

SECOND DIVISION

[G.R. No. 210251, April 17, 2017]

**SECRETARY OF FINANCE CESAR V. PURISIMA AND
COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-
HENARES, PETITIONERS, VS. PHILIPPINE TOBACCO INSTITUTE,
INC., RESPONDENT.**

DECISION

CARPIO, J.:

This is a petition for review on *certiorari*^[1] assailing the Decision^[2] dated 7 October 2013 of the Regional Trial Court (RTC) of Las Piñas City, Branch 253 in SCA Case No. 13-0003. The RTC declared null and void certain portions of Revenue Regulations No. 17-2012^[3] (RR 17-2012) and Revenue Memorandum Circular No. 90-2012^[4] (RMC 90-2012) and ordered petitioners to cease and desist from implementing Section 11 of RR 17-2012 and RMC 90-2012 which refer to cigarettes packed by machine.

The Facts

On 20 December 2012, President Benigno S. Aquino III signed Republic Act No. 10351^[5] (RA 10351), otherwise known as the Sin Tax Reform Law. RA 10351 restructured the excise tax on alcohol and tobacco products by amending pertinent provisions of Republic Act No. 8424,^[6] known as the Tax Reform Act of 1997 or the National Internal Revenue Code of 1997 (NIRC).

Section 5 of RA 10351, which amended Section 145(C) of the NIRC, increased the excise tax rate of cigars and cigarettes and allowed cigarettes packed by machine to be packed in other packaging combinations of not more than 20. The relevant portions state:

SEC. 5. Section 145 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, is hereby further amended to read as follows:

SEC. 145. *Cigars and Cigarettes.* - 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:

Effective on January 1, 2013

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos

(P11.50) and below per pack, the tax shall be Twelve pesos (P12.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (P11.50) per pack, the tax shall be Twenty-five pesos (P25.00) per pack.

Effective on January 1, 2014

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (P11.50) and below per pack, the tax shall be Seventeen pesos (P17.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (P11.50) per pack, the tax shall be Twenty-seven pesos (P27.00) per pack.

Effective on January 1, 2015

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (P11.50) and below per pack, the tax shall be Twenty-one pesos (P21.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (P11.50) per pack, the tax shall be Twenty-eight pesos (P28.00) per pack.

Effective on January 1, 2016

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (P11.50) and below per pack, the tax shall be Twenty-five pesos (P25.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (P11.50) per pack, the tax shall be Twenty-nine pesos (P29.00) per pack.

Effective on January 1, 2017, the tax on all cigarettes packed by machine shall be Thirty pesos (P30.00) per pack.

The rates of tax imposed under this subsection shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance.

Duly registered cigarettes packed by machine shall only be packed in twenties and other packaging combinations of not more than twenty.

x x x x

On 21 December 2012, the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue (CIR), issued RR 17-2012. Section 11 of RR 17-2012 imposes an excise tax on individual cigarette pouches of 5's and 10's even if they are bundled or packed in packaging combinations not exceeding 20 cigarettes. The provision states:

SEC. 11. Revised Provisions for the Manner of Packaging of Cigarettes. - All Cigarettes whether packed by hand or packed by machine shall only be packed in twenties (20s), and through other packaging combinations which shall result to not more than twenty sticks of cigarettes: *Provided, That,* in case of cigarettes packed in not more than twenty sticks, whether in 5 sticks, 10 sticks and other packaging combinations below 20 sticks, the net retail price of each individual package of 5s, 10s, etc. shall be the basis of imposing the tax rate prescribed under the Act.

Pursuant to Section 11 of RR 17-2012, the CIR issued RMC 90-2012 dated 27 December 2012. Annex "D-1" of RMC 90-2012 provides for the initial classifications in tabular form, effective 1 January 2013, of locally-manufactured cigarette brands packed by machine according to the tax rates prescribed under RA 10351 based on the (1) 2010 Bureau of Internal Revenue (BIR) price survey of these products, and (2) suggested net retail price declared in the latest sworn statement filed by the local manufacturer or importer. Some relevant portions provide:

Annex "D-1"

LIST OF LOCALLY MANUFACTURED CIGARETTE BRANDS AS OF
DECEMBER 2012

1. List of brands Based on 2010 BIR Price Survey

BRAND NAMES	Content/Unit (pack)	Net Retail Price (Based on 2010 BIR Price Survey)	Applicable Excise Tax Rates Effective Jan. 1, 2013 under R.A. No. 10351
A. Cigarettes Packed by Machine			
A. 1. Net Retail Price (NRP) is Php 11.50 per Pack and below			
1. Astro Filter King	20 sticks/pack	10.92	12.00
x x x x			
22. Fortune Int'l Extra Filter King	20 sticks/pack	10.84	12.00
23. Fortune Int'l Extra Filter	10 sticks/pack	6.58	12.00

King (10's)*			
X X X X			
44. Marlboro Filter (2x10's) Flip Top*	10 sticks/pack	8.27	12.00
45. Marlboro Filter KS (5's)*	5 sticks/pouch	4.11	12.00
X X X X			
61. Miller Filter Silver KS SP	20 sticks/pack	10.27	12.00
X X X X			
63. Miller Filter Silver-(5's) KS Pouch*	5 sticks/pouch	2.88	12.00
X X X X			
76. Philip Morris Menthol KS FTB-(10's)*	10 sticks/pack	6.25	12.00
77. Philip Morris Menthol-(5's) 100's Pouch*	5 sticks/pouch	3.84	12.00
X X X X			

* NRP is converted into individual package of 5s or 10s pursuant to Section 11 of RR No. 17-2012

PMFTC, Inc., a member of respondent Philippine Tobacco Institute, Inc. (PTI), paid the excise taxes required under RA 10351, RR 17-2012, and RMC 90-2012 in order to withdraw cigarettes from its manufacturing facilities. However, on 16 January 2012, PMFTC wrote the CIR prior to the payment of the excise taxes stating that payment was being made under protest and without prejudice to its right to question said issuances through remedies available under the law.

As a consequence, on 26 February 2013, PTI filed a petition^[7] for declaratory relief with an application for writ of preliminary injunction with the RTC. PTI sought to have RR 17-2012 and RMC 90-2012 declared null and void for allegedly violating the Constitution and imposing tax rates not authorized by RA 10351. PTI stated that the excise tax rate of either P12 or P25 under RA 10351 should be imposed only on cigarettes packed by machine in packs of 20's or packaging combinations of 20's and should not be imposed on cigarette pouches of 5's and 10's.

In a Decision dated 7 October 2013, the RTC granted the petition for declaratory relief. The dispositive portion of the Decision states:

WHEREFORE, premised on the foregoing, the Petition for Declaratory Relief is GRANTED. The assailed portions of Revenue Regulation 17-2012 and Revenue Memorandum Circular 90-2012 are declared NULL AND VOID and OF NO FORCE AND EFFECT. Respondents are to immediately cease and desist from implementing Sec. 11 of Revenue Regulation 17-2012 and Revenue Memorandum Circular 90-2012 insofar as the

cigarettes packed by machine are concerned.

The tax rates imposed by RA No. 10351 should be imposed on the whole packaging combination of 20's, regardless of whether they are packed by pouches of 2 x 10's or 4 x 5's, etc.

SO ORDERED.^[8]

Hence, the instant petition filed by the Secretary of Finance and the CIR through the Office of the Solicitor General.

Meanwhile, in a Resolution dated 9 June 2014, this Court issued a temporary restraining order against PTI and the RTC. The dispositive portion states:

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, the respondent, the RTC, Br. 253, Las Piñas City, their representatives, agents or other persons acting on their behalf are hereby RESTRAINED from enforcing the assailed Decision dated 7 October 2013 of the RTC, Br. 253, Las Piñas City in SCA Case No. 13-0003.

x x x x^[9]

The Issue

Whether or not the RTC erred in nullifying Section 11 of RR 17-2012 and Annex "D-1" of RMC 90-2012 in imposing excise tax to packaging combinations of 5's, 10's, etc. not exceeding 20 cigarette sticks packed by machine.

The Court's Ruling

The petition lacks merit.

Petitioners contend that RA 10351 imposes the excise tax "per pack," regardless of the content or number of cigarette sticks of each pack. Thus, the RTC erred in ruling that RR 17-2012 and RMC 90-2012 have gone beyond the plain meaning of RA 10351. Petitioners assert that the two regulations merely clarify the tax rates set out in RA 10351 but have neither amended nor added any new taxes. Petitioners maintain that the excise tax rates imposed by RA 10351 on cigarettes packed by machine are based on the net retail price per pack. The pack, therefore, is the unit on which the tax rates are imposed and is understood to be the packaging unit that reaches the ultimate consumer. Each pack of 5, 10, or 20 cigarettes is meant to be sold at retail individually. On the other hand, bundles of smaller packs resulting in 20 cigarettes are meant to be sold wholesale. Thus, petitioners insist that the excise tax imposable on a bundle of 20 is computed on the net retail price of each individual pack or pouch of the bundle and not on the bundle as one unit.

PTI, on the other hand, contends that RA 10351 allows a cigarette manufacturer to adopt packaging combinations, such as the bundling of four pouches with five sticks per pack (4 x 5's), or two pouches often sticks per pack (2 x 10's), provided that such packaging combination does not exceed 20 sticks. Thus, individual cigarette pouches of 5's and 10's bundled together into a single packaging of not more than