REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

FORTUNE TOBACCO CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7367

Members:
ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
APR 30 2009 ; 10:00 a.m.

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DECISION

CASANOVA, *J.*:

The instant Petition for Review is seeking that a judgment be rendered ordering respondent to refund to petitioner the amount of P219,566,450.00 as overpaid taxes for the period covering June 1 to December 31, 2004, or, in the alternative, to issue a tax credit certificate in the same amount.

Petitioner is a domestic corporation organized and existing under and by virtue of the Republic of the Philippines, with principal address at Fortune Avenue, Parang, Marikina City[1].

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including, among

[1] Joint Stipulation, paragraph 1, *Rollo* p. 201.

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[2].

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 (RA) No. 4280, to wit[3]:

Brand	**Tax Rate**
Champion M-100	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 subjected to *ad valorem* tax pursuant to then Section 142 of the Tax Code of 1977, as amended[4]. However, on January 1, 1997, RA No. 8240 took effect causing a shift from the *ad valorem* tax (AVT) system to the specific tax system. As a result of such shift the aforesaid cigarette brands were subjected to specific tax under Section 142 thereof, now renumbered as Section 145 of the Tax Code of 1997. Section 145 is quoted thus[5]:

"***Section 145. 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 (P0.40) per pack.

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[2] Ibid., paragraph 2, *Rollo*, p. 202.
[3] Ibid., paragraph 3.
[4] Ibid., paragraph 4.
[5] Ibid., paragraph 5, *Rollo*, pp. 203-204.

(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 R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.

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 then 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.

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. (Emphasis supplied)

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 twenty (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 (5) 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', 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."

To implement the provisions for a twelve percent (12%) increase of excise tax on cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, upon recommendation of the respondent Commissioner of Internal Revenue, issued Revenue Regulations (RR) No. 17-99 dated December 16, 1999, which provides the increase on the applicable tax rates on cigar and cigarettes as follows[6]:

SECTION		**DESCRIPTION OF ARTICLES**		**PRESENT SPECIFIC TAX RATE PRIOR TO JAN. 1, 2000**	**NEW SPECIFIC TAX RATE EFFECTIVE JAN. 1, 2000**
145	(A)			P1.00/cigar	P1.12/cigar
	(B)	Cigarettes packed by machine			
		(1)	Net Retail Price (excluding VAT & Excise) Exceeds P1.00 per pack	P12.00/pack	P13.44/pack
		(2)	Net Retail Price		

[6] Ibid., paragraph 6, *Rollo*, pp. 205-206.

	(excluding VAT & Excise) is P6.51 up to P10.00 per 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 per pack	P1.00/pack	P1.12/pack

RR No. 17-99 likewise provides in the last paragraph of Section 1 thereof, "(t)hat the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."[7]

On March 31, 2005, petitioner filed a claim for tax credit or refund under Section 229 of the National Internal Revenue Code of 1997 (1997 NIRC) for erroneously or illegally collected specific taxes covering the period June to December 31, 2004 in the total amount of P219,566,450.00 [8].

Not having received any favorable reply from the respondent, herein petitioner filed the instant Petition for Review on November 14, 2005.

In response thereto, respondent alleged its Special and Affirmative Defenses[9] in his Answer as follows:

> "7. The amount of P219,566,450.00 being claimed by petitioner as alleged overpaid excise tax for the period covering 1 June to 31 December 2004 was not properly documented;

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[7] Ibid., paragraph 7, *Rollo*, p. 206.
[8] Ibid., paragraph 8.
[9] Answer, *Rollo*, p. 113.

8. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption form taxation;

11. The last paragraph of Section 1 of Revenue Regulations No. 17-99 is a valid implementing regulation which has the force and effect of law."

After presentation of its evidence, petitioner submitted its Formal Offer of Evidence[10] on November 28, 2007. In a Resolution[11] dated January 7, 2008, petitioner's documentary exhibits were denied admission, except for Exhibit "C", due to petitioner's failure to present the originals for comparison; to have the documents marked during trial; and to submit the same to the Court.

Petitioner manifested on May 22, 2008[12] that it will file a Motion for Reconsideration on the Resolution dated January 7, 2008 since its Formal Offer of Evidence was erroneously filed. However, no such motion was ever received by the Court[13] and on July 23, 2008, the Court set the case for respondent's initial presentation of evidence. Nonetheless, on August 21, 2008, petitioner presented the original of Exhibit "G" for comparison and likewise submitted the original of Exhibit "H". Respondent did not object to the presentation of the two exhibits that Exhibit "G" was deemed a faithful reproduction of the original and Exhibit "H" was deemed an original[14].

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[10] *Rollo*, pp. 236-241.
[11] *Rollo*, pp. 286-287.
[12] *Rollo*, p. 302.
[13] *Rollo*, p. 303.
[14] *Rollo*, p. 305.

After respondent's presentation of evidence and receipt of respondent's Memorandum on October 17, 2008, the case was submitted for Decision *via* a Resolution dated October 27, 2008[15]. In the same Resolution, Petitioner's Memorandum was deemed a scrap of paper or being submitted out of time.

The admitted legal issues[16] for decision are as follows;

1. Whether or not the last paragraph of Section 1 of Revenue Regulations No. 17-99 is in accordance with the pertinent provisions of Republic Act 8240, now incorporated in Section 145 of the Tax Code of 1997; and

2. Whether or not the petitioner is entitled to a refund of P219,566,450.00 as alleged overpaid excise tax for the periods from June 1 to December 31, 2004.

In as much as the main point of contention is the last paragraph of RR No. 17-99 and its relation to the other provisions of the 1997 NIRC, We again quote the same hereunder for convenience:

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

Petitioner argues that the aforequoted paragraph of RR No. 17-99 has no basis in law and is an illegal extension for an indefinite period of time of the three-year transitory provisions of RA 8240, now incorporated in Section 145 of the Tax Code of 1997. According to petitioner, the three-year period took effect from January 1, 1997, the date when RA 8240 took effect, up to December 31, 1999. However, from January 1, 2000, the correct base of the 12% increase is the rates prescribed under paragraphs (1), (2), (3), and (4) of Section 145 of the 1997 NIRC.

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[15] *Rollo*, p. 386.
[16] Supra, note 1, *Rollo*, p. 207.

Petitioner further maintains that the questioned provisions of Revenue Regulations No. 17-99 is an administrative legislation since there is nothing under the provisions of Section 145 which authorizes the BIR to impose, by way of regulations, "that the new specific tax rate for any existing brand of cigar, cigarettes packed by machine . . . shall not be lower than the excise tax that is actually being paid prior to January 1, 2000." Being entirely a creation of the respondent, and having no basis in said Section 145 itself which the questioned provisions of RR No. 17-99 meant to carry into effect, petitioner concluded that the said revenue regulations cannot be accorded validity.

Respondent, in his Answer, submits that the amount of P219,566,450.00 being claimed for refund as alleged overpaid excise taxes for the period covering June 1 to December 31, 2004 was not properly documented; and that petitioner failed to show it complied with Sections 204 and 209 of the Tax Code.

In his Memorandum, respondent further argues that:

> a. A literal interpretation of the last paragraph of Section 145 of the Tax Code subverts the legislative purpose for the enactment of R.A. No. 8240 which is to increase the collection of taxes;
>
> b. At the very least, the last paragraph 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;
>
> c. Tax refund is in the nature of a tax exemption; hence, it must be strictly construed against the taxpayer like herein petitioner;
>
> d. The 12% increase is based on the taxes applicable to the brands at the end of the 3-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;
>
> e. The Congressional intent in providing the three-year transitory period is merely to cushion the impact of the increase in excise tax rates;

f. Petitioner should not be allowed to profit from the mistakes of the Government;

g. The BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain; and

h. 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 Tax Code of 1997.

With respect to the first issue, this Court, in several cases, consistently held that the last paragraph of RR 17-99 is not in accordance with the law it seeks to implement which is RA 8240. In these cases[17], We have ruled that:

"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 xxx 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 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.

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[17] CTA Case Nos. 6365 and 6383, both entitled *Fortune Tobacco Corporation vs. Commissioner of Internal Revenue* and promulgated on October 21, 2002,

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 questioned 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. 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.

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.

xxx xxx xxx

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. 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."** (Emphasis supplied)

In the more recent case of ***Fortune Tobacco vs. Commissioner of Internal Revenue***[18]***,*** We further said that, "[i]n sum, Revenue Regulations No. 17-99 issued by the Secretary of Finance is really an administrative legislation, which the Court cannot countenance. Basic is the rule that administrative issuances seeking to carry into effect an act of Congress must be in harmony with the provisions of the law. Implementing rules cannot add or detract from the provisions of law it is designed to implement. Administrative regulations should be for the sole purpose of carrying into effect its general provisions. An administrative agency cannot amend an act of Congress. Thus, being an administrative legislation, Revenue Regulations No. 17-99 is void."

The above pronouncements were affirmed by the Supreme Court in ***Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, G.R. Nos. 167274-74, July 21, 2008,*** when the High Court ruled as follows:

> "In the case at bar, the OSG's argument that by 1 January 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the *ad valorem* tax system plus the 12% increase imposed by paragraph 5, Section 145 of the Tax Code, is an unsuccessful attempt to justify what is clearly an impermissible incursion into the limits of administrative legislation. Such an interpretation is not supported by the clear language of the law and is obviously only meant to validate the OSG's thesis that Section 145 of the Tax Code is ambiguous and admits of several interpretations.
>
> The contention that the increase of 12% starting on 1 January 2000 does not apply to the brands of cigarettes listed under Annex 'D' is likewise unmeritorious, absurd even. Paragraph 8, Section 145 of the Tax Code simply states that, '[T]he 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'. This declaration certainly does not lend itself to the interpretation given to it by the OSG. As plainly worded, the average net retail prices of the listed brands under Annex 'D', which classify

[18] CTA Case No. 7015, May 26, 2006 as affirmed in CTA EB Case No. 228, July 12, 2007.

cigarettes according to their net retail price into low, medium or high, obviously remain the bases for the application of the increase in excise tax rates effective on 1 January 2000.

The foregoing leads us to conclude that Revenue Regulation No. 17-99 is indeed indefensibly flawed. The Commissioner cannot seek refuge in his claim that the purpose behind the passage of the Tax Code is to generate additional revenues for the government. Revenue generation has undoubtedly been a major consideration in the passage of the Tax Code. However, as borne by the legislative record, the shift from the *ad valorem* system to the specific tax system is likewise meant to promote fair competition among the players in the industries concerned, to ensure an equitable distribution of the tax burden and to simplify tax administration by classifying cigarettes, among others, into high, medium and low-priced based on their net retail price and accordingly graduating tax rates.

At any rate, this advertence to the legislative record is merely gratuitous because, as we have held, the meaning of the law is clear on its face and free from the ambiguities that the Commissioner imputes. We simply cannot disregard the letter of the law on the pretext of pursuing its spirit.

xxx xxx xxx"

(Emphasis supplied)

The above decision of the Supreme Court was rendered conclusive upon Entry of Judgment on November 6, 2008.

Going now to the second issue of whether or not petitioner is entitled to refund, petitioner states that there is no issue that excise taxes were paid, received and accepted by the Bureau of Internal Revenue; that this is further manifested by the fact that the Bureau of Internal Revenue never presented any documentary and testimonial evidence before the Court to refute such payment; or that the requested refund was filed after the two year period.

Respondent in his Answer alleged that the amount of P219,566,450.00 being claimed by petitioner as alleged overpaid excise tax for the period covering June 1 to December 31, 2004 was not properly documented. However, respondent did not present any witness or document in its behalf and likewise failed to cross-examine the lone witness presented by petitioner to refute petitioner's claim.

To prove its entitlement to refund, petitioner submitted the following documentary exhibits:

EXHIBIT	DESCRIPTION
"A", "A-1" to "A-8"	Republic Act 8240
"B", "B-1" to "B-4"	Revenue Regulations No. 17-99
"C", "C-1" to "C-4"	Letter Claim for Refund dated 31 March 2005 of Fortune Tobacco Corporation
"D", "D-1" to "D-7"	Schedule of Computations of Fortune Tobacco's Excise Taxes Paid and its Refund Claim Amounts totaling hp 219,566,450.00 for the period from June 1 to December 31, 2004
"E", "E-1" to "E-7"	Schedule of Excise Advance Deposits from June 2004-December 2004 with Breakdown and Bank Payment Confirmation Numbers on a monthly basis for the period from June 1 to December 31, 2004
"F", "F-1" to "F-7"	Schedule of Payments and Application of Excise Taxes for the Period 1 June 2004-31 December 2004 with Recap Excise Tax Deposit Payments/ Application for the stated period
"G", "G-1" to "G-7"	BIR Statement of Production and Removals with Corresponding Specific Tax Payments
"H", "H-1"	FTC Excise Tax Refund Computation Summary for the period covering 1 January- 31 May 2004

From the above documents, only Exhibit "C" was admitted by this Court; the rest were denied for being mere photocopies. Despite petitioner's manifestation that it will file a Motion for Reconsideration on the denial of its exhibits, no such Motion was filed. In an attempt to remedy such omission, petitioner presented the originals of Exhibits "G" and "H" during respondent's presentation of evidence, to which respondent did not object.

For convenience, the said exhibits are reproduced hereunder:

EXHIBIT "G"

"ANNEX 'F'
FTC Production removals
EXCISE TAX PAYMENTS
For All FTC Brands

Period Covered
1 June 2004- 31 December 2004

June 1-30, 2004	1,132,209,655.00
July 1 -31, 2003	978,370,180.00
August 1- 31, 2004	748,140,350.00
September 1- 30, 2004	922,760,155.00
October 1-31, 2004	940,343,885.00
November 1-30, 2004	1,008,563,980.00
December 1-31, 2004	1,502,880,165.00
Total	7,232,268,370.00

Please see Production Removals details in sub-section"

EXHIBIT "H"

"FTC EXCISE TAX REFUND COMPUTATION SUMMARY
For Period 1 June 2004 – 31 December 2004

FORTUNE CIGARETTE BRAND	REMOVALS (In Cases)	ACTUAL SPECIFIC TAX PAID PAID PER CASE	AMOUNT OF SPECIFIC TAX PAID	BASIC TAX RATE PER CASE	SPECIFIC TAX DUE PER CASE	DIFFERENCE AND/OR OVERPAYMENT
P1.00-P1.12 12% Increase Effective 1 January 2000						
CHAMPION M-100	22,427	**P1650**	**P37004550**	P560	P12559120	P24445430
CAMEL F. KINGS	51,333	**P2750**	**P141165750**	P560		P112419270
P5.00- P5.60 12% Increase Effective 1 January 2000						
WINSTON F. KINGS	621,462	**P2925**	**P1817776350**	P2800	P1740093600	P77682750
WINSTON LIGHTS	40,152	**P2925**	**P117444600**	P2800	P112425600	P5019000

GRAND	TOTAL					P219566450

Prepared and Computed By:
Using Working Papers Submitted
In Connection with Tax Refund Claim

(sgd.)
CARLOS C. CHUA, C.P.A.
PRC 51330- Validity 07-12-08"

Although respondent did not object to the presentation of the above exhibits and the same were deemed either as the original and faithful reproduction of the original, Exhibits "G" and "H" were not admitted, hence, cannot be given probative value by this Court.

Even if this Court applies leniency of procedural rules, the documentary exhibits are not sufficient to prove the amounts being claimed by petitioner as refund. Looking at Exhibit "G", the same is a mere summary of excise taxes paid by petitioner for ALL of its cigarette brands. This Court cannot verify the amounts of excise taxes paid for the brands in issue which are Champion M-100s, Camel Filter Kings, Winston Filter Kings, and Winston Lights.

This Court cannot likewise rely solely on petitioner's Excise Tax Refund Computation Summary[19]. The figures therein must be verified through other documentary evidence which this Court must look into and which petitioner failed to properly provide.

It is a basic rule in an action for tax refund/credit that the party claiming the tax refund/tax credit has the burden of proving its entitlement thereto. There is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. In doing so, petitioner must rely on the strength of its evidence and not on the weakness of that of its opponent.

[19] Exhibit "H".

WHEREFORE, the instant Petition is hereby **DENIED** for **INSUFFICIENCY OF EVIDENCE**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division