



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

**LA SUERTE CIGAR & G.R. No. 125346**  
**CIGARETTE FACTORY,**  
Petitioner,

-versus-

**COURT OF APPEALS and**  
**COMMISSIONER OF INTERNAL**  
**REVENUE,**

Respondents.

X-----X  
**COMMISSIONER OF INTERNAL**  
**REVENUE,**

Petitioner,

**G.R. Nos. 136328-29**

-versus-

**FORTUNE TOBACCO**  
**CORPORATION,**

Respondent.

X-----X  
**COMMISSIONER OF INTERNAL**  
**REVENUE,**

Petitioner,

**G.R. No. 144942**

-versus-

**LA SUERTE CIGAR &**  
**CIGARETTE FACTORY,**  
Respondent.

X-----X  
**STERLING TOBACCO**  
**CORPORATION,**  
Petitioner,

**G.R. No. 148605**

-versus-

**COMMISSIONER OF INTERNAL  
REVENUE,**

Respondent.

X-----X  
**LA SUERTE CIGAR &**  
**CIGARETTE FACTORY,**  
Petitioner,

**G.R. No. 158197**

-versus-

**COMMISSIONER OF INTERNAL  
REVENUE,**

Respondent.

X-----X  
**LA SUERTE CIGAR &**  
**CIGARETTE FACTORY,**  
Petitioner,

**G.R. No. 165499**

Present:

SERENO, *C.J.*, \*  
CARPIO, *Acting C.J.*, \*\*  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA, \*\*\*  
BERSAMIN, \*\*\*\*  
DEL CASTILLO,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN,  
JARDELEZA, *JJ.*

-versus-

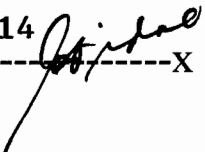
**COMMISSIONER OF INTERNAL  
REVENUE,**

Respondent.

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\* On official leave.  
\*\* No part.  
\*\*\* On official leave.  
\*\*\*\* On official leave.

Promulgated:

~~NOVEMBER 11, 2014~~ 

X-----X

## DECISION

## LEONEN, J.:

These cases involve the taxability of stemmed leaf tobacco imported and locally purchased by cigarette manufacturers for use as raw material in the manufacture of their cigarettes. Under the National Internal Revenue Code of 1997 (1997 NIRC), before it was amended on December 19, 2012 through Republic Act No. 10351<sup>1</sup> (Sin Tax Law), stemmed leaf tobacco is subject to an excise tax of ₱0.75 for each kilogram thereof.<sup>2</sup> The 1997 NIRC further provides that stemmed leaf tobacco — “leaf tobacco which has had the stem or midrib removed”<sup>3</sup> — “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 rules and regulations prescribed by the Secretary of Finance.”<sup>4</sup>

This is a consolidation of six petitions for review of several decisions of the Court of Appeals, involving three cigarette manufacturers and the Commissioner of Internal Revenue. **G.R. No. 125346** is an appeal<sup>5</sup> from the Court of Appeals (Sixth Division) that reversed<sup>6</sup> the Court of Tax Appeals’ decision<sup>7</sup> and held petitioner La Suerte Cigar & Cigarette Factory (La Suerte) liable for deficiency specific tax on its purchase of imported and locally produced stemmed leaf tobacco and sale of stemmed leaf tobacco to Associated Anglo-American Tobacco Corporation (AATC) during the period from January 1, 1986 to June 30, 1989. **G.R. Nos. 136328–29** is an appeal<sup>8</sup> by the Commissioner of Internal Revenue (Commissioner) from the decision<sup>9</sup> of the Court of Appeals that affirmed the Court of Tax Appeals’ rulings<sup>10</sup> that Fortune Tobacco Corporation (Fortune) was not obliged to pay

<sup>1</sup> An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424. Otherwise Known as the National Internal Revenue Code of 1997, as Amended by Republic Act No. 9334, and for Other Purposes.

<sup>2</sup> Rep. Act No. 8424 (1997), sec. 144.

<sup>3</sup> Commonwealth Act No. 466 (1939), sec. 132.

<sup>4</sup> Rep. Act No. 8424 (1997), sec. 140.

<sup>5</sup> *Rollo* (G.R. No. 125346), pp. 16–75.

<sup>6</sup> *Id.* at 78–91 (decision) and 93–100 (resolution). The decision dated December 29, 1995 and the affirmatory resolution dated June 7, 1996 were both penned by Associate Justice Romeo J. Callejo, Sr. and concurred in by Associate Justices Antonio M. Martinez (Chair) and Pacita Cañizares-Nye.

<sup>7</sup> *Id.* at 139–161. The case was docketed as C.T.A. Case No. 4515. The decision dated July 13, 1995 was penned by Presiding Judge Ernesto D. Acosta and concurred in by Associate Judges Manuel K. Gruba and Ramon O. De Veyra.

<sup>8</sup> *Rollo* (G.R. Nos. 136328-29), pp. 8–25.

<sup>9</sup> *Id.* at 28–51 (decision) and 52 (resolution). The decision dated January 30, 1998 and the affirmatory resolution dated November 13, 1998 were both penned by Associate Justice Corona Ibay-Somera (Chair) and concurred in by Associate Justices Oswaldo D. Agcaoili and Rodrigo V. Cosico.

<sup>10</sup> *Id.* at 53–72 (C.T.A. Case No. 4587) and 73–88 (C.T.A. Case No. 4616). The decision on C.T.A. Case No. 4587 dated November 23, 1994 was penned by Presiding Judge Ernesto D. Acosta and concurred

the excise tax on its importations of stemmed leaf tobacco for the periods from January 1, 1986 to June 30, 1989 and July 1, 1989 to November 30, 1990. In **G.R. No. 148605**, Sterling Tobacco Corporation (Sterling) appeals<sup>11</sup> the decision<sup>12</sup> of the Court of Appeals that reversed the Court of Tax Appeals' decision<sup>13</sup> and held it liable to pay deficiency excise taxes on its importation and local purchases of stemmed leaf tobacco from November 1986 to June 24, 1989. **G.R. No. 144942** is an appeal<sup>14</sup> from the Court of Appeals' decision<sup>15</sup> that affirmed the Court of Tax Appeals' decision<sup>16</sup> and ordered the refund of specific taxes paid by La Suerte on its importation of stemmed leaf tobacco in April 1995. In **G.R. No. 158197**, La Suerte sought to appeal<sup>17</sup> the decision<sup>18</sup> of the Court of Appeals holding it liable for deficiency specific tax on its local and imported purchases of stemmed leaf tobacco and those it sold for the period from June 21, 1989 to November 20, 1990. Finally, in **G.R. No. 165499**, La Suerte again sought to appeal by certiorari<sup>19</sup> the decision<sup>20</sup> of the Court of Appeals reversing the Court of Tax Appeals and holding it liable for deficiency specific tax on its importation of stemmed leaf tobacco in March 1995.

## Factual background

### Overview of cigarette manufacturing

The primary component of cigarettes is tobacco, a processed product derived from the leaves of the plants in the genus *Nicotiana*.<sup>21</sup> Most cigarettes contain a mixture or blend of several types of tobacco from a variety of sources.

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- in by Associate Judges Manuel K. Gruba and Ramon O. De Veyra. The decision on C.T.A. Case No. 4616 dated October 6, 1994 was penned by Associate Judge Ramon O. De Veyra and concurred in by Presiding Judge Ernesto D. Acosta and Associate Judge Manuel K. Gruba.
- <sup>11</sup> *Rollo* (G.R. No. 148605), pp. 10–51.
- <sup>12</sup> *Id.* at 54–69 (decision) and 88–90 (resolution). The decision dated March 7, 2001 and the affirmatory resolution dated June 19, 2001 were both penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Godardo A. Jacinto (Chair) and Bernardo P. Abesamis.
- <sup>13</sup> *Id.* at 109–129. The case was docketed as C.T.A. Case No. 4532. The decision dated July 13, 1995 was penned by Associate Judge Ramon O. De Veyra and concurred in by Presiding Judge Ernesto D. Acosta and Associate Judge Manuel K. Gruba.
- <sup>14</sup> *Rollo* (G.R. No. 144942), pp. 7–17.
- <sup>15</sup> *Id.* at 19–23. The decision dated August 31, 2000 was penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Quirino D. Abad Santos, Jr. (Chair) and Romeo A. Brawner.
- <sup>16</sup> *Id.* at 24–32. The case was docketed as C.T.A. Case No. 5482. The decision dated March 9, 1999 was penned by Associate Judge Ramon O. De Veyra and concurred in by Presiding Judge Ernesto D. Acosta and Associate Judge Amancio Q. Saga.
- <sup>17</sup> *Rollo* (G.R. No. 158197), pp. 3–33.
- <sup>18</sup> *Id.* at 36–49 (decision) and 51 (resolution). The decision dated July 18, 2002 was penned by Associate Justice Hilarion L. Aquino and concurred in by Associate Justices Conchita Carpio-Morales (Chair) and Jose L. Sabio, Jr. The affirmatory resolution dated May 9, 2003 was penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Salvador J. Valdez, Jr. (Chair) and Roberto A. Barrios.
- <sup>19</sup> *Rollo* (G.R. No. 165499), pp. 10–35.
- <sup>20</sup> *Id.* at 45–56 (decision) and 58–59 (resolution). The decision dated October 10, 2003 and the affirmatory resolution dated September 24, 2004 were both penned by Associate Justice Godardo A. Jacinto (Chair) and concurred in by Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin.
- <sup>21</sup> “Tobacco, the Unique Plant,” 25 YEARS OF THE NATIONAL TOBACCO ADMINISTRATION 31 (2012).

The tobacco types grown in the Philippines are: **Virginia (or ‘flue-cured’)**,<sup>22</sup> which accounts for 59.35% of tobacco production, **Burley (or ‘bright air-cured’)**,<sup>23</sup> which makes up 22.21%, and the **Native (or ‘dark air-cured’)**,<sup>24</sup> which makes up the remaining 18.44%.<sup>25</sup> “[T]he ‘native’ type is normally categorized into three: cigar filler type, wrapper type and chewing type, or . . . ‘Batek’ tobacco.”<sup>26</sup> Virginia and Burley, considered as the aromatic type, are intended for cigarette manufacturing.

### **Growing and harvesting**

“Tobacco seeds undergo a process of germination, which takes about 7 to 10 days, depending on the tobacco varieties. . . . The tobacco seedlings are then sown in cold frames or hotbeds to prevent attacks from insects, and then transplanted into the fields”<sup>27</sup> after 45 to 65 days.<sup>28</sup>

Harvesting begins 55 to 60 days after transplanting.<sup>29</sup> A farmer carries out either *priming* (leaf by leaf) or *stalk harvesting* (by the whole plant).<sup>30</sup>

### **Curing**

“After harvest, tobacco is stored for curing, which allows for the slow oxidation and degradation of carotenoids. This allows for the leaves to take on properties that are usually attributed to the ‘smoothness’ of the smoke.”<sup>31</sup>

“Curing methods vary with the type of tobacco grown. The tobacco barn design varies accordingly.”<sup>32</sup> There are two main ways of curing tobacco in the Philippine setting:

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<sup>22</sup> “Tobacco Types Grown in the Philippines,” 25 YEARS OF THE NATIONAL TOBACCO ADMINISTRATION 37 (2012): “Our flue-cured or Virginia tobacco is actually concentrated in the Ilocos Region, primarily Ilocos Norte, Ilocos Sur, La Union and Abra. We also have the same type grown in Isabela, albeit on a smaller scale. . . .”

<sup>23</sup> Id.: “For Burley tobacco, our main or largest growers are Pangasinan, Isabela, Cagayan, Tarlac, Mindoro and La Union.”

<sup>24</sup> Id.: “Dark air-cured tobacco or the ‘native’ type is . . . grown mostly in Mindanao and the Visayas, Cagayan, Isabela, La Union and Pangasinan.”

<sup>25</sup> National Tobacco Administration, Department of Agriculture, “Industry Performance” <[http://nta.da.gov.ph/publications\\_industry.html](http://nta.da.gov.ph/publications_industry.html)> (visited November 4, 2014).

<sup>26</sup> “Tobacco Types Grown in the Philippines,” 25 YEARS OF THE NATIONAL TOBACCO ADMINISTRATION 37 (2012).

<sup>27</sup> Id. at 38.

<sup>28</sup> National Tobacco Administration, Department of Agriculture, “Industry Performance” <[http://nta.da.gov.ph/publications\\_manual.html](http://nta.da.gov.ph/publications_manual.html)> (visited November 4, 2014): Sowing is done within the month of November, depending on the type of tobacco.

<sup>29</sup> Id.

<sup>30</sup> “Tobacco Types Grown in the Philippines,” 25 YEARS OF THE NATIONAL TOBACCO ADMINISTRATION 38 (2012).

<sup>31</sup> “Tobacco Cultivation and Processing,” 25 YEARS OF THE NATIONAL TOBACCO ADMINISTRATION 39 (2012).

<sup>32</sup> Id.

- 1) Air-curing (for Burley and Native tobacco) “is carried out by hanging the tobacco in well-ventilated barns, where the tobacco is allowed to dry over a period of 4 to 8 weeks. Air-cured tobacco is generally low in sugar content, which gives the tobacco smoke a light, smooth, semi-sweet flavor. These tobacco leaves usually have a high nicotine content[;]”<sup>33</sup> and
- 2) Flue-curing (for Virginia tobacco) process “starts by the sticking of tobacco leaves, which are then hung from tier-poles in curing barns. The procedure will generally take about a week. Flue-cured tobacco generally produces cigarette tobacco, which usually has a high content of sugar, with medium to high levels of nicotine.”<sup>34</sup>

Once cured, the leaves are sorted into grades based on size, color, and quality, and packed in standard bales.<sup>35</sup> The bales are then moved to accredited trading centers where they are purchased by leaf buyers such as wholesale tobacco dealers and exporters or cigarette manufacturing companies.<sup>36</sup>

### **Redrying and aging**

After purchase, leaf tobacco is re-dried and then added with moisture to make the tobacco pliable enough to remove its large stems.<sup>37</sup> The leaves are stripped or de-stemmed, either by hand or machine, cleaned and compressed into boxes or porous wooden vats called hogsheads, and aged.<sup>38</sup> Thereafter, the leaves are either exported or used for the manufacture of cigarettes, cigars, and other tobacco products.

### **Primary processing**<sup>39</sup>

In the cigarette factory, the tobacco leaves undergo a conditioning process where “high temperatures and humidity restore moisture to suitable levels for cutting and blending tobacco and completing the cigarette-making process.”<sup>40</sup>

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<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> See TOBACCO ASIA 41 <<http://nta.da.gov.ph/images/TA-Q3-11p40-45.pdf>> (visited November 4, 2014).

<sup>37</sup> See Philip Morris USA, “Making Our Cigarettes” <[http://www.philipmorrisusa.com/en/cms/Products/Cigarettes/Manufacturing/default.aspx?src=top\\_nav](http://www.philipmorrisusa.com/en/cms/Products/Cigarettes/Manufacturing/default.aspx?src=top_nav)> (visited November 4, 2014).

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

“[T]obaccos are precisely cut and blended according to . . . formulas, or recipes, to produce tobaccos for various brands of cigarettes. These brand recipes include ingredients and flavors that are added to the tobacco to give each brand its unique characteristics.”<sup>41</sup>

### **Cigarette making and packing<sup>42</sup>**

“The blended tobacco — often referred to as “filler” or “cut-filler” — . . . is delivered by a pneumatic feed system to cigarette making machines . . . within the factory.”<sup>43</sup> The machine disperses the shredded tobacco over a continuous roll of cigarette paper and cuts the paper to the desired length. The completed cigarettes are subsequently packed, sealed, and placed in cartons.

### **Cigarette manufacturers**

La Suerte Cigar & Cigarette Factory (La Suerte),<sup>44</sup> Fortune Tobacco Corporation (Fortune),<sup>45</sup> and Sterling Tobacco Corporation (Sterling)<sup>46</sup> are domestic corporations engaged in the production and manufacture of cigars and cigarettes. These companies import leaf tobacco from foreign sources and purchase locally produced leaf tobacco to be used in the manufacture of cigars and cigarettes.<sup>47</sup>

The transactions of these cigarette manufacturers pertinent to these consolidated cases are the following:

1. La Suerte’s local purchases, importations, and sale of stemmed leaf tobacco from January 1, 1986 to June 30, 1989 (G.R. No. 125346), and from June 1989 to November 1990 (G.R. No. 158197), and importations in March 1995 (G.R. No. 165499) and April 1995 (G.R. No. 144942);
2. Fortune’s importation of tobacco strips from January 1, 1986 to June 30, 1989, and from July 1, 1989 to November 30, 1990 (G.R. Nos. 136328–29); and
3. Sterling’s importations and local purchases of stemmed leaf tobacco from November 1986 to June 24, 1989 (G.R. No. 148605).

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<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> *Rollo* (G.R. No. 158197), p. 36.

<sup>45</sup> *Rollo* (G.R. Nos. 136328–29), p. 144.

<sup>46</sup> *Rollo* (G.R. No. 148605), p. 282.

<sup>47</sup> Id.

### History of applicable tax provisions

The first tax code came into existence in 1939 with the enactment of Commonwealth Act No. 466<sup>48</sup> (1939 Code). Section 136 of the 1939 Code imposed specific (excise) taxes on manufactured products of tobacco, but excluded cigars and cigarettes, which were subject to tax under a different section.<sup>49</sup> Section 136 provided thus:

SECTION 136. Specific Tax on Products of Tobacco. – On manufactured products of tobacco, except cigars, cigarettes, and tobacco specially prepared for chewing so as to be unsuitable for consumption in any other manner, but including all other tobacco twisted by hand or reduced into a condition to be consumed in any manner other than by the ordinary mode of drying and curing; and *on all tobacco prepared or partially prepared for sale or consumption, even if prepared without the use of any machine or instrument and without being pressed or sweetened*; and on all fine-cut shorts and refuse, scraps, clippings, cuttings, and sweepings of tobacco, there shall be collected on each kilogram, sixty centavos.

On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, forty-eight centavos. (Emphasis supplied)

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<sup>48</sup> An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines.

<sup>49</sup> Sec. 137. Specific Tax on Cigars and Cigarettes. – On cigars and cigarettes there shall be collected the following taxes:

(a) Cigars –

(1) When the manufacturer's or importer's wholesale price, less the amount of the tax, does not exceed thirty pesos per thousand, on each thousand, two pesos and thirty centavos.

(2) When the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds thirty pesos but does not exceed sixty pesos per thousand, on each thousand, four pesos and sixty centavos.

(3) When the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds sixty pesos per thousand, on each thousand, seven pesos.

(b) Cigarettes –

(1) When the manufacturer's or importer's wholesale price, less the amount of the tax, is four pesos or less per thousand, on each thousand, one peso and thirty centavos.

(2) When the manufacturer's or importer's wholesale price, less the amount of the tax, is more than four pesos but not more than six pesos per thousand, on each thousand, three pesos.

(3) When the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds six pesos per thousand, on each thousand, four pesos.

The maximum price at which the various classes of cigars and cigarettes are sold at wholesale in the factory or in the establishment of the importer to any member of the public shall determine the rate of tax applicable to such cigars and cigarettes; and if the manufacturer or importer also sells, or allows to be sold, his cigars and cigarettes at wholesale in another establishment of which he is the owner or in the profits of which he has an interest, the maximum sale price in such establishment shall determine the rate of the tax applicable to the cigars and cigarettes therein sold.

Every manufacturer or importer of cigars and cigarettes shall file with the Collector of Internal Revenue, on the date or dates designated by the latter, a sworn statement of the maximum wholesale prices of cigars and cigarettes, and it shall be unlawful to sell said cigars and cigarettes at wholesale at a price in excess of the one specified in the statement required by this Title without previous written notice to said Collector of Internal Revenue.



Section 132 of the 1939 Code, however, by way of exception, provided that “stemmed leaf tobacco . . . may be sold in bulk as raw material by one manufacturer directly to another, *under such conditions as may be prescribed in the regulations of the Department of Finance*, without the prepayment of the tax.” Section 132 stated:

SECTION 132. 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; and *stemmed leaf tobacco*, fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse, scraps, cuttings, clippings and sweepings of tobacco *may be sold in bulk as raw material by one manufacturer directly to another, under such conditions as may be prescribed in the regulations of the Department of Finance*, without the prepayment of the tax.

"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. (Emphasis supplied)

On September 29, 1954, upon the recommendation of then Acting Collector of Internal Revenue J. Antonio Araneta, the Department of Finance promulgated Revenue Regulations No. V-39 (RR No. V-39), or “The Tobacco Products Regulations,” relative to “the enforcement of the provisions of Title IV of the [1939 Tax Code] in so far as they affect the manufacture or importation of, and the collection and payment of the specific tax on, manufactured tobacco or products of tobacco.”<sup>50</sup> Section 20(a) of RR No. V-39, which lays the rules for tax exemption on tobacco products, states:

**SECTION 20. Exemption from tax of tobacco products intended for agricultural or industrial purposes. — (a) Sale of stemmed leaf tobacco, etc., 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 sweepings of tobacco may be sold in bulk as raw materials by one manufacturer directly to another without the prepayment of specific tax.

Stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, 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 of removals.*

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<sup>50</sup> Revenue Regulations No. V-39, sec. 1.

*Corresponding debit entry will be made in the L-7 register book of the factory receiving the tobacco under heading "Refuse, etc., received from other factory," showing the date of receipt, assessment and invoice numbers, name and address of the consignor, form in which received, and the 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 supplied)*

Sections 10 and 11 of RR No. V-39 enumerate and describe the record books to be kept and used by manufacturers of tobacco products, *viz*:

**SECTION 10. (a) Register, auxiliary, and stamps requisition books for manufacturers.** — The Collector of Internal Revenue shall from time to time supply provincial revenue agents or the Chief of the Tobacco Tax Section with the necessary number of manufacturers official register books and official auxiliary register books as may be required in each locality by manufacturers of tobacco products. *Whenever any manufacturer shall have qualified himself as such by executing a proper bond, registering his factory, and paying the privilege tax and shall have complied with all the requirements of engaging in such business contained in the National Internal Revenue Code and in these regulations, the internal revenue agent within whose district the factory is located shall deliver to said manufacturer the necessary official register books and auxiliary register books. These books consist of the following:*

B.I.R. No. 31.09—Official Register Book, A-3 for manufacturers of chewing and smoking tobacco.

B.I.R. No. 31.10—Manufactured tobacco (Transcript sheet of above).

B.I.R. No. 31.18—Official Register Book, A-4, for manufacturers of cigar.

B.I.R. No. 31.19—(Transcript sheet of the above).

B.I.R. No. 31.27—Official Register Book, A-5, for Manufacturers of cigarettes.

B.I.R. No. 31.28—(Transcript sheet of above).

*B.I.R. No. 31.01—Official Register Book, L-7, record of raw materials for manufacturers of any class of tobacco products.*

B.I.R. No. 31.02—(Transcript sheet of above)[.]

B.I.R. No. 31.46—Auxiliary Register Book, L-7-1/2, bale book, for manufacturers of any class of tobacco products.

B.I.R. No. 31.47—(Transcript sheet of above).

B.I.R. No. 31.12—Stamp requisition book, for manufacturers of manufactured tobacco.

B.I.R. No. 31.21—Stamp requisition book, for manufacturers of cigars.

B.I.R. No. 31.30—Stamp requisition book, for manufacturers of cigarettes.

*B.I.R. No. 31.05—L-7 Official Invoice Book for, use in connection with L-7 register book.*

*B.I.R. No. 31.05—L-7-1/2 Official Invoice Book, for use in connection with L-7-1/2 bale book.*

**(b) General nature of official register and auxiliary register books.** — *The L-7 official register book is the record of all raw materials used in the manufacture of tobacco products of all description in the factory. It is the primary record of the internal operations of the factory. It shows the raw materials used in the manufacture and the articles actually manufactured or produced. The Schedule A register books are the record of the articles actually manufactured or produced, and transferred from the credit side of the official register book, L-7. They show the amount of taxes paid and the name of the person to whom the finished products is consigned or sold when leaving the factory. The bale book[,] L-7-1/2, is an auxiliary to the L-7 official register book.*

All official register books and other official records herein required of manufacturers shall be kept in the factory premises, or in the factory warehouse, in the case of bale books, and open to inspection by any internal revenue officer at all times of the day or night.

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**SECTION 11. Entries to be made in the official register and auxiliary register books; monthly transcripts.** — (a) Official bale book (L-7-1/2). All leaf tobacco received in any factory or factory warehouse shall be debited, and any removal of tobacco from the factory shall be credited in the official bale book; except cuttings, clippings, sweepings, and other partially manufactured tobacco, which shall be credited in the L-7 register book.

The Collector of Internal Revenue may in his discretion waive the requirements of keeping an official bale book by small factories.

**(b) The Official Register Book (L-7).** — One L-7 books shall suffice for each manufacturer of tobacco products, regardless of the classes of tobacco manufactured by him. All loose leaf tobacco received in the factory proper and all bales of leaf tobacco which are opened in the factory for use in the manufacture of tobacco products shall be entered in the L-7 official register book under the heading “Received from Dealers” at the net weights. In the column headed “Name[”] and “Address” shall be shown the words “Transferred from tobacco factory warehouse”. All leaf tobacco received into a factory must be entered in the official bale book pertaining to the factory and bales of leaf tobacco shall not be taken up in the L-7 register book until said bales are transferred for use and credited in the official bale book. While leaf tobacco must be taken in the official bale book, this is done for statistical purposes only. As soon as it enters the

factory for use in manufacture it should be taken up in the L-7 register book and credited in the official bale book.

All removals of waste of tobacco, whether transferred to other factories, removed for agricultural or industrial purposes, or destroyed on the premises or elsewhere, shall be entered in the official register book, L-7, under the heading "Raw Materials Removed", showing all information required therein. (Emphasis supplied)

Section 2 of RR No. V-39 broadly defined "manufactured products of tobacco" and "manufacturer of tobacco products" as follows:

**Section 2. Definition of terms.** — When used in there [sic] regulations, the following terms shall be given the interpretations indicated in their respective definitions given below, except where the context indicates otherwise:

(a) "Manufactured products of tobacco" shall include cigars, cigarettes, smoking tobacco, chewing, snuff, and all other forms of manufactured and partially manufactured tobacco, as defined in section 194 (M)<sup>51</sup> of the National Internal Revenue Code.

(b) "Manufacturer of tobacco products" shall include all persons engaged in the manufacture of any of the forms of tobacco mentioned in the next preceding paragraph.

In 1967, the Secretary of Finance promulgated Revenue Regulations No. 17-67 (RR No. 17-67), as amended,<sup>52</sup> or the "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." Section 2(i) of RR No. 17-67 defined a "manufacturer of tobacco" and included in the definition one who prepares partially manufactured tobacco. Section 2(m) defined "partially manufactured tobacco" as including stemmed leaf tobacco. Thus, Sections 2(i) and (m) read:

- (i) "Manufacturer of tobacco" — Includes every person whose business it is to manufacture tobacco o[r] 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

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<sup>51</sup> SECTION 194. Words and Phrases Defined. — . . .

(m) "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, grinding, or rubbing 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 of tobacco resulting from any process of handling tobacco stems, scraps, clippings, or waste by sifting, twisting, screening, or by any other process.

<sup>52</sup> Amended by Revenue Regulations Nos. 9-72 (September 27, 1972), 1-73 (December 26, 1972), 5-75 (November 11, 1975), 10-75 (December 19, 1975), and 1-76 (November 16, 1976).

otherwise preparing raw or leaf tobacco, or manufactured or partially manufactured tobacco and snuff, or putting up for consumption scraps, refuse, or stems of tobacco resulting from any process of handling tobacco stems, scraps, clippings, or waste by sifting, twisting, screening or by any other process.

.....

- (m) "Partially manufactured tobacco" — Includes:
- (1) "Stemmed leaf" — handstripped tobacco, clean, good, partially broken leaf only, free from mold and dust.
  - (2) "Long-filler" — handstripped tobacco of good, long pieces of broken leaf usable as filler for cigars without further preparation, and free from mold, dust stems and cigar cuttings.
  - (3) "Short-filler" — handstripped or machine-stripped tobacco, clean, good, short pieces of broken leaf, which will not pass through a screen of two inches (2") mesh.
  - (4) "Cigar-cuttings" — clean cuttings or clippings from cigars, unsized with any other form of tobacco.
  - (5) "Machine-scrap tobacco" — machine-threshed, clean, good tobacco, not included in any of the above terms, usable in the manufacture of tobacco products.
  - (6) "Stems" — midribs of leaf tobacco removed from the whole leaf or broken leaf either by hand or machine.
  - (7) "Waste tobacco" — denatured tobacco; powder or dust, refuse, unfit for human consumption; discarded materials in the manufacture of tobacco products, which may include stems.

Section 3 of RR No. 17-67 classified entities that dealt with tobacco according to the type of permit that the Bureau of Internal Revenue issued to each entity. Under this classification, wholesale leaf tobacco dealers were considered L-3 permittees. Those (referring to wholesale leaf tobacco dealers) that reprocess partially manufactured tobacco for export, for themselves, and/or for other L-6 or L-7 permittees were considered L-6 permittees. Manufacturers of tobacco products such as cigarette manufacturers were considered L-7 permittees. Section 3 of RR No. 17-67 reads:

- (a) L-3 — Wholesale leaf tobacco dealer.
- (b) L-3F — Wholesale leaf tobacco dealer. Issued only in favor of Farmer's Cooperative Marketing Association (FaCoMas) duly organized in accordance with law. [This function relative to tobacco trading was transferred to the Philippine Virginia Tobacco Administration (PVTVA) under Section 15 of Republic Act No. 2265].
- (c) L-3R — Wholesale leaf tobacco dealers. Issued only in favor of persons or entities having fully equipped Redrying Plants.
- (d) L-3-¼ — Buyers for wholesale leaf tobacco dealers.
- (e) L-4 — Wholesale leaf tobacco dealers. Issued only in favor of persons or entities having flue-curing barns, who may purchase or receive green Virginia leaf tobacco from bona fide tobacco planters only, or handle green leaf of their own production, which tobacco shall be sold or transferred only to holders of L-3 and L-3R permits after flue-curing the tobacco.
- (f) L-5 — Tobacco planters selling to consumers part or the whole of their tobacco production.
- (g) L-6 — Wholesale leaf tobacco dealers who, exclusively for export, except as otherwise provided for in these regulations, perform the following functions:
  - (1) Handstripped and/or thresh whole leaf tobacco for themselves or for other L-6 or L-7 permittees;
  - (2) Re-process partially manufactured tobacco for themselves, or for other L-6 or L-7 permittees;
  - (3) Sell their partially manufactured tobacco to other L-6 permittees.
- (h) L-7 — Manufacturers of tobacco products. [L-7 ½ designates an auxiliary registered book (bale books), for manufacturers of tobacco products.]
- (i) B-14 — Wholesale leaf tobacco dealers (Privilege tax receipt)
- (j) B-14 (a) — Retail leaf tobacco dealers (Privilege tax receipt)

La Suerte contends that on December 12, 1972, then Internal Revenue Commissioner Misael P. Vera issued a ruling which declared that:

. . . . The subsequent sale or transfer by the L-6/L-3R permittee for export or to an L-7-1/2 for use in the manufacture of cigars or cigarettes may also be allowed without the prepayment of the specific tax.<sup>53</sup>

Almost 40 years from the enactment of the 1939 Tax Code, Presidential Decree No. 1158-A, otherwise known as the “National Internal Revenue Code of 1977,” was promulgated on June 3, 1977, to consolidate and integrate the various tax laws which have so far amended or repealed the provisions found in the 1939 Tax Code. Section 132 was renumbered as Section 144, and Section 136 as Section 148. Sections 144 and 148, read:

SEC. 144. *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, and stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cuts chewing tobacco, re-refuse, scraps, cuttings, clippings, stems or midribs, and sweepings of tobacco may be sold in bulk as raw material by one manufacturer directly to another, under such conditions as may be prescribed in the regulations of the Department of Finance, without the prepayment of the tax.

“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.

. . . .

SEC. 148. *Specific tax on products of tobacco.*—On manufactured products of tobacco, except cigars, cigarettes, and tobacco specially prepared for chewing so as to be unsuitable for consumption in any other manner, but including all other tobacco twisted by hand or reduced into a condition to be consumed in any manner other than by the ordinary mode of drying and curing; and on all tobacco prepared or partially prepared for sale or consumption, even if prepared without the use of any machine or instrument and without being pressed or sweetened; and on all fine-cut shorts and refuse, scraps, clippings, cuttings, stems, and sweepings of tobacco, there shall be collected on each kilogram, seventy-five centavos: *Provided, however,* That 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 such conditions as may be 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 specific tax will eventually be paid on the finished product.

On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, sixty centavos.

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<sup>53</sup> *Rollo* (G.R. No. 125346), p. 381.

Sections 144 and 148 were subsequently renumbered as Sections 120 and 125 respectively under Presidential Decree No. 1994,<sup>54</sup> which took effect on January 1, 1986 (1986 Tax Code); then as Sections 137 and 141 under Executive Order No. 273,<sup>55</sup> and finally as Sections 140 and 144 under Republic Act No. 8424 or the “Tax Reform Act of 1997.” However, the provisions remained basically unchanged.

The business transactions of La Suerte, Fortune, and Sterling that the Commissioner found to be taxable for specific tax took place during the effectivity of the 1986 Tax Code, as amended by Executive Order No. 273. The pertinent provisions are Sections 137 and 141, thus:

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 Ministry 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 Ministry of Finance.

‘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.

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SEC. 141. Tobacco Products. – There shall be collected a tax of seventy-five centavos on each kilogram of the following products of tobacco:

- (a) tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing;
- (b) tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened; and
- (c) fine-cut shorts and refuse, scraps, clippings, cuttings, stems and sweepings of tobacco.

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

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<sup>54</sup> Further Amending Certain Provisions of the National Internal Revenue Code, promulgated on November 5, 1985.

<sup>55</sup> Adopting a Value-Added Tax, Amending for this Purpose Certain Provisions of the National Internal Revenue Code, and for Other Purposes, promulgated on July 25, 1987 and took effect on January 1, 1988.



prepayment of the specific tax herein provided for under such conditions as may be prescribed in the regulations promulgated by the Ministry 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 product.

On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, sixty centavos.

Parenthetically, the present provisions explicitly state the following:

Stemmed leaf tobacco, 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, midribs, and sweepings of tobacco resulting from the handling or stripping of whole leaf tobacco shall be transferred, disposed of, or otherwise sold, without any prepayment of the excise tax . . . if the same are to be exported or to be used in the manufacture of cigars, cigarettes, or other tobacco products on which the excise tax will eventually be paid on the finished product, under such conditions as may be prescribed in the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner.<sup>56</sup>

### **BIR assessments**

#### **G.R. No. 125346**

Sometime in June, 1989, a team of examiners from the Bureau of Internal Revenue, led by Crisanto G. Luna, Revenue Officer III of the Field Operation Division of the Excise Tax Service, conducted an examination of the books of La Suerte by virtue of a letter of authority issued by then Commissioner Jose U. Ong.

On January 3, 1990, La Suerte received a letter from then Commissioner Jose U. Ong demanding the payment of ₱34,934,827.67 as deficiency excise tax on La Suerte's entire importation and local purchase of stemmed leaf tobacco for the period covering January 1, 1986 to June 30, 1989.

On January 12, 1990, La Suerte . . . protest[ed] the excise tax deficiency assessment . . . stressing that the BIR assessment was based solely on Section 141(b) of the Tax Code 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. However, in a letter, dated August 31, 1990, Commissioner Jose U. Ong denied La Suerte's protest, insisting that stemmed leaf tobacco is subject to excise tax "unless there is an express grant of exemption from [the] payment of tax."

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<sup>56</sup> Rep. Act No. 8424 (1997), sec. 144, as amended by Rep. Act No. 10351 (2012).

In a letter dated October 17, 1990, Commissioner Ong reiterated his demand for the payment of the alleged deficiency excise taxes due from La Suerte, to wit:

“Please be informed that in an investigation conducted by this Office, it was ascertained that you incurred a deficiency specific tax on your importation and local purchase of stemmed leaf tobacco covering the period from January 1, 1986 to June 30, 1989 in the total amount of ₱34,904,247.00 computed as follows:

STEMMED-LEAF TOBACCO

Imported	13,918,465 kls. x ₱0.75	₱10,438,848.00
Local	32,620,532 kls. x 0.75	<u>24,465,399.00</u>
Total Amount Due (Basic Tax) - - - - -		₱34,904,247.00

. . . .” (page 99, Rollo)

On December 6, 1990, La Suerte filed with the Court of Tax Appeals a Petition for Review seeking for the annulment of the assessments. . .

. . . On July 13, 1995, the Tax Court rendered [its] Decision, the dispositive portion of which reads[:]

“WHEREFORE, in all the foregoing, the assessment of alleged deficiency specific tax in the amount of ₱34,904,247.00 issued by the Respondent is hereby CANCELLED for lack of merit.

SO ORDERED.”<sup>57</sup>

The Commissioner appealed the Court of Tax Appeals’ decision before the Court of Appeals. On December 29, 1995, the Court of Appeals Sixth Division ruled against La Suerte and found that RR No. V-39 limits the tax exemption on transfers of stemmed leaf tobacco to transfers between two L-7 permittees.<sup>58</sup> The Court of Appeals ruled as follows:

IN THE LIGHT OF ALL THE FOREGOING, the Decision appealed from is hereby REVERSED and SET ASIDE. Respondent is ordered to pay the petitioner Commissioner of Internal Revenue the amount of ₱34,904,247.00 as deficiency specific tax on its importations and local purchases of stemmed leaf tobacco and its sale of stemmed leaf tobacco to Associated Anglo-American Tobacco Corporation covering the period from January 1, 1986 to June 30, 1989, plus 25% surcharge for late payment and 20% interest per annum from October 17, 1990 until fully paid pursuant to sections 248 and 249 of the Tax Code.

<sup>57</sup> Id. at 78–80.

<sup>58</sup> Id. at 85.

SO ORDERED.<sup>59</sup>

La Suerte filed a motion for reconsideration, which was denied by the Court of Appeals in its June 7, 1996 resolution.<sup>60</sup>

On August 2, 1996, La Suerte filed the instant petition for review,<sup>61</sup> praying for the reversal of the Court of Appeals' decision and cancellation of the assessment by the Commissioner. La Suerte raises the following grounds in support of its prayer:

- A. THE COURT OF APPEALS ERRED WHEN IT CONSIDERED SECTION 20 (A) OF RR NO. V-39, SINCE THE COMMISSIONER RAISED IT FOR THE FIRST TIME IN THE COURT OF APPEALS
- B. THE COURT OF APPEALS ERRED WHEN IT HELD THAT SECTION 20(A) OF RR NO. V-39 RESTRICTS THE APPLICATION OF SECTION 137 OF THE TAX CODE, SINCE LANGUAGE IN SEC. 137 IS UNQUALIFIED, WHILE SEC. 20(A) CONTAINS NO RESTRICTIVE LANGUAGE
- C. THE COURT OF APPEALS ERRED WHEN IT IGNORED SEC. 43 OF RR NO. 17-67 AS WELL AS OPINIONS OF BIR OFFICIALS WHICH CONFIRMED THE EXEMPTION OF STEMMED LEAF TOBACCO FROM PREPAYMENT OF SPECIFIC TAX
- D. THE COURT OF APPEALS ERRED WHEN IT HELD THAT SEC. 43 OF RR NO. 17-67 DID NOT REPEAL SECTIONS 35 AND 20(A) OF RR NO. V-39, SINCE THEIR PROVISIONS ARE REPUGNANT TO EACH OTHER
- E. THE COURT OF APPEALS ERRED WHEN IT HELD THAT RR NO. V-39 IMPOSES SPECIFIC TAXES ON STEMMED LEAF TOBACCO, SINCE IT MAKES NO MENTION AT ALL OF TAXES ON STEMMED LEAF TOBACCO
- F. THE COURT OF APPEALS ERRED WHEN IT HELD RR NO. V-39 APPLIED TO L-6 PERMITTEES OR MANUFACTURERS OF STEMMED LEAF TOBACCO, SINCE L-6 CLASSIFICATION WAS NON-EXISTENT AT THE TIME
- G. THE COURT OF APPEALS ERRED WHEN IT INTERPRETED SECTION 20(A) OF RR NO. V-39 IN SUCH A WAY AS TO RESULT IN ADMINISTRATIVE LEGISLATION, SINCE THE INTERPRETATION SANCTIONED THE RESTRICTION OF AN UNQUALIFIED PROVISION OF LAW BY A MERE REGULATION
- H. THE COURT OF APPEALS ERRED WHEN IT GAVE NO WEIGHT TO THE DECEMBER 12, 1972 BIR RULING AND OPINIONS OF OTHER BIR OFFICIALS WHICH CONFIRMED THE EXEMPTION

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<sup>59</sup> Id. at 90.

<sup>60</sup> Id. at 93–100.

<sup>61</sup> Id. at 16–75.

## OF STEMMED LEAF TOBACCO FROM PREPAYMENT OF SPECIFIC TAX

- I. THE COURT OF APPEALS ERRED WHEN IT HELD [THAT] NON-APPLICATION OF [THE] DECEMBER 12 RULING DID NOT IMPINGE ON PRINCIPLE OF NON-RETROACTIVITY OF RULINGS BECAUSE THE ASSESSMENT DID NOT CITE THE RULING, SINCE CITATION OF A RULING IN AN ASSESSMENT [IS] NOT NECESSARY FOR PRINCIPLE TO APPLY
- J. THE COURT OF APPEALS ERRED WHEN IT DISREGARDED THE ADMINISTRATIVE PRACTICE OF BIR FOR OVER HALF A CENTURY OF NOT SUBJECTING STEMMED LEAF TOBACCO TO SPECIFIC TAX
- K. THE COURT OF APPEALS ERRED WHEN IT HELD THAT SUBJECTING STEMMED LEAF TOBACCO TO SPECIFIC TAX IS NOT PROHIBITED FORM OF DOUBLE TAXATION, SINCE A TAX ON BOTH STEMMED LEAF TOBACCO AND CIGARETTES INTO WHICH IT IS MANUFACTURED IS DOUBLE TAXATION
- L. THE COURT OF APPEALS ERRED WHEN IT HELD LA SUERTE LIABLE FOR SPECIFIC TAX EVEN IF NO EFFORT WAS FIRST MADE TO COLLECT THE TAX FROM THE MANUFACTURER OF STEMMED LEAF TOBACCO, SINCE TAX CODE ALLOWS THIS ONLY IF SPECIAL ALLOWANCE IS GRANTED, WHICH IS NOT THE CASE
- M. THE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THAT THE REENACTMENT OF THE 1939 CODE AS THE 1977 CODE AND 1986 TAX CODES ADOPTED THE INTERPRETATION IN THE DECEMBER 1972 BIR RULING
- N. THE COURT OF APPEALS ERRED WHEN IT APPLIED THE RULES OF CONSTRUCTION ON EXEMPTION FROM TAXES, SINCE NO TAX EXEMPTION WAS INVOLVED BUT MERELY AN EXEMPTION FROM PREPAYMENT OF TAX.<sup>62</sup>

**G.R. No. 136328–29**

In the letter dated November 24, 1989, the Commissioner demanded from Fortune the payment of deficiency excise tax in the amount of ₱28,938,446.25 for its importation of tobacco strips from January 1, 1986 to June 30, 1989. Fortune requested for reconsideration, which was denied by the Commissioner on August 31, 1990. Undaunted, Fortune appealed to the Court of Tax Appeals through a petition for review, which was docketed as CTA Case No. 4587.<sup>63</sup>

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<sup>62</sup> Id. at 31–33.

<sup>63</sup> *Rollo* (G.R. Nos. 136328-29), p. 54.

In the decision dated November 23, 1994, the Court of Tax Appeals ruled in favor of Fortune and set aside the Commissioner's assessment of □28,938,446.25 as deficiency excise tax.

Meanwhile, on March 20, 1991, Fortune received another letter from the Bureau of Internal Revenue, demanding payment of □1,989,821.86 as deficiency specific tax on its importation of stemmed leaf tobacco from July 1, 1989 to November 30, 1990.<sup>64</sup> Fortune filed its protest and requested the Commissioner to cancel and withdraw the assessment.<sup>65</sup> On April 18, 1991, the Commissioner denied with finality Fortune's request.<sup>66</sup> Fortune appealed to the Court of Tax Appeals, and the case was docketed as CTA Case No. 4616.<sup>67</sup>

In the decision dated October 6, 1994, the Court of Tax Appeals ruled in favor of Fortune and set aside the Commissioner's assessment of □1,989,821.26 as deficiency excise tax on stemmed leaf tobacco.

The Commissioner filed separate petitions before the Court of Appeals, challenging the decisions rendered by the Court of Tax Appeals in CTA Case Nos. 4587 and 4616. These petitions were consolidated on November 28, 1996.<sup>68</sup>

In the decision dated January 30, 1998, the Court of Appeals Seventeenth Division dismissed the consolidated petitions filed by the Commissioner and affirmed the assailed decisions of the Court of Tax Appeals. It also denied the Commissioner's motion for reconsideration.

Hence, the Commissioner filed the present petition<sup>69</sup> on January 8, 1999. The Commissioner claims that the Court of Appeals erred (1) "in holding that stemmed leaf tobacco is not subject to the specific tax imposed under Section 141 of the Tax Code[;]"<sup>70</sup> (2) "in not holding that under Section 137 of the Tax Code, stemmed leaf tobacco is exempt from specific tax when sold in bulk as raw material by one manufacturer directly to another under such conditions as may be prescribed in the regulations of the Department of Finance[;]"<sup>71</sup> and (3) "in holding that there is double taxation in the prohibited sense when specific tax is imposed on stemmed leaf tobacco and again on the finished product of which stemmed leaf tobacco is a raw material."<sup>72</sup>

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<sup>64</sup> Id. at 73–74.

<sup>65</sup> Id. at 74.

<sup>66</sup> Id.

<sup>67</sup> Id. at 73 and 75.

<sup>68</sup> Id. at 28.

<sup>69</sup> Id. at 8–25.

<sup>70</sup> Id. at 12.

<sup>71</sup> Id. at 13.

<sup>72</sup> Id.

**G.R. No. 144942**

In April 1995, “[La Suerte] imported stemmed leaf tobacco from various sellers abroad.”<sup>73</sup> The Commissioner “assessed specific taxes on the stemmed leaf tobacco in the amount of □175,909.50, which [La Suerte] paid under protest.”<sup>74</sup> “Consequently, [La Suerte] filed a claim for refund with [the Commissioner], [who] failed to act on the same.”<sup>75</sup> Undeterred, La Suerte appealed to the Court of Tax Appeals, which in its March 9, 1999 decision, ruled in its favor.

The Commissioner appealed to the Court of Appeals Third Division, which on August 31, 2000, rendered its decision in CA-G.R. SP. No. 51902, affirming the decision of the Court of Tax Appeals.

The Commissioner then filed the instant petition for review<sup>76</sup> asking this court to overturn the Court of Appeals’ decision. It avers that the Court of Appeals erred in holding that Section 137 of the Tax Code applied “without any conditions as to the domicile of the manufacturers and that [the Commissioner] cannot indirectly restrict its application to local manufacturers.”<sup>77</sup>

The Third Division of this court initially denied<sup>78</sup> the petition due to an insufficient or defective verification and because “the petition was filed by revenue lawyers and not by the Solicitor General.”<sup>79</sup>

The Commissioner filed a motion for clarification<sup>80</sup> seeking to clarify whether the Bureau of Internal Revenue legal officers can file petitions for review pursuant to Section 220 of the Tax Code without the intervention of the Office of the Solicitor General.

The motion was referred to the En Banc<sup>81</sup> on August 7, 2001, which issued the resolution on July 4, 2002, holding that “Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the

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<sup>73</sup> *Rollo* (G.R. No. 144942), p. 20.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 7–17.

<sup>77</sup> *Id.* at 9.

<sup>78</sup> *Id.* at 33. The resolution was dated November 15, 2000.

<sup>79</sup> *Id.* The Commissioner’s subsequent motion for reconsideration was also denied in this court’s February 5, 2001 resolution (*rollo*, p. 44).

<sup>80</sup> *Id.* at 45–50.

<sup>81</sup> *Id.* at 55.

Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.”<sup>82</sup> In the same resolution, this court also declared the following:

The present controversy ruminates upon the singular issue of whether or not Revenue Regulation 1767 [sic] issued by petitioner, in relation to Section 137 of the Internal Revenue Code in the imposition of a tax on stemmed-leaf tobacco, deviated from the tax code. *This question basically inquires then into whether or not the revenue regulation has exceeded, on constitutional grounds, the allowable limits of legislative delegation.*

Aware that the dismissal of the petition could have lasting effect on government tax revenues, the lifeblood of the state, the Court heeds the plea of petitioner for a chance to prosecute its case.<sup>83</sup> (Emphasis and underscoring supplied)

This court resolved to reinstate<sup>84</sup> and give due course<sup>85</sup> to the Commissioner’s petition.

#### **G.R. No. 148605**

“On January 12, 1990, [Sterling] received a pre-assessment notice for alleged deficiency excise tax on its importation and local purchase of stemmed-leaf tobacco for ₱5,187,432.00 covering the period from November 1986 to January 1989.”<sup>86</sup> Sterling filed its protest letter<sup>87</sup> dated January 19, 1990. The Commissioner, through its letters<sup>88</sup> dated August 31, 1990 and October 17, 1990, denied the protest with finality.

Sterling filed before the Court of Tax Appeals a petition for review<sup>89</sup> dated January 3, 1991, seeking the cancellation of the deficiency assessment and praying that the Commissioner be ordered to desist from collecting the assessed excise tax. On July 13, 1995, the Court of Tax Appeals rendered its decision ordering the cancellation of the assessment for deficiency excise tax.

The Commissioner then appealed<sup>90</sup> to the Court of Appeals. On March 7, 2001, the latter, through its Ninth Division, rendered a decision reversing the Court of Tax Appeals’ ruling, thus:

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<sup>82</sup> Id. at 86.

<sup>83</sup> Id. at 87–88.

<sup>84</sup> Id. at 139. The resolution was dated October 8, 2002.

<sup>85</sup> Id. at 252. The resolution was dated March 25, 2003.

<sup>86</sup> *Rollo* (G.R. No. 148605), p. 54.

<sup>87</sup> Id. at 99.

<sup>88</sup> Id. at 100–101.

<sup>89</sup> Id. at 91–95.

<sup>90</sup> Id. at 131–169.

WHEREFORE, premises considered, the Decision of the Court of Tax Appeals in C.T.A. Case No. 4532 is hereby REVERSED and SET ASIDE, and the respondent is ORDERED to pay to the public petitioner the amount of □5,187,432.00 as deficiency specific tax on its imported and locally purchased stemmed leaf tobacco from November 1986 to June 24, 1989, plus 25% surcharge on □5,187,432.00, and 20% interest per annum on the total amount due from December 07, 1990 until full payment, pursuant to Sections 248-49 of the Tax Code.

SO ORDERED.<sup>91</sup>

Sterling filed a motion for reconsideration,<sup>92</sup> which was denied by the Court of Appeals in its June 19, 2001 resolution.

Hence, on August 13, 2001, Sterling filed the instant petition for review.<sup>93</sup>

Sterling argues that the Court of Appeals erred in holding that (1) then Section 141 of the Tax Code subjects stemmed leaf tobacco to excise tax; (2) Section 137 of the Tax Code did not exempt stemmed leaf tobacco from prepayment of excise tax; (3) Section 20(A) of RR No. V-39 restricts the application of Section 137 of the Tax Code since its language was unqualified, while Section 20(A) contained no restrictive language; (4) RR No. V-39 imposed specific taxes on stemmed leaf tobacco since its language made no mention of taxes on stemmed leaf tobacco; (5) the reason behind limiting exemptions only to transfers from one L-7 to another L-7 is because sale has previously been subjected to specific tax; and (6) the exemption from specific tax did not apply to imported stemmed leaf tobacco.<sup>94</sup>

Sterling further argues that the Court of Appeals erred in not holding that (1) the Commissioner's interpretation of Section 141 of the Tax Code and Section 20(A) of RR No. V-39 amounts to an amendment of Sections 141 and 137 of the Tax Code by a mere administrative regulation; (2) a December 12, 1972 Bureau of Internal Revenue ruling and opinions of other Bureau of Internal Revenue officials confirmed the exemption of stemmed leaf tobacco from prepayment of specific tax; (3) the administrative practice of the Bureau of Internal Revenue for over half a century of not subjecting stemmed leaf tobacco to excise tax proves that no excise taxes were ever intended to be imposed; (4) imposition of excise tax on stemmed leaf tobacco would result in the prohibited form of double taxation; and (5) the re-enactment of the relevant provisions in the 1977 and 1986 Tax Codes adopted the interpretation in the December 1972 Bureau of Internal Revenue

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<sup>91</sup> Id. at 69.

<sup>92</sup> Id. at 70-85.

<sup>93</sup> Id. at 10-51.

<sup>94</sup> Id. at 14-15.



ruling.<sup>95</sup> Sterling also contends that the “Court of Appeals erred in applying the rules of construction on exemption from taxes, since no tax exemption was involved, but merely an exemption from prepayment of excise tax.”<sup>96</sup>

### **G.R. No. 158197**

On January 10, 1991, the Commissioner sent a pre-assessment notice to La Suerte demanding payment of ₱11,757,275.25 as deficiency specific tax on its local purchases and importations and on the sale of stemmed leaf tobacco during the period from September 14, 1989 to November 20, 1990.<sup>97</sup> On February 8, 1991, La Suerte received the formal assessment letter of the Commissioner.<sup>98</sup>

La Suerte filed its protest on March 8, 1991.<sup>99</sup> On May 14, 1991, La Suerte received the Commissioner’s decision “denying the protest with finality.”<sup>100</sup>

“On June 13, 1991, the Court of Tax Appeals promulgated a Decision finding for . . . La Suerte and disposing [as follows:]”<sup>101</sup>

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 the deficiency specific tax in the sum of P11,575,275.25 subject of the respondent’s letter, dated January 30, 1991, is deemed cancelled.

No pronouncement as to costs of suit.

SO ORDERED.<sup>102</sup>

The Commissioner filed a motion for reconsideration that was denied by the Court of Tax Appeals in its April 5, 1995 resolution.<sup>103</sup>

The Commissioner appealed to the Court of Appeals.<sup>104</sup> In its decision dated July 18, 2002, the Court of Appeals reversed the decision of the Court of Tax Appeals. It cited *Commissioner of Internal Revenue v. La*

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<sup>95</sup> Id. at 15–16.

<sup>96</sup> Id. at 16.

<sup>97</sup> *Rollo* (G.R. No. 158197), pp. 36–37.

<sup>98</sup> Id. at 37.

<sup>99</sup> Id. at 38.

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> Id.

<sup>104</sup> Id. at 39.

*Campaña Fabrica de Tabacos, Inc.*<sup>105</sup> as basis for its ruling. La Suerte filed a motion for reconsideration, but it was denied by the Court of Appeals in the resolution<sup>106</sup> dated May 9, 2003.

La Suerte prays for the reversal of the Court of Appeals' decision and resolution in its petition for review,<sup>107</sup> wherein it raises the following arguments:

- I. THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT SECTION 20(A) OF REV. REGS. NO. V-39 LIMITED THE CLASS OF MANUFACTURERS WHOSE SALES OF STEMMED LEAF TOBACCO WERE EXEMPT FROM PRE-PAYMENT OF SPECIFIC TAX.
- II. EVEN IF SEC. 3 OF RR NO. 17-67 HAD BEEN WAS [sic] INTENDED TO LIMIT MANUFACTURERS EXEMPT FROM PREPAYMENT OF SPECIFIC TAX, THIS WOULD AMOUNT TO UNLAWFUL DELEGATION OF LEGISLATIVE POWER.
- III. RR NO. 17-67 WAS NEITHER ISSUED TO AMEND RR NO. V-39 NOR TO AMEND THE TAX CODE, BUT SOLELY TO IMPLEMENT ACT NO. 2613, AS AMENDED, WHICH WAS ENACTED IN 1916 AND HAD ABSOLUTELY NOTHING TO DO WITH TAXES.
- IV. SECTION 2(H) OF RR NO. 17-67 EXCEEDED THE CONSTITUTIONAL LIMITS ON THE DELEGATION OF LEGISLATIVE POWER.
- V. SECTION 3(M) OF RR NO. 17-67 AS INTERPRETED BY COMMISSIONER EXCEEDED ALLOWABLE LIMITS ON DELEGATION OF LEGISLATIVE POWER.
- VI. THE HONORABLE COURT OF APPEALS ERRED IN APPLYING SECTION 20(A) OF RR NO. V-39 TO LA SUERTE'S IMPORTS OF STEMMED LEAF TOBACCO, FOR THE APPLICABLE PROVISION IS CHAPTER V OF RR NO. V-39.
- VII. THE COMMISSIONER'S PRESENT INTERPRETATION OF SECTIONS 2(M)(1) AND 3(H) OF RR NO. 17-67, WAS NOT THE INTERPRETATION GIVEN TO THOSE SECTIONS BY ITS FRAMERS, AS SHOWN BY THE LONG ADMINISTRATIVE PRACTICE AFTER THE ISSUANCE OF RR NO. 17-67 AND THE BIR RULING DATED DECEMBER 12, 1972, WHICH CONFIRMED THE TAX-FREE TRANSFER OF STEMMED- LEAF TOBACCO.<sup>108</sup>

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<sup>105</sup> 420 Phil. 920 (2001) [Per J. Pardo, First Division].

<sup>106</sup> *Rollo* (G.R. No. 158197), p. 51.

<sup>107</sup> *Id.* at 3–33.

<sup>108</sup> *Id.* at 14–15.

**G.R. No. 165499**

On various dates in March 1995, the Commissioner of Internal Revenue . . . collected from La Suerte the aggregate amount of THREE HUNDRED TWENTY-FIVE THOUSAND FOUR HUNDRED TEN PESOS (P325,410.00) for specific taxes on La Suerte's bulk purchases of stemmed-leaf tobacco from foreign tobacco manufacturers. La Suerte paid the said amount under protest.

. . . .

On September 27, 1996 and October 2, 1996, La Suerte instituted with the Commissioner of Internal Revenue . . . and with Revenue District No. 52, a claim for refund of specific taxes said to have been erroneously paid on its importations of stemmed-leaf tobacco for the period of November 1994 up to May 1995, including the amount of Three Hundred Twenty Five Thousand Four Hundred Ten Pesos (P325,410.00). . . .

Inasmuch as its claim for refund was not acted upon by petitioner and in order to toll the running of the two-year reglementary period within which to file a judicial claim for such refund as provided under Section 229 of the 1997 National Internal Revenue Code, as amended, La Suerte filed on February 8, 1997 a petition for review with the CTA.<sup>109</sup>

On September 23, 1998, the Court of Tax Appeals rendered judgment granting the petition for review and ordering the Commissioner to refund the amount of ₱325,410.00 to La Suerte.<sup>110</sup> The Commissioner filed a motion for reconsideration, but this was denied by the Court of Tax Appeals on December 15, 1998.<sup>111</sup>

On appeal, the Court of Appeals Fourth Division reversed<sup>112</sup> the Court of Tax Appeals' ruling. It also denied<sup>113</sup> La Suerte's motion for reconsideration. Hence, this petition was filed,<sup>114</sup> reiterating the same arguments already presented in the other cases.

This court ordered the consolidation of G.R. Nos. 136328–29 and 125346.<sup>115</sup> Thereafter, this court consolidated G.R. Nos. 165499, 144942, and 148605.<sup>116</sup> Finally, this court approved the consolidation of G.R. Nos. 125346, 136328–29, 144942, 148605, 158197, and 165499.<sup>117</sup>

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<sup>109</sup> *Rollo* (G.R. No. 165499), pp. 46–47.

<sup>110</sup> *Id.* at 47.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 45–56. The decision dated October 10, 2003 and was penned by Associate Justice Godardo A. Jacinto (Chair) and concurred in by Associate Justices Elvi John S. Asuncion and Lucas P. Bersamin.

<sup>113</sup> *Id.* at 58–59.

<sup>114</sup> *Id.* at 10–35.

<sup>115</sup> *Rollo* (G.R. No. 125346), p. 351. The resolution was dated January 20, 2003.

<sup>116</sup> *Rollo* (G.R. No. 165499), p. 65. The resolution was dated February 14, 2005.

<sup>117</sup> *Rollo* (G.R. No. 125346), p. 562. The en banc resolution was dated November 15, 2011.

### Issues

- I. Whether stemmed leaf tobacco is subject to excise (specific) tax under Section 141 of the 1986 Tax Code;
- II. Whether Section 137 of the 1986 Tax Code exempting from the payment of specific tax the sale of stemmed leaf tobacco by one manufacturer to another is not subject to any qualification and, therefore, exempts an L-7 manufacturer from paying said tax on its purchase of stemmed leaf tobacco from other manufacturers who are not classified as L-7 permittees;
- III. Whether stemmed leaf tobacco imported by La Suerte, Fortune, and Sterling is exempt from specific tax under Section 137 of the 1986 Tax Code;
- IV. Whether Section 20(a) of RR No. V-39, in relation to RR No. 17-67, which limits the exemption from payment of specific tax on stemmed leaf tobacco to sales transactions between manufacturers classified as L-7 permittees is a valid exercise by the Department of Finance of its rule-making power under Section 338<sup>118</sup> of the 1939 Tax Code;
- V. Whether the possessor or owner of stemmed leaf tobacco may be held liable for the payment of specific tax if such tobacco product is removed from the place of production without payment of said tax;
- VI. Whether the August 31, 1990 ruling of then Bureau of Internal Revenue Commissioner Jose U. Ong denying La Suerte's request for exemption from specific tax on its local purchase and importation of stemmed leaf tobacco violates the principle on non-retroactivity of administrative ruling for allegedly contradicting the previous position taken by the Bureau of Internal Revenue that such a transaction is not subject to specific tax as expressed in the December 12, 1972 ruling of then Bureau of Internal Revenue Commissioner Misael P. Vera; and
- VII. Whether the imposition of excise tax on stemmed leaf tobacco under Section 141 of the 1986 Tax Code constitutes double taxation.

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<sup>118</sup> Sec. 338. *Authority of Secretary of Finance to promulgate rules and regulations.* – The Secretary of Finance, upon recommendation of the Collector of Internal Revenue, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

### Arguments of the cigarette manufacturers

The cigarette manufacturers claim that since Section 137 of the 1986 Tax Code and Section 20(a) of RR No. V-39 do not distinguish “as to the type of manufacturer that may sell stemmed-leaf tobacco without the prepayment of specific tax[,] [t]he logical conclusion is that any kind of tobacco manufacturer is entitled to this treatment.”<sup>119</sup> The authority of the Secretary of Finance to prescribe the “conditions” refers only to procedural matters and should not curtail or modify the substantive right granted by the law.<sup>120</sup> The cigarette manufacturers add that the reference to an L-7 invoice and L-7 register book in the second paragraph of Section 20(a) cannot limit the application of the tax exemption provision only to transfers between L-7 permittees because (1) it does not so provide;<sup>121</sup> and (2) under the terms of RR No. V-39, L-7 referred to manufacturers of any class of tobacco products, including manufacturers of stemmed leaf tobacco.<sup>122</sup>

They further argue that, going by the theory of the Commissioner, RR No. 17-67 would have unduly restricted the meaning of “manufacturers” by limiting it to a few manufacturers such as manufacturers of cigars and cigarettes.<sup>123</sup> Allegedly, RR No. 17-67 cannot change the original meaning of L-7 in Section 20(A) of RR No. V-39 without exceeding constitutional limits of delegated legislative power.<sup>124</sup> La Suerte further points out that RR No. 17-67 was not even issued for the purpose of implementing the Tax Code but for the sole purpose of implementing Act No. 2613; and Section 3 of RR No. 17-67 restricts the new designations only for administrative purposes.<sup>125</sup>

Moreover, the cigarette manufacturers contend “that Section 132 does not operate as a tax exemption” because “prepayment means payment of obligation in advance or before it is due.”<sup>126</sup> Consequently, the rules of construction on tax exemption do not apply.<sup>127</sup> According to them, “the absence of tax prepayment for the sale of stemmed leaf tobacco impliedly indicates the underlying policy of the law: that stemmed leaf tobacco shall not be taxed twice, first, as stemmed leaf tobacco and, second, as a component of the finished products of which it forms an integral part.”<sup>128</sup>

Fortune, for its part, claims that stemmed leaf tobacco is not subject to excise tax. It argues that stemmed leaf tobacco cannot be considered

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<sup>119</sup> *Rollo* (G.R. No. 125346), p. 386.

<sup>120</sup> *Rollo* (G.R. No. 125346), p. 394; (G.R. No. 148605), p. 290.

<sup>121</sup> *Rollo* (G.R. No. 125346), p. 386; (G.R. No. 148605), p. 297.

<sup>122</sup> *Rollo* (G.R. No. 125346), p. 388; (G.R. No. 148605), p. 306.

<sup>123</sup> *Rollo* (G.R. No. 125346), p. 387.

<sup>124</sup> *Id.* at 389 and 391.

<sup>125</sup> *Id.* at 392.

<sup>126</sup> *Id.* at 395.

<sup>127</sup> *Rollo* (G.R. No. 125346), p. 395; *Rollo* (G.R. No. 148605), pp. 319-320.

<sup>128</sup> *Rollo* (G.R. No. 125346), p. 395.

prepared or partially prepared tobacco because it does not fall within the definition of a “processed tobacco” under Section 1-b of Republic Act No. 698, as amended.<sup>129</sup> Furthermore, it adds that Section 141 should be strictly construed against the taxing power.<sup>130</sup> “There being no explicit reference to stemmed leaf tobacco in Section 141, it cannot be claimed or construed to be subject to specific tax.”<sup>131</sup>

According to Fortune, “a plain reading of Section 141 readily reveals that the intention was to impose excise taxes on products of tobacco that are not to be used as raw materials in the manufacture of other tobacco products.”<sup>132</sup> “Section 2(m)(1) unduly expanded the meaning of prepared or partially prepared tobacco to include a raw material like stemmed leaf tobacco; hence, *ultra vires* and invalid.”<sup>133</sup>

As regards the taxability of their importations, Sterling argues that since locally manufactured stemmed leaf tobaccos are not subject to specific tax, it follows that imported stemmed leaf tobaccos are also not subject to specific tax.<sup>134</sup> On the other hand, La Suerte claims that Section 20(A) of RR No. V-39 does not apply to its imports because the applicable provision is Section 128(b) of the 1986 Tax Code, which states that “imported articles shall be subject to the same tax and the same rates and basis of excise taxes applicable to locally manufactured articles,” and Chapter V of RR No. V-39 (Payment of specific taxes on imported cigars, cigarettes, smoking and chewing tobacco).<sup>135</sup>

Finally, La Suerte and Sterling<sup>136</sup> argues that the Court of Appeals erred: (1) in ignoring Section 43 of RR No. 17-67, December 12, 1972 Bureau of Internal Revenue ruling and other Bureau of Internal Revenue opinions confirming the exemption of stemmed leaf tobacco from prepayment of specific tax;<sup>137</sup> (2) in disregarding the Bureau of Internal Revenue’s practice for over half a century of not subjecting stemmed leaf tobacco to specific tax;<sup>138</sup> (3) in failing to consider that the re-enactment of the 1939 Tax Code as the 1977 and 1986 Tax Codes impliedly adopted the interpretation in the December 12, 1972 ruling; and 4) in holding that non-application of the December 12, 1972 ruling did not impinge on the principle of non-retroactivity of rulings.<sup>139</sup> Moreover, it argues that the Tax Code does not authorize collection of specific tax from buyers without a prior attempt

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<sup>129</sup> Rollo (G.R. No. 136328-29), pp. 147-148.

<sup>130</sup> Id. at 152.

<sup>131</sup> Id. at 153.

<sup>132</sup> Id. at 151.

<sup>133</sup> Id. at 152.

<sup>134</sup> Rollo (G.R. No. 148605), pp. 319.

<sup>135</sup> Rollo (G.R. No. 125346), pp. 399-400.

<sup>136</sup> Rollo (G.R. No. 148605), pp. 310-314.

<sup>137</sup> Rollo (G.R. No. 144942), p. 322.

<sup>138</sup> Id.

<sup>139</sup> Rollo (G.R. No. 125346), pp. 401-403.

to collect tax from manufacturers.<sup>140</sup>

### Respondent's arguments

Respondent counters that “under Section 141(b), partially prepared or manufactured tobacco is subject to specific tax.”<sup>141</sup> The definition of “partially manufactured tobacco” in Section 2(m) of RR No. 17-67 includes stemmed leaf tobacco; hence, stemmed leaf tobacco is subject to specific tax.<sup>142</sup> “Imported stemmed leaf tobacco is also subject to specific tax under Section 141(b) in relation to Section 128 of the 1977 Tax Code.”<sup>143</sup> Fortune’s reliance on the definition of “processed tobacco” in Section 1-b of Republic Act No. 698<sup>144</sup> as amended by Republic Act No. 1194 is allegedly misplaced because the definition therein of processed tobacco merely clarified the type of tobacco product that may not be imported into the country.<sup>145</sup>

Respondent posits that “there is no double taxation in the prohibited sense even if specific tax is also imposed on the finished product of which stemmed leaf tobacco is a raw material.”<sup>146</sup> Congress clearly intended it “considering that stemmed leaf tobacco, as partially prepared or manufactured tobacco, is subjected to specific tax under Section 141(b), while cigars and cigarettes, of which stemmed leaf tobacco is a raw material, are also subjected to specific tax under Section 142.”<sup>147</sup> It adds that there is no constitutional prohibition against double taxation.<sup>148</sup>

“Foreign manufacturers of tobacco products not engaged in trade or business in the Philippines cannot be classified as L-7, L-6, or L-3R since they are beyond the pale of Philippine laws and regulations.”<sup>149</sup> “Since the transfer of stemmed leaf tobacco from one factory to another must be under an official L-7 invoice and entered in the L-7 registers of both transferor and transferee, it is obvious that the factories contemplated are those located or operating in the Philippines and operated only by L-7 permittees.”<sup>150</sup> The transaction contemplated under Section 137 is sale and not importation because the law uses the word “sold.”<sup>151</sup> The law uses “importation” or “imported” whenever the transaction involves bringing in articles from

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<sup>140</sup> *Rollo* (G.R. No. 125346), p. 397.

<sup>141</sup> *Id.* at 431.

<sup>142</sup> *Id.* at 432.

<sup>143</sup> *Id.*

<sup>144</sup> An Act to Limit the Importation of Foreign Leaf Tobacco.

<sup>145</sup> *Rollo* (G.R. No. 125346), p. 528-529.

<sup>146</sup> *Id.* at 529.

<sup>147</sup> *Id.* at 530.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 536.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 537.

foreign countries.<sup>152</sup>

Respondent argues that “the issuance of RR Nos. V-39 and 17-67 is a valid exercise by the Department of Finance of its rule-making power” under Sections 132 and 338 of the 1939 Tax Code.<sup>153</sup> It explains that “the reason for the exemption from specific tax of the sale of stemmed leaf tobacco as raw material by one L-7 directly to another L-7 is that the stemmed leaf tobacco is supposed to have been already subjected to specific tax when an L-7 purchased the same from an L-6.”<sup>154</sup> “Section 20(A) of RR No. V-39 adheres to the standards set forth in Section 245 because it provides the conditions for a tax-free removal of stemmed leaf tobacco under Section 137 without negating the imposition of specific tax under Section 141(b).”<sup>155</sup> “To construe Section 137 in the restrictive manner suggested by La Suerte will practically defeat the revenue-generating provision of Section 141(b).”<sup>156</sup>

It further argues that the August 31, 1990 ruling of then Bureau of Internal Revenue Commissioner Jose U. Ong denying La Suerte’s request for exemption from specific tax on its local purchase and importation of stemmed leaf tobacco does not violate the principle on non-retroactivity of administrative ruling. It alleges that an erroneous ruling, like the December 12, 1972 ruling, does not give rise to a vested right that can be invoked by La Suerte.<sup>157</sup>

Finally, respondent contends that under Section 127, if domestic products are removed from the place of production without payment of the excise taxes due thereon, it is not required that the tax be collected first from the manufacturer or producer before the possessor thereof shall be liable.<sup>158</sup>

### **Court’s ruling**

#### **Nature of excise tax**

Excise tax is a tax on the production, sale, or consumption of a specific commodity in a country. Section 110 of the 1986 Tax Code explicitly provides that the “excise taxes on domestic products shall be paid by the manufacturer or producer before [the] removal [of those products] from the place of production.” “It does not matter to what use the article[s] subject to tax is put; the excise taxes are still due, even though the articles

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<sup>152</sup> Id.

<sup>153</sup> Id. at 537.

<sup>154</sup> Id. at 539.

<sup>155</sup> Id. at 540.

<sup>156</sup> Id.

<sup>157</sup> Id. at 545-546.

<sup>158</sup> Id. at 442-443.



are removed merely for storage in some other place and are not actually sold or consumed.”<sup>159</sup> The excise tax based on weight, volume capacity or any other physical unit of measurement is referred to as “specific tax.” If based on selling price or other specified value, it is referred to as “ad valorem” tax.

**Section 141 subjects partially prepared tobacco, such as stemmed leaf tobacco, to excise tax**

Section 141 of the 1986 Tax Code provides:

SEC. 141. Tobacco Products. – There shall be collected a tax of seventy-five centavos on each kilogram of the following products of tobacco:

(a) tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing;

(b) *tobacco prepared or partially prepared with or without the use of any machine or instruments or without being pressed or sweetened*; and

(c) fine-cut shorts and refuse, scraps, clippings, cuttings, stems and sweepings of tobacco.

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 such conditions as may be prescribed in the regulations promulgated by the Ministry 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 product.

On tobacco specially prepared for chewing so as to be unsuitable for use in any other manner, on each kilogram, sixty centavos. (Emphasis supplied)

It is evident that when tobacco is harvested and processed either by hand or by machine, all its products become subject to specific tax. Section 141 reveals the legislative policy to tax all forms of manufactured tobacco — in contrast to raw tobacco leaves — including tobacco refuse or all other tobacco which has been cut, split, twisted, or pressed and is capable of being smoked without further industrial processing.

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<sup>159</sup> *People v. Sandiganbayan*, 504 Phil. 407, 429 (2005) [Per J. Panganiban, Third Division].

Stemmed leaf tobacco is subject to the specific tax under Section 141(b). It is a partially prepared tobacco. The removal of the stem or midrib from the leaf tobacco makes the resulting stemmed leaf tobacco a prepared or partially prepared tobacco. The following is La Suerte's own illustration of how the stemmed leaf tobacco comes about: In the process of removing the stems, the whole leaf tobacco breaks into pieces; after the stems or midribs are removed, the tobacco is threshed (cut by machine into fine narrow strips) and then undergoes a process of redrying,<sup>160</sup> undoubtedly showing that stemmed leaf tobacco is a partially prepared tobacco.

Since the Tax Code contained no definition of "partially prepared tobacco," then the term should be construed in its general, ordinary, and comprehensive sense.<sup>161</sup>

RR No. 17-67, as amended, supplements the law by delineating what products of tobacco are "prepared or manufactured" and "partially prepared or partially manufactured." Section 2(m) states:

- (m) "Partially manufactured tobacco" — Includes:
- (1) "Stemmed leaf" — handstripped tobacco, clean, good, partially broken leaf only, free from mold and dust.
  - (2) "Long-filler" — handstripped tobacco of good, long pieces of broken leaf usable as filler for cigars without further preparation, and free from mold, dust stems and cigar cuttings.
  - (3) "Short-filler" — handstripped or machine-stripped tobacco, clean, good, short pieces of broken leaf, which will not pass through a screen of two inches (2") mesh.

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<sup>160</sup> *Rollo* (G.R. No. 144942), p. 312.

<sup>161</sup> *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 130, 137–138 (1999) [Per J. Purisima, Third Division] involved the proper application of the proviso in Section 168 of the old Tax Code: "That credit for any sales, miller's or excise taxes paid on raw materials or supplies used in the milling process shall not be allowed against the miller's tax due, except in the case of a proprietor or operator of a refined sugar factory as provided hereunder." This court, citing *Mustang Lumber, Inc. v. Court of Appeals*, 327 Phil. 214, 235 (1996) [Per J. Davide, Jr., En Banc], stated: "It is a basic rule of interpretation that words and phrases used in the statute, in the absence of a clear legislative intent to the contrary, should be given their plain, ordinary and common usage or meaning." Construing the term "raw materials" in its ordinary sense, this court held that the sales, miller's and excise taxes paid on containers and packaging materials are not raw materials of the milled products under consideration and, thus, may be credited against the miller's tax due. It further declared, citing *Samson v. Court of Appeals*, 230 Phil. 59, 64 (1986) [Per J. Alampay, Second Division]: "Under the rules of statutory construction, exceptions, as a general rule, should be strictly but reasonably construed. They extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception. Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication. . . ." Conformably, it held that "[t]he exception provided for in Section 168 of the old Tax Code should thus be strictly construed."

- (4) “Cigar-cuttings” — clean cuttings or clippings from cigars, unsized with any other form of tobacco.
- (5) “Machine-scrap tobacco” — machine-threshed, clean, good tobacco, not included in any of the above terms, usable in the manufacture of tobacco products.
- (6) “Stems” — midribs of leaf tobacco removed from the whole leaf or broken leaf either by hand or machine.
- (7) “Waste tobacco” — denatured tobacco; powder or dust, refuse, unfit for human consumption; discarded materials in the manufacture of tobacco products, which may include stems.

Insisting on the inapplicability of RR No. 17-67, La Suerte points to the different definitions given to stemmed leaf tobacco by Section 2(m)(1) of RR No. 17-67 and Section 137. It argues that while RR No. 17-67 defines stemmed leaf tobacco as handstripped tobacco of clean, good, *partially broken leaf only*, free from mold and dust, Section 137 defines it as leaf tobacco which has had the stem or midrib removed. *The term does not include broken leaf tobacco.* We are not convinced.

Different definitions of the term “stemmed leaf” are unavoidable, especially considering that Section 2(m)(1) is an implementing regulation of Act No. 2613, which was enacted in 1916 for purposes of *improving the quality* of Philippine tobacco products, while Section 137 defines the tobacco product only for the purpose of *exempting it from the specific tax*. Whichever definition is adopted, there is no doubt that stemmed leaf tobacco is a partially prepared tobacco.

The *onus* of proving that stemmed leaf tobacco is not subject to the specific tax lies with the cigarette manufacturers. Taxation is the rule, exemption is the exception.<sup>162</sup> Accordingly, statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. The cigarette manufacturers must justify their claim by a clear and categorical provision in the law. Otherwise, they are liable for the specific tax on stemmed leaf tobacco found in their possession pursuant to Section 127<sup>163</sup> of the 1986 Tax Code, as amended.

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<sup>162</sup> *Philippine Amusement and Gaming Corporation (PAGCOR) v. Bureau of Internal Revenue*, G.R. No. 172087, March 15, 2011, 645 SCRA 338, 354 [Per J. Peralta, En Banc]; *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, 522 Phil. 693, 700 (2006) [Per J. Ynares-Santiago, First Division]; *Lung Center of the Philippines v. Quezon City*, 477 Phil. 141, 155 (2004) [Per J. Callejo, Sr., En Banc]; *Sea-Land Service, Inc. v. Court of Appeals*, 409 Phil. 508, 513 (2001) [Per J. Pardo, First Division]; *Commissioner of Internal Revenue v. Mitsubishi Metal Corporation*, 260 Phil. 224, 235 (1990) [Per J. Regalado, Second Division].

<sup>163</sup> 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

**Stemmed leaf tobacco transferred in bulk between cigarette manufacturers are exempt from excise tax under Section 137 of the 1986 Tax Code in conjunction with RR No. V-39 and RR No. 17-67**

In the instant case, an exemption on the taxability of stemmed leaf tobacco is found in Section 137, which provides the following:

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 Ministry 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 Ministry of Finance.*

‘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. (Emphasis and underscoring supplied)

Section 137 authorizes a tax exemption subject to the following: (1) that the stemmed leaf tobacco is sold in bulk as raw material by one *manufacturer* directly to another; and (2) that the sale or transfer has complied with the conditions prescribed by the Department of Finance.

That the title of Section 137 uses the term “without prepayment” while the body itself uses “without payment” is of no moment. Both terms simply mean that stemmed leaf tobacco may be removed from the factory or place of production without prior payment of the specific tax.

This court has held in *Commissioner of Internal Revenue v. La Campaña Fabrica de Tabacos, Inc.*,<sup>164</sup> reiterated in *Compania General de Tabacos de Filipinas v. Court of Appeals*<sup>165</sup> and *Commissioner of Internal*

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on locally manufactured petroleum products and indigeneous [sic] petroleum levied under Section 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.*

<sup>164</sup> 420 Phil. 920, 929 (2001) [Per J. Pardo, First Division].

<sup>165</sup> 469 Phil. 1064, 1073 (2004) [Per J. Quisumbing, Second Division].

*Revenue v. La Suerte Cigar and Cigarette Factory, Inc.*<sup>166</sup> that the exemption from specific tax of the sale of stemmed leaf tobacco is qualified by and is subject to “*such conditions as may be prescribed in the regulations of the Department of Finance.*” These *conditions* were provided for in RR Nos. V-39 and 17-67. Thus, Section 137 must be read and interpreted in accordance with these regulations.

Section 20(a) of RR No. V-39 provides the rules for tax exemption on tobacco products:

**SECTION 20. Exemption from tax of tobacco products intended for agricultural or industrial purposes. — (a) Sale of stemmed leaf tobacco, etc., 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 sweepings 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, cuttings, 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 of removals. Corresponding debit entry will be made in the L-7 register book of the factory receiving the tobacco* under heading “Refuse, etc., received from other factory,” showing the 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 supplied)

The conditions under which stemmed leaf tobacco may be transferred from one factory to another without prepayment of specific tax are as follows:

- (a) The transfer shall be under an official L-7 invoice on which shall be entered the exact weight of the tobacco at the time of its removal;
- (b) Entry shall be made in the L-7 register in the place provided on the page for removals; and

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<sup>166</sup> 506 Phil. 324, 329 (2005) [Per J. Sandoval-Gutierrez, Third Division].

- (c) Corresponding debit entry shall be made in the L-7 register book of the factory receiving the tobacco under the heading, "Refuse, *etc.*, received from the other factory," showing the date of receipt, assessment and invoice numbers, name and address of the consignor, form in which received, and the weight of the tobacco.

Under Section 3(h) of RR No. 17-67, entities that were issued by the Bureau of Internal Revenue with an L-7 permit refer to "manufacturers of tobacco products." Hence, the transferor and transferee of the stemmed leaf tobacco *must be* an L-7 tobacco manufacturer.

*La Campaña* explained that the reason behind the tax exemption of stemmed leaf tobacco transferred between two L-7 manufacturers is that the same had already been previously taxed when acquired by the L-7 manufacturer from dealers of tobacco, thus:

[T]he exemption from specific tax of the sale of stemmed leaf tobacco as raw material by one L-7 directly to another L-7 is because such stemmed leaf tobacco has been subjected to specific tax when an L-7 manufacturer purchased the same from wholesale leaf tobacco dealers designated under Section 3, Chapter I, Revenue Regulations No. 17-67 (*supra*) as L-3, L-3F, L-3R, L-4, or L-6, the latter being also a stripper of leaf tobacco. These are the sources of stemmed leaf tobacco to be used as raw materials by an L-7 manufacturer which does not produce stemmed leaf tobacco. When an L-7 manufacturer sells the stemmed leaf tobacco purchased from the foregoing suppliers to another L-7 manufacturer as raw material, such sale is not subject to specific tax under Section 137 (now Section 140), as implemented by Section 20(a) of Revenue Regulations No. V-39.<sup>167</sup>

There is no new product when stemmed leaf tobacco is transferred between two L-7 permit holders. Thus, there can be no excise tax that will attach. The regulation, therefore, is reasonable and does not create a new statutory right.

**RR Nos. V-39 and 17-67 did not exceed the allowable limits of legislative delegation**

The cigarette manufacturers contend that the authority of the Department of Finance to prescribe conditions is merely procedural. Its rule-making power is only for the effective enforcement of the law, which implicitly rules out substantive modifications. The Secretary of Finance cannot, by mere regulation, limit the classes of manufacturers that may be

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<sup>167</sup> *Commissioner of Internal Revenue v. La Campaña Fabrica de Tabacos, Inc.*, 420 Phil. 920, 929–930 (2001) [Per J. Pardo, First Division].

entitled to the tax exemption. Otherwise, Section 137 (Section 132 in the 1939 Tax Code) would be invalid as an undue delegation of legislative power without the required standards or parameters.

The power of taxation is inherently legislative and may be imposed or revoked only by the legislature.<sup>168</sup> Moreover, this plenary power of taxation cannot be delegated by Congress to any other branch of government or private persons, unless its delegation is authorized by the Constitution itself.<sup>169</sup> Hence, the discretion to ascertain the following — (a) basis, amount, or rate of tax; (b) person or property that is subject to tax; (c) exemptions and exclusions from tax; and (d) manner of collecting the tax — may not be delegated away by Congress.

However, it is well-settled that the power to fill in the details and manner as to the enforcement and administration of a law may be delegated to various specialized administrative agencies like the Secretary of Finance in this case.<sup>170</sup>

This court in *Maceda v. Macaraig, Jr.*<sup>171</sup> explained the rationale behind the permissible delegation of legislative powers to specialized agencies like the Secretary of Finance:

The latest in our jurisprudence indicates that delegation of legislative power has become the rule and its non-delegation the exception. The reason is the increasing complexity of modern life and many technical fields of governmental functions as in matters pertaining to tax exemptions. This is coupled by the growing inability of the legislature to cope directly with the many problems demanding its attention. The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present day undertakings, the legislature may not have the competence, let alone the interest and the time, to provide the required direct and efficacious, not to say specific solutions.<sup>172</sup>

Thus, rules and regulations implementing the law are designed to fill in the details or to make explicit what is general, which otherwise cannot all

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<sup>168</sup> Article VI, Section 1 of the Constitution institutionalizes the law-making power of Congress; Section 24 under the same Article further provides that “[a]ll appropriation, revenue or tariff bills . . . shall originate exclusively in the House of Representatives. . . .”

<sup>169</sup> Delegations allowed under the Constitution, in particular, the authority of the President to fix tariff rates, import and export quotas, tonnage and wharfage dues (Article VI, Section 28(2)) and the authority of the local governments to create their own revenues and to levy taxes, fees, and charges (Article X, Section 5).

<sup>170</sup> *Commissioner of Internal Revenue v. Solidbank Corporation*, 462 Phil. 96, 117 (2003) [Per J. Panganiban, First Division].

<sup>171</sup> 274 Phil. 1060 (1991) [Per J. Gancayco, En Banc].

<sup>172</sup> *Id.* at 1111, *citing* J. ISAGANI A. CRUZ, PHILIPPINE POLITICAL LAW 82–83 (1989).

be incorporated in the provision of the law.<sup>173</sup> Such rules and regulations, when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law,<sup>174</sup> “deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.”<sup>175</sup> To be valid, a revenue regulation must be within the scope of statutory authority or standard granted by the legislature. Specifically, the regulation must (1) be germane to the object and purpose of the law;<sup>176</sup> (2) not contradict, but conform to, the standards the law prescribes;<sup>177</sup> and (3) be issued for the sole purpose of carrying into effect the general provisions of our tax laws.<sup>178</sup>

Section 338 authorizes the Secretary of Finance to promulgate all *needful* rules and regulations for the *effective enforcement* of the provisions of the 1939 Tax Code.

The specific authority of the Department of Finance to issue regulations relating to the taxation of tobacco products is found in Section 4<sup>179</sup> (Specific provisions to be contained in regulations); Section 125<sup>180</sup>

<sup>173</sup> *Rodrigo, Jr. v. Sandiganbayan*, 369 Phil. 103, 108–109 (1999) [Per J. Kapunan, First Division]; *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, 248 Phil. 762, 773 (1988) [Per J. Cruz, First Division].

<sup>174</sup> *Victorias Milling Co., Inc. v. Social Security Commission*, 114 Phil. 555, 558 (1962) [Per J. Barrera, En Banc] explained: “[S]tatutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times left to the administrative agency entrusted with its enforcement. In this sense, it has been said that rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law.”

<sup>175</sup> *Chamber of Real Estate and Builders’ Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo*, G.R. No. 160756, March 9, 2010, 614 SCRA 605, 639–640 [Per J. Corona, En Banc].

<sup>176</sup> *Rabor v. Civil Service Commission*, 314 Phil. 577, 593 and 595 (1995) [Per J. Feliciano, En Banc].

<sup>177</sup> *Tayug Rural Bank v. Central Bank of the Philippines*, 230 Phil. 216, 224 (1986) [Per J. Paras, Second Division]; *Romulo, Mabanta, Buenaventura, Sayoc and De Los Angeles v. Home Development Mutual Fund*, 389 Phil. 296, 306 (2000) [Per C.J. Davide, Jr., First Division].

<sup>178</sup> *Commissioner of Internal Revenue v. Solidbank Corporation*, 462 Phil. 96, 118 (2003) [Per J. Panganiban, First Division].

<sup>179</sup> Sec. 4. *Specific provisions to be contained in regulations.* – The regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing, or defining:

- (a) The time and manner in which provincial treasurers shall canvas their provinces for the purpose of discovering persons and property liable to national internal revenue taxes, and the manner in which their lists and records of taxable persons and taxable objects shall be made and kept.
- (b) The forms of labels, brands, or marks to be required on goods subject to a specific tax, and the manner in which the labeling, branding, or marking shall be effected.
- (c) The conditions under which and the manner in which goods intended for export, which if not exported would be subject to a specific tax, shall be labelled, branded, or marked.
- .....
- (h) The conditions under which goods intended for storage in bonded warehouses shall be conveyed thither, their manner of storage, and the method of keeping the entries and records in connection therewith, also the books to be kept by storekeepers and the reports to be made by them in connection with their supervision of such houses.
- .....
- (j) The manner in which revenue shall be collected and paid, the instrument, document, or object to which revenue stamps shall be affixed, the mode of cancellation of the same, the manner in which the proper books, records, invoices, and other papers shall be kept and entries therein made by the person subject to the tax, as well as the manner in which licenses and stamps shall be gathered up and returned after serving their purposes.



(Payment of specific tax on imported articles to customs officers prior to release from the customhouse); Section 132 (Removal of tobacco products without prepayment of tax); Section 149<sup>181</sup> (Extent of supervision over establishments producing taxable output); Section 150<sup>182</sup> (Records to be kept by manufacturers; Assessment based thereon); and Section 152<sup>183</sup> (Labels and form of packages) of the 1939 Tax Code.

RR No. V-39 was promulgated to enforce the provisions of Title IV (Specific Taxes) of the 1939 Tax Code relating to the *manufacture and importation of*, and payment of specific tax on, manufactured tobacco or products of tobacco. By an explicit provision in Section 132, the lawmakers defer to the Department of Finance to provide the details upon which the removal of stemmed leaf tobacco may be exempt from the specific tax in view of its supposed expertise in the tobacco trade. Section 20(a) of RR No. V-39 adhered to the standards because it provided the *conditions* — the proper documentation and recording of raw materials transferred from one factory to another — for a tax-free removal of stemmed leaf tobacco, without negating the imposition of specific tax under Section 137. The “effective enforcement of the provisions of [the Tax Code]” in Section 338 provides a sufficient standard for the Secretary of Finance in determining the *conditions* for the tax-free removal of stemmed leaf tobacco. Section 4 further provides a limitation on the contents of revenue regulations to be issued by the Secretary of Finance.

On the other hand, RR No. 17-67 was promulgated “[i]n accordance with the provisions of Section 79 (B) of the Administrative Code, as amended by Act No. 2803.”<sup>184</sup> Among the specific administrative powers conferred upon a department head under the Administrative Code is that of

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<sup>180</sup> Sec. 125. *Payment of specific tax on imported articles.* – Specific taxes on imported articles shall be paid by the owner or importer to the customs officers, conformably with regulations of the Department of Finance and before the release of such articles from the customhouse.

<sup>181</sup> Sec. 149. *Extent of supervision over establishments producing taxable output.* – The Bureau of Internal Revenue has authority to supervise establishments where articles subject to a specific tax are made or kept. The Secretary of Finance shall prescribe regulations as to the mode in which the processes of production shall be conducted in so far as may be necessary to secure a sanitary output and to safeguard the revenue.

<sup>182</sup> Sec. 150. *Records to be kept by manufacturers – Assessment based thereon.* – The Secretary of Finance is authorized to prescribe, by regulations, the records which shall be kept by manufacturers of articles subject to specific tax, and such records, whether of raw materials received into the factory or of articles produced therein, shall be deemed public and official documents for all purposes.

The records of raw materials kept by such manufacturers may be used as a species of evidence by which to determine the amount of raw materials received into any factory exceeds the amount of manufactured or partially manufactured products on hand and lawfully removed from the factory, plus waste removed or destroyed, and a reasonable allowance for unavoidable loss in manufacture, the Collector of Internal Revenue may assess and collect the tax due on the products which should have been produced from the excess.

<sup>183</sup> Sec. 152. *Labels and form of packages.* – All articles of domestic manufacture subject to a specific tax and all leaf tobacco shall be put up and prepared by the manufacturer or producer, when removed for sale or consumption, in such packages only and bearing such marks or brands as shall be prescribed in the regulations of the Department of Finance; and goods of similar character imported into the Philippines shall likewise be packed and marked in such manner as may be required. (Emphasis supplied)

<sup>184</sup> DOF Revenue Regulations No. 17-67 (1969), chap. I, sec. 1.

promulgating rules and regulations, not contrary to law, “necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and *for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department.*”<sup>185</sup> Under the 1939 Tax Code, the Secretary of Finance is authorized to prescribe regulations affecting the business of persons dealing in articles subject to specific tax, including the mode in which the processes of production of tobacco and tobacco products should be conducted and the records to be kept by manufacturers. Clearly then, the provisions of RR No. 17-67 classifying and regulating the business of persons dealing in tobacco and tobacco products are within the rule-making authority of the Secretary of Finance.

### **RR No. 17-67 did not create a new classification**

The contention of the cigarette manufacturers that RR No. 17-67 unduly restricted the meaning of manufacturers of tobacco products by limiting it to a few manufacturers such as manufacturers of cigars and cigarettes is misleading.

The definitions in RR No. 17-67 of “manufacturer of tobacco” and “manufacturer of cigars and/or cigarettes” are in conformity with, as in fact they are verbatim adoptions of, the definitions under Section 194(m) and (n) of the 1939 Tax Code.

The cigarette companies further argue that RR No. 17-67 unduly restricted the meaning of L-7 in Section 20(a) of RR No. V-39 because when RR No. V-39 was issued, there was no distinction at all between L-7, L-3, L-6 permittees, and L-7 referred to manufacturers of any class of tobacco products including stemmed leaf tobacco.

This argument is similarly misplaced.

A reading of the entire RR No. V-39 shows that the regulation pertains particularly to activities of manufacturers of smoking and chewing tobacco, cigars and cigarettes.<sup>186</sup> This was rightly so because the regulation

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<sup>185</sup> Act No. 2657, known as the Administrative Code, as amended by Act No. 2803, sec. 79(B).

<sup>186</sup> SEC. 3. **Administrative schedule and paragraphs used in the collection of specific taxes on products of tobacco.**—The following administrative schedule and paragraphs will be used in the collection of the tax on manufactured products of tobacco.

SCHEDULE A

Paragraph 3 (A-3) — Manufacture of smoking and chewing tobacco;

Paragraph 4 (A-4) — Manufacture of cigars;

Paragraph 5 (A-5) — Manufacture of cigarettes.

SEC. 4. **Assessment numbers of manufacturers; assessment rolls to be kept by provincial revenue agents or the chief of the tobacco tax section.**—Every manufacturer of tobacco products shall be

was issued to enforce the tax law provisions in relation to the *manufacture* and *importation* of tobacco products. Clearly apparent in Section 10(a) is that when a manufacturer of chewing and smoking tobacco, cigars, or cigarettes has been qualified to conduct his or her business as such, he or she is issued by the internal revenue agent the corresponding register books and auxiliary register books pertaining to his business as well as the official register book, L-7, to be used as record of the raw materials for his or her product. It is, therefore, logical to conclude that the L-7 invoice and L-7 register book under Section 20(a) refers to those invoice and books used by manufacturers of chewing and smoking tobacco, cigars or cigarettes.

RR No. 17-67 clarified RR No. V-39 by explicitly designating the manufacturers of tobacco products as L-7 permittees (Section 2), in contrast to wholesale leaf tobacco dealers and those that process partially manufactured tobacco such as stemmed leaf tobacco. RR No. 17-67 did not create a new and restrictive classification but only expressed in clear and categorical terms the distinctions between “manufacturers” and “dealers” of tobacco that were already implicit in RR No. V-39.

Indeed, there is no repugnancy between RR No. 17-67 and RR No. V-39, on the one hand, and the Tax Code, on the other. It is safer to presume that the term “manufacturer” used in Section 137 on tax exempt removals referred to an entity that is engaged in the business of, and was licensed by the Bureau of Internal Revenue as a, manufacturer of tobacco products. It does not include an entity engaged in business as a dealer in tobacco that, incidentally or in furtherance of its business as a dealer, strip or thresh whole leaf tobacco or reprocess partially manufactured tobacco.<sup>187</sup>

Such construction is consistent with the rule that tax exemptions, deemed to be in derogation of the state’s sovereign right of taxation, are strictly applied and may be granted only under clear and unmistakable terms of the law and not merely upon a vague implication or inference.<sup>188</sup>

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given a permanent and official assessment number, distinct for each paragraph under which he operates, which will be stamped in the official register books to be issued him by the Collector of Internal Revenue. No two manufacturers under the same paragraph will be given the same assessment number. When a manufacturer retires from business his assessment number will be dropped. However, when there is merely a change in the ownership of the tobacco factory by reason of sale, transfer, or otherwise, the Collector of Internal Revenue may permit the new owner or transferee, if the latter so desires, to use the old assessment number of his vendor or transferor if the right to use said assessment number has been included in the sale or transfer. Provincial Revenue Agents, if in the provinces, and the Chief of the Tobacco Tax Section, if in Manila, shall keep, by paragraph, a chronological assessment roll of the manufacturers of tobacco products in their respective territories.

<sup>187</sup> Tax Code (1939), sec. 151:

SEC. 151. Premises subject to approval by Collector. – No person shall engage in business as a manufacturer of or dealer in articles subject to a specific tax unless the premises upon which the business is to be conducted shall have been approved by the Collector of Internal Revenue.

<sup>188</sup> *Floro Cement Corporation v. Gorospe*, G.R. No. L-46787, August 12, 1991, 200 SCRA 480, 488 [Per J. Bidin, Third Division].

**RR No. V-39 must be applied  
and read together with RR  
No. 17-67**

The cigarette manufacturers' argument is misplaced, stating that RR No. 17-67 could not modify RR No. V-39 because it was promulgated to enforce Act No. 2613, as amended (entitled "An Act to Improve the Methods of Production and the Quality of Tobacco in the Philippines and to Develop the Export Trade Therein"), which allegedly had nothing whatsoever to do with the Tax Code or with the imposition of taxes.

"The Tobacco Inspection Service, instituted under Act No. 2613, was made part of the Bureau of Internal Revenue and Bureau of Customs administration for . . . internal revenue purposes."<sup>189</sup> The Collector of Internal Revenue was charged to enforce Act No. 2613, otherwise known as the Tobacco Inspection Law, with a view to promoting the Philippine tobacco trade and thereby increase the revenues of the government. This can be inferred from a reading of the following provisions of Act No. 2613:

SEC. 6. The Collector of Internal Revenue shall have the power and it shall be his duty:

- (a) To establish general and local rules respecting the classification, marking, and packing of tobacco for domestic sale or factory use and for exportation so far as may be necessary to secure leaf tobacco of good quality and to secure its handling under sanitary conditions, and to the end that leaf tobacco be not mixed, packed, and marked and of the same quality when it is not of the same class and origin.
- (b) To establish from time to time adequate rules defining the standard and the type of leaf and manufactured tobacco which shall be exported, as well also as the manner in which standard tobacco, shall be packed. Before establishing the rules above specified, the Collector of Internal Revenue shall give due notice of the proposed rules or amendments to those interested and shall give them an opportunity to present their objections to such rules or amendments.
- (c) To require, whenever it shall be deemed expedient the inspection of and affixture of inspection labels to tobacco removed from the province of its origin to another province before such removal, or to tobacco for domestic sale or factory use.<sup>190</sup>

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<sup>189</sup> L. S. BARREDO, PHILIPPINE TOBACCO LAWS AND SPECIFIC TAX REGULATIONS 11 (1970).

<sup>190</sup> As amended by Rep. Act No. 31 (1946), sec. 1.

SEC. 7. *No leaf tobacco or manufactured tobacco shall be exported until it shall have been inspected by the Collector of Internal Revenue or his duly authorized representative and found to be standard for export.* Collector of customs shall not permit the exportation of tobacco from the Philippines unless the shipment be in conformity with the requirements set forth in this Act. The prohibition contained in this section shall not apply to waste and refuse tobacco accumulated in the manufacturing process when it is invoiced and marked as such waste and refuse.<sup>191</sup> (Emphasis supplied)

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SEC. 9. The Collector of Internal Revenue may appoint inspectors of tobacco for the purpose of making the inspections herein required, and may also detail any officer or employee of the Bureau to perform such duty. Said inspectors or employees shall likewise be charged with the duty of grading leaf tobacco and *shall perform such other duties as may be required of them in the promotion of the Philippine tobacco industry.* The Collector of Internal Revenue shall likewise appoint, with the approval of the Secretary of Finance, agents in the United States *for the purpose of promoting the export trade in tobacco with the United States,* whose duty it shall be to inspect shipments of tobacco upon or after their arrival in that country when so required, to assist manufacturers of, exporters of, and dealers in tobacco in disseminating information regarding Philippine tobacco and, at the request of the parties, to act as arbitrators between the exporter in the Philippine Islands and the importer in the United States whenever a dispute arises between them as to the quality, sizes, classes, or shapes shipped or received. When acting as arbitrator as aforesaid, the agent shall proceed in accordance with the law governing arbitration and award in the locality where the dispute arises. All agents, inspectors, and employees acting under and by virtue of this Act shall be subject to all penal provisions applicable to internal-revenue officers generally.<sup>192</sup> (Emphasis supplied)

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SEC. 12. The inspection fees collected by virtue of the provisions of this Act shall constitute a special fund to be known as the Tobacco Inspection Fund, which shall be expended by the Collector of Internal Revenue, with the approval of the Secretary of Finance, upon allotment by a Board consisting of the Commissioner of Internal Revenue, the Director of Plant Industry, the Director of the Bureau of Commerce and Industry, two manufacturers designated by the Manila Tobacco Association, and two persons representing the interests of the tobacco producers and growers, appointed by the President of the Philippine Islands[.]

These funds may be expended for any of the following purposes:

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<sup>191</sup> As amended by Rep. Act No. 31 (1946), sec. 2.

<sup>192</sup> As amended by Act No. 3179 (1924), sec. 1.

- (a) The payment of the expenses incident to the enforcement of this Act including the salaries of the inspectors and agents.
- (b) The payment of expenses incident to the reconditioning and returning to the Philippine Islands of damaged tobacco and the reimbursement of the value of the United States internal-revenue stamps lost thereby.
- (c) The advertising of Philippine tobacco products in the United States and in foreign countries.
- (d) The establishment of tobacco warehouses in the Philippine Islands and in the United States at such points as the trade conditions may demand.
- (e) The payment of bounties to encourage the production of leaf tobacco of high quality.
- (f) The promotion and defense of the Philippine tobacco interests in the United States and in foreign countries.
- (g) The establishment, operation, and maintenance of tobacco experimental farms for the purpose of studying and testing the best methods for the improvement of the leaves: *Provided, however*, That thirty per centum of the total annual income of the tobacco inspection fund shall be expended for the establishment, operation, and maintenance of said tobacco experimental farms and for the investigation and discovery of efficacious ways and means for the extermination and control of the pests and diseases of tobacco: *Provided, further*, That in the establishment of experimental farms, preference shall be given to municipalities offering the necessary suitable land for the establishment of an experimental farm.
- (h) The sending of special agents and commissions to study the markets of the United States and foreign countries with regard to the Philippine cigars and their propaganda in said markets.
- (i) The organization of exhibits of cigars and other Philippine tobacco products in the United States and in foreign countries.<sup>193</sup>

SEC. 13. *The Collector Internal Revenue shall be the executive officer charged with the enforcement of the provisions of this Act and of the regulations issued in accordance therewith*, but it shall be the duty of the Director of Agriculture, with the approval of the Secretary of Public Instruction, to execute and enforce the provisions hereof referring to the cultivation of tobacco. (Emphasis supplied)

The cigarette manufacturers, thus, erroneously concluded that Act No. 2613 does not involve taxation.

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<sup>193</sup> As amended by Act No. 3179 (1924), sec. 1.

Parenthetically, Section 8 of Act No. 2613 pertained to the imposition of tobacco inspection fees, which are National Internal Revenue taxes, these being one of the miscellaneous taxes provided for under the Tax Code. Said Section 8 was in fact repealed by Section 369(b) of the 1939 Tax Code, and the provision regarding inspection fees are found in Section 302 of the 1939 Tax Code.

Since the two revenue regulations, RR Nos. V-34 and 17-67, are *in pari materia*, i.e., they both pertain specifically to the regulation of tobacco trade, they should be read and applied together.

Statutes are in *pari materia* when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter.

It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, “*interpretare et concordare legibus est optimus interpretandi*,” or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.<sup>194</sup> (Citation omitted)

The foregoing rules on statutory construction can be applied by analogy to administrative issuances such as RR No. V-39 and RR No. 17-67, especially since both are issued by the same administrative agency.

### **Importation of stemmed leaf tobacco not included in the exemption under Section 137**

The transaction contemplated in Section 137 does not include importation of stemmed leaf tobacco for the reason that the law uses the word “sold” to describe the transaction of transferring the raw materials from one manufacturer to another.

The Tax Code treats an *importer* and a *manufacturer* differently. Section 123 clearly distinguishes between *goods manufactured or produced in the Philippines* and *things imported*. The law uses the proper term “importation” or “imported” whenever the transaction involves bringing in articles from foreign countries as provided under Section 125 (cf. Section 124). Whenever the Tax Code refers to importers and manufacturers, they are separately mentioned as two distinct persons or entities (Sections 156 and 160). Under Chapter II, whenever the law uses the word *manufacturer*,

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<sup>194</sup> *Philippine Economic Zone Authority v. Green Asia Construction & Development Corporation*, G.R. No. 188866, October 19, 2011, 659 SCRA 756, 764 [Per J. Sereno (now C.J.), Second Division].

it only means *local manufacturer or producer of domestic products* (Sections 150, 151, and 152 of the 1939 Tax Code).

Moreover, foreign manufacturers of tobacco products not engaged in trade or business in the Philippines cannot be designated as L-7 since these are beyond the pale of Philippine law and regulations. The factories contemplated are those located or operating only in the Philippines.

Contrary to La Suerte's claim, Chapter V, Section 61 of RR No. V-39<sup>195</sup> is not applicable to justify the tax exemption of its importation of stemmed leaf tobacco because from the title of Chapter V, the provision particularly refers to specific taxes on *imported cigars, cigarettes, smoking and chewing tobacco*.

### **No estoppel against government**

The cigarette manufacturers contend that for a long time prior to the transactions herein involved, the Collector of Internal Revenue had never subjected their purchases and importations of stemmed leaf tobacco to excise taxes. This prolonged practice allegedly represents the official and authoritative interpretation of the law by the Bureau of Internal Revenue which must be respected.

We are not persuaded.

In *Philippine Long Distance Telephone Co. v. Collector of Internal Revenue*,<sup>196</sup> this court has held that this principle is not absolute, and an erroneous implementation by an officer based on a misapprehension of law may be corrected when the true construction is ascertained. Thus:

The appellant argues that the Collector of Internal Revenue, previous to the transactions herein involved, had never collected the franchise tax on items of the same nature as those herein in question and this is strong evidence that such transactions are not subject to tax on the principle that a prolonged practice on the part of an executive or administrative officer in charge of executing a certain statute is an

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<sup>195</sup> CHAPTER V - Payment of Specific Taxes on Imported Cigars, Cigarettes, Smoking, and Chewing Tobacco

SEC. 61. **Taxes due and payable before release from customhouse.** — With respect to the specific taxes on cigars and cigarettes, smoking and chewing tobacco imported into the Philippines, the same shall become due from and payable by the owner or importer to the customs officers immediately before the release of such articles from the customhouse in such manner and under such conditions as prescribed or may be prescribed by the Commissioner of Customs. Philippine stamps are now affixed to imported cigarettes during the process of manufacture in the country of origin under the procedure outlined in Revenue Regulations No. V-11, as amended by Revenue Regulations No. V-17.

<sup>196</sup> 90 Phil. 674 (1952) [Per J. Jugo, En Banc].



authoritative construction of great weight. *This contention may be granted, but the principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has erroneously executed it for a long time, the error may be corrected when the true construction is ascertained.* Such we deem to be the situation in the present case. Incidentally, the doctrine of estoppel does not apply here.<sup>197</sup> (Emphasis supplied)

This court reiterated this rule in *Abello v. Commissioner of Internal Revenue*<sup>198</sup> where it rejected petitioners' claim that the prolonged practice (since 1939 up to 1988) of the Bureau of Internal Revenue in not subjecting political contributions to donor's tax was an authoritative interpretation of the statute, entitled to great weight and the highest respect:

*This Court holds that the BIR is not precluded from making a new interpretation of the law, especially when the old interpretation was flawed.* It is a well-entrenched rule that[:]

. . . erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents.<sup>199</sup> (Emphasis supplied, citations omitted)

Prolonged practice of the Bureau of Internal Revenue in not collecting the specific tax on stemmed leaf tobacco cannot validate what is otherwise an erroneous application and enforcement of the law. The government is never estopped from collecting legitimate taxes because of the error committed by its agents.<sup>200</sup>

In *La Suerte Cigar and Cigarette Factory v. Court of Tax Appeals*,<sup>201</sup> this court upheld the validity of a revenue memorandum circular issued by the Commissioner of Internal Revenue to correct an error in a previous circular that resulted in the non-collection of tobacco inspection fees for a long time and declared that estoppel cannot work against the government:

. . . the assailed Revenue Memorandum Circular was issued to rectify the error in General Circular No. V-27 and to interpret the phrase "tobacco for domestic sale or factory use" with the view of arresting huge losses of tobacco inspection fees which were not collected and imposed since the said Circular (No. V-27) took effect. Furthermore, the questioned Revenue Memorandum Circular was also issued to apprise those concerned of the construction and interpretation which should be

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<sup>197</sup> Id. at 680.

<sup>198</sup> 492 Phil. 303 (2005) [Per J. Azcuna, First Division].

<sup>199</sup> Id. at 312.

<sup>200</sup> *La Suerte Cigar and Cigarette Factory v. Court of Tax Appeals*, 219 Phil. 25, 36 (1985) [Per J. Cuevas, Second Division]; *E. Rodriguez, Inc. v. Collector of Internal Revenue*, 139 Phil. 354, 366 (1969) [Per J. Barredo, En Banc].

<sup>201</sup> 219 Phil. 25 (1985) [Per J. Cuevas, Second Division].

accorded to Act No. 2613, as amended, and which respondent is duty bound to enforce. It is an opinion on how the law should be construed and there was no attempt whatsoever to enlarge or restrict the meaning of the law.

The basis for the issuance of said Memorandum Circular was so stated in Resolution No. 2-67 of the Tobacco Board, wherein petitioners as members of the Manila Tobacco Association, Inc. were duly represented, the pertinent portions of which read:

“ . . . .

WHEREAS, this original recommendation of Mr. Hernandez was perfectly in accordance with existing law, more particularly Sec. 1 of Republic Act No. 31 which took effect since September 25, 1946, but perhaps *thru oversight* by the former Commissioners and officers of the Tobacco Inspection Service *the propriety and legality of effecting the inspection of tobacco products for local sales and imported leaf tobacco for factory use might have overlooked resulting in huge losses of tobacco inspection fees . . .*” (Italics supplied)

. . . .

Tobacco Inspection fees are undoubtedly National Internal Revenue taxes, they being one of the miscellaneous taxes provided for under the Tax Code. Section 228 (formerly Section 302) of Chapter VII of the Code specifically provides for the collection and manner of payment of the said inspection fees. It is within the power and duty of the Commissioner to collect the same, even without inspection, should tobacco products be removed clandestinely or surreptitiously from the establishment of the wholesaler, manufacturer or redrying plant and from the customs custody in case of imported leaf tobacco. *Errors, omissions or flaws committed by BIR inspectors and representatives while in the performance of their duties cannot be set up as estoppel nor estop the Government from collecting a tax legally due.* Tobacco inspection fees are levied and collected for purposes of regulation and control and also as a source of revenue since fifty per centum (50%) of said fees shall accrue to the Tobacco Inspection Fee Fund created by Sec. 12 of Act No. 2613, as amended and the other fifty per centum, to the Cultural Center of the Philippines. (Sec. 88, Chapter VII, NIRC)<sup>202</sup> (Emphasis in this paragraph supplied, citation omitted)

Furthermore, the December 12, 1972 ruling of Commissioner Misael P. Vera runs counter to Section 20(a) of RR No. V-39 in relation to RR No. 17-67, which provides that only transfers of stemmed leaf tobacco between L-7 permittees are exempt. An implementing regulation cannot be superseded by a ruling which is a mere interpretation of the law. While opinions and rulings of officials of the government called upon to execute or implement administrative laws command much respect and weight, courts are not bound to accept the same if they override, instead of remain

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<sup>202</sup> Id. at 34-36.

consistent and in harmony with, the law they seek to apply and implement.<sup>203</sup>

## Double taxation

The contention that the cigarette manufacturers are doubly taxed because they are paying the specific tax on the raw material and on the finished product in which the raw material was a part is also devoid of merit.

For double taxation in the objectionable or prohibited sense to exist, “the same property must be taxed twice, when it should be taxed but once.”<sup>204</sup> “[B]oth taxes must be imposed on the same property or subject-matter, for the same purpose, by the same . . . taxing authority, within the same jurisdiction or taxing district, during the same taxing period, and they must be the same kind or character of tax.”<sup>205</sup>

At all events, there is no constitutional prohibition against double taxation in the Philippines.<sup>206</sup> This court has explained in *Pepsi-Cola Bottling Company of the Philippines, Inc. v. Municipality of Tanauan, Leyte*:<sup>207</sup>

There is no validity to the assertion that the delegated authority can be declared unconstitutional on the theory of double taxation. It must be observed that the delegating authority specifies the limitations and enumerates the taxes over which local taxation may not be exercised. The reason is that the State has exclusively reserved the same for its own prerogative. *Moreover, double taxation, in general, is not forbidden by our fundamental law, since We have not adopted as part thereof the injunction against double taxation found in the Constitution of the United States and some states of the Union.* Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality.<sup>208</sup> (Emphasis supplied, citations omitted)

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<sup>203</sup> In *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, G.R. No. 108524, November 10, 1994, 238 SCRA 63, 70 [Per J. Mendoza, Second Division], it was held that “[t]he Commissioner of Internal Revenue is not bound by the ruling of his predecessors. To the contrary, the overruling of decisions is inherent in the interpretation of laws.”

<sup>204</sup> *Procter & Gamble Philippine Manufacturing Corporation v. Municipality of Jagna*, 183 Phil. 453, 461 (1979) [Per J. Melencio-Herrera, First Division].

<sup>205</sup> *Villanueva v. City of Iloilo*, 135 Phil. 572, 588 (1968) [Per J. Castro, En Banc].

<sup>206</sup> *China Banking Corporation v. Court of Appeals*, 451 Phil. 772, 809 (2003) [Per J. Carpio, First Division]; *City of Manila v. Inter-Island Gas Service, Inc.*, 99 Phil. 847, 854 (1956) [Per J. Concepcion, En Banc].

<sup>207</sup> 161 Phil. 591 (1976) [Per J. Martin, En Banc].

<sup>208</sup> *Id.* at 602–603.

“It is something not favored, but is permissible, provided some other constitutional requirement is not thereby violated, such as the requirement that taxes must be uniform.”<sup>209</sup>

Excise taxes are essentially taxes on property<sup>210</sup> because they are levied on certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and on goods imported. In this case, there is no double taxation in the prohibited sense because the specific tax is imposed by explicit provisions of the Tax Code on two different articles or products: (1) on the stemmed leaf tobacco; and (2) on cigar or cigarette.<sup>211</sup>

**WHEREFORE**, this court:


1. **DENIES** the petition for review filed by La Suerte Cigar & Cigarette Factory in G.R. No. 125346 and **AFFIRMS** the questioned decision and resolution of the Court of Appeals in CA-G.R. SP. No. 38107;
2. **GRANTS** the petition for review filed by the Commissioner of Internal Revenue in G.R. Nos. 136328–29 and **REVERSES** and **SETS ASIDE** the challenged decision and resolution of the Court of Appeals in CA-G.R. SP. Nos. 38219 and 40313. Fortune Tobacco Corporation is **ORDERED** to pay the following taxes:
  - a. □28,938,446.25 as deficiency excise tax for the period covering January 1, 1986 to June 30, 1989, plus 20% interest per annum from November 24, 1989 until fully paid; and
  - b. □1,989,821.26 as deficiency excise tax for the period covering July 1, 1989 to November 30, 1990, plus 20% interest per annum from March 1, 1991 until fully paid.
3. **GRANTS** the petition for review filed by the Commissioner of Internal Revenue in G.R. No. 144942 and **REVERSES** and **SETS ASIDE** the challenged decision of the Court of Appeals in CA-G.R. SP. No. 51902. La Suerte Cigar & Cigarette Factory’s claim for refund of the amount of □175,909.50 is **DENIED**.

<sup>209</sup> *Villanueva v. City of Iloilo*, 135 Phil. 572, 588–589 (1968) [Per J. Castro, En Banc].

<sup>210</sup> *People v. Sandiganbayan*, 504 Phil. 407, 429 (2005) [Per J. Panganiban, Third Division].

<sup>211</sup> *Victorias Milling Co., Inc. v. Municipality of Victorias*, 134 Phil. 180, 198 (1968) [Per J. Sanchez, En Banc] states that for double taxation to exist, "the same property must be taxed twice, when it should be taxed but once."

- 4. **DENIES** the petition for review filed by Sterling Tobacco Corporation in G.R. No. 148605 and **AFFIRMS** the questioned decision and resolution of the Court of Appeals in CA-G.R. SP. No. 38159;
- 5. **DENIES** the petition for review filed by La Suerte Cigar & Cigarette Factory in G.R. No. 158197 and **AFFIRMS** the questioned decision and resolution of the Court of Appeals in CA-G.R. SP. No. 37124; and
- 6. **DENIES** the petition for review filed by La Suerte Cigar & Cigarette Factory in G.R. No. 165499 and **AFFIRMS** the questioned decision and resolution of the Court of Appeals in CA-G.R. SP. No. 50241.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

(On official leave)  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

(No part)  
**ANTONIO T. CARPIO**  
Acting Chief Justice


  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice


  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**ARTURO D. BRION**  
Associate Justice

(On official leave)  
**DIOSDADO M. PERALTA**  
Associate Justice

(On official leave)  
**LUCAS P. BERSAMIN**  
Associate Justice


  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice


  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

**CERTIFICATION**

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

  
**ANTONIO T. CAPIO**  
Acting Chief Justice