REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LA SUERTE CIGAR AND CIGARETTE FACTORY,
Petitioner,

- versus -

C.T.A CASE NO. 4515

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated : JUL 13 1995

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DECISION

This is a case involving an assessment in the amount of P34,904,247.00 as alleged deficiency specific tax on the Petitioner's purchase of imported and locally produced stemmed-leaf tobacco.

Petitioner is a domestic corporation engaged in, among others, the importation and local purchase of stemmed leaf tobacco which it uses as a raw material in the production and manufacture of cigar and cigarettes.

On January 3, 1990, Petitioner received a letter from the Respondent demanding payment of P34,934,827.69 "as deficiency excise tax on your importation and local purchase of stemmed leaf tobacco covering the period from January 1, 1986 to June 30, 1989, exclusive of surcharge and interest, within ten (10) days from receipt hereof." (Exh. "H") The demand letter was anchored on Section 141

(b) of National Internal Revenue Code of 1977. Which respondent interpreted as follows:

> Section 141 of the Code provides that there should be collected a tax of P0.75 on each kilogram of the following products of tobacco:
>
> > "(b) Tobacco prepared or partially-prepared with or without the use of any machine or instrument or without being pressed or sweetened." (Underscoring supplied) Stemmed-leaf tobacco is partially-prepared tobacco as provided under Section 1 (L) of Revenue Regulations No. 17-67.
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> Further, under the penultimate paragraph of the same section, it provides that fine-cut shorts and refuse, scraps, clippings, stems and sweepings of tobacco resulting from handling and stripping of whole leaf tobacco may be transferred, disposed of, or otherwise sold, without the prepayment of the specific tax when the same are to be used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product. It will be noted from the above enumeration, however, that stemmed leaf tobacco is not among the products exempted from the payment of tax.

On January 15, 1990, Petitioner filed a letter of protest dated January 12, 1990 stressing "that the BIR assessment was based solely on Sec. 141 (b) of the NIRC without, however, applying Section 137 thereof, the more specific provision, which expressly allows the sale of stemmed leaf tobacco as raw material by one manufacturer directly to another without payment of the (excise) tax. La Suerte purchased stemmed Leaf tobacco from manufacturers (Petition, p. 3) "Moreover, La Suerte made reference to a BIR Ruling dated 12 December 1972 wherein the BIR expressly ruled that under Sec. 137 of the NIRC, the sale of partially manufactured tobacco from a wholesale leaf tobacco dealer (L-3R) to a manufacturer of tobacco products (L-7½) 'for use in the manufacture of cigar and cigarettes may also be allowed without prepayment of the tax'". (Ibid., See full letter in Exh. I).

On November 26, 1990, Petitioner received a letter from the Respondent dated August 31, 1990 denying Petitioner's protest with finality (Exh. J) and reiterated its demand to pay the amount of P34,904,247.75 computed as follows:

STEMMED-LEAF TOBACCO			RATE OF TAX	SPECIFIC TAX
Importer	13,918,465 kls.	x	P0.75	P10,438,848.00
Local	32,620,532 kls.	x	0.75	24,465,399.00
Total Amount Due (Basic Tax)				P34,904,247.00

representing deficiency specific tax exclusive of increments. (Exh. K)

Hence, this appeal.

The issue is: Whether or not Petitioner is liable to pay the alleged specific tax on locally purchased and imported stemmed-leaf tobacco used as a raw material in the production and manufacture of cigar and cigarettes?

We answer in the negative.

This is not a case of first impression. This Court has already ruled out in a number of cases before involving the same question of law. In a similar case involving the <u>same</u> parties and the <u>same</u> issue (La Suerte Cigar and Cigarette Factory versus Commissioner of Internal Revenue, CTA Case No. 4617, dated September 6, 1994) We already ruled, thus:

> Respondent relies on the provisions of Section 141(b), 127(a), and 128 of the Tax Code as basis for the deficiency specific tax assessment, which we quote hereunder:
>
> "SEC. 141. **Tobacco Products.** - There shall be collected a tax of seventy-five centavos on each kilogram of 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
>
> (c) xxx xxx xxx
>
> "SEC. 127. ***Payment of excise taxes on domestic products. - (a) Persons liable; time for payment.*** - Unless otherwise especially allowed excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of production: Provided, that the excise tax on locally manufactured petroleum products and indigenous

petroleum levied under Sections 145 and 151 (a) (4), respectively, of this Title shall be paid within 15 days from the date of removal thereof from the place of production. Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

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"SEC. 128. ***Payment of excise taxes on imported articles. — (a) Persons liable.*** - Excise taxes on imported articles shall be paid by the owner or importer to the customs officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.

In case of tax-free articles brought or imported into the Philippines by persons, entities, or agencies exempted from tax which are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers or recipients shall be considered the importers thereof, and shall be liable for the duty and internal revenue tax due on such importation. The tax due on such article shall constitute a lien on the article itself, superior to all other charges or liens, irrespective of the possessor thereof.

(b) Rate and basis of the excise tax on imported articles. - Unless otherwise specified, imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles."

and its implementing regulation Revenue Regulations No. 17-67, as amended, pertinent portion of which provides:

"REVENUE REGULATIONS NO. 17-67
[as amended by Rev. Regs. Nos. 9-72 (Sept.27, 1972), 1-73 (Dec. 26, 1972), 5-75 (Nov.11, 1975), and 1-76 (Nov. 16,1976)]

SUBJECT: Tobacco Revenue Regulations on leaf, scrap, other partially manufactured tobacco and other tobacco products; grading, classification, inspection, shipments, exportation, importation and the manufacturers thereof under the provisions of Act No. 2613, as amended.

To: All Internal Revenue Officers and Others Concerned:

Section 1. xxx xxx xxx

Section 2. Definitions of terms

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(m) "Partially manufactured tobacco" - includes:

(1) "Stemmed leaf" - handstripped tobacco, clean, good, partially broken leaf only, free from mold and dust."

We shall discuss each of the items appearing in the preassessment notice issued by respondent's office holding petitioner liable for deficiency specific tax.

The first and third items will be discussed jointly. In Item No. 1, respondent assessed the petitioner for specific tax on locally purchased stemmed-leaf tobacco from local suppliers pursuant to Section 141 (b) of the Tax Code. Petitioner's purchases of 14,703,644 kilos of local stemmed-leaf tobacco was assessed a specific tax at the rate of P0.75 per kilo or a total of P11,027,733.00. In Item No.3, respondent assessed petitioner the P0.75 per kilogram specific tax on its sale of 157,200 kilos of stemmed-leaf tobacco from an L-7 account to Associated Anglo-American Tobacco Corporation equal to P117,900.00 plus 25% surcharge of P29,475.00 or a total of P147,375.00.

In refuting the arguments raised by respondent, petitioner insists that the applicable provision of law is Section 137 of the Tax Code, and not Section 141 (b), which provides:

> "**SEC. 137. Removal of tobacco products without prepayment of tax.** - Products of tobacco entirely unfit for chewing or smoking may be removed free of tax for agricultural or industrial use, under such conditions as may be prescribed in the regulations of the Department of Finance. Stemmed leaf tobacco, fine cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and sweepings of tobacco may be sold in bulk as raw material by one manufacturer directly to another, without payment of the tax under such conditions as may be prescribed in the regulations of the Department of Finance.
>
> "Stemmed leaf tobacco", as herein used means leaf tobacco which has had the stem or midrib removed.

<u>The term does not include broken leaf tobacco.</u>" (Emphasis Ours.)

There is nothing abstract in the language of the said provision. The aforequoted provision is clear and leaves no room for strained interpretation. The language is clear and unequivocal and must be taken to mean exactly what it says. "It is the fundamental duty of the courts to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them." (**People v. Mapa, G.R. No. L-22301, August 30, 1967.**)

The records will show that petitioner's local purchases of stemmed-leaf tobacco were acquired from various manufacturer and the same were used as raw materials for the manufacture of cigars and cigarettes.

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By and large the term "manufacturers" as mentioned in Section 137 of the Tax Code can be interpreted to mean both "manufacturer of tobacco" and/or "manufacturer of cigars and/or cigarette" as defined in Revenue Regulations No. 17-67, as amended, to wit:

"**Section 2.** Definition of terms

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(i) "**Manufacturer of tobacco**" - Includes every person whose business it is to manufacture tobacco or snuff or who employs others to manufacture tobacco or snuff, whether such manufacture be by cutting, pressing (not baling), grinding, or rubbing (grating) any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco and snuff, or

> putting up for consumption scraps, refuse, or stems or tobacco resulting from any process of handling tobacco stems, scraps, clippings, or waste or sifting, twisting, screening or by any other process.
>
> (j) **"Manufacturer of cigars and/or cigarettes"**- Includes those persons whose business it is to make or manufacture cigars and/or cigarettes for sale, or who employ others to make or manufacture cigars and/or cigarettes for sale; but the term does not include artisans or apprentices employed to make cigars and/or cigarettes from material supplied by the employer, the latter being lawfully engaged in the manufacture of cigars and/or cigarettes.
>
> xxx xxx xxx

Since petitioner's purchases of local stemmed-leaf tobacco manufacturers and the same were used as raw materials in the production of cigars and cigarettes it is therefore clear that it is covered by Section 137 of the Tax Code. Thus, petitioner's purchases of local stemmed-leaf tobacco from various tobacco manufacturers are exempt from the payment of the specific tax.

Furthermore, Section 20 (a) of Revenue Regulations No. V-39 [The Tobacco Products Regulations], as amended, even bolsters the provision of Section 137 of the Tax Code considering that stemmed-leaf tobacco was specifically mentioned as an exemption from the payment of the specific tax. Section 20 (a) of said regulation provides:

> "Section 20. Exemption from tax of tobacco products intended for agricultural or industrial purposes. -(a) Sale of stemmed leaf tobacco, et., by one factory to another. - Subject to the limitations herein established, products of tobacco entirely unfit for chewing or smoking may be removed free of tax for agricultural or industrial use; and stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut, chewing tobacco, refuse, scraps, cuttings, clippings, and sweeping of tobacco may be sold in bulk as raw materials by one manufacturer directly to another without the prepayment of the specific tax.
>
> Stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cutting, clippings, and sweeping of leaf tobacco or partially manufactured tobacco or other refuse of tobacco may be transferred from one factory to another under an official L-7 invoice on which shall be entered the exact weight of the tobacco at the time of its removal, and entry shall be made in the L-7 register in the place provided on the page for removals. Corresponding debit entry will be made in the L-7 register book of the factory receiving the tobacco under heading "Refuse, et., received from other factory", showing date of receipt, assessment and invoice numbers, name and address of the consignor, form in which received, and the net weight of the tobacco. This paragraph should not, however, be construed to permit the transfer of materials unsuitable for the manufacture of tobacco products from one factory to another."(Emphasis Ours.)

The term "manufacturer of tobacco products" has been defined to include all persons engaged in the manufacture of any of the forms of tobacco such as cigars and cigarettes [Sec.2(b), Revenue Regulations No. V-39]. When the law and regulations enumerate and define various categories of manufacturers subject to the excise tax and thereafter exempt them if the sale of stemmed-leaf tobacco was made by one manufacturer directly to another then the term "manufacturer" as broadly used should be interpreted to mean "manufacturers of tobacco" and "manufacturers of tobacco products" or "manufacturers of cigars and cigarettes".

The whole concept being that the stemmed-leaf tobacco will not be sold or transferred as is but is sold in bulk to be used as raw materials in the manufacture of tobacco products such as cigars and cigarettes wherein the corresponding excise tax will eventually be paid on these finished products. The rationale, is that the tax incidence is merely postponed for it will later be collected as part of the excise tax on the finished product (cigar and cigarettes). Thus, the purchase of stemmed-leaf tobacco to be used as raw materials by petitioner in its manufacture of cigar and cigarettes is therefore exempt from the payment of the specific tax.

With respect to its sale of stemmed-leaf tobacco with Associated Anglo-American Tobacco Corporation (Item No.3), petitioner also maintains that it need not pay the specific tax thereon pursuant to Section 137 of the Tax Code. Petitioner has proven that it is a manufacturer of cigars and cigarettes as evidenced by its Mayor's Permit issued by the Mayor of Parañaque, Metro Manila for the years 1989 (Exh. CW, p.231, CTA record) and 1990 (Exh. CW-1, p. 232, CTA record), stating that it is engaged in business as a Cigarette Manufacturer. Therefore, stemmed-leaf tobacco sold in bulk by petitioner, a manufacturer of cigars and cigarettes, to another manufacturer, Associated Anglo-American Tobacco Corporation, is exempt from the payment of the specific tax. The stemmed-leaf tobacco sold can thus be removed without the prepayment of the specific tax.

This Court has observed that while Section 127 of the Tax Code requires that excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of production, the bulk of the assessment herein imposed against the petitioner is on the basis that it is a possessor, having bought the stemmed-leaf tobacco from other tobacco manufacturers or local suppliers. In other words, the law identifies the person or taxpayer primarily liable and yet respondent failed to enforce its collection against them although they are known to the respondent. To show her inconsistency in enforcing the procedure to collect, petitioner is likewise being assessed not as buyer-possesor but this time as manufacturer-seller of stemmed leaf tobacco to Associated Anglo-American Tobacco Corporation. We do not wish to question the way respondent enforces the law, but for the guidance of taxpayers a uniform enforcement of tax laws may be suggested. While it is true that the respondent may collect excise taxes even against a mere possessor, she is first required to collect the same from the manufacturer or producer, as the entity primarily liable to the said tax. To interpret otherwise would render the first portion of Section 127 a mere surplusage which could not have been the intention of the lawmaker. It is only after there is a clear showing that the manufacturer or producer could not pay or failed to pay the excise tax for some valid or justifiable reasons could the respondent run after the possessor. The way respondent enforces the law may not have been the intention of the lawmaker.

While it is true that stemmed-leaf tobacco are classified as "partially manufactured tobacco" under Section 2(m) of Revenue Regulations No. 17-67, as amended, still it will be observed that in Section 43 of the same Revenue Regulation, falling under Chapter XI entitled "Partially manufactured tobacco and tobacco products for export", it provides:

> "**Section 43. Tobacco exempted from specific tax.** - <u>No specific tax shall be collected on the following:</u>
>
> (a) Leaf tobacco and <u>partially manufactured tobacco, except imported leaf tobacco, unless entered in the L-7 official register book.</u>
>
> (b) Manufactured products of tobacco for export and/or use by the Armed Forces of the Philippines or the United States "Armed Forces, and other entities specifically exempted by law." (Emphasis Ours.)

It is clear from the above-quoted provision that no specific tax shall be collected on partially manufactured tobacco including stemmed-leaf tobacco.

Thus, even assuming arguendo that stemmed-leaf tobacco falls under the category of partially manufactured tobacco still the same is exempted from the payment of the specific tax under Sec. 43(a) of Revenue Regulations No. 17-67, as amended. There is no showing that the provision of Section 43(a) has been repealed or superseded by another regulation. The respondent has no right to rule otherwise because a revenue regulation issued pursuant to law has the force and effect of law unless found to be contrary to law.

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Furthermore, it is an elementary rule in statutory construction that a statute must be read or construed as a whole or in its entirety. All parts, provisions, or sections, must be read, considered or construed together, and each must be considered with respect to all the others, and in harmony with the whole. (**St. Martin, et. al. v. Iberville Parish, et. al., 212 La. 886, cited in MARTIN's Statutory Construction, p. 132.**) Under this rule, that construction is favored which will render every word operative rather than one which makes some words idle and nugatory. (**Shimonek v. Tillanan, 1 P. 2d, 154; ibid.**) Thus, courts are duty bound to adopt a construction that will give effect to every part of a statute, if at all possible, following the maxim *"ut magis valeat quam pereat"* (that construction is to be sought which gives effect to the whole statute). **(Almeda v. Florentino, G.R. No. L-23800, December 21, 1965.)**

In the case at bar, there being no conflict with the provisions of Section 2(m) and 43(a) of Revenue Regulations No. 17-67, as amended, the local purchases of stemmed-leaf tobacco classified as partially manufactured tobacco are therefore exempt from the specific tax.

Anent the second item, regarding the alleged deficiency specific tax on imported stemmed-leaf tobacco in the amount of P582,167.25, respondent applied the provisions of Sections 128 and 141(b) of the Tax Code.

At this juncture, petitioner pointed that it imported foreign leaf tobacco from various <u>manufacturers</u> of tobacco from the United States of America. These were properly recorded in its L-7 (see Exhs. DA up to DS-4, inclusive; and Exhs. DA-01 through DS-31, inclusive) and L-7-1/2 (see Exhs. FA to FP, inclusive) registers.

Section 137 of the Tax Code does not make any distinction whether the sale of stemmed-leaf tobacco by a manufacturer to another is imported or local. What is essential is that the sale of stemmed-leaf was made by a manufacturer directly to another to be used as raw material in its production in order that the same may be removed without the payment of the excise tax.

There appears to be no distinction as to the term "manufacturer" as mentioned in Section 137 of the Tax Code. The manufacturer that supplies stemmed-leaf tobacco may either be foreign or local suppliers. Where the law does not distinguish we should not distinguish. There is nothing cryptic nor abstract in the language of the said provision as would pose an ambiguity in its application. We should ensure the continued application of said provision as it is in all fours with the case at bar.

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As a rule no specific tax shall be collected on leaf tobacco and partially manufactured tobacco (which includes stemmed-leaf tobacco), except imported leaf tobacco, unless entered in the L-7 official register book [Sec. 43(a) of Rev. Regs. No. 17-67, as amended]. Thus, while it is true that imported leaf tobacco is subjected to the specific tax still the same is exempted if entered in the L-7 official register book. For its part, petitioner has amply proven that the imported tobacco were properly recorded in its L-7 and L-7 1/2 official register book (see Exhs. DA to DS-4; DA-01 to DS-31; FA to FP, all inclusive). Having complied with the requirement of Section 43(a) of Revenue Regulations No. 17-67, as amended, we see no reason why petitioner should not be exempted from the payment of the specific tax in question.

WHEREFORE, in view of the foregoing, We find the petition for review meritorious and the same is hereby GRANTED. Respondent's decision dated April 29, 1991 is hereby set aside and the formal assessment for deficiency specific tax in the sum of P11,757,275.25 subject of respondent's letter, dated January 30, 1991, is deemed cancelled.

And in a separate concurring opinion, this Ponente opined that:

As pointed out by the majority opinion while imported leaf tobacco is subjected to specific tax still the same is exempted if entered in the L-7 official register book. On this point, petitioner has proven by sufficient evidence that the imported leaf tobacco were properly recorded in its L-7 and L-7 1/2 official register books.

The above provision must have been the reason why for a long period of time until 1990 when assessment was reported by the respondent revenue examiners, the BIR has not been requiring payment of specific tax on leaf tobacco whenever used as raw material in the manufacture of tobacco finished products.

This situation is confirmed by Atty. Ricardo Aquino, Chief of the Field Operation Division of the BIR, that prior to 1989 the BIR did not enforce the P0.75 tax on partially manufactured tobacco (T.S.N. June 23, 1993, p. 10). This court would like to take note that the same situation confronts the other cigarette manufacturers as similar cases involving these manufacturers are also pending with this court.

Granting that error may have been committed in the interpretation of the law, the situation may not be corrected by just issuing an assessment but more equitably by amending the aforequoted provision of Revenue Regulation No. 17-67. As pointed out by the majority opinion, the Commissioner of Internal Revenue alone may not supersede a regulation issued by her superior. This will be a violation of the provision of Section 245 of the Tax Code which grants the Secretary of Finance the authority to issue rules and regulations. The proper thing that the Commissioner should have done under the circumstances is to amend the subject revenue regulation but the same may not also be given retroactive effect pursuant to Section 246 of the same Code, providing for the non-retroactivity of any change in rules and regulations if it will prejudice the taxpayer. Administrative agencies should likewise adhere to administrative due process and orderly change in the administrative regulations, for the public especially businessmen are guided by what the administrative agencies promulgate in the conduct of their business. Had petitioner been aware that the imported leaf tobacco would be subjected to specific tax it could have incorporated the said tax as part of its cost which it could pass on to its consumer. In this particular case, petitioner has no hope of recovering the same for no fault of its own but relying faithfully on an existing regulation.

Not only that.

In a later case, (**Fortune Tobacco Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4587, dated November 23, 1994) involving the same issue, We again ruled for the assessment's dismissal. Said We:

> The issue is not new. The question has already been passed upon in C.T.A. Case No. 4616, promulgated October 6, 1994, involving the same parties herein and the analogous issue, where this Court set aside respondent's assessment of deficiency excise tax on stemmed leaf tobacco principally because under Section 1-b of Republic Act No. 690 entitled "An Act to Limit the Importation of Foreign Leaf Tobacco" as amended by R.A. 1194, stemmed leaf tobacco is specifically excluded from the definition of processed tobacco. In the absence of a statutory definition of what is the meaning of "tobacco prepared or partially prepared" we may adopt the definition of law on "processed tobacco" because its definition clearly refers to tobacco being prepared for manufacturing purposes which for ready reference is being quoted below:
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> > "Section 1-b. By processed tobacco is meant leaf tobacco which is either blended, cased, flavored, ready-cut or cut fillers ready for manufacturing purposes and shall not include tobacco leaf only the stem of which is removed. xxx"
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> In accordance with the above definition, "processed tobacco" cannot possibly refer to finished tobacco products but to tobacco leaf being prepared so that it will be ready for manufacturing purposes similar to "prepared or partially prepared tobacco". In fact, under Section 2(m) of Revenue Regulation No. 17-67 defining what is partially manufactured tobacco, "ready-cut or cut fillers" included in the phrase "processed tobacco" is also specifically enumerated, among others, as one

type of partially manufactured tobacco. However, the same revenue regulation likewise included "stemmed leaf tobacco" as a type of partially manufactured tobacco which by definition of law is specifically excluded. In case of this conflict, the rule in statutory construction is very clear that said provision of the implementing regulation which is contrary to law is considered null and void and of no effect.

This construction is specifically true in the case of tax statutes because statutes imposing tax are strictly construed against the state and liberally in favor of the taxpayer. This is because tax laws operate to impose tax burdens on the public or to restrict them in the enjoyment of their property and the pursuit of their occupation. Thus, in the interpretation of such statutes it is the established rule not to extend their provisions by implication, beyond the clear import of the language employed, or to enlarge their scope as to include matters not specifically pointed out. In case of doubt, they are construed most strongly against the government. (**Gould vs. Gould**, 62 L. ed. p. 211, cited in the Handbook on Statutory Construction by Ruperto Martin, 1972 ed. p. 193.) This strict interpretation is especially true in the case of specific taxes because these taxes are those imposed on specified articles, such as the taxes on articles mentioned in Sections 123 to 148 of the National Internal Revenue Code (now Sections 126 to 151) (**Shell Co. vs. Vano**, 94 Phil. 389).

Concerning the argument of the respondent that unlike in Section 137 of the Tax Code, stemmed leaf tobacco is not specifically mentioned in the penultimate paragraph of Section 141 as among those not subject to specific tax when used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product and therefore subject to specific tax. This court believes that the legislature has to provide the said exemption in Section 141 because the same section imposes specific tax on those specified items under subletter(c), namely: fine-cut shorts and refuse, scrap, clippings, cuttings, stems and sweepings of tobacco. Stemmed leaf tobacco is not included because in the first place, it is not being taxed specifically under said section. Respondent merely expanded the meaning of "partially manufactured tobacco" to include within the scope of stemmed leaf tobacco by implication contrary to the aforementioned rule on statutory construction.

On the other hand, Section 137 of the Tax Code mentions stemmed leaf tobacco among those not subject to specific tax when sold by one manufacturer directly to another manufacturer. Does it mean when those items mentioned are not sold by one manufacturer to another, these items are already taxable? If our answer is yes, why then are imported leaf tobacco not taxable? Maybe your answer would be because no provision in the Tax Code imposes specific tax on leaf tobacco. And further because it is being used as raw materials in the manufacture of other tobacco products on which the excise tax will eventually be paid. But is it not a fact that stemmed leaf tobacco like leaf, tobacco is not also taxable under any provision of the Tax Code and likewise being used as raw materials in the manufacture of other tobacco products on which the excise tax will eventually be paid. Why then will there be a different tax treatment just because one provision of the Tax Code exempts stemmed leaf tobacco from specific tax under certain conditions. Following, the strict rule against taxation as explained above, we cannot imply that stemmed leaf tobacco will be taxable if it failed to meet the condition set forth under said section in the absence of a clear provision taxing the same. The obvious intention of Sections 137 and the penultimate paragraph of Section 141 is not to tax the articles enumerated therein but to exempt them from being taxed when those articles will be utilized in the manufacture of finished tobacco products on which the specific tax will eventually be paid, otherwise, it will lead to double taxation. Although double taxation is not prohibited in this jurisdiction, the same is however being discouraged because of its disincentive effect. In accordance with the cardinal rule on statutory construction, legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision above (**Aboitiz Shipping Corporation, et al vs. The City of Cebu**, et al., G.R. No. L-14526, March 31, 1965, cited in the Handbook on Statutory Construction by Ruperto Martin, pp. 42-43). The rule has been to exempt raw materials or even semi-finished products from taxes if it will be utilized in the manufacture of articles subject to specific tax. So that under Section 103(e) sale or importation of raw materials to be used by the buyer or importer himself in the manufacture of petroleum products (except lubricating oil and grease) subject to excise tax is not subject to value added tax. Even finished products such as wines and distilled spirits for treatment of tobacco leaf to be used in the manufacture of cigars and cigarettes may be withdrawn from bond free of excise tax pursuant to Section 130 of the Tax Code. Removal of spirits for rectification need not pay excise tax under Section 134 of the same Code and under Section 145(1) & (13), tax credit is granted on feedstock utilized in the manufacture of exciseable articles and naptha shall be subject to zero rating if utilized as raw material in the production of petrochemical products, respectively. Similarly, stemmed leaf tobacco which is basically a raw material in the manufacture of other tobacco products such as cigars and cigarettes on which the specific tax will eventually be paid will have to be exempted also from specific tax. The construction is done pursuant to the spirit of the law or the reason for it. The spirit or intention of the law prevails over the letter thereof. (**U.S. vs. Yee Ngee, How, D.C.** Cal. 105, F. supp. 577, Martin, *op cit*, p.64).

Granting for purposes of argument that the term "partially manufactured tobacco" includes "stemmed leaf tobacco", the Bureau of Internal Revenue itself pursuant to Section 43(a) of Revenue Regulation No. 17-67, tobacco product regulation, which provides:

> "Section 43. Tobacco exempted from specific tax. - No specific tax shall be collected on the following:
>
> (a) Leaf tobacco and partially manufactured tobacco, except imported leaf tobacco, unless entered in the L-7 official register book.
>
> xxx xxx xxx
>
> (Underscoring supplied, See Revenue Regulations Updated by Prof. Eustaquio O. Ordono, p. 801).

Pursuant to said provision, partially manufactured tobacco including local and imported leaf tobacco shall not be subject to specific tax if entered in the L-7 official register book. This is the book of manufacturer of tobacco. There is no showing that the provisions of Section 43(a) has been superseded by any other regulation. The respondent has no right to rule otherwise because the revenue regulation issued pursuant to law has the force and effect of law unless found to be contrary to law. Furthermore, when a particular construction has been operative over a long period and has acquired the sanction of usage, it is entitled to "respectful consideration" especially if rights have been adjusted and determined by it for many years, as a change may result in inequitable treatment of similarly situated taxpayers and may occur after many persons have acted upon the faith of the Regulation. The rule is also, perhaps, particularly applicable where a change in the administrative construction would produce great administrative inconvenience or inequality. (Law of Federal Income Taxation, Mertens Vol. 1, 1978, Sec. 3.20, p. 40). Long and continuous construction given by government officials entitled to consideration (Phil. **Sugar Central** vs. **Collector,** 51 Phil. 131). This provision in the regulation may have been the reason why for a long time the BIR has not been collecting specific tax on stemmed leaf tobacco and other partially manufactured tobacco if these articles will be utilized in the manufacture of other tobacco products on which the corresponding specific tax will eventually be paid.

WHEREFORE, in all the foregoing, the assessment of alleged deficiency specific tax in the amount of P34,904,247.00 issued by the Respondent is hereby **CANCELLED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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