581 Phil. 146

SECOND DIVISION

[G.R. Nos. 167274-75, July 21, 2008]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. FORTUNE TOBACCO CORPORATION, RESPONDENT.

D E C I S I O N

TINGA, J,:

Simple and uncomplicated is the central issue involved, yet whopping is the amount at stake in this case.

After much wrangling in the Court of Tax Appeals (CTA) and the Court of Appeals, Fortune Tobacco Corporation (Fortune Tobacco) was granted a tax refund or tax credit representing specific taxes erroneously collected from its tobacco products. The tax refund is being re-claimed by the Commissioner of Internal Revenue (Commissioner) in this petition.

The following undisputed facts, summarized by the Court of Appeals, are quoted in the assailed Decision[1] dated 28 September 2004:

> **CAG.R. SP No. 80675**
>
> x x x x
>
> Petitioner[2] is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at Fortune Avenue, Parang, Marikina City.
>
> Petitioner is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to R.A. No. 4280, to wit:
>
> | Brand | Tax Rate |
> |---|---|
> | Champion M 100 | P1.00 |
> | Salem M 100 | P1.00 |
> | Salem M King | P1.00 |

Camel F King	P1.00
Camel Lights Box 20's	P1.00
Camel Filters Box 20's	P1.00
Winston F Kings	P5.00
Winston Lights	P5.00

Immediately prior to January 1, 1997, the above-mentioned cigarette brands were subject to ad *valorem tax* pursuant to then Section 142 of the Tax Code of 1977, as amended. However, on January 1, 1997, R.A. No. 8240 took effect whereby a shift from the ad *valorem* tax (AVT) system to the specific tax system was made and subjecting the aforesaid cigarette brands to specific tax under [S]ection 142 thereof, now renumbered as Sec. 145 of the Tax Code of 1997, pertinent provisions of which are quoted thus:

Section 145. Cigars and Cigarettes-

(A) **Cigars**. - There shall be levied, assessed and collected on cigars a tax of One peso (P1.00) per cigar.

"(B) **Cigarettes packed by hand**. - There shall be levied, assessesed and collected on cigarettes packed by hand a tax of Forty centavos (P0.40) per pack.

(C) **Cigarettes packed by machine**. - There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (P10.00) per pack, the tax shall be Twelve (P12.00) per pack;

(2) If the net retail price (excluding the excise tax and the value added tax) exceeds Six pesos and Fifty centavos (P6.50) but does not exceed Ten pesos (P10.00) per pack, the tax shall be Eight Pesos (P8.00) per pack.

(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (P5.00) but does not exceed Six Pesos and fifty centavos (P6.50) per pack, the tax shall be Five pesos (P5.00) per pack;

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (P5.00) per pack, the tax shall be One peso (P1.00) per pack;

"Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.

The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due

from each brand on October 1, 1996. Provided, however, that in cases were (sic) the excise tax rate imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

The rates of excise tax on cigars and cigarettes under paragraphs (1), (2) (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000. (Emphasis supplied)

New brands shall be classified according to their current net retail price.

For the above purpose, `**net retail price**' shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and value-added tax. For brands which are marketed only outside Metro [M]anila, the `**net retail price**' shall mean the price at which the cigarette is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of cigarettes based on its average retail price as of October 1, 1996, as set forth in Annex "D," shall remain in force until revised by Congress.

Variant of a brand shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

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

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATES PRIOR TO JAN. 1, 2000	NEW SPECIFIC TAX RATE Effective Jan.. 1, 2000

145	(A) Cigars	P1.00/cigar	P1.12/cigar
	(B)Cigarettes packed by Machine		
	(1) Net Retail Price (excluding VAT and Excise) exceeds P10.00 per pack	P12.00/pack P8.00/pack	P13.44/pack P8.96/pack
	(2) Net Retail Price (excluding VAT and Excise) is P6.51 up to P10.00 per pack	P5.00/pack	P5.60/pack
	(3) Net Retail Price (excluding VAT and excise) is P5.00 to P6.50 per pack	P1.00/pack	P1.12/pack
	(4) Net Retail Price (excluding VAT and excise) is below P5.00 per pack)		

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

For the period covering January 1-31, 2000, petitioner allegedly paid specific taxes on all brands manufactured and removed in the total amounts of P585,705,250.00.

On February 7, 2000, petitioner filed with respondent's Appellate Division a claim for refund or tax credit of its purportedly overpaid excise tax for the month of January 2000 in the amount of P35,651,410.00

On June 21, 2001, petitioner filed with respondent's Legal Service a letter dated June 20, 2001 reiterating all the claims for refund/tax credit of its overpaid excise taxes filed on various dates, including the present claim for the month of January 2000 in the amount of P35,651,410.00.

As there was no action on the part of the respondent, petitioner filed the instant petition for review with this Court on December 11, 2001, in order to comply with the two-year period for filing a claim for refund.

In his answer filed on January 16, 2002, respondent raised the following Special

and Affirmative Defenses;

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P35,651,410 being claimed by petitioner as alleged overpaid excise tax for the month of January 2000 was not properly documented.

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

7. Petitioner must show that it has complied with the provisions of Section 204(C) in relation [to] Section 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake of tax exemption from taxation; and

9. The last paragraph of Section 1 of Revenue Regulation[s] [No.]17-99 is a valid implementing regulation which has the force and effect of law."

CA G.R. SP No. 83165

The petition contains essentially similar facts, except that the said case questions the CTA's December 4, 2003 decision in CTA Case No. 6612 granting respondent's[3] claim for refund of the amount of P355,385,920.00 representing erroneously or illegally collected specific taxes covering the period January 1, 2002 to December 31, 2002, as well as its March 17, 2004 Resolution denying a reconsideration thereof.

x x x x

In both CTA Case Nos. 6365 & 6383 and CTA No. 6612, the Court of Tax Appeals reduced the issues to be resolved into two as stipulated by the parties, to wit: (1) Whether or not the last paragraph of Section 1 of Revenue Regulation[s] [No.] 17-99 is in accordance with the pertinent provisions of Republic Act [No.] 8240, now incorporated in Section 145 of the Tax Code of 1997; and (2) Whether or not petitioner is entitled to a refund of P35,651,410.00 as alleged overpaid excise tax for the month of January 2000.

x x x x

Hence, the respondent CTA in its assailed October 21, 2002 [twin] Decisions[s] disposed in CTA Case Nos. 6365 & 6383:

> **WHEREFORE**, in view of the foregoing, the court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby ORDERED to REFUND to petitioner the amount of P35,651.410.00 representing erroneously paid excise taxes for the period January 1 to January 31, 2000.
>
> **SO ORDERED**.

Herein petitioner sought reconsideration of the above-quoted decision. In [twin] resolution[s] [both] dated July 15, 2003, the Tax Court, in an apparent change of heart, granted the petitioner's consolidated motions for reconsideration, thereby denying the respondent's claim for refund.

However, on consolidated motions for reconsideration filed by the respondent in CTA Case Nos. 6363 and 6383, the July 15, 2002 resolution was set aside, and the Tax Court ruled, this time with a semblance of finality, that the respondent is entitled to the refund claimed. Hence, in a resolution dated November 4, 2003, the tax court reinstated its December 21, 2002 Decision and disposed as follows:

> **WHEREFORE,** our Decisions in CTA Case Nos. 6365 and 6383 are hereby REINSTATED. Accordingly, respondent is hereby ORDERED to REFUND petitioner the total amount of P680,387,025.00 representing erroneously paid excise taxes for the period January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001.
>
> **SO ORDERED**.

Meanwhile, on December 4, 2003, the Court of Tax Appeals rendered decision in CTA Case No. 6612 granting the prayer for the refund of the amount of P355,385,920.00 representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002. The tax court disposed of the case as follows:

> **IN VIEW OF THE FOREGOING**, the Petition for Review is GRANTED. Accordingly, respondent is hereby ORDERED to REFUND to petitioner the amount of P355,385,920.00 representing overpaid excise tax for the period covering January 1, 2002 to December 31, 2002.
>
> SO ORDERED.

Petitioner sought reconsideration of the decision, but the same was denied in a Resolution dated March 17, 2004.[4] (Emphasis supplied) (Citations omitted)

The Commissioner appealed the aforesaid decisions of the CTA. The petition questioning the grant of refund in the amount of P680,387,025.00 was docketed as CA-G.R. SP No. 80675, whereas that assailing the grant of refund in the amount of P355,385,920.00 was docketed as CA-G.R. SP No. 83165. The petitions were consolidated and eventually denied by the Court of Appeals. The appellate court also denied reconsideration in its Resolution[5] dated 1 March 2005.

In its Memorandum[6] 22 dated November 2006, filed on behalf of the Commissioner, the Office of the Solicitor General (OSG) seeks to convince the Court that the literal interpretation given by the CTA and the Court of Appeals of Section 145 of the Tax Code of 1997 (Tax Code) would lead to a lower tax imposable on 1 January 2000 than that imposable during the transition period. Instead of an increase of 12% in the tax rate effective on 1 January 2000 as allegedly mandated by the Tax Code, the appellate court's ruling would result in a significant decrease in the tax rate by as much as 66%.

The OSG argues that Section 145 of the Tax Code admits of several interpretations, such as:

1. That by January 1, 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the *ad valorem* tax system plus the 12% increase imposed by par. 5, Sec. 145 of the Tax Code;

2. The increase of 12% starting on January 1, 2000 does not apply to the brands of cigarettes listed under Annex "D" referred to in par. 8, Sec. 145 of the Tax Code;

3. The 12% increment shall be computed based on the net retail price as indicated in par. C, sub-par. (1)-(4), Sec. 145 of the Tax Code even if the resulting figure will be lower than the amount already being paid at the end of the transition period. This is the interpretation followed by both the CTA and the Court of Appeals.[7]

This being so, the interpretation which will give life to the legislative intent to raise revenue should govern, the OSG stresses.

Finally, the OSG asserts that a tax refund is in the nature of a tax exemption and must, therefore, be construed strictly against the taxpayer, such as Fortune Tobacco.

In its Memorandum[8] dated 10 November 2006, Fortune Tobacco argues that the CTA and the Court of Appeals merely followed the letter of the law when they ruled that the basis

for the 12% increase in the tax rate should be the net retail price of the cigarettes in the market as outlined in paragraph C, sub paragraphs (1)-(4), Section 145 of the Tax Code. The Commissioner allegedly has gone beyond his delegated rule-making power when he promulgated, enforced and implemented Revenue Regulation No. 17-99, which effectively created a separate classification for cigarettes based on the excise tax "actually being paid prior to January 1, 2000."[9]

It should be mentioned at the outset that there is no dispute between the fact of payment of the taxes sought to be refunded and the receipt thereof by the Bureau of Internal Revenue (BIR). There is also no question about the mathematical accuracy of Fortune Tobacco's claim since the documentary evidence in support of the refund has not been controverted by the revenue agency. Likewise, the claims have been made and the actions have been filed within the two (2)-year prescriptive period provided under Section 229 of the Tax Code.

The power to tax is inherent in the State, such power being inherently legislative, based on the principle that taxes are a grant of the people who are taxed, and the grant must be made by the immediate representatives of the people; and where the people have laid the power, there it must remain and be exercised.[10]

This entire controversy revolves around the interplay between Section 145 of the Tax Code and Revenue Regulation 17-99. The main issue is an inquiry into whether the revenue regulation has exceeded the allowable limits of legislative delegation.

For ease of reference, Section 145 of the Tax Code is again reproduced in full as follows:

Section 145. Cigars and Cigarettes-

(A) **Cigars**.--There shall be levied, assessed and collected on cigars a tax of One peso (P1.00) per cigar.

(B). **Cigarettes packed by hand**.--There shall be levied, assessed and collected on cigarettes packed by hand a tax of Forty centavos (P0.40) per pack.

(C) **Cigarettes packed by machine**.--There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:

(1) If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (P10.00) per pack, the tax shall be Twelve pesos (P12.00) per pack;

(2) If the net retail price (excluding the excise tax and the value added tax) exceeds Six pesos and Fifty centavos (P6.50) but does not exceed Ten pesos (P10.00) per pack, the tax shall be Eight Pesos (P8.00) per pack.

(3) If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (P5.00) but does not exceed Six Pesos and fifty centavos (P6.50) per pack, the tax shall be Five pesos (P5.00) per pack;

(4) If the net retail price (excluding the excise tax and the value-added tax) is below Five pesos (P5.00) per pack, the tax shall be One peso (P1.00) per pack;

Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.

The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not be lower than the tax, which is due from each brand on October 1, 1996. *Provided, however*, That in cases where the excise tax rates imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

The rates of excise tax on cigars and cigarettes under paragraphs (1), (2) (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.

New brands shall be classified according to their current net retail price.

For the above purpose, `***net retail price***' shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and value-added tax. For brands which are marketed only outside Metro Manila, the `***net retail price***' shall mean the price at which the cigarette is sold in five (5) major intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of cigarettes based on its average retail price as of October 1, 1996, as set forth in Annex "D," shall remain in force until revised by Congress.

Variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.[11] (Emphasis supplied)

Revenue Regulation 17-99, which was issued pursuant to the unquestioned authority of the Secretary of Finance to promulgate rules and regulations for the effective implementation of the Tax Code,[12] interprets the above-quoted provision and reflects the 12% increase in excise taxes in the following manner:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATES PRIOR TO JAN. 1, 2000	NEW SPECIFIC TAX RATE Effective Jan.. 1, 2000
145	(A) Cigars	P1.00/cigar	P1.12/cigar
	(B)Cigarettes packed by Machine		
	(1) Net Retail Price (excluding VAT and Excise) exceeds P10.00 per pack	P12.00/pack P8.00/pack	P13.44/pack P8.96/pack
	(2) Net Retail Price (excluding VAT and Excise) is P6.51 up to P10.00 per pack	P5.00/pack	P5.60/pack
	(3) Net Retail Price (excluding VAT and excise) is P5.00 to P6.50 per pack	P1.00/pack	P1.12/pack
	(4) Net Retail Price (excluding VAT and excise) is below P5.00 per pack)		

This table reflects Section 145 of the Tax Code insofar as it mandates a 12% increase effective on 1 January 2000 based on the taxes indicated under paragraph C, sub-paragraph (1)-(4). However, Revenue Regulation No. 17-99 went further and added that "[T]he new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor *shall not be lower than the excise tax that is actually being paid prior to January 1, 2000*."[13]

Parenthetically, Section 145 states that during the transition period, *i.e.,* within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower

than that collected prior to this date.

By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12%--a situation not supported by the plain wording of Section 145 of the Tax Code.

This is not the first time that national revenue officials had ventured in the area of unauthorized administrative legislation.

In *Commissioner of Internal Revenue v. Reyes*,[14] respondent was not informed in writing of the law and the facts on which the assessment of estate taxes was made pursuant to Section 228 of the 1997 Tax Code, as amended by Republic Act (R.A.) No. 8424. She was merely notified of the findings by the Commissioner, who had simply relied upon the old provisions of the law and Revenue Regulation No. 12-85 which was based on the old provision of the law. The Court held that in case of discrepancy between the law as amended and the implementing regulation based on the old law, the former necessarily prevails. The law must still be followed, even though the existing tax regulation at that time provided for a different procedure.[15]

In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[16] the tax authorities gave the term "tax credit" in Sections 2(i) and 4 of Revenue Regulation 2-94 a meaning utterly disparate from what R.A. No. 7432 provides. Their interpretation muddled up the intent of Congress to grant a mere discount privilege and not a sales discount. The Court, striking down the revenue regulation, held that an administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature. The Court emphasized that tax administrators are not allowed to expand or contract the legislative mandate and that the "plain meaning rule" or *verba legis* in statutory construction should be applied such that where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

As we have previously declared, rule-making power must be confined to details for regulating the mode or proceedings in order to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute. Administrative regulations must always be in harmony with the provisions of the law because any resulting discrepancy between the two will always be resolved in favor of the basic law.[17]

In *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*,[18] Commissioner Jose Ong issued Revenue Memorandum Order (RMO) No. 15-91, as well as the clarificatory Revenue Memorandum Circular (RMC) 43-91, imposing a 5% lending

investor's tax under the 1977 Tax Code, as amended by Executive Order (E.O.) No. 273, on pawnshops. The Commissioner anchored the imposition on the definition of lending investors provided in the 1977 Tax Code which, according to him, was broad enough to include pawnshop operators. However, the Court noted that pawnshops and lending investors were subjected to different tax treatments under the Tax Code prior to its amendment by the executive order; that Congress never intended to treat pawnshops in the same way as lending investors; and that the particularly involved section of the Tax Code explicitly subjected lending investors and dealers in securities only to percentage tax. And so the Court affirmed the invalidity of the challenged circulars, stressing that "administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out."[19]

In *Philippine Bank of Communications v. Commissioner of Internal Revenue,*[20] the then acting Commissioner issued RMC 7-85, changing the prescriptive period of two years to ten years for claims of excess quarterly income tax payments, thereby creating a clear inconsistency with the provision of Section 230 of the 1977 Tax Code. The Court nullified the circular, ruling that the BIR did not simply interpret the law; rather it legislated guidelines contrary to the statute passed by Congress. The Court held:

> It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[21]

In *Commissioner of Internal Revenue v. CA, et al.*,[22] the central issue was the validity of RMO 4-87 which had construed the amnesty coverage under E.O. No. 41 (1986) to include only assessments issued by the BIR after the promulgation of the executive order on 22 August 1986 and not assessments made to that date. Resolving the issue in the negative, the Court held:

> x x x all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.[23]
>
> x x x
>
> If, as the Commissioner argues, Executive Order No. 41 had not been intended

> to include 1981-1985 tax liabilities already assessed (administratively) prior to 22 August 1986, the law could have simply so provided in its exclusionary clauses. It did not. The conclusion is unavoidable, and it is that the executive order has been designed to be in the nature of a general grant of tax amnesty subject only to the cases specifically excepted by it.[24]

In the case at bar, the OSG's argument that by 1 January 2000, the excise tax on cigarettes should be the higher tax imposed under the specific tax system and the tax imposed under the *ad valorem* tax system plus the 12% increase imposed by paragraph 5, Section 145 of the Tax Code, is an unsuccessful attempt to justify what is clearly an impermissible incursion into the limits of administrative legislation. Such an interpretation is not supported by the clear language of the law and is obviously only meant to validate the OSG's thesis that Section 145 of the Tax Code is ambiguous and admits of several interpretations.

The contention that the increase of 12% starting on 1 January 2000 does not apply to the brands of cigarettes listed under Annex "D" is likewise unmeritorious, absurd even. Paragraph 8, Section 145 of the Tax Code simply states that, "[T]he classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex `D', shall remain in force until revised by Congress." This declaration certainly does not lend itself to the interpretation given to it by the OSG. As plainly worded, the average net retail prices of the listed brands under Annex "D," which classify cigarettes according to their net retail price into low, medium or high, obviously remain the bases for the application of the increase in excise tax rates effective on 1 January 2000.

The foregoing leads us to conclude that Revenue Regulation No. 17-99 is indeed indefensibly flawed. The Commissioner cannot seek refuge in his claim that the purpose behind the passage of the Tax Code is to generate additional revenues for the government. Revenue generation has undoubtedly been a major consideration in the passage of the Tax Code. However, as borne by the legislative record,[25] the shift from the *ad valorem* system to the specific tax system is likewise meant to promote fair competition among the players in the industries concerned, to ensure an equitable distribution of the tax burden and to simplify tax administration by classifying cigarettes, among others, into high, medium and low-priced based on their net retail price and accordingly graduating tax rates.

At any rate, this advertence to the legislative record is merely gratuitous because, as we have held, the meaning of the law is clear on its face and free from the ambiguities that the Commissioner imputes. We simply cannot disregard the letter of the law on the pretext of pursuing its spirit.[26]

Finally, the Commissioner's contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobaccos claim for refund is premised on its erroneous payment of the

tax, or better still the government's exaction in the absence of a law.

Tax exemption is a result of legislative grace. And he who claims an exemption from the burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken.[27] The rule is that tax exemptions must be strictly construed such that the exemption will not be held to be conferred unless the terms under which it is granted clearly and distinctly show that such was the intention.[28]

A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.[29]

Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another.[30] The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti,* which covers not only mistake in fact but also mistake in law.[31]

The Government is not exempt from the application of *solutio indebiti*.[32] Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected.[33] If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers.[34] And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.

Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any sum alleged to have been excessive or in any manner wrongfully collected.[35]

What is controlling in this case is the well-settled doctrine of strict interpretation in the imposition of taxes, not the similar doctrine as applied to tax exemptions. The rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because

burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import.[36] As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws.[37]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA G.R. SP No. 80675, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Ynares-Santiago, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

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[1] *Rollo*, pp. 59-93; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Eubulo G. Verzola and Monina Arevalo-Zenarosa.

[2] Herein respondent, Fortune Tobacco Corporation.

[3] Herein respondent, Fortune Tobacco Corporation.

[4] *Rollo,* pp. 60-73.

[5] Id. at 95-101.

[6] Id. at 456-495.

[7] *Rollo,*, pp. 484, 486 and 487.

[8] Id. at 407-455.

[9] Id. at 409.

[10] 1 COOLEY TAXATION, 3rd Ed., p. 43 cited in DIMAAMPAO, TAX PRINCIPLE AND REMEDIES, p. 13.

[11] TAX CODE, Sec. 145.

[12] TAX CODE, Sec. 244, provides:

Sec. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations*.--The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

See ABAKADA Guro Party List Officers v. Ermita, G.R. No. 168056, 1 September 2005, 469 SCRA 1.

[13] *Rollo,* p. 104.

[14] G.R. No. 159694, 27 January 2006, 480 SCRA 382.

[15] Id. at 396. Citing *Philippine Petroleum Corp. v. Municipality of Pililla, Rizal*, 198 SCRA 82, 88, 3 June 1991, citing *Shell Philippines, Inc. v. Central Bank of the Philippines*, 162 SCRA 628, 634, 27 June 1988.

[16] G.R. No. 159647, 15 April 2005, 456 SCRA 414.

[17] *Landbank of the Philippines v. Court of Appeals,* 327 Phil. 1047, 1052 (1996).

[18] 453 Phil. 1043 (2003).

[19] Id. at 1052. Citing *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 108358, 20 January 1995, 240 SCRA 368, 372; *Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles v. Home Development Mutual Fund*, G.R. No. 131082, 19 June 2000; 333 SCRA 777, 786.

[20] 361 Phil. 916 (1999).

[21] Id. at 928-929.

[22] 310 Phil. 392 (1995).

[23] Id. at 399. This ruling was reiterated in *Republic v. Court of Appeals*, 381 Phil. 248 (2000).

[24] Id. at 397.

[25] Record of the Senate, pp. 224-225.

[26] *Tañada and Macapagal v. Cuenco, et al.*, 103 Phil. 1051, 1086 (1957), *citing* 82 C.J.S., 613.

[27] *Surigao Consolidated Mining Co. Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals*, 119 Phil. 33, 37 (1963).

[28] *Phil. Acetylene Co. v. Commission of Internal Revenue*, et al., 127 Phil. 461, 472 (1967); *Manila Electric Company v. Vera*, G.R. No. L-29987, 22 October 1975, 67 SCRA 351, 357-358; *Surigao Consolidated Mining Co. Inc. v. Commissioner of Internal Revenue*, *supra*.

[29] See *Surigao Consolidated Mining Co. Inc. v. CIR*, *supra* at 732-733; *Philex Mining Corp. v. . Commissioner of Internal Revenue*, 365 Phil. 572, 579 (1999); *Davao Gulf Lumber Corp. v. . Commissioner of Internal Revenue*, 354 Phil. 891-892 (1998); . *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd*., 314 Phil. 220, 228 (1995).

[30] *Ramie Textiles, Inc. v. Hon. Mathay*, Sr., 178 Phil. 482 (1979); *Puyat & Sons v. City of Manila*, et al., 117 Phil. 985 (1963).

[31] CIVIL CODE, Arts. 2142, 2154 and 2155.

[32] *Commissioner of Internal Revenue v. Fireman's Fund Insurance Co*., G.R. No. L-30644, 9 March 1987, 148 SCRA 315, 324-325; *Ramie Textiles, Inc. v. Mathay, supra*; *Gonzales Puyat & Sons v. City of Manila*, *supra.*

[33] *Commissioner of Internal Revenue v. Tokyo Shipping Co., supra* at 338.

[34] *AB Leasing and Finance Corporation v. . Commissioner of Internal Revenue*, 453 Phil. 297.. Citing *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 330 SCRA 507, 510, 518 (200).

[35] TAX CODE (1997), Secs. 204(c) and 229.

[36] *CIR v. Court of Appeals*, 338 Phil. 322, 330-331 (1997).

[37] *CIR v. Philippine American Accident Insurance Company, Inc.,* G.R. No. 141658, March 18, 2005, 453 SCRA 668, 680.