

THIRD DIVISION

[G.R. Nos. 167274-75, September 11, 2013]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
FORTUNE TOBACCO CORPORATION, RESPONDENT.**

[G.R. No. 192576]

**FORTUNE TOBACCO CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

Fortune Tobacco Corporation (FTC), as petitioner in G.R. No. 192576,^[1] assails and seeks the reversal of the Decision of the Court of Tax Appeals (CTA) En Banc dated March 12, 2010, as effectively reiterated in a Resolution of June 11, 2010, both rendered in C.T.A. EB No. 530 entitled *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*. The assailed issuances affirmed the Resolution of the CTA First Division dated June 4, 2009, denying the Motion for Issuance of Additional Writ of Execution filed by herein petitioner in CTA Case Nos. 6365, 6383 & 6612, and the Resolution dated August 10, 2009 which denied its Motion for Reconsideration.

The present appellate proceeding traces its origin from and finds context in the July 21, 2008 Decision^[2] of the Court in G.R. Nos. 167274-75, an appeal thereto interposed by the Commissioner of Internal Revenue (BIR Commissioner) from the consolidated Decision and Resolution issued by the Court of Appeals on September 28, 2004 and March 1, 2005, respectively, in CA-G.R. SP Nos. 80675 and 83165. The decretal part of the July 21, 2008 Decision reads:

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals **in CA G.R. SP No. 80675**, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.^[3] (Emphasis supplied.)

The antecedent facts, as summarized by the CTA in its adverted March 12, 2010 Decision, are as follows:

FTC (herein petitioner Fortune Tobacco Corporation) is engaged in manufacturing or producing cigarette brands with tax rate classification based on net retail price prescribed as follows:

Brand	Tax Rate
Champion	P1.00

M 100	
Salem M	P1.00
100	
Salem M	P1.00
King	
Camel F	P1.00
King	
Camel	
Lights Box	P1.00
20's	
Camel	
Filters Box	P1.00
20's	
Winston F	P5.00
King	
Winston	P5.00
Lights	

Prior to January 1, 1997, the aforesaid cigarette brands were subject to *ad-valorem tax* under Section 142 of the 1977 Tax Code, as amended. However, upon the effectivity of Republic Act (R.A.) No. 8240 on January 1, 1997, a shift from *ad valorem tax* system to the specific tax system was adopted imposing excise taxes on cigarette brands under Section 142 thereof, now renumbered as Section 145 of the 1997 Tax Code, stating the following pertinent provision:

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. x x x 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.

Upon the Commissioner's recommendation, the Secretary of Finance, issued Revenue Regulations (RR) No. 17-99 dated December 16, 1999 for the purpose of implementing the provision for a 12% increase of excise tax on, among others, cigars and cigarettes packed by machines by January 1, 2000. RR No. 17-99 provides that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine x x x shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.

FTC paid excise taxes on all its cigarettes manufactured and removed from its place of production for the following period:

PERIOD	PAYMENT
January 1, 2000 to January 31, 2000	P585,705,250.00
February 1, 2000 to December 31, 2001	P19,366,783,535.00
January 1, 2002 to December 31, 2002	P11,359,578,560.00

FTC subsequently sought administrative redress for refund before the Commissioner on the following dates:

PERIOD	ADMINISTRATIVE FILING OF CLAIM	AMOUNT CLAIMED
January 1, 2000 to January 31, 2000	February 7, 2000	P35,651,410.00
February 1, 2000 to December 31, 2001	Various claims filed from March 21, 2000 – January 28, 2002	P644,735,615.00
January 1, 2002 to December 31, 2002	February 3, 2003	P355,385,920.00

(CTA En Banc Decision, Annex "A," Petition, pp. 2-4)

2. Since the claim for refund was not acted upon, petitioner filed on December 11, 2001 and January 30, 2002, respectively, Petitions for Review before the Court of Tax Appeals (CTA) docketed as CTA Case Nos. 6365 and 6383 questioning the validity of Revenue Regulations No. 17-99 with claims for refund in the amounts P35,651,410.00 and P644,735,615.00, respectively.

These amounts represented overpaid excise taxes for the periods from January 1, 2000 to January 31, 2000 and February 1, 2000 to December 31, 2001, respectively (*Ibid.*, pp. 4-5).

3. In [separate] Decision dated October 21, 2002, the CTA in Division ordered the Commissioner of Internal Revenue (respondent herein) to refund to petitioner the erroneously paid excise taxes in the amounts of P35,651,410.00 for the period covering January 1, 2000 to January 31, 2000 (CTA Case No. 6365) and P644,735,615.00 for the period February 1, 2000 to December 31, 2001 (CTA Case No. 6383)(*Ibid.*).

4. Respondent filed a motion for reconsideration of the Decision dated October 21, 2002 covering CTA Case Nos. 6365 and 6383 which was granted in the Resolution dated July 15, 2003.

5. Subsequently, petitioner filed another petition docketed as CTA Case No. 6612 questioning the validity of Revenue Regulations No. 17-99 with a prayer for the refund of overpaid excise tax amounting to P355,385,920.00, covering the period from January 1, 2002 to December 31, 2002 (*Ibid.*, p. 5).

6. Petitioner thereafter filed a consolidated Motion for Reconsideration of the Resolution dated July 15, 2003 (*Ibid.*, pp. 5-6).

7. The CTA in Division issued Resolution dated November 4, 2003 which reversed the Resolution dated July 15, 2003 and ordered respondent to

refund to petitioner the amounts of P35,651,410.00 for the period covering January 1 to January 31, 2000 and P644,735,615.00 for the period covering February 1, 2000 to December 31, 2001, or in the aggregate amount of P680,387,025.00, representing erroneously paid excise taxes (*Ibid.*, p. 6).

8. In its Decision dated December 4, 2003, the CTA in Division in Case No. 6612 declared RR No. 17-99 invalid and contrary to Section 145 of the 1997 National Internal Revenue Code (NIRC). The Court ordered respondent to refund to petitioner the amount of P355,385,920.00 representing overpaid excise taxes for the period covering January 1, 2002 to December 21, 2002 (*Ibid.*)

9. Respondent filed a motion for reconsideration of the Decision dated December 4, 2003 but this was denied in the Resolution dated March 17, 2004 (*Ibid.*)

10. On December 10, 2003, respondent [Commissioner] filed a Petition for Review with the Court of Appeals (CA) questioning the CTA Resolution dated November 4, 2003 which was issued in CTA Case Nos. 6365 and 6383. The case was docketed as CA-G.R. SP No. 80675 (*Ibid.*).

11. On April 28, 2004, respondent [Commissioner] filed another appeal before the CA questioning the CTA Decision dated December 4, 2003 issued in CTA Case No. 6612. The case was docketed as CA-G.R. SP No. 83165 (*Ibid.*, p. 7).

12. Thereafter, petitioner filed a Consolidated Motion for Execution Pending Appeal before the CTA for CTA Case Nos. 6365 and 6383 and an Amended Motion for Execution Pending Appeal for CTA Case No. 6612 (*Ibid.*).

13. The motions were denied in the CTA Resolutions dated August 2, 2004 and August 3, 2004, respectively.

The CTA in Division pointed out that Section 12, Rule 43 of the 1997 Rules of Civil Procedure should be interpreted with Section 18 of R.A. 1125 which provides that CTA rulings become final and conclusive only where there is no perfected appeal. Considering that respondent filed an appeal with the CA, the CTA in Division's rulings granting the amounts of P355,385,920.00 and P680,387,025.00 were not yet final and executory (*Ibid.*).

14. In the consolidated CA Decision dated September 28, 2004 issued in CA-G.R. SP Nos. 80675 (CTA Case Nos. 6365 and 6383) and 83165 (CTA Case No. 6612), the appellate court denied respondent's petitions and affirmed petitioner's refund claims in the amounts of P680,387,025.00 (CTA Case Nos. 6365 and 6383) and P355,385,920.00 (CTA Case No. 6612), respectively (*Ibid.*, p. 8).

15. Respondent filed a motion for reconsideration of the CA Decision dated September 28, 2004 but this was denied in the CA's Resolution dated March 1, 2005 (*Ibid.*).

16. Respondent, filed a Petition for Review on Certiorari [docketed as G.R. Nos. 167274-75 on May 4, 2005] before the Honorable Court. On June 22, 2005, a Supplemental Petition for Review was filed and the petitions were consolidated (*Ibid.*).

17. In its Decision dated July 21, 2008 [in G.R. Nos. 167274-75], the Honorable Court affirmed the findings of the CA granting petitioner's claim for refund. The dispositive portion of said Decision reads:

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 80675, dated 28 September 2004, and its Resolution, dated 1 March 2005, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

[*Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, 559 SCRA 160 (2008)]

18. On January 23, 2009, petitioner filed a motion for execution praying for the issuance of a writ of execution of the Decision of the Honorable Court in G.R. Nos. 167274-75 dated July 21, 2008 which was recorded in the Book of Entries of Judgments on November 6, 2008 (*Ibid.*, p. 10).

Petitioner's prayer was for the CTA to order the BIR to pay/refund the amounts adjudged by the CTA, as follows:

a) CTA Case No. 6612 under the Decision 04 December 2003 – the amount of Three Hundred Fifty Five Million Three Hundred Eighty Five Thousand Nine Hundred Twenty Pesos (P355,385,920.00).

b) CTA Case Nos. 6365 and 6383 under the Decisions dated 21 October 2002 and Resolution dated 04 November 2003 – the amount of Six Hundred Eighty Million Three Hundred Eighty Seven Thousand Twenty Five Pesos (P680,387,025.00).

(Petition, p. 11)

19. On April 14, 2009, the CTA issued a Writ of Execution, which reads:

You are hereby **ORDERED TO REFUND** in favor of the petitioner **FORTUNE TOBACCO CORPORATION**, pursuant to the Supreme Court Decision in the above-entitled case (SC G.R. 167274-75), dated July 21, 2008, which has become final and executory on November 6, 2008, by virtue of the **Entry of Judgment** by the Supreme Court on said dated, which reads as follows:

x x x x