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SECOND DIVISION

[G.R. No. 192024, July 01, 2015]

FORTUNE TOBACCO ORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Fortune Tobacco Corporation (*petitioner*), assailing the March 12, 2010 Decision[1] of the Court of Tax Appeals *En Banc* (*CTA En Banc*) and its April 26, 2010 Resolution[2] in CTA EB Case No. 533, which affirmed *in toto* the April 30, 2009 Decision[3] and the August 18, 2009 Resolution[4] of the Former First Division of the Court of Tax Appeals (*CTA Division*) in CTA Case No. 7367.

The facts of this case are akin to those obtaining in G.R. Nos. 167274-75 and GR. No. 180006. In G.R. No. 167274-275, the Court eventually sustained petitioner's claim for refund of overpaid excise taxes for the period covering January 1, 2002 to December 31, 2002. In G.R. No. 180006, the Court likewise sustained petitioner's claim for refund of overpaid excise tax paid in 2003 and the period covering January 1 to May 31, 2004. The subject claim for refund involves the amount of excise taxes allegedly overpaid during the period beginning June 1, 2004 up to December 31, 2004.

For a better understanding of the controversy, a recapitulation of the factual and procedural antecedents is in order. Thus, as stated in the following portions of the CTA *En Banc* decision:

> Petitioner is the manufacturer/producer of, among others, the following cigarette brands, with tax rate classification based on net retail price prescribed by Annex "D" to Republic Act (R.A.) No. 4280, to wit:
>
> | Brand | Tax Rate |
> |---|---|
> | Champion M 100 | P1.00 |
> | Camel F King | P1.00 |
> | Camel Lights Box 20's | P1.00 |
> | Camel Filters Box 20's | P1.00 |
> | Winston F King | P5.00 |

Winston Lights	P5.00

Immediately prior to January 1, 1997, the above-mentioned cigarette brands were subject to ad valorem tax pursuant to then Section 142 of the Tax Code of 1977, as amended. However, on January 1, 1997, R.A. No. 8240 took effect causing a shift from the ad valorem tax (AVT) system to the specific tax system. As a result of such shift, the aforesaid cigarette brands were subjected to specific tax under Section 142 thereof, now renumbered as Section 145 of the Tax Code of 1997. Section 145 is quoted thus:

> 'Section 145. Cigars and Cigarettes - (A) Cigars. - There shall be levied, assessed and collected on cigars a tax of One peso (P1.00) per cigar.
>
> (B) Cigarettes Packed by Hand. - There shall be levied, assessed and collected on cigarettes packed by hand a tax of Forty centavos (P0.40) per pack.
>
> (C) Cigarettes Packed by Machine. - There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below:
>
> > [1] If the net retail price (excluding the excise tax and the value-added tax) is above Ten pesos (P10.00) per pack, the tax shall be Twelve (P12.00) per pack:
> >
> > [2] If the net retail price (excluding the excise tax and the value added tax) exceeds Six pesos and Fifty centavos (P6.50) but does not exceed Ten pesos (P10.00) per pack, the tax shall be Eight Pesos (P8.00) per pack.
> >
> > [3] If the net retail price (excluding the excise tax and the value-added tax) is Five pesos (P5.00) but does not exceed Six Pesos and fifty centavos (P6.50) per pack, the tax shall be Five pesos (P5.00) per pack;
> >
> > [4] If the net retail price (excluding the excise tax and the value-added tax] is below Five pesos (P5.00) per pack, the tax shall be One peso (P1.00) per pack;
>
> Variants of existing brands of cigarettes which are introduced in the domestic market after the effectivity of R.A. No. 8240 shall be taxed under the highest classification of any variant of that brand.
>
> The excise tax from any brand of cigarettes within the next three (3) years from the effectivity of R.A. No. 8240 shall not

be lower than the tax, which is due from each brand on October 1, 1996. *Provided, however*, that in cases where the excise tax rate imposed in paragraphs (1), (2), (3) and (4) hereinabove will result in an increase in excise tax of more than seventy percent (70%), for a brand of cigarette, the increase shall take effect in two tranches: fifty percent (50%) of the increase shall be effective in 1997 and one hundred percent (100%) of the increase shall be effective in 1998.

Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

The rates of excise tax on cigars and cigarettes under paragraphs (1), (2), (3) and (4) hereof, shall be increased by twelve percent (12%) on January 1, 2000.

New brands shall be classified according to their current net retail price.

For the above purpose, '*net retail price*' shall mean the price at which the cigarette is sold on retail in twenty (20) major supermarkets in Metro Manila (for brands of cigarettes marketed nationally), excluding the amount intended to cover the applicable excise tax and value-added tax. For brands which are marketed only outside Metro Manila, the '*net retail price*' shall mean the price at which the cigarette is sold in five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

The classification of each brand of cigarettes based on its average net retail price as of October 1, 1996, as set forth in Annex "D," shall remain in force until revised by Congress.

'*Variant of a brand*' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand and/or a different brand which carries the same logo or design of the existing brand.

To implement the provisions for a twelve percent (12%) increase of excise tax on cigars and cigarettes packed by machines by January 1, 2000, the Secretary of Finance, upon recommendation of the respondent Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99, dated December 16, 1999, xxx

RR No. 17-99 likewise provides in the last paragraph of Section 1 thereof, "that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquor shall not be lower than the excise tax that is actually being paid prior to January 1, 2000."

On 31 March 2005, petitioner filed a claim for tax credit or refund under

> Section 229 of the National Internal Revenue Code of 1997 (1997 NIRC) for erroneously or illegally collected specific taxes covering the period June to December 31, 2004 in the total amount of Php219,566,450.00.
>
> On November 14, 2005, petitioner filed a Petition for Review which was raffled to the Former First Division of this Court.
>
> Respondent in his Answer raised among others, as a Special and Affirmative Defense, that the amount of TWO HUNDRED NINETEEN MILLION FIVE HUNDRED SIXTY SIX THOUSAND FOUR HUNDRED FIFTY PESOS (Php219,566,450.00) being claimed by petitioner as alleged overpaid excise tax for the period covering 1 June to 31 December 2004, is not properly documented.
>
> After trial on the merits, the Former First Division of this Court rendered the assailed Decision, dated April 30, 2009, which consistently ruled that RR 17-99 is contrary to law and that there is insufficiency of evidence on the claim for refund.
>
> Petitioner filed its motion for reconsideration therefrom, and which was denied by the Former First Division on August 18, 2009.

Petitioner elevated its claim to the CTA *En Banc*, but was rebuffed after the tax tribunal found no cause to reverse the findings and conclusions of the CTA Division.

Hence, this petition.

Essentially, petitioner claims that it paid a total amount of P219,566,450.00 in overpaid excise taxes. For petitioner, considering that the CTA found Revenue Regulation No. 17-99 (*RR 17-99*) to be contrary to law, there should be no obstacle to the refund of the total amount excess excise taxes it had paid.[5]

In a nutshell, the sole issue for the resolution of the Court is: whether or not there is sufficient evidence to warrant the grant of petitioner's claim for tax refund.

The petition lacks merit.

The question of sufficiency of petitioner's evidence to support its claim for tax refund is a question of fact

Unlike in the proceeding had in G.R. Nos. 167274-75 and G.R. No. 180006, the denial of petitioner's claim for tax refund in this case is based on the ground that petitioner failed to provide sufficient evidence to prove its claim and the amount thereof. As a result, petitioner seeks that the Court re-examine the probative value of its evidence and determine whether it should be refunded the amount of excise taxes it allegedly overpaid.

This cannot be done.

The settled rule is that only questions of law may be raised in a petition under Rule 45 of the Rules of Court. It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, the Court's

jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. A question of law which the Court may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.[6] This is in accordance with Section 1, Rule 45 of the Rules of Court, as amended, which reads:

> **Section 1. *Filing of petition with Supreme Court*.** - A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition** may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth**. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.
>
> [Emphasis and Underlining Supplied]

In fact, the rule finds greater significance with respect to the findings of specialized courts such as the CTA, the conclusions of which are not lightly set aside because of the very nature of its functions which is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[7]

Moreover, it has been said that the proper interpretation of the provisions on tax refund that *does not* call for an examination of the probative value of the evidence presented by the parties-litigants is *a question of law*.[8] Conversely, it may be said that if the appeal essentially calls for the re-examination of the probative value of the evidence presented by the appellant, the same raises a *question of fact*. Often repeated is the distinction that there is a question of law in a given case when doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when doubt or difference arises as to the truth or falsehood of alleged facts.[9]

Verily, the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are *questions of fact*,[10] which are for the judicious determination by the CTA of the evidence on record.

Significantly, it bears noting that Section 5, Rule 45 of the Rules of Court provides that the failure of petitioner to comply with the requirements on the contents of the petition shall be sufficient ground for its dismissal. While jurisprudence provides exceptions to these rules, the subject petition does not fall under any of those so excepted. Thus, for this reason alone, the petition must fail.

The CTA committed no reversible error in denying petitioner's claim for tax refund for insufficient evidence.

A. Petitioner relied heavily on photocopied documents to prove its claim.