REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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

- versus -

C.T.A. CASE NO. 5461

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 13 1999

x - x

DECISION

On the basis of the Resolution promulgated by this Court on August 26, 1998, granting Petitioner's Motion for Reconsideration and/or New Trial which reads:

> "IN VIEW OF ALL THE FOREGOING, in the interest of justice and equity and pursuant to said Rule 37, the Court hereby RESOLVES TO GRANT petitioner's motion for new trial considering the explanation of petitioner's counsel that his failure to present the confirmation receipts showing payment of specific taxes by the petitioner was due to an honest belief that the respondent had already admitted the fact of payment of the specific taxes in question. To deny the same would appear to be too much of an adherence to technicality in disregard with the substantial merits of the case.
>
> ACCORDINGLY, the decision of this Court denying petitioner's claim for refund is hereby set aside. x x x x x x

this Court is confronted anew with the issue of whether or not Petitioner is entitled to the refund of the amount of Three Hundred Eighty Two Thousand Nine Hundred Fifty Six and 38/100 (P382,956.38) representing specific taxes paid under protest during the month of February, 1995 based on the additional evidence presented.

The factual background of the case are as follows:

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

From February 1 to 15, 1995, herein Respondent collected from La Suerte the aggregate amount of ₱382,956.38 for specific taxes allegedly due on the latter's bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers. La Suerte paid the said amount under protest. The dates of payment, the respective weight/description of the stemmed-leaf tobacco purchased on the basis of which the specific taxes were paid, the Authority to Accept Payment of Excise Tax (ATAPET) Serial Number as well as the amount of each payment are as follows:

DATE	DESCRIPTION	ATAPET SERIAL NUMBER	AMOUNT
02/01/95	41,640 Kgs.	2044464	₱ 31,230.00
02/01/95	46,539 Kgs.	2044452	34,904.25
02/01/95	31,026 Kgs.	2044461	23,269.50
02/01/95	79,200 Kgs.	2044459	59,400.00
02/01/95	27,760 Kgs.	2044457	20,820.00
02/10/95	79,200 Kgs.	2044490	59,400.00
02/14/95	38,400 Kgs.	2044502	28,800.00
02/14/95	78,076 Kgs.	2044501	58,557.00
02/14/95	19,367 Kgs.	2044499	14,524.88
02/15/95	69,401 Kgs.	2044509	52,050.75
TOTAL			₱382,956.38

On September 27, 1996 and October 2, 1996, through a letter dated September 19, 1996, La Suerte filed with the

Commissioner of Internal Revenue and with Revenue District No. 52, respectively, a claim for the refund of specific taxes paid by La Suerte on its importations of stemmed leaf tobacco from October 1994 to May 1995, which included the amounts aforestated.

As no action was taken by herein Respondent on its claim for refund, La Suerte filed a Petition for Review with this Court on January 31, 1997.

Petitioner anchored its claim on Section 137 of the NIRC, which in part reads as follows:

> "Section 137.-x x x Stemmed leaf tobacco, fine cut shorts, the refuse of fine cut chewing tobacco, scraps, cuttings, clippings, stems or midribs and sweeping of tobacco maybe sold in bulk as raw materials 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. (underscoring supplied)

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

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

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

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

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

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

> "Section 141.-there shall be collected a tax of P0.75 on each kilogram of the following products of tobacco:
>
> x x x x x x x x x
>
> (b) Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened."

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

The issues having been joined, the Court rendered a Decision on June 17, 1998, legally finding for the Petitioner but denying the claim on the basis of insufficiency of evidence. The Decision succintly declares that the case of the Petitioner falls under Section 137 of the NIRC, citing a Court of Appeals case entitled CIR vs. Fortune Tobacco Corp. CA-G.R. SP Nos. 38219 and 40313 dated January 30, 1998, where it was held that stemmed leaf tobacco is not subject to specific tax. However, this Court's Decision denied the claim of the Petitioner for failure to submit any proof of payment that could ascertain the veracity of the amount claimed as refund, the dispositive portion of which reads:

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

On July 8, 1998, Petitioner filed through registered mail a "Motion for Reconsideration and/or New Trial", praying that this Court issue an order reconsidering its Decision and granting Petitioner's claim for refund in the amount of P382,956.38 or in the alternative, reopen the case to allow the presentation of the confirmation receipts to prove the payment of specific taxes.

This Motion for Reconsideration and/or New Trial was granted by this Court in a Resolution, dated August 26, 1998.

It is the contention of the Petitioner that the allegation in Paragraph 2 of respondent's Answer did not specifically deny the material allegations in Paragraph 3 of the petition. In fact, the said paragraph 2 of the Answer admits the allegation of the Petitioner that the Commissioner of Internal Revenue collected from La Suerte the amount of ₱382,956.38 as specific tax subject to verification. This statement of the Respondent is repeated in the second paragraph of his Memorandum when he stated that "sometime in said February 1995, the same petitioner imported, received, transferred and purchased stemmed leaf tobacco from various sellers abroad <u>whereby the corresponding excise taxes were collected</u>. These statements on the part of the Respondent could easily be interpreted as an admission on his part of the fact of collection of the specific tax.

During the new trial permitted by the Court, Petitioner introduced the following additional evidence in order to support its claim for refund, to wit:

EXHIBITS	**DESCRIPTION**
E	Authority to Accept Payment (ATAP) No. 2044464 dated 2-1-95 amounting to ₱31,230.00
F	ATAP No. 2044462 dated 2-1-95 amounting to ₱34,904.25
G	ATAP No. 2044461 dated 2-1-95 amounting to ₱23,269.50
H	ATAP No. 2044459 dated 2-1-95 amounting to ₱59,400.00
I	ATAP No. 2044457 dated 2-1-95 amounting to ₱20,820.00
J	ATAP No. 2044490 dated 2-10-95 amounting to ₱59,400.00
K	ATAP No. 2044502 dated 2-14-95 amounting to ₱28,800.00
L	ATAP No. 2044501 dated 2-14-95 amounting to ₱58,557.00
M	ATAP No. 20444599 dated 2-15-95 amounting to ₱14,524.88
N	ATAP No. 20444509 dated 2-15-95 amounting to ₱52,050.75

These documents were all admitted by this Court in a Resolution, dated November 18, 1998.

The issues involved in the case at bar are as follows:

> (1) Whether or not the stemmed-leaf tobacco purchased by the petitioner from foreign manufacturer is exempt from specific tax
>
> (2) And if the answer is in the affirmative, whether or not the additional evidence presented by petitioner is sufficient to merit its claim for refund.

Anent the first issue, this Court consistently holds an affirmative answer. Section 137 of the Tax Code, as earlier cited, expressly defines "stemmed leaf tobacco" and excludes it from the payment of the tax when sold in bulk as raw material by one manufacturer directly to another. Clearly, the applicable provision in the case at bar is Section 137 of the Tax Code and not Section 141 which was further interpreted by Revenue Regulation No. 17-67 saying that "stemmed leaf tobacco" is classified as partially-prepared tobacco therefore subject to tax.

Thus, adopting our earlier Decision, dated June 17, 1998, this Court rules that the "stemmed leaf tobacco" purchased by the Petitioner from foreign tobacco manufacturers is not subject to specific tax based on the decision of the Court of Appeals in the case of Commissioner of Internal Revenue vs. Fortune Tobacco

Corporation, CA-G.R. SP Nos. 38219 and 40311 (January 20, 1998).

We shall no longer quote the pertinent portions of the Court of Appeals' decision as these were already mentioned in this Court's first Decision, dated June 17, 1998.

In gist, the Court of Appeals has arrived at the inescapable conclusion that Section 127 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 closer examination of Petitioner's exhibits revealed that the documents presented are mere photocopies, as the originals were allegedly lost. However, since no substantial objections were made by the counsel of Respondent with respect to the authenticity of these documents, plus the fact that petitioner's witness, Ms. Leticia Reyes, testified under oath that these photocopies are true and faithful reproductions of the originals, We are inclined to uphold the probative value of the evidence presented by Petitioner during thi- New Trial.

At this juncture, it is worth citing the verbatim transcription of the testimonies of petitioner's witness during the hearing:

x x x x x x

Atty. Castillo: Now during the month of February 1995, do you recall if the petitioner, La Suerte paid specific taxes on its imported stemmed-leaf tobacco, Ms. Witness?

Ms. Reyes: Yes, Sir.

Q : Whenever you pay specific taxes, what evidence do you have?

A : The Authority to Accept Payment, Sir. (At this point, the counsel for the petitioner shows documents to the witness)

Q : Now, I am showing to you the photocopies, what happen to the original of these, Ms. Witness?

A : I lost the original, sir.

Q : Did you try to look for them, Ms. Witness?

A : Yes, Sir.

Q : Who have (sic) these photocopies made, Ms. Witness?

A : Me, Sir.

Q : And these are the true and faithful reproduction of the originals?

A : Yes, Sir.

x x x x x x

Q : Ms. Witness, I am showing to you these Exhibits, how do you know that this ATAP indicates that payment has been made?

A : There is stamp validated, Sir.

x x x x x x

Q : When are the other copies aside from the copy of the taxpayer, Ms. Witness?

A : I give the copies to the Bureau of Internal Revenue, Sir.

Q : So it is with the Respondent?

A : Yes, Sir. (TSN, October 12, 1998 pp.10-14)

It is also important to point out that the documents titled Authority To Accept Payment (ATAP) presented by Petitioner have been validated by the banks evidencing that said banks received the payment of the taxes. In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax refund. (Citibank N.A. vs. CA and CIR, 280 SCRA 459). And since Petitioner, in this case, was able to support its entitlement to refund by submitting substantial evidence for that matter, the burden of proof is shifted to the Respondent to disprove the said claim. Respondent, herein failed at this juncture. Respondent did not offer any evidence to refute the genuineness of the photocopied ATAP's submitted. He should have submitted those vital and pertinent documents that would work to his advantage. Furthermore, the non-transmittal by the Respondent of the required BIR records makes Us conclude that Respondent has conceded and realized that indeed Petitioner is entitled to its claim.

Given this scenario, the Court is inclined to give more credence to the photocopied ATAPS submitted by the Petitioner than to the Respondent's allegations unsupported by documentary evidence.

Furthermore, it could be gleaned from the testimonies aforecited that the Respondent has in its possession copies of the ATAP. Respondent has all the chance of verifying if the other copies of the ATAP is in its possession, and check if the amount being claimed is true and since Respondent did not object to their admission as evidence for the Petitioner, then we can accept the said photocopied ATAPS as competent to prove the amount being claimed.

After having examined the evidence presented and finding no cogent reason to deviate from the present jurisprudence on the matter, this Court finds that Petitioner has successfully and sufficiently performed its duty to establish its right to the refund claimed. It appears that the claim for refund was filed with the Respondent's office on September 28, 1996 (Exh. A-1) and with Region VIII (Makati) of BIR on October 10, 1997 (Exh. A-2). This Petition for Review was filed on January 21, 1997, and the taxes were paid within February 1, 1995 to February 15, 1995 amounting to P382,956.38. Clearly, the claim for refund is well within the 2-year period from date of payment as provided in Section 230 of the Tax Code, hence allowable.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby granted. The Decision of this Court, dated June 17, 1998, denying Petitioner's claim for refund is hereby set aside. Accordingly, Respondent is hereby **ORDERED** to **REFUND** the amount of ₱382,956.38 in favor of the Petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that 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