REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AULT & WIBORG CO. (FAR EAST) PHILIPPINE BRANCH,
Petitioner,

- versus - C.T.A. CASE NO. 5277

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 20 1999

x - x

DECISION

This Petition for Review seeks to nullify and set aside the adverse decision of the Respondent on Petitioner's protest of an assessment for deficiency percentage and excise (specific and ad valorem) taxes covering the year 1987 in the total amount of ₱19,772,659.08.

Petitioner corporation is a domestic branch of Ault & Wiborg, U.S.A. and is duly registered and licensed to do business in the Philippines. Its principal office address is at No. 101 Marcos Alvarez Avenue, Bo. Talon, Las Pinas, Metro Manila.

The present controversy stemmed from the findings of Respondent's revenue examiner[1], as contained in a memorandum dated August 15, 1990 (BIR records, pp. 189-191) that Petitioner is liable for deficiency percentage taxes for the year 1987 due to non-compliance with the requirements for availment of sales tax credits and uniform method of sales tax credit accounting as embodied in Revenue Regulations ("RR" for brevity) No. 19-84; and

1 Eduardo V. Ty, Revenue Officer II of BIR Revenue Region No. 4-B2, Makati City

that Petitioner cannot be allowed tax credits for import duties paid to the Bureau of Customs because only advance sales tax and compensating tax are allowed under said regulations.

In particular, the deficiency percentage tax was anchored on the following grounds, namely: that, as a manufacturer, Petitioner failed to record in its books of accounts the various purchases it made under such specified accounts or similarly equivalent accounts duly prescribed in Section 4 of RR No. 19-84; that, Petitioner failed to maintain a subsidiary ledger wherein the "Deferred Sales Tax Credit" accounts are classified and separately recorded according to supplier and according to rates of tax; that, Petitioner failed to comply with Section 5 (a) of the same regulations regarding the entry of all sales, sales liability and sales tax credit in such accounts or similarly equivalent accounts enumerated therein; that Petitioner failed to comply with Section 2(b) of the same regulations requiring the adoption and employment of the sales tax credit accounting method prescribed thereunder; and that lastly, majority of the suppliers of raw materials of Petitioner were manufacturers which is contrary to what is allowed under subparagraph 1 of paragraph b of the latter section requiring the invoice to be that of a dealer.

The findings further showed that Petitioner is also liable for the same year to pay deficiency excise taxes as a result of its failure to remit the amount of ₱659,357.04 representing the balance of its excise tax liability for the second, third and fourth quarters of 1987 in the amount of ₱2,884,191.91 - which is based on a tax rate of 25% of gross selling price, as provided in Section 128 of the Tax Code of 1987.

Consequently, in a letter dated September 10, 1990 and designated as Demand No. 111720-87-B-90-9-2[2], the Regional Director of Revenue Region No. 4-B2 assessed Petitioner of its tax liabilities for the year 1987, as follows:

Percentage Tax

Total Taxable sales/receipts per filed audit	₱ 81,290,689.02
20% Tax due hereon	16,258,137.80
Less: Tax Already Paid	7,810,889.53
Deficiency Tax Due	8,447,248.27
Add: 25% Surcharge due thereon	2,111,812.06
Interest	7,692,275.45
Compromise penalty and late payment	75,000.00
Subtotal	₱ 18,326,335.78

Excise Tax

Total Tax Due	₱ 2,884,191.91
Less: Tax Already Paid	2,224,834.87
Deficiency Tax Due	659,357.04
Add: 25% Surcharge due thereon	164,839.26
Interest	600,427.00
Compromise penalty and late payment	21,700.00
Subtotal	1,446,323.00
TOTAL AMOUNT DUE AND COLLECTIBLE	**₱ 19,772,659.08**

2 Received by the Petitioner on September 18, 1990

Petitioner did not acquiesce with the assessment. It accordingly filed a letter of protest on September 27, 1990 followed by two other supplementary memoranda dated May 31, 1991 and November 10, 1993 with the Appellate Division of Respondent's Bureau.

Altogether, Petitioner argued in its protest and memoranda that in so far as the alleged deficiency percentage tax is concerned the accounts to be maintained by the taxpayer in its books of accounts under RR No. 10-84 are not exclusive and mandatory in nature and that the requirements therein stated had been substantially complied with by similarly equivalent accounts, as follows:

1) <u>Purchases</u>

A. For purchases of raw materials from a dealer

DR.	Purchases - raw materials	xxx.xx	
DR.	Sales Tax(Creditable)-Dealer	xxx.xx	
CR.	Accounts payable		xxx.xx

B. Purchase of raw materials from a manufacturer

DR.	Purchases - raw materials	xxx.xx	
DR.	Sales Tax(Creditable)-manufacturer	xxx.xx	
CR.	Accounts payable..........		xxx.xx

C. Purchase of containers from a manufacturer

DR.	Purchases - containers	xxx.xx	
DR.	Sales Tax(Creditable)-manufacturer	xxx.xx	
CR.	Accounts payable		xxx.xx

2) <u>Sales</u>

DR.	Accounts Receivable	xxx.xx

CR.	Sales Tax Payable	xxx.xx
CR.	Sales	xxx.xx

Explaining how the above accounts worked, Petitioner stated, thus:

> Upon payment of the quarterly sales tax, the total amounts debited to the "sales tax (creditable) - Dealer/manufacturer" accounts during the quarter were credited to the extent of the total amount of sales tax which was credited to the "Sales Tax Payable" account during the same quarter.
>
> (Memorandum of November 10, 1993, p. 2 - Annex D of Petition)

In the same manner, Petitioner disputed the allegation of the revenue examiner that its payments for import duties were availed of as tax credits. Petitioner pointed out in its protest/memoranda that the tax credits were sourced from the portion of payments representing advance sales or compensating tax only and not from payments of import duties. Such fact Petitioner asserted can easily be verified from the Customs' consumption entries and official receipts.

With regard to the alleged deficiency excise tax, Petitioner submitted in its protest that per BIR[3] Ruling No. 194-87 dated July 7,1987, its products known as thinner or reducer and retarder were not classified as manufactured oils and other fuels, hence, they were declared not subject to the 25% excise tax imposed by

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3 Bureau of Internal Revenue

Section 128 of the Tax Code, and instead, they were determined to be subject to the 1.5% sales tax imposed under Section 164 of the same Code.

Amplifying further, Petitioner elucidated on the events that transpired in its book of accounts right after the issuance of the said ruling, in this wise:

> Initially, the sales taxes in the book of the Cebu sales office exceeded the amount remitted for the third quarter of 1987 because the concerned official of our client thereat continued to compute and record the "passed-on" tax on the basis of the excise taxes under Section 128 of the Tax Code then in force. However, the same were subsequently adjusted in the books of our client.
>
> Based on the aforesaid ruling, our client including its Cebu sales office started paying the then 20% tax on original sales of imported thinner or reducer and retarder sold "as is" and 1.5% tax on subsequent sales of locally purchased thinner or reducer and retarder which were likewise sold "as is" beginning July 7, 1987. Consequently, the corresponding sales invoices were prepared on the basis thereof.
>
> On the allegation that our client effectively denied the government the collection of the correct amount of tax, we submit that while the booking of the amount billed by our client was with the use of the erroneous 25% rate, the amount actually billed, collected, and remitted to the BIR was on the correct 1-1/2% rate. Thus, we see no reason why the above deficiency percentage tax assessment should not be cancelled and withdrawn.
>
> (Annex D of Petition, pp. 4-5)

On review, the Appellate Division sided entirely with the contentions of the Petitioner and with respect to the thorny issue on whether or not the latter's method of accounting falls under the term "similarly equivalent accounts", it was concluded, in part, thus:

> If we have to consider the 1987 sales and purchase books which taxpayer presented during the hearings held on April 1 and May 27, 1993, respectively, the same would show that for each month of said year the necessary data that would satisfy the requirements of RR Nos. 19-84 and 2-86 are truly and correctly reflected therein. A cursory reading of the taxpayer's salesbook for 1987, for example, would show the names of the customers, invoice numbers, the total accounts receivables, sales taxes and total sales for each month. The purchase book, on the other hand, reflects the accounts payable to suppliers, the net amount of purchase made for each month, and the sales tax for each particular purchase of raw materials, which when taken altogether, would evidently show full compliance with the substantiation requirements. Proofs to this effect are clear and overwhelming as shown by taxpayer's Exhibits specifically denominated and/or marked, respectively, as "A" to "B-23".
>
> (Memorandum, dated February 10, 1994, pp. 569-573, BIR records)

The Appellate Division also opined in the same memorandum that BIR Ruling No. 194-87 should be upheld because unless such ruling is otherwise revoked or modified accordingly, its validity continues to have force and effect in cases or situations with similar facts.

Despite the Appellate Division's favorable recommendation, however, Respondent, through then Commissioner Liwayway Vinzons-Chato, remained unconvinced. So in a letter dated May 4, 1995, she denied with finality Petitioner's protest . Thus:

> x-x-x x-x-x x-x-x
>
> In reply, please be informed that after careful review of the facts of the case and the evidences submitted, this Office finds your protest to be devoid of any legal as well as factual bases.
>
> I. Deficiency Percentage Tax
>
> A. There is no argument to the contention that the requirements under the aforesaid regulations are not exclusive and mandatory in nature. In fact, the Bureau subscribes to the view that the regulations allow taxpayers a certain latitude of discretion or flexibility on what "account" to use provided that they are akin to that prescribed considering that rules and regulations are promulgated for the effective enforcement of the Tax Code (Section 245). It must be stressed however that the real issue at hand is whether the requirements therein stated were substantially complied with by the taxpayer.
>
> The findings of the reinvestigating examiner contradict in all force (sic) the claim that your client substantially complied with the regulations. Informations gathered from the entries reflected on your client's books of accounts clearly indicate that there was flagrant non-compliance of RR No. 19-84. This led our examiner to make the following observations:
>
> 1. Section 4(a) of RR No. 19-84 - a subsidiary ledger shall be kept and maintained wherein the Deferred Sales Tax Credit (DSTC) accounts are classified and separately recorded according to rates of sales tax. The

> taxpayer failed to record their purchases in the abovestated manner, and also failed to maintain a subsidiary ledger wherein the DSTC accounts are classified and separately recorded according to supplier and according to rates of sales tax. While they maintained an account for a separately recorded manufacturer and dealer, the rates of sales tax for each is not separately recorded."

These and all are clear indications of failure to comply even substantially with RR No. 19-84. In short, the journal entries adopted by your client are unacceptable and fail to satisfy the basic objective enunciated by RR No. 19-84 of recording separately the amount of tax credit passed on to the taxpayer by the supplier-dealer or supplier manufacturer. While it is true that regulations are intended merely to promote safety and efficiency, an authoritative rule or principle dealing with matters of procedure, it is equally important to take notice of the case of Arches vs. Bellosillo, 20 SCRA 32 wherein it was declared that "a revenue regulation, the issuance of which is authorized by statute, has the force and effect of law."

> B. The tax credits on importations claimed by your client are not in payment of compensating or advance sales taxes but are, in truth and in fact, payment for import duties. This was ascertained upon examination of the Bureau of Customs' official receipts which reflected the payment of import duties alone. There is also the allegation that for every Bureau of Customs official receipt, there is a corresponding import entry that would show that the import duty actually includes compensating or advance sales tax. Hence, there is a discrepancy between the official receipt and the import entry. Which

will now prevail? This office believes in the veracity of the official receipt rather than that of the import entry. While the receipt is prepared by the designated official of the Bureau of Customs, the import entry is filled up by the taxpayer through its broker thus making the latter self-serving, and under the Rules on Evidence, self-serving evidence has very little or no weight at all.

II. Specific Tax

This Office subscribes to the finding of our examiner that your client is actually engaged in the manufacture of thinner or reducer and retarder and thus, subject to 25% tax rate under Section 128 of the Tax Code. Revenue Ruling No. 194-87 dated July 7, 1987 issued to your client that it is not subject to excise tax under Section 128 relative to their product is therefore **inapplicable** in as much as the facts subsequently gathered upon investigation are materially different from the facts as represented in the ruling. Information gathered upon investigation disclosed the following revelations:

"1. The ingredients used by the taxpayer in the manufacturer of thinner are as follows:

a. Acetone
b. Pegasol 1425
c. Isopropyl Alcohol
d. Toluene
e. Xylene
f. Ucar Ester EEP
g. Butyl Cellosolve

2. The mixing or blending of the above stated ingredients resulted in a mixture which is different from the use of the individual ingredients.

3. The resulting mixture thinner are then placed in tin cans with the name of the taxpayer indicated as manufacturer."

> From the foregoing facts, we see no reason at all to disturb our examiner's finding that your client is indeed a manufacturer and is liable to the assessed deficiency excise tax.
>
> x-x-x x-x-x x-x-x
>
> (Letter of Respondent, dated May 4, 1995; Annex "E" of Petition; emphasis and underscoring supplied))

The above decision of the Respondent denying the protest was received by the Petitioner on July 20, 1995. Mindful of the 30-day period within which to appeal to this Court from receipt of said decision, as provided in Section 229 of the Tax Code, Petitioner instituted the present appeal on August 18, 1995.

At bar, Petitioner basically reasserts its stance *a quo*. On the other hand, Respondent avers, *inter alia*, the special and affirmative defenses that there was flagrant non-compliance by the Petitioner of RR No. 19-84, hence, the assessment of percentage tax; that Petitioner has been positively found to be actually engaged in the manufacture of thinner or reducer and retarder, thus, it is subject to the 25% tax rate under then Section 128 of the Tax Code; that RR No. 194-87 is inapplicable in the instant case; and that all presumptions are in favor of the correctness of the tax assessment.

Records show that the trial of this case consisted mainly of presentation and formal offer of evidence for both parties. Petitioner filed its memorandum while

Respondent failed to do so within the time given by this Court.

The issues confronting this Court are the following:

> 1. Whether or not Petitioner complied with the substantiation requirements for availment of sales tax credits and uniform method of sales tax credit accounting as required in RR No. 19-84;
>
> 2. Whether or not customs duties were claimed by the Petitioner as tax credit on importation; and,
>
> 3. Whether or not Petitioner is a manufacturer which must be subjected to the 25% tax rate under Section 128 of the Tax Code and not to the 1 & 1/2 % tax rate on subsequent sales.

After a painstaking scrutiny of the facts, the arguments of the parties and the laws and rules and regulations in point, this Court rules in favor of the Petitioner.

Anent the first issue, this Court deems it apropos to cite the pertinent provisions of RR No. 19-84, the implementing regulations in question, for the sake of clarity and better understanding, to wit:

> x-x-x x-x-x x-x-x
>
> SECTION 1. *Scope.*-These Regulations, promulgated in accordance with Section 326 of the National Internal Revenue Code, prescribe certain requirements for availment by manufacturers of sales tax credits, including a uniform method of accounting for sales tax and sales tax credit under Title V of the National

Internal Revenue Code and **Executive Order No. 990**.

SEC. 2. *Requirements for allowing claims for sales tax credit.*-(a) x-x-x

x-x-x x-x-x x-x-x

(2) The supplier issuing the invoice-

(i) is duly registered and accredited by the Commissioner of Internal Revenue as a registered supplier of raw material **and the said supplier is not a manufacturer**;

x-x-x x-x-x x-x-x

(c) *Effect of manufacturer's failure to meet substantiation requirements.*-Except as provided for in paragraph (d) of this Section, **claims for tax credits which do not meet the requirements of substantiation prescribed in this Section shall not be allowed**.

x-x-x x-x-x x-xx

SEC. 4. *Accounts to be used and entries to be made for recording sales tax credits.* (a) Manufacturer. Every manufacturer shall maintain the following **or similarly equivalent accounts** in his books of accounts wherein all purchases of raw material, part, accessory, or other article (hereinafter referred to as "purchases"), including packaging materials, which are intended by the purchaser-manufacturer for conversion into and to form part of a finished article and sales tax credits representing sales, millers, or specific taxes billed to him and/or indicated as a separate item in a supplier's sales invoice (hereinafter referred to as "separately billed tax") are recorded:

(1) ***"Purchases-w/TC: Supplier-Manufacturer" Account.*** x-x-x

(2) ***"Purchases-w/TC: Supplier-Dealer" Account.*** x-x-x

(3) *"Purchases-w/o TC: Account.* x-x-x

(4) *"Packaging materials-w/TC: Supplier-Manufacturer" Account.* x-x-x

(5) *"Packaging materials-w/TC: Supplier-Dealer" Account.* x-x-x

(6) *"Packaging material-w/o TC: Account.* x-x-x

(7) *"Deferred Sales Tax Credit (or DSTC): Supplier-Manufacturer" Account.* x-x-x

(8) *"Deferred Sales Tax Credit (or DSTC): Supplier-Dealer: Account.* x-x-x

(9) *"Deferred Sales Tax Credit (or DSTC): AST Account.* x-x-x

(10) *"Deferred Sales Tax Credit (or DSTC): Pioneer Enterprise" Account.* x-x-x

A **subsidiary ledger** shall be kept and maintained wherein the DSTC accounts are classified and separately recorded according to supplier (manufacturer or dealer) and according to rates of sales tax.

x-x-x x-x-x x-x-x
(Underscoring and emphasis supplied)

Acting on the findings that Petitioner's method of keeping its books of accounts was not in accordance with what is stated in Sections 2(c) and 4 of RR No. 19-04, *supra*, Respondent disallowed Petitioner's claim for tax credit of sales tax.

At first brush, there is basis for the disallowance because it is indeed apparent that the accounts maintained by the Petitioner, *supra*, were not equivalent to what is required under the regulations. Its accounts for sales as well as accounts for purchases, packaging materials, and deferred sales tax credit of supplier-manufacturers/dealers with or without tax credit were not recorded separately as required by the regulations. Petitioner merely combined, mixed or lumped into one account all the purchases it has made inclusive of the corresponding creditable sales taxes, regardless of whether the same came from a manufacturer or dealer with or without tax credit. This is equally true in so far as accounts for packaging materials, deferred sales tax credits and sales are concerned.

Unbeknown to herein parties, however, this Court believes that Petitioner is entitled to a relief in the interest of substantive justice. Whereas under Section 2(b)(2)(1) of RR No. 19-84 it is required that the supplier of raw materials, parts, accessory or other articles should only be a dealer and not a manufacturer, a reading of Executive Order No. 990 (1984) which is the basis for the promulgation of RR No. 19-84 would show that suppliers who are manufacturers are not to be excluded from the availment of sales tax credit. Said Order states:

x-x-x x-x-x x-x-x

Section 1. *Credits against sales tax due.* - **Any specific or percentage tax paid** under Titles IV and V of the National Internal Revenue Code **on domestically manufactured, processed or produced,** or imported **raw material, part, accessory or other article locally purchased or imported** by the manufacturer for conversion into or intended to form part of the finished products **shall be credited against the sales tax due** on the finished product enumerated in Sections 194, 195, 196, 197, 199(a) and 201 of the same Code: x-x-x

x-x-x x-x-x x-x-x

Section 3. *Uniformity of methods of recording sales tax credits and tax liability.* The Minister of Finance, upon recommendation of the Commissioner of Internal Revenue, shall promulgate rules and regulations, prescribing uniform system of accounting and method of recording sales tax liability of manufacturers and SALES TAX **CREDITS** REPRESENTING **specific and sales tax shifted and separately billed in sales invoices by** dealers, importers, MANUFACTURERS or producers.

x-x-x x-x-x x-x-x

(Underscoring and emphasis supplied)

It is crystal clear from the above that sales tax of supplier-manufacturers constitutes sales tax credit against the sales tax liability of purchaser-manufacturers. This fact stirs up a monumental change in understanding Petitioner's compliance with the prescribed method of recording purchases, packaging materials, sales and deferred sales tax credits under RR No. 19-84. It has, in effect, rendered unnecessary and a surplusage the creation of separate accounts for dealers and manufacturers as required in said regulations.

In case of discrepancy or conflict between the basic law and the regulations issued to implement it, the former prevails over the latter. (**Article 7, Civil Code; Villa vs. Llanes, 120 SCRA 81, as cited in Statutory Construction by Agpalo**)

Likewise, this Court believes that there is no need for a separate account for purchases and for packaging materials without tax credit as required in RR No. 19-84 because what is really intended by Executive Order No. 990 to be recorded as available tax credit are actual specific and sales taxes which have been separately billed in sales invoices. Absent any specific and sales taxes in an invoice, there should really be nothing to record at all.

As to the alleged failure of the Petitioner to maintain a subsidiary ledger for deferred sales tax credit, this Court so holds that non-compliance therefrom is not a ground for disallowance inasmuch as the maintenance of a subsidiary ledger is *optional* to the taxpayer as provided in Section 332 of the Tax Code (1984).

Bringing thus into fore the method of accounting adopted by the Petitioner in the case at bar and noting most especially, the finding of the Appellate Division of

Respondent's Bureau, *supra*, that Petitioner's books of accounts when taken as a whole would show full compliance with the substantiation requirements of RR No. 19-84, this Court commensurately finds Petitioner's books of accounts to be in accordance with Executive Order No. 990 and in substantial compliance with the term "similarly equivalent accounts" as stated in RR No. 19-84.

With regard to the second issue which is evidentiary in nature, this Court finds as correct the allegation of the Petitioner that it claimed as tax credit on importation only the portion representing payment of advance sales or compensating tax. A meticulous examination conducted on the consumption entries on importation and respective official receipts issued by the Bureau of Customs unmistakably supports Petitioner's honest assertion (**Exhibits M to M-29, N to N-25, O to O-33, P to P-52, Q to Q-43, R to R-46, S to S-41, T to T-21, U to U-67, V to V-39, W to W-48 and X to X-43**).

There is no truth therefore to Respondent's contention that Petitioner claimed as tax credit on importation the customs duties it has paid.

Delving into the last issue, this Court chooses to uphold the validity of BIR Ruling No. 134-87. The specific provision of law governing BIR rulings, most especially their retroactivity or non-retroactivity is found in Section 246 of the Tax Code, the content of which is hereunder quoted for reference to wit:

> Sec. 246. *Non-retroactivity of rulings.*- **Any revocation, modification, or reversal of** any of the rules and regulations promulgated in accordance with the preceding section or **any of the rulings** or circulars **promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except** in the following cases: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; **(b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based**; or (c) where the taxpayer acted in bad faith. (Emphasis and italics supplied)

It can be gleaned from the section above quoted that as a general rule, a ruling can not be given retroactive application if it would cause prejudice to the taxpayer. By way of exception, however, such ruling may be applied retroactively if it meets the following requisites, namely: (1) that it has been revoked, modified or reversed and (2) that it qualifies under any of the three exceptions provided therein.

Evidence on record fails to show any action having been taken by the Respondent to revoke, modify or reverse said ruling. What he has done so far is merely to contend with the Petitioner, through his letter of denial of the protest, dated May 4, 1995, *supra*, that subsequent facts gathered through investigation were materially different from the facts represented in said ruling, hence, the latter is "inapplicable" and Petitioner should pay specific tax as a manufacturer.

In disregarding the applicability of the ruling in question, Respondent simply called it as "inapplicable". This term, to this Court's mind, did not engender any bit of change on the ruling. Its validity and existence has not been assailed or impaired. Only its irrelevance to an alleged different set of facts has been pinpointed. In a sense, it can be stated that the ruling was not utilized at all by the Respondent in making a deficiency assessment.

Section 246 is limpid in its provisions, *inter alia*, that retroactivity should be based on a revoked, modified or reversed ruling. This procedural requirement of law was ostensibly not observed by the Respondent. Ineluctably, it presents a fatal flaw to the deficiency assessment made against the Petitioner.

For another reason, this Court could not well agree on the finding of the Respondent that facts subsequently gathered upon investigation were "materially different from the facts" represented in BIR Ruling No. 194-87. In the latter ruling, Petitioner represented the following facts, to wit:

BIR RULING NO. 194-87

Gentlemen:

This refers to your letter dated February 9 and April 7, 1987 requesting a ruling whether the products of your client, The Ault & Wiborg Co. (Far East) commercially known as Thinner or Reducer and Retarder are subject to the excise tax or the sales tax based on the facts represented by you, as follows:

<u>"1. The said products are produced by our client through the simple process of mixing or blending two or more solvents;</u>

<u>"2. The individual solvents which are mixed or blended, are by itself, used to dissolve the resin portion (thin or reduce the viscosity) of the paints or inks. The resulting mixture or blend is also used to dissolve the resin portion of the paints or inks;</u>

<u>"3. That the component solvents are mixed or blended together to combine the application properties of the individual solvents. For example, Retarder is a thinner composed mainly of the mixture of solvents or thinner called Xylene and Cellosolve Acetate. Xylene has a strong dissolving power but evaporates or dries quickly. On the other hand, Cellosolve Acetate is not a strong solvent but evaporates or dries slowly. By mixing or blending Xylene and Cellosolve Acetate, the resulting mixture or blend is a thinner that dissolve strongly the resin portion of the paint but allows it to dry slowly. Another example is PNT-90 Color Thinner. It is composed mainly of the mixture of solvents or thinner which are called Acetone. Toluene and Pegasol. Acetone is fast drying. Toluene is medium drying and Pegasol is slow drying. By mixing or blending these solvents or thinners,</u>

> the resulting mixture or blend evaporates or dries at a desired rate allowing the paint to spread evenly and smoothly on the painted surface."

You also represented that solvents utilized by your clients were acquired either through importation or purchase from oil companies or dealers and that the excise tax and *ad valorem* tax under Section 128 (c)(3) of the Tax Code have been previously paid.

In reply, please be informed that Section 128 of the Tax Code imposes the specific and *ad valorem* taxes *on manufactured oils and fuels*. Among said manufactured oils and other fuels are thinners and solvents. [Sec. 128 (c)(2), Tax Code]. In other words, to be subject to excise taxes (specific and/or *ad valorem taxes*), said articles must have undergone the process of manufacturing.

From the foregoing facts, you represented that the individual solvents are used to dissolve the resin portion of the paints or inks and that the resulting mixture is also used for the same purpose. *The only difference between the individual solvents and the resulting mixture is that while the individual solvents possess their respective properties, the resulting mixture combines the application properties of the individual solvents.* In other words, the mixing or blending of the individual solvents did not result in the use of the resulting mixture which is different from the use of the individual solvents. Such being the case, the resulting mixture are not considered manufactured oils and other fuels as contemplated under Section 157(a) of the Tax Code; hence they are not subject to the excise (specific and *ad valorem*) taxes imposed by Section 128 of the Tax Code.

However your client is subject to the 1.5% sales tax imposed by Section 164 of the Tax Code on its sales of the abovementioned products.

Very truly yours,

(Sgd.) **BIENVENIDO A. TAN, JR.**
Commissioner

(Emphasis and underscoring supplied)

In refuting as inapplicable the aforementioned facts represented by the Petitioner, Respondent argued in his letter of denial of the protest, dated May 4, 1995, *supra*, that (1) the mixing or blending of the above stated ingredients resulted in a mixture which is different from the use of the individual ingredients and that, (2) the resulting mixture are placed in tin cans with the name of the taxpayer indicated as manufacturer.

This Court views the above conclusion reached by the Respondent as vague. It is a general inference devoid of factual basis. No specific technical explanation was afforded by the Respondent as to why the blending of the individual ingredients resulted in a mixture different from the use of each ingredient. It must be noted that the ingredients involved here are chemicals possessing of varied characteristics. As such, some type of technical understanding and explanations are to be expected in order to fully disprove Petitioner's assertion of facts and reverse Respondent's previous assent thereto in said ruling.

Without qualm or quibble, Respondent has failed to satisfy the wordings of Section 246 of the Tax Code on the need for a "materially different" set of facts so as to be able to apply retroactively any ruling that has been revoked, modified or reversed. Material difference connotes serious or significant incompatibility or dissimilarity. In so far as this Court is concerned, Respondent has barely scratched the nuances of such a requirement.

In fine, the validity of BIR Ruling No. 194-87 continued to subsist during the year involved. Petitioner is therefore not liable to pay the 25% tax rate provided in Section 128 of the Tax Code, as stated in said ruling. Petitioner is only liable for 1 & 1/2 % sales tax imposed by then Section 164 of the same Code.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED. ACCORDINGLY**, the assessment in question, under **Demand No. 111720-87-B-90-B-2, dated September 10, 1990**, in the amount of **P19,772,659.08** covering percentage and excise taxes issued against the Petitioner, is hereby **WITHDRAWN** and **CANCELLED** and declared to be of no force and effect.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(Dissenting)
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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AULT AND WIBORG CO. (FAR EAST) PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5277

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 20 1999

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CONCURRING AND DISSENTING OPINION

The majority opinion embodied in the main decision of this case, elected to order the cancellation of the assessment issued against the Petitioner for deficiency percentage taxes for the taxable year 1987.

I concur with the view of the majority with respect to the cancellation of the assessment pertaining to deficiency excise tax as the records of this case clearly show that Petitioner should not be subject to the 25% excise tax prescribed by Section 128 of the 1987 Tax Code.

With respect however to the deficiency percentage tax in the amount of ₱18,326,335.78, I beg to differ with the ruling declared by my esteemed colleagues and find that the Petitioner should be made to pay the full amount of ₱18,326,335,78, plus 20% interest, from the date prescribed for payment until fully paid.

The deficiency percentage tax liability was a result of the findings made by the revenue examiner that Petitioner did not comply with the substantiation requirements for the availment of sales tax credits and uniform method of sales tax credit accounting prescribed by Revenue Regulations No. 19-84, as amended by Revenue Regulations No. 2-86.

Petitioner refutes the findings of the revenue examiner and argues that it has fully complied with the requirements of Revenue Regulations No. 19-84, and even granting that its accounting method did not strictly follow the requirements prescribed by Revenue Regulations 19-84, Petitioner asserts that the provisions of the latter are not exclusive and mandatory in nature because said revenue regulations allow the taxpayers to maintain "similarly equivalent accounts" which may not be in the form prescribed therein.

Revenue Regulations No. 19-84 require that the tax credit passed on to the taxpayer by the supplier-dealer must be recorded separately from the tax credit passed on by a supplier-manufacturer. In addition, a subsidiary ledger must be kept and maintained wherein the Deferred Sales Tax Credit accounts are classified and separately recorded according to supplier (manufacturer or dealer) and according to rates of sales tax.

An examination of the records, particularly Exhibits B, B-2, B-4, B-6, B-12 and B-20, disclose that the accounting method adopted by petitioner cannot even fall under the term 'similarly equivalent accounts" required by Revenue Regulations No. 19-84. Pages from the purchase book of petitioner show that the purchase made from a supplier-dealer and those made from a supplier-manufacturer were all placed in one column. What appears to distinguish between the two kinds of purchases are supposedly the letters D for dealer and M for manufacturer placed after each amount (see Exhibits B, B-1 to B-23), understandable only to the Petitioner. There was no separate recording for the two kinds of purchases as required by Revenue Regulations 19-84. Petitioner did not even submit the subsidiary ledger earlier mentioned, giving credence to Respondent's allegations that Petitioner did not keep one in contravention with said revenue regulation.

It must be remembered that Revenue Regulations No. 19-84 provide that tax credits by the manufacturer (Petitioner herein) shall be allowed only upon compliance with the requirements prescribed therein which Petitioner failed to substantially comply. I see therefore no reason why Petitioner should be allowed to avail of the tax credit provided by said regulation when it obviously contravened the provisions therein.

Even the majority view acknowledges the fact of non-compliance when they declared thus:

> "At first brush, there is basis for the disallowance because it is indeed apparent that the accounts maintained by the Petitioner, supra, were not similarly equivalent to what is required under the regulations. Its accounts for sales as well as accounts for purchases, packaging materials, and deferred sales tax credit of supplier-manufacturers/dealers with or without tax credit were not recorded separately as required by the regulations. Petitioner merely combined, mixed or lumped into one account all the purchases it has made inclusive of the corresponding creditable sales taxes, regardless of whether the same came from a manufacturer or dealer with or without tax credit. This is equally true in so far as account for packaging materials, deferred sales tax credits and sales are concerned.

The aforequoted admission by the majority places the final conclusion in the cancellation of the percentage tax assessment on a very shaky foundation.

The attempt to challenge the wisdom and validity of Revenue Regulations No. 19-84 by stating that it is not a proper implementation of Executive Order No. 990 is, to say the least, a flimsy basis for upholding Petitioner's position. First of all, Petitioner never assailed the provisions of Revenue Regulations No. 19-84, and even maintained that it substantially complied with its requirements. Secondly, there is nothing in Revenue Regulations No. 19-84 which is inconsistent with the provisions of Executive Order No. 990, contrary to the majority opinion. I believe that Executive Order 990 does not contain any provision which would preclude the Commissioner of Internal Revenue from requiring the adoption of an accounting method that would have a separate recording of the amount of tax credit passed on to the taxpayer by a supplier-dealer from that of the tax credit passed on by a supplier-manufacturer.

I submit that the real issue to be resolved in the instant case is whether or not Petitioner complied with the requirements prescribed in Revenue Regulation No. 19-84.

The records reveal a negative answer.

WHEREFORE, in view of the foregoing, I vote to uphold the percentage tax deficiency assessment for 1987 and order the Petitioner to pay the amount of ₱18,326,335.78, plus 20% interest, from the date prescribed for payment thereof until fully paid, pursuant to Section 283(a) and (b) of the Tax Code.

RAMON O. DE VEYRA
Associate Judge