REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPANIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

- versus -

C.T.A. CASE NO. 5204

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 15 1998

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DECISION

Before Us for consideration is a judicial claim for the refund of specific taxes in the amount of ₱1,051,050.00 which allegedly have been erroneously and illegally paid by the petitioner on the removal, transfer and sale of its stemmed leaf tobacco products to various cigar and cigarette manufacturers.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at Aringay, La Union. It is principally engaged in the export and domestic sale and redrying of tobacco leaves.

The instant case cropped up when in June of 1993, respondent imposed upon the petitioner the payment of specific tax on its stripped tobacco prior to any removal, sale or transfer thereof. Petitioner paid said tax under protest and continually did so up to August 22, 1994.

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On December 8, 1994, petitioner filed a written claim for refund dated December 6, 1994 for the aforementioned amount based on Sections 137 and 141 of the Tax Code and Section 20 of Revenue Regulations No. V-39 which exempt the transfer of stripped tobacco intended to be used in the manufacture of other tobacco products from prepayment of excise tax.

On February 22, 1995, petitioner instituted the presentation by way of a petition for review, in view of respondent's inaction on its claim and in order to interrupt the running of the two-year prescriptive period provided under Section 230 of the Tax Code.

At bar, petitioner reasserts its stance a quo. On the other hand, respondent interposes the following special and affirmative defenses, to wit:

SPECIAL AND AFFIRMATIVE DEFENSES

> 5. Petitioner's payment of the excise tax for the period from June 1993 to August 1994 as a result of the removal, transfer and sale of its stripped leaf tobacco products to various cigar and cigarette manufacturers is governed by Section 141 of the National Internal Revenue Code, which provided:
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> > "**SEC. 141**.-There shall be collected a tax of ₱0.75 on each kilogram on the following products of tobacco:

> (a) xxx xxx xxx
>
> (b) Tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened; and
>
> xxx xxx xxx

6. Definitely, stemmed-leaf tobacco is partially manufactured or prepared tobacco, as expressly provided for in Section 1 (1) of Revenue Regulations 17-67 which categorizes stemmed-leaf tobacco as partially manufactured tobacco. This is precisely why stemmed-leaf tobacco, having been expressly classified as partially manufactured or prepared tobacco and accordingly taxed under Section 141 (b) is not among the products of tobacco enumerated in Section 141 (c) of the Tax Code as subject to specific tax of ₱0.75 per Kilogram thereunder.

7. Section 137 of the Tax Code relied upon by the petitioner pertains to transfer of stemmed-leaf tobacco as raw materials from one manufacturer or (sic) tobacco products (L-7) to another. Section 20 of Revenue Regulations V-39 implementing this particular provision refers explicitly to transfer from L-7 directly to another but not from L-6 (stripper of thresher) to L-7;

8. In an action for refund, it is incumbent upon the taxpayer to show that the taxes paid were erroneously or illegally collected. Failure to meet said burden is fatal to the action for refund;

9. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Company versus Commissioner of Internal Revenue, 67 SCRA 351 (1975); Resins, Inc. versus Auditor General, 25 SCRA 754).

Both parties submitted their respective memorandum. Petitioner contends in its memorandum that based on the provisions of Sections 127 and 137 of the Tax Code and

Revenue Regulation No. 17-67, it is apparent that "(1) tobacco which are (sic) unfit for consumption and are used as raw materials and sold by one manufacturer directly to another may be transferred or removed without payment of specific tax; and, (2) that tobacco which are used in the manufacture of other tobacco products on which the excise (specific or ad valorem) tax will be paid on the finished product may likewise be transferred or removed without any initial payment of specific tax."

On her part, respondent cited the supporting case of Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, CA-G.R. SP No. 38107, promulgated on December 29, 1995, in furthering her position that petitioner's claim for refund should be denied on the ground that as a redrying plant, it is not an L-7 permittee, being merely an L-3, L--3R or L-6 permittee. In addition, respondent contends that there is no showing that the entities to which it sold the stripped tobacco are classified as L-7.

The common issue confronting Us is simply whether or not petitioner is entitled to its claim for refund.

After a searching scrutiny of the facts, the disquisition of the parties and the laws and jurisprudence in point, We rule in favor of the petitioner.

This is not a case of first impression. The present controversy has already been settled and passed upon in the recent case entitled Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, docketed as CA-G.R. SP Nos. 38219 and 40313 (CTA Case Nos. 4587 and 4616) promulgated on January 30, 1998, wherein the Honorable Court of Appeals ruled in this wise:

> "There is no disputing the fact that stemmed leaf tobacco is not among the tobacco products expressly mentioned in Section 141.
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> xxx xxx xxx
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> *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 pre-payment of tax, it is significant that the Tax Code defines and classifies stemmed leaf tobacco under its Section 137. When the 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.
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> 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.
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> 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 products. But the petitioner's power 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 respective 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 the 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 Regulations 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."

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In gist, the Court of Appeals has arrived at the inescapable conclusion that Section 137 of the Tax Code is the governing provision insofar as Fortune Tobacco Corporation's case is concerned, hence, no prepayment of excise tax is required. Being similarly situated, petitioner is entitled to the same interpretation given by the Court of Appeals. What is left then for this Court to do is merely to ascertain whether petitioner has satisfied the evidentiary requirements of its claim for refund.

A detailed examination of petitioner's exhibits listed hereunder ("A" to "K" inclusive), convinces this Court that it is entitled to its claim, all of which are well-within the two-year period for the filing of a claim for refund from date of payment as provided in Section 230 of the Tax Code, to wit:

Amount	Date of Payment	Receipt No.	
₱ 345,375.00	June 2, 1993	BIR Form 2319A-E No.	003084
84,000.00	June 9, 1993		00308
107,737.50	June 16, 1993		003314
3,300.00	June 18, 1993		003315
28,875.00	June 25, 1993		003319
55,125.00	June 30, 1993		003325
39,375.00	July 2, 1993		004346
1,050.00	July 5, 1993		004347
112,500.00	May 3, 1994	BIR Form 25.24 No.	3500567L
159,712.50	May 16, 1994		3500518L
114,000.00	Aug. 22, 1994		3889707M
₱1,051,050.00	T O T A L		

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** the amount of ₱1,051,050.00 to the petitioner immediately.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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