

## THIRD DIVISION

[ G.R. NO. 139803, September 02, 2005 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. LA SUERTE CIGAR AND CIGARETTE FACTORY, INC., RESPONDENT.**

### DECISION

**SANDOVAL-GUTIERREZ, J.**

For our resolution is the petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision<sup>[1]</sup> dated August 23, 1999 rendered by the Court of Appeals in CA-G.R. SP No. 51371, entitled "*Commissioner of Internal Revenue vs. La Suerte Cigar and Cigarette Factory, Inc.*"

The facts as borne by the records are:

La Suerte Cigar and Cigarette Factory, Inc., *respondent*, is a corporation engaged in the manufacture of cigar and cigarettes using imported stemmed-leaf tobacco.

On separate dates in 1995, respondent purchased from a foreign tobacco manufacturer 138,600 and 19,200 kilograms of stemmed-leaf tobacco. Subsequently, the Commissioner of Internal Revenue, *petitioner*, imposed upon respondent specific taxes at the rate of P0.75 centavos per kilogram or P103,950.00 for 138,600 kgs. and P14,400.00 for 19,200 kgs. Petitioner's assessment was pursuant to Section 141 of the Tax Code<sup>[2]</sup> in relation to Section 2 (m) of Revenue Regulations No. 17-67.<sup>[3]</sup>

On May 4, 1995, respondent paid petitioner P118,350.00 as specific taxes under protest.

On September 27, 1996 and October 2, 1996, respondent filed with the Office of the Commissioner of Internal Revenue, a claim for refund of specific taxes covering the period from October, 1994 to May, 1995, including the disputed payment of P118,350.00. But petitioner failed to act on its claim.

Consequently, respondent filed his claim with the Court of Tax Appeals (CTA), docketed as C.T.A. Case No. 5527.

In due course, the CTA rendered a Decision dated February 15, 1999 ordering petitioner to refund to respondent the amount of P118,350.00 as specific taxes. This prompted petitioner to file with the Court of Appeals a petition for review with prayer for issuance of a writ of preliminary injunction.

On August 23, 1999, the Appellate Court rendered a Decision denying the petition and affirming the CTA assailed Decision. The Court of Appeals held:

"It is the contention of the petitioner that stemmed-leaf tobacco is partially processed tobacco pursuant to the provisions of Section 1 (L) of the Revenue Regulation No. 17-67, and thus embraced within the scope of Section 141 (b). The respondent, however, failed to consider Section 137 of the Tax Code, which is the applicable provision. Section 137 states:

"Stemmed-leaf tobacco, fine cut shorts, the refuse of fine cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and sweeping of tobacco may be sold in bulk as raw material by one manufacturer directly to another, without payment of the tax.'

Section 1 (h) of Revenue Regulations No. 17-67, known as 'The Revenue Tobacco Regulations,' defined 'manufacturer of tobacco' as including 'every person whose business is to manufacture tobacco or snuff or who employs others to manufacture tobacco or snuff, whether such manufacturing is by cutting, pressing (not balancing), grinding, or rubbing (grating) any raw or leaf tobacco, 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 sifting, twisting, screening or by any other process.'

La Suerte is engaged in manufacturing cigarettes. La Suerte utilizes the stemmed-leaf tobacco to manufacture cigarettes. It is thus a manufacturer of tobacco.

When the law and regulations enumerate and define various categories of manufacturers subject to excise tax and thereafter, exempt from excise tax the sale of stemmed- leaf tobacco 'by one manufacturer directly to another,' this broad and unqualified provision manifestly covers the sale of stemmed-leaf tobacco by any manufacturer to another. Since Section 137 broadly grants excise tax exemption for tobacco products sold as raw materials 'by one manufacturer directly to another,' without distinction, it must be deemed to refer to all 'manufacturers of tobacco products,' whether they be manufacturers of cigars, manufacturers of cigarettes or manufacturers of tobacco, and whether or not they are located abroad or in the Philippines. Where the law uses a general term without qualification, it must be so understood. This means that Section 137 covers all 'manufacturers,' without distinction. x x x.

Thus, La Suerte, a manufacturer of tobacco, cannot be held liable for the payment of any excise tax, since it purchased stemmed-leaf tobacco in bulk from other tobacco manufacturers, and thus fell within the clear terms of Section 137 of the Tax Code.

Any administrative attempt to restrict the application of Section 137 would amount to legislation which is manifestly beyond the powers of the petitioner."

Hence, this petition for review on *certiorari*.

Petitioner contends that Section 137 (now Section 140) of the Tax Code, granting

excise tax exemption for stemmed-leaf tobacco sold as raw material from one manufacturer to another, must be interpreted in relation to its implementing Regulation. Section 20 (a) of Revenue Regulation No. V-39 serves as a limitation to the scope of Section 137. Section 20 (a) provides that stemmed-leaf tobacco is exempt from specific tax only when sold as raw material by one L-7<sup>[4]</sup> directly to another L-7.

Respondent maintains that the phrase "stemmed-leaf tobacco x x x may be sold in bulk as raw material by one manufacturer directly to another without payment of the tax" does not make a distinction whether such phrase refers to manufacturers of cigars, manufacturers of cigarettes or manufacturers of tobacco or whether they are located locally or abroad; and that restricting the application of Section 137 amounts to legislation.

The sole issue for our resolution is whether respondent is entitled to the refund of P118,350.00 erroneously paid as specific taxes when it imported stemmed-leaf tobacco.

Sections 137 (now Section 140) of the Tax Code provides:

"SECTION 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 Department of Finance. **Stemmed-leaf tobacco**, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and sweeping of tobacco **may be sold in bulk as raw material by one manufacturer directly to another, without payment of the tax under such conditions as may be prescribed in the regulations of the Department of Finance.**

'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."

**The above provision allows the sale of stemmed-leaf tobacco without any payment of tax. However, a careful reading of the same provision shows that the sale is subject to "such conditions as may be prescribed in the regulations of the Department of Finance."** These conditions are provided by Revenue Regulations Nos. V-39 and 17-67 issued to clarify and implement Section 137. Thus, its provisions must be read and interpreted in accordance with the said regulations.

Section 20 of Revenue Regulation No. V-39 provides:

"Section 20. *Exemption from tax of tobacco products intended for agricultural or industrial purposes.* –

(a) Sale of stemmed-leaf tobacco, etc., by one factory or 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