

FIRST DIVISION

[G.R. No. 119761, August 29, 1996]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. HON.
COURT OF APPEALS, HON. COURT OF TAX APPEALS AND
FORTUNE TOBACCO CORPORATION, RESPONDENTS.**

D E C I S I O N

VITUG, J.:

The Commissioner of Internal Revenue ("CIR") disputes the decision, dated 31 March 1995, of respondent Court of Appeals^[1] affirming the 10th August 1994 decision and the 11th October 1994 resolution of the Court of Tax Appeals^[2] ("CTA") in C.T.A. Case No. 5015, entitled "Fortune Tobacco Corporation vs. Liwayway Vinzons-Chato in her capacity as Commissioner of Internal Revenue."

The facts, by and large, are not in dispute.

Fortune Tobacco Corporation ("Fortune Tobacco") is engaged in the manufacture of different brands of cigarettes.

On various dates, the Philippine Patent Office issued to the corporation separate certificates of trademark registration over "Champion," "Hope," and "More" cigarettes. In a letter, dated 06 January 1987, of then Commissioner of Internal Revenue Bienvenido A. Tan, Jr., to Deputy Minister Ramon Diaz of the Presidential Commission on Good Government, "the initial position of the Commission was to classify 'Champion,' 'Hope,' and 'More' as foreign brands since they were listed in the World Tobacco Directory as belonging to foreign companies. However, Fortune Tobacco changed the names of 'Hope' to Hope Luxury and 'More' to 'Premium More,' thereby removing the said brands from the foreign brand category. Proof was also submitted to the Bureau (of Internal Revenue ['BIR']) that 'Champion' was an original Fortune Tobacco Corporation register and therefore a local brand." [3] Ad Valorem taxes were imposed on these brands,^[4] at the following rates:

"BRAND	AD VALOREM TAX RATE		
	E.O. 22 06- 23-86 07-01- 86	and E.O. 273 07-25- 87 01-01- 88	RA 6956 06- 18-90 07-05- 90
Hope Luxury M. 100's	40%		45%
Sec. 142, (c), (2)			
Hope Luxury M. King	40%		45%
Sec. 142, (c), (2)			

More Premium M. 100's	40%	45%
Sec. 142, (c), (2)		
More Premium International	40%	45%
Sec. 142, (c), (2)		
Champion Int'l. M. 100's	40%	45%
Sec. 142, (c), (2)		
Champion M. 100's	40%	45%
Sec. 142, (c), (2)		
Champion M. King	15%	20%
Sec. 142, (c), last par.		
Champion Lights	15%	20% ^[5]
Sec. 142, (c), last par.		

A bill, which later became Republic Act ("RA") No. 7654, ^[6] was enacted, on 10 June 1993, by the legislature and signed into law, on 14 June 1993, by the President of the Philippines. The new law became effective on 03 July 1993. It amended Section 142(c)(1) of the National Internal Revenue Code ("NIRC") to read; as follows:

"SEC. 142. Cigars and Cigarettes. -

"x x x x x x x x x.

"(c) Cigarettes packed by machine. - There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below based on the constructive manufacturer's wholesale price or the actual manufacturer's wholesale price, whichever is higher:

"(1) On locally manufactured cigarettes which are currently classified and taxed at fifty-five percent (55%) or the exportation of which is not authorized by contract or otherwise, fifty-five (55%) provided that the minimum tax shall not be less than Five Pesos (P5.00) per pack.

"(2).On other locally manufactured cigarettes, forty-five percent (45%) provided that the minimum tax shall not be less than Three Pesos (P3.00) per pack.

"x x x x x x x x x.

"When the registered manufacturer's wholesale price or the actual manufacturer's wholesale price whichever is higher of existing brands of

cigarettes, including the amounts intended to cover the taxes, of cigarettes packed in twenties does not exceed Four Pesos and eighty centavos (P4.80) per pack, the rate shall be twenty percent (20%)."^[7] (Italics supplied.)

About a month after the enactment and two (2) days before the effectivity of RA 7654, Revenue Memorandum Circular No. 37-93 ("RMC 37-93"), was issued by the BIR the full text of which expressed:

"REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

July 1, 1993

REVENUE MEMORANDUM CIRCULAR NO. 37-93

SUBJECT : Reclassification of Cigarettes Subject to Excise Tax

TO : All Internal Revenue Officers and Others Concerned.

"In view of the issues raised on whether 'HOPE,' 'MORE' and 'CHAMPION' cigarettes which are locally manufactured are appropriately considered as locally manufactured cigarettes bearing a foreign brand, this Office is compelled to review the previous rulings on the matter.

"Section 142(c)(1) National Internal Revenue Code, as amended by R.A. No. 6956, provides:

"On locally manufactured cigarettes bearing a foreign brand, fifty-five percent (55%) Provided, That this rate shall apply regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. Whenever it has to be determined whether or not a cigarette bears a foreign brand, the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern."

"Under the foregoing, the test for imposition of the 55% ad valorem tax on cigarettes is that the locally manufactured cigarettes bear a foreign brand regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. The brand must be originally owned by a foreign manufacturer or producer. If ownership of the cigarette brand is, however, not definitely determinable, 'x x x the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern. x x x'

"'HOPE' is listed in the World Tobacco Directory as being manufactured by (a) Japan Tobacco, Japan and (b) Fortune Tobacco, Philippines. 'MORE' is listed in the said directory as being manufactured by: (a) Fills de Julia Reig, Andorra; (b) Rothmans, Australia; (c) RJR-Macdonald, Canada; (d) Rettig-Strenberg, Finland; (e) Karellas, Greece; (f) R.J. Reynolds, Malaysia; (g) Rothmans, New Zealand; (h) Fortune Tobacco, Philippines;

(i) R.J. Reynolds, Puerto Rico; (j) R.J. Reynolds, Spain; (k) Tabacalera, Spain; (l) R.J. Reynolds, Switzerland; and (m) R.J. Reynolds, USA. 'Champion' is registered in the said directory as being manufactured by (a) Commonwealth Bangladesh; (b) Sudan, Brazil; (c) Japan Tobacco, Japan; (d) Fortune Tobacco, Philippines; (e) Haggar, Sudan; and (f) Tabac Reunies, Switzerland.

"Since there is no showing who among the above-listed manufacturers of the cigarettes bearing the said brands are the real owner/s thereof, then it follows that the same shall be considered foreign brand for purposes of determining the ad valorem tax pursuant to Section 142 of the National Internal Revenue Code. As held in BIR Ruling No. 410-88, dated August 24, 1988, 'in cases where it cannot be established or there is dearth of evidence as to whether a brand is foreign or not, resort to the World Tobacco Directory should be made.'

"In view of the foregoing, the aforesaid brands of cigarettes, viz: 'HOPE,' 'MORE' and 'CHAMPION' being manufactured by Fortune Tobacco Corporation are hereby considered locally manufactured cigarettes bearing a foreign brand subject to the 55% ad valorem tax on cigarettes.

"Any ruling inconsistent herewith is revoked or modified accordingly.

(SGD) LIWAYWAY VINZONS-CHATO
Commissioner"

On 02 July 1993, at about 17:50 hours, BIR Deputy Commissioner Victor A. Deoferio, Jr., sent *via telefax* a copy of RMC 37-93 to Fortune Tobacco but it was addressed to no one in particular. On 15 July 1993, Fortune Tobacco received, by ordinary mail, a certified xerox copy of RMC 37-93.

In a letter, dated 19 July 1993, addressed to the appellate division of the BIR, Fortune Tobacco, requested for a review, reconsideration and recall of RMC 37-93. The request was denied on 29 July 1993. The following day, or on 30 July 1993, the CIR assessed Fortune Tobacco for *ad valorem* tax deficiency amounting to P9,598,334.00.

On 03 August 1993, Fortune Tobacco filed a petition for review with the CTA. [8]

On 10 August 1994, the CTA upheld the position of Fortune Tobacco and adjudged:

"WHEREFORE, Revenue Memorandum Circular No. 37-93 reclassifying the brands of cigarettes, viz: 'HOPE,' 'MORE' and 'CHAMPION' being manufactured by Fortune Tobacco Corporation as locally manufactured cigarettes bearing a foreign brand subject to the 55% ad valorem tax on cigarettes is found to be defective, invalid and unenforceable, such that when R.A. No. 7654 took effect on July 3, 1993, the brands in question were not CURRENTLY CLASSIFIED AND TAXED at 55% pursuant to Section 1142(c)(1) of the Tax Code, as amended by R.A. No. 7654 and were therefore still classified as other locally manufactured cigarettes and taxed at 45% or 20% as the case may be.

"Accordingly, the deficiency ad valorem tax assessment issued on petitioner Fortune Tobacco Corporation in the amount of P9,598,334.00, exclusive of surcharge and interest, is hereby canceled for lack of legal basis.

"Respondent Commissioner of Internal Revenue is hereby enjoined from collecting the deficiency tax assessment made and issued on petitioner in relation to the implementation of RMC No. 37-93.

"SO ORDERED." [9]

In its resolution, dated 11 October 1994, the CTA dismissed for lack of merit the motion for reconsideration.

The CIR forthwith filed a petition for review with the Court of Appeals, questioning the CTA's 10th August 1994 decision and 11th October 1994 resolution. On 31 March 1993, the appellate court's Special Thirteenth Division affirmed in all respects the assailed decision and resolution.

In the instant petition, the Solicitor General argues: That -

"I. RMC 37-93 IS A RULING OR OPINION OF THE COMMISSIONER OF INTERNAL REVENUE INTERPRETING THE PROVISIONS OF THE TAX CODE.

"II. BEING AN INTERPRETATIVE RULING OR OPINION, THE PUBLICATION OF RMC 37-93, FILING OF COPIES THEREOF WITH THE UP LAW CENTER AND PRIOR HEARING ARE NOT NECESSARY TO ITS VALIDITY, EFFECTIVITY AND ENFORCEABILITY.

"III. PRIVATE RESPONDENT IS DEEMED TO HAVE BEEN NOTIFIED OR RMC 37-93 ON JULY 2, 1993.

"IV. RMC 37-93 IS NOT DISCRIMINATORY SINCE IT APPLIES TO ALL LOCALLY MANUFACTURED CIGARETTES SIMILARLY SITUATED AS 'HOPE,' 'MORE' AND 'CHAMPION' CIGARETTES.

"V. PETITIONER WAS NOT LEGALLY PROSCRIBED FROM RECLASSIFYING 'HOPE,' 'MORE' AND 'CHAMPION' CIGARETTES BEFORE THE EFFECTIVITY OF R.A. NO. 7654.

"VI. SINCE RMC 37-93 IS AN INTERPRETATIVE RULE, THE INQUIRY IS NOT INTO ITS VALIDITY, EFFECTIVITY OR ENFORCEABILITY BUT INTO ITS CORRECTNESS OR PROPRIETY; RMC 37-93 IS CORRECT." [10]

In fine, petitioner opines that RMC 37-93 is merely an interpretative ruling of the BIR which can thus become effective without any prior need for notice and hearing, nor publication, and that its issuance is not discriminatory since it would apply under similar circumstances to all locally manufactured cigarettes.

The Court must sustain both the appellate court and the tax court.