

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

**LA SUERTE CIGAR AND
CIGARETTE FACTORY, INC.,**
Petitioner,

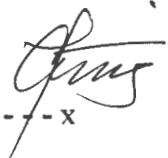
- versus -

**C.T.A. CASE NOS. 4689, 4704, 4710,
4723, 4777, 4782,
4799, 4805, 4814,
4818, 4843, 4862,
4870, 4880**

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

SEP 03 1998



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D E C I S I O N

These consolidated cases involve claims for refund of alleged erroneously or illegally collected specific taxes on various importation of stemmed leaf tobacco in the amounts of P54,000.00, P246,819.00, P53,343.00, P235,767.00, P62,460.75, P31,230.00, P116,070.00, P234,882.75, P52,050.00, P23,269.50, P85,250.25, P83,281.50, P57,391.50, P22,044.70 or for the aggregate amount of P1,357,859.45 covering the period from December 1989 to November 1990.

Petitioner is a domestic corporation engaged in the manufacture of cigars and cigarettes out of stemmed leaf tobacco as raw materials which it purchases in bulk from both local and foreign tobacco manufacturers.

Sometime in December 1989 to November 1990, petitioner purchased and imported stemmed leaf tobacco from various sellers abroad whereby the corresponding excise/specific taxes were subsequently assessed and collected. Petitioner allegedly paid

319

DECISION -

C.T.A. CASE NOS. 4689, 4704,
4710, 4723, 4777, 4782, 4799,
4805, 4814, 4818, 4843, 4862,
487, 4880

- 2 -

said amounts under protest.

Petitioner, through counsel, filed a claim for refund of specific taxes subject of CTA Case No. 4689 (Exhibit A-1), and on December 13, 1991 and February 12, 1992, consolidated claims for refund of the specific taxes filed covering all periods therein which are now the subject of CTA Case Nos. 4704, 4710, 4723, 4777, 4782, 4799, 4805, 4814, 4848, 4843, 4862, 4870 and 4880 (Exhibit A). In said claims, petitioner protested the assessments and collections of specific taxes, invoking Section 137 of the National Internal Revenue Code, wherein it exempts the sale of stemmed leaf tobacco "by one manufacturer directly to another" from excise taxes.

Respondent formally denied petitioner's claim for refund in CTA Case No. 4689, and failed to act on the other consolidated claims, hence, petitioner was constrained to file Petitions for Review before this Court on December 26, 1991 (CTA Case No. 4689); January 18, 1992 (CTA Case No. 4704); February 06, 1992 (CTA Case No. 4710); March 5, 1992 (CTA Case No. 4723); April 3, 1992 (CTA Case No. 4777); April 8, 1992 (CTA Case No. 4782); April 25, 1992 (CTA Case No. 4799); May 15, 1992 (CTA Case No. 4805); May 29, 1992 (CTA Case No. 4814); June 5, 1992 (CTA Case No. 4818); September 2, 1992 (CTA Case No. 4843); October 15, 1992 (CTA Case No. 4862); November 4, 1992 (CTA Case No. 4870); and November 26, 1992 (CTA Case No. 4880).

It is important to note at this point that these cases were originally submitted for decision on June 28, 1995 but their final disposition was held in abeyance for reasons stated in a resolution, dated May 28, 1996 (page 317, CTA records). However, in view

320

DECISION -

C.T.A. CASE NOS. 4689, 4704,
4710, 4723, 4777, 4782, 4799,
4805, 4814, 4818, 4843, 4862,
487, 4880

- 3 -

of the decision promulgated by the Court of Appeals involving identical facts and issues in the case of Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, CA SP Nos. 38219 and 40313, dated January 30, 1998, We have decided to rule on these instant petitions in the same light.

In her Answer, respondent considered stemmed leaf tobacco as "partially manufactured or prepared tobacco" as provided for in Revenue Regulations No. 17-67 (Sec. 1 (1)), and as such, subject to a tax of P0.75 for each kilogram in accordance with Section 141, of the National Internal Revenue Code. She further avers that Section 137 of the Tax Code pertains to transfer from one L-7 directly to another L-7 but not from an L-6 (stripper or thresher) to an L-7. She claims that while imported leaf tobacco has never been subject to tax, partially manufactured tobacco is subject to the specific tax of P0.75/kg. Thus, according to respondent, whether or not the stemmed leaf tobacco imported by petitioner is liable to tax depends upon compliance with such conditions.

The sole issue in these cases is whether or not imported stemmed leaf tobacco is exempt from excise (specific) tax, thus, entitling petitioner to the refund of the amounts mentioned in the foregoing facts.

Resolution of the issue centers on Section 137 and 141(b) of the National Internal Revenue Code relied upon by petitioner and respondent, respectively, to wit:

"Section 137.- x x x Stemmed leaf tobacco, fine cut shorts, the refuse of fine cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and 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. (*Underscoring supplied*)

321

DECISION -

C.T.A. CASE NOS. 4689, 4704,
4710, 4723, 4777, 4782, 4799,
4805, 4814, 4818, 4843, 4862,
487, 4880

- 4 -

"Stemmed leaf tobacco" as herein used means leaf tobacco which has had the stem or midrib removed. The term does not include broken leaf tobacco."

"Section 141. - There shall be collected a tax of seventy-five centavos on each kilogram of the following products of tobacco:

(a) x x x

(b) Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened."

Fine cut shorts and refuse, scraps, clippings, cuttings, stems, and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco may be transferred, disposed of, or otherwise, sold, without, prepayment of the specific tax herein provided for under conditions as maybe prescribed in the regulations promulgated by the Secretary of Finance upon recommendation of the Commissioner if the same are to be exported or to be used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished products."

The records show that petitioner purchased stemmed leaf tobacco products wherein it was assessed and excise taxes collected by the Bureau of Internal Revenue. It may also be noted that the imported stemmed leaf tobacco were blended with locally purchased stemmed leaf tobacco thus constituting the raw materials in the manufacture of petitioner's cigarettes. Petitioner paid the corresponding excise taxes of these finished products.

Petitioner contends that to tax stemmed leaf tobacco under Section 141 of the Tax Code simply because it is "partially manufactured tobacco" would render useless the express grant of exemption to stemmed leaf tobacco under Section 137 of the Tax

322

DECISION -

C.T.A. CASE NOS. 4689, 4704,
4710, 4723, 4777, 4782, 4799,
4805, 4814, 4818, 4843, 4862,
487, 4880

- 5 -

Code; besides, Section 141 does not purport to be the exclusive law or deferment of excise taxes.

This is not a case of first impression. As adverted to earlier, the Honorable Court of Appeals has ruled on this issue in the recent case of Commissioner of Internal Revenue vs. Fortune Tobacco Corporation, docketed as CA-SP Nos. 38219 and 40313 (CTA Case Nos. 4587 and 4616) and promulgated on January 30, 1998. The pertinent portions of the decision in said case read as follows:

"There is no disputing the fact that stemmed leaf tobacco is not among the tobacco products expressly mentioned in Section 141.

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Section 137 of the Tax Code, earlier cited, expressly defines "stemmed leaf tobacco" and excludes it from payment of the tax when sold in bulk as raw material by one manufacturer directly to another. While this particular section provides for removal of tobacco products without prepayment of tax, it is significant that the Tax Code defines and classifies stemmed leaf tobacco under its Section 137. When Revenue Regulations No. 17-67 undertakes to classify stemmed leaf tobacco under Section 141 in a manner different from the way it is treated in Section 137, it is no longer engaged in mere classification. It is already adding something to the law not in consonance with what the law itself specifically provides but contrary to it. It is not only engaged in amendment but in amendment contrary to a specific provision of the same law.

The petitioner argues that Section 137 is for one tax purpose while Section 141 is for another. The fact is that the reason for one provision is also present in the other and must, therefore, be treated in the same light.

Section 141 of the Tax Code specifically excludes "fine cut shorts and refuse, clippings, cuttings stems and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco" from the 75 centavos per kilogram tax when disposed of or sold. The condition in the statute is that the above must be exported or used in the manufacture of other tobacco products. The reason for the exclusion is that the excise tax will eventually be paid on the finished product.

The same reason applies to stemmed leaf tobacco which is intended solely as a raw material in the manufacture of cigarettes and

323

DECISION -

C.T.A. CASE NOS. 4689, 4704,
4710, 4723, 4777, 4782, 4799,
4805, 4814, 4818, 4843, 4862,
487, 4880

- 6 -

other tobacco products. After the cigarettes are manufactured, excise taxes will be paid. In effect, what the petitioner has provided in the disputed regulation is double taxation - the payment of excise taxes on the raw material and later, the payment of excise taxes on the manufactured product. Double taxation must be specifically and clearly provided by law. It cannot be imposed by administrative rule-making body. If specifically excluded under the last paragraph of Section 141, taxes cannot be included under paragraph 2 of the same section by a mere interpretation of the petitioner.

It is elementary that any taxes not specifically imposed by law cannot be mandated on the strength of an administrative regulation which purports to implement the said law. Only Congress, not the BIR, can provide for additional taxes. Revenue Regulations No. 17-67 is correct when it provides for the procedure in enforcing the statute. It can state the rules, taxation-wise, on securing permits, putting up factories and machineries, procuring raw materials, recording production, and disposing of the finished product. But the petitioner's powers are limited to procedure and implementation and not substantive law which seeks to add new taxes in addition to those specifically taxed under the law. This is especially true when the particular product being taxed by regulation is expressly excluded from taxes in another section of the same law and also in another law. The petitioner is arrogating powers to itself which it does not possess.

The argument that stemmed leaf tobacco used as raw material is exempt from taxation only when it is from one L-7 manufacturer to another L-7 manufacturer suffers from the same infirmity. It is based on the BIR's own Revenue Regulations V-39 which add to the law something which is not there. Using its power of classification, the petitioner has ventured into an amendment and amplification of the basic law.

Section 141 taxes fine cut shorts and refuse, scraps, clippings, stems and sweepings but the unnumbered paragraph after Section 141(c) exempts these items if they are used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product.

The law defines and exempts certain raw materials on condition that excise taxes will eventually be paid on the finished manufactured product. The BIR has classified these raw materials in a restrictive manner - only from one L-7 to another L-7 when all that the law requires is that the excise taxes not collected at the start will eventually be paid once the tobacco product comes out in final form. For a wide variety of raw materials, there is double imposition by the BIR of excise taxes when the law obviously removes taxes at the start of the manufacturing process and imposes them only once - when the process is completed. Again, double taxation is valid but only when it is provided by statute. It cannot be imposed through an interpretative rule.

The petitioner's contention that the classification of stemmed leaf

324

DECISION -

C.T.A. CASE NOS. 4689, 4704,
4710, 4723, 4777, 4782, 4799,
4805, 4814, 4818, 4843, 4862,
487, 4880

- 7 -

tobacco as "partially manufactured tobacco" under Revenue Regulations No 17-67 prevails over the definition of processed tobacco under Rep. Act 698 is fanciful to say the least. Revenue Regulations No 17-67 is not a basic law. It is simply an implementation of the statutory provision of the Tax Code. A mere regulation of a quasi-legislative agency cannot prevail over the express definition under a law passed by Congress itself. It is elementary that an administrative regulation cannot amend or repeal the express provisions of statutes enacted by Congress. How can the petitioner argue that an administrative regulation prevails over a statute or law?

The petitioner states that Sections 141 and 137 of the Tax Code must be read and construed together. It explains that under Section 141 stemmed leaf tobacco, being partially prepared tobacco is subject to specific tax. However, under Section 137 if the stemmed leaf tobacco is sold in bulk directly from one manufacturer to another in accordance with the conditions prescribed in Section 20(a) of Revenue Regulation No. V-39, it is exempt from specific tax. It is very obvious that it is not the Tax Code which taxes on one hand and exempts from taxes on the other hand the tobacco involved. It is the addition of a definition of partially manufactured tobacco which clashes with the law itself and the regulatory conditions of BIR which restrict the application of the law to an extremely limited class that form the basis of BIR action. The petitioner engages in legislation and then uses its own administrative or quasi-legislative powers to add a certain class of tax which is neither expressed not contemplated in the basic law.

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It appears that the consolidated cases at bar are no different from facts and circumstances obtaining in the case of Fortune Tobacco and with the same principal issue to contend with, We therefore adopt the aforesaid ruling.

WHEREFORE, premises considered, finding the petitions meritorious and in accordance with law, the same are hereby GRANTED and respondent is ORDERED to REFUND in favor of La Suerte Cigar and Cigarette Factory Inc., the total amount of P1,125,268.25, representing erroneously or illegally paid specific taxes for the period of December 1989 up to November 1990 detailed as follows:

325

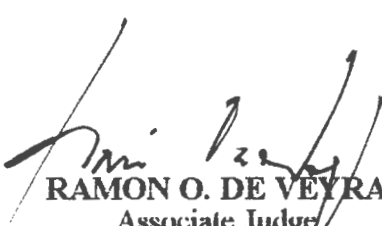
DECISION -

C.T.A. CASE NOS. 4689, 4704,
4710, 4723, 4777, 4782, 4799,
4805, 4814, 4818, 4843, 4862,
487, 4880

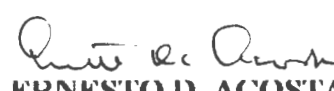
- 8 -

<i>Date of Payment</i>	<i>Amount of Specific Tax Paid</i>	<i>Confirmation Receipt No.</i>	<i>Payment Order No.</i>
02-06-90	P 53,343.00	B18396095	6916220(Exh.CD)
03-05-90	46,539.00	B18720631	7160894(Exh.CE)
03-22-90	72,870.75	B19169730	7597793(Exh.CF)
03-30-90	116,348.25	B19169748	7598191(Exh.CG)
04-04-90	62,460.75	B19415507	7598199(Exh.CH)
04-10-90	31,230.00	B19415532	7598459(Exh.CI)
04-27-90	52,050.75	B19764215	8032861(Exh.CJ)
04-27-90	20,820.00	B19764221	8032856(Exh.CK)
05-16-90	43,200.00	B20071051	8033460(Exh.CM)
05-16-90	58,174.50	B20070550	8033463(Exh.CN)
05-16-90	23,283.50	B20071053	8033458(Exh.CO)
05-17-90	23,269.50	B20071058	8033467(Exh.CQ)
05-29-90	31,230.00	B20103832	8033643(Exh.CR)
05-29-90	20,820.00	B20103831	8033642(Exh.CS)
06-06-90	23,269.50	B20103849	8360363(Exh.CU)
06-15-90	58,161.00	B20104904	8360673(Exh.CV)
06-15-90	62,460.75	B20104903	8360672(Exh.CW)
06-20-90	31,230.00	B20291301	8360820(Exh.CX)
06-20-90	23,269.50	B20291302	8360818(Exh.CY)
06-20-90	23,269.50	B20104924	8360822(Exh.CZ)
09-03-90	1,050.00	B20623603	8825962(Exh.DA)
09-04-90	84,200.25	B20623607	8569082(Exh.DB)
10-16-90	41,640.75	B20910826	9152912(Exh.DD)
10-16-90	41,640.75	B10810827	9152911(Exh.DE)
11-05-90	23,269.50	B21191392	9153618(Exh.DF)
11-05-90	34,122.00	B21191391	9153617(Exh.DG)
11-27-90	22,044.75	B21270273	9249834(Exh.DI,AG)
TOTAL	<u>P1,125,268.25</u>		

SO ORDERED.


RAMON O. DE VEYRA
Associate Judge

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Judge


AMANCIO Q. SACA
Associate Judge



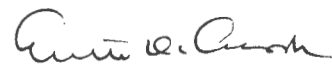
DECISION -

C.T.A. CASE NOS. 4689, 4704,
4710, 4723, 4777, 4782, 4799,
4805, 4814, 4818, 4843, 4862,
487, 4880

- 9 -

CERTIFICATION

I hereby certify that the above 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

327