

SECOND DIVISION

[G.R. No. 147361, March 23, 2004]

**COMPANIA GENERAL DE TABACOS DE FILIPINAS, PETITIONER,
VS. HON. COURT OF APPEALS AND THE COMMISSIONER OF
INTERNAL REVENUE, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This petition for review on *certiorari* seeks to reverse the Decision,^[1] dated October 16, 2000, of the Court of Appeals in CA-G.R. SP No. 48797, which set aside the Decision^[2] of the Court of Tax Appeals (CTA), in CTA Case No. 5204. The tax court ordered the refund of specific taxes in the amount of P1,051,050 paid under protest by petitioner on the removal, transfer and sale of its stemmed leaf tobacco products to various cigar and cigarette manufacturers. Petitioner likewise assails the appellate court's Resolution^[3] dated March 6, 2001 which denied the Motion for Reconsideration.

The facts, as culled from records, are as follows:

Petitioner *Compania General de Tabacos de Filipinas* is engaged in the business of re-drying of tobacco leaves, for both the export and domestic markets. It purchases its tobacco leaves directly from local growers. Thereafter, petitioner cuts, re-dries, packs and sells in bulk the leaves for delivery to cigar and cigarette manufacturers. Said re-dried leaves then form the raw material for the manufacture of cigar and cigarettes.

Prior to June 1993, petitioner sold its tobacco to cigar and cigarette manufacturers without prepayment of any excise tax, there being no notice of assessment from nor collection made by respondent Commissioner. Instead, what petitioner paid were inspection fees.

Beginning June 1993, however, respondent Commissioner imposed upon petitioner a specific tax at the rate of 75 centavos per kilogram prior to any removal, sale or transfer of its tobacco products.

Petitioner paid said taxes under protest up to August 22, 1994.

On December 8, 1994, petitioner filed a written claim for refund of P1,051,050 as specific taxes paid on its tobacco leaves. It alleged that it was exempt from paying said taxes. Petitioner based its claim on Sections 137^[4] and 141^[5] of the National Internal Revenue Code and Section 20 of Revenue Regulations No. V-39,^[6] which exempted the transfer of stripped tobacco for use in the manufacture of other tobacco products from prepayment of excise tax.

Receiving no response from respondent Commissioner, petitioner on February 22, 1995, filed a Petition for Review, docketed as CTA Case No. 5204 with the tax court, praying for refund of specific taxes it had paid since June 1993.

The CTA granted the petition in its decision dated June 15, 1998, which decreed:

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby GRANTED. Accordingly, respondent is hereby ORDERED to REFUND the amount of P1,051,050.00 to the petitioner immediately.

SO ORDERED.^[7]

In finding for petitioner, the CTA cited *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, CA-G.R. SP Nos. 38219/40313, dated January 30, 1998. It held that the exemption from specific tax granted by Sections 137 and 141 of the Tax Code applies to stemmed leaf tobacco. The appellate court held that stemmed leaf tobacco is solely meant to be the raw material of cigarettes and other tobacco products which are subject to excise tax. The Court of Appeals also found that the Bureau of Internal Revenue (BIR) went beyond its rule-making power and arrogated legislative power unto itself when it issued both Revenue Regulations Nos. 17-67 and V-39 since by using the power to classify, the BIR actually amended and amplified the tax law. Inasmuch as petitioner herein was similarly situated as Fortune Tobacco, said the tax court, there was no reason why the appellate court's ruling in CA-G.R. SP Nos. 38219/40313 should not apply to petitioner's case. Hence, no prepayment of excise tax was required and a refund was in order.

Respondent Commissioner appealed the tax court's decision to the Court of Appeals in CA-G.R. SP No. 48797. On October 16, 2000, the appellate court ruled as follows:

WHEREFORE, in view of the foregoing, the petition is GRANTED. The decision and resolution of the Court of Tax Appeals is hereby ANNULLED and SET ASIDE.

SO ORDERED.^[8]

The Court of Appeals reasoned that petitioner is not entitled to a refund since it was liable to pay the tobacco excise tax based on Sections 137 and 141 of the NIRC in relation to Revenue Regulations Nos. V-39 and 17-67. The CA noted that both Sections 137 and 141 contain the qualifying phrase "under such conditions as may be prescribed in the regulations of the Department of Finance" for certain tobacco products to avail of the tax exemption. Thus, Revenue Regulations No. V-39, which specifies the conditions under which stemmed tobacco may be transferred from one manufacturer to another without prepayment of specific tax and Revenue Regulations No. 17-67, which classifies stemmed leaf tobacco as "partially manufactured tobacco" were issued to provide the conditions and the framework to avail of the specific tax exemption. It held that there was nothing irregular or illegal in the issuance of said revenue regulations, as both had been issued under the authority provided by law. The established rule is that a tax refund is in the nature of exemption, said the appellate court. It is construed strictly against the taxpayer, who has the burden of proving his claim. Petitioner failed to discharge this burden, according to the appellate court.

Petitioner then moved for reconsideration of the aforesaid decision, but this was denied by the appellate court on March 6, 2001.

Hence, this petition alleging that the respondent Court of Appeals committed serious error:

1.WHEN IT CONCLUDED THAT PETITIONER IS NOT ENTITLED TO ANY TAX REFUND ON THE BASIS OF REVENUE REGULATION NO. 17-67 AND REVENUE REGULATION NO. V-39 NOTWITHSTANDING THE CLEAR LANGUAGE OF SECTIONS 137 AND 141 OF THE NATIONAL INTERNAL REVENUE CODE;

2.WHEN IT DENIED PETITIONER'S CLAIM FOR REFUND CONTRARY TO THE WELL ESTABLISHED DOCTRINES ON *STARE DECISIS*.^[9]

The only issue for our resolution is whether petitioner is entitled to the refund of the amount of P1,051,050 on specific taxes on stemmed tobacco which it paid under protest.

Petitioner contends that it is exempt from paying the specific tax on its stemmed tobacco since its tobacco leaves are unfit for consumption and the cigar and cigarette manufacturers, who are the end users of its product, pay excise taxes thereon.

Respondent Commissioner counters that under Revenue Regulations No. 17-67, stemmed leaf tobacco is classified as "partially manufactured tobacco", hence subject to specific tax under Section 141 of the NIRC. Stemmed leaf tobacco is exempt from specific tax only when sold as raw material by one L-7^[10] directly to another L-7, as prescribed by Revenue Regulations No. V-39. Respondent Commissioner further points out that since petitioner is engaged in re-drying, Revenue Regulations No. 17-67 classifies it as either an L-3R^[11] or L-6,^[12] and not L-7. Thus, it cannot claim any exemption from specific tax.

The issue raised in the instant case is not novel.

We agree with petitioner that both Sections 137 and 141 of the former Tax Code allowed the sale of stemmed leaf tobacco without any pre-payment of tax. We must stress, however, that a careful reading of the aforementioned provisions show that such sale is qualified by and is subject to "such conditions as may be prescribed in the regulations of the Department of Finance." Said conditions were provided for in Revenue Regulations Nos. V-39 and 17-67, which were issued to clarify and implement the foregoing provisions of the Tax Code. Hence, said provisions of the Tax Code must be read and interpreted in accordance with said regulations.

Section 20 of Revenue Regulations No. V-39, which specifically 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 sweeping of tobacco may*