effective implementation of this Act**." (*Emphasis supplied*)

From the above, the general prohibition on non-delegation of legislative power allows certain exceptions one of which is the exercise by administrative agencies, such as the BIR, of it's administrative function to provide implementing rules and regulations. In the exercise of this rule-making power, the BIR can create rules and regulations to accomplish the declared policies laid down by Congress. Necessarily, it interprets the law to achieve these declared policies and the exercise of discretion is permitted, provided that what is being delegated is not the discretion as to what the law shall be, but only the discretion as to its execution.

Questioned in this Petition for Review is the First Division's finding that the BIR exceeded its authority in issuing Revenue Regulations No, 17-99 and that the same amounted to "unauthorized administrative legislation". As I have already stated in my previous dissent to the said Decision, I find the above conclusion erroneous.

The core of the controversy is the last paragraph of Section 1 of Revenue Regulations No. 17-99, which was issued to implement Section 145 of the National Internal Revenue Code (NIRC). The last paragraph of Section 1 of RR 17-99 provides:

> "Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors **shall not be lower than the excise tax that is actually being paid prior to January 1, 2000**."

On the other hand, the pertinent portions of Section 145 read:

> "SEC. 145. Cigars and Cigarettes.-
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> The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996: *Provided, however*, That in cases where the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.
>
> xxx xxx xxx
>
> The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000. xxx"

According to the majority opinion, said Revenue Regulations amounts to an "unauthorized administrative legislation," as there is nothing in Section 145 of the NIRC, which it purportedly implements, that authorizes or justifies the BIR to impose by way of regulations, the new specific tax rate (for any existing brand of cigars, cigarettes packed machine), to be "**not be lower than the existing tax** that is actually being paid prior to January 1, 2000". Thus, it cannot be accorded validity.

However, to go along with this line of reasoning would amount to turning a blind eye to the reason for the enactment of the law. Let me again explain.

I have already discussed, the reasons behind the grant of the rule-making power to administrative agencies are:

- It relieves the legislature of a great burden of work in respect to which it has no special competence, and thus, enables it more largely to direct its attention to matters of general import;
- It entrusts the drafting of detailed provisions, which are usually of a highly technical character to the agencies most familiar with the conditions to be met and which have the responsibility for their enforcement; and

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- It makes possible the prompt modification of a provision as soon as experience demonstrates that it is unsatisfactory. (*Administrative Law — A Text, pages 27–28, Neptali Gonzales*)

Prescinding from the above reasons, a reading said Revenue Regulations No. 17-99, particularly the last paragraph of Section 1, as well the Section 145 of the NIRC, the law it seeks to implement, should reveal that the said Revenue Regulations is within the prerogative of the BIR to issue. Administrative agencies, like the Bureau of Internal Revenue should not be constrained to simply repeat or reproduce the words of the statute. It should be given sufficient leeway to exercise discretion if, an efficient discharge of its assigned duties is to be expected. Further, if the Court is to construe this power as limited to reproducing the words in the statute it seeks to implement, it is worthless and meaningless.

The grant to the BIR of the authority to issue the necessary regulations in implementing the NIRC, particularly, Section 145 thereof, is undisputed. It can even be found in the Senate Deliberations of Bill No. 7198, which became R.A. 8240:

> "Senator Drilon: In this particular case, Mr. President, **the Congress would, in effect, be delegating to the Department of Finance the power to increase taxes**.
>
> Senator Enrile: **In a sense, yes**, Mr. President, but there is nothing that will prevent Congress from withdrawing that delegation if it wants to do this. **We thought that we have to entrust this function to the tax administrators so that they can plan and they can move on**." (*Interpellations-H. No. 7918, Records of the Senate, Vol. II, No. 33*) (*Emphasis supplied*)

And in this case, as herein petitioner correctly pointed out, the last paragraph of **Section 1 of Revenue Regulations No. 17-99** is in accordance with the legislative intent of **Republic Act No. 8240 and Section 145 of the NIRC**, which is to increase revenues by increasing the rates of excise tax on among others, cigar and cigarettes.

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I will now proceed to discuss the issue of correctness of the interpretation and the validity of the regulation.

The history of the last paragraph of Section 1 of Revenue Regulations No. 17-99 indicates that it traces its origin to Revenue Regulations No. 1-97 that implemented Republic Act No. 8240. Subsequently, R.A. No 8240 has been incorporated in Section 143 of the NIRC.

The legislative intent and purpose in enacting R.A. No. 8240 and said Section 143 may again be discovered from congressional records. In the Sponsorship Speech of Senator Juan Ponce Enrile (*Sponsorship Speech of Sen. Enrile, Records of the Senate, Volume II, No. 32, October 15, 1996*) on Senate Bill No. 7198 and his answers to the interpellations reveal that said bill was the most important part of the Comprehensive Tax Reform Program (CTRP) through which the government expects to raise as much as P6 Billion in additional revenue to finance its economic development requirements and progress annually:

> "The guiding principles of the excise tax reform that we are presenting, Mr. President, are the following:
>
> First, to evolve a tax structure which will promote fair competition among the players in the industries concerned and generate buoyant and stable revenues for government.
>
> Second, to ensure that the tax burden is equitably distributed not only amongst the industries affected but equally amongst the various markets that are going to be affected by this excise tax on distilled spirits, fermented liquor, cigars and cigarettes.
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> xxx xxx xxx
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> Third, to simplify the tax administration and compliance with the tax laws that we are about to unfold in order to minimize losses arising from inefficiencies and tax avoidance scheme, if not outright tax evasion."

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The evident legislative intent of the subject statutes is therefore to increase the rates of excise tax on, among others, cigars and cigarettes, in order to collect more revenues in the process. The Decision of the majority failed to consider the *raison d'être* of the law, when the interpretation of the provisions of R.A. No. 8240 and Section 145 of the NIRC was made literally.

In **Commissioner of Internal Revenue vs. S. C. Johnson and Sons, Inc. et al.**, *G.R. No. 127105, June 25, 1999*, the Supreme Court warned courts in resorting to literal interpretation of laws in this manner:

> "The above construction is based principally on syntax or sentence structure but fails to take into account the purpose animating the treaty provisions in point ...
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> xxx xxx xxx
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> In one case the Supreme Court pointed out that the laws are not just mere compositions, but have the ends to be achieved and that the general purpose is a more important aid to the meaning of the law than any rule which grammar may lay down. **It is the duty of the courts to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved, and should give the law a reasonable or liberal construction which will best effectuate its purpose** xxx." *(Emphasis Supplied)*

This obligation of Courts in interpreting the provisions of the said statutes, *i.e.*, "to look to the object to be accomplished, the evils to be remedied, or the purpose to be subserved" is undoubtedly more important than looking at rules of grammar to aid it in arriving at proper legal interpretations.

Literal construction is not favored, and the Supreme Court has admonished against a too literal reading of the law as it constricts rather than to fulfills its purpose and defeat the intention of its authors. "The intention is usually found not in the letter

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that killeth but in the spirit that vivifieth" ***(Paras vs. Comelec**, 76 SCAD 40, 264 SCRA 49).*

As earlier mentioned, the opinion that the new rates of excise taxes under paragraphs (1) to (4), which is to increase by 12%, must be imposed, even if it may be lower than the amount of tax being paid prior to January 1, 2000 would defeat the very purpose of the law. There will naturally be no increase in revenues, if no increase in the rates of excise tax on among others, cigar and cigarettes, is to be imposed.

In other words, if the conclusion reached by the majority is adopted, there would be an absurd situation where despite an intention to increase on the tax rates, there will be a sudden drop in collection.

To my mind petitioner's contention that the interpretation that the 12% increase is based on the taxes applicable to the brands at the end pf the three-year period is most logical and reasonable, is correct.

Moreover, adopting the argument of herein petitioner and declaring the questioned regulation as valid, would give meaning to the provisions of Section 145 of the Tax Code of 1997, particularly the directive in paragraph 5 which states that: "[T]he rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof shall be increased by twelve percent (12%) on January 1, 2000." And the preceding paragraph 3 that reads: "[T]he excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower that the tax, which is due from each brand of October 1, 1996: *Provided, however*, That in cases where the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be

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effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998."

At the expense of being repetitious, if the Court is to interpret Section 145 according to legislative intent, it should be read to mean that the increase in the rates under paragraph 5 should refer to the rates applicable at the end of the three year period, as provided in paragraph 3 thereof.

Parts of a statute should not be viewed in isolation. A cardinal rule of statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole, and not of an isolated part or a particular provision alone (**Aboitiz Shipping Corporation, et al., vs. City of Cebu, et al.**, *13 SCRA 449*).

When Congress deemed it proper to restructure the taxation of these so-called "sin products," it did so in order to generate more revenues and to deter the consumption of alcohol and cigarettes. Never did Congress contemplate to substantially decrease the tax to be collected for these products. In fact, Congress had the foresight to meet and consider the rising cost of goods and inflation by mandating a 12% increase on the specific tax rates, three years from the effectivity of R.A. 8240 or on January 1, 2000.

Further, as argued by petitioner, the three-year period granted by law was inserted merely to soften the impact of the excise tax rate increase and to set the date of the start of the 12% increase. It was not meant to lower the excise tax rates beginning January 1, 2000.

In sum, I would like to restate my opinion that Revenue Regulations No. 17-99 was issued in conformity with the law it meant to implement. To rule otherwise will go against evident legislative objective. Accordingly, I reiterate my vote to deny herein respondent's claim for refund and my opinion that the instant Petition for Review should be granted.

ERNESTO D. ACOSTA
Presiding Justice