

## SECOND DIVISION

[ G.R. No. 180006, September 28, 2011 ]

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

#### DECISION

##### BRION, J.:

Before the Court is a petition for review on *certiorari* filed under Rule 45 of the Rules of Court by petitioner Commissioner of Internal Revenue (CIR), assailing the decision dated July 12, 2007<sup>[1]</sup> and the resolution dated October 4, 2007,<sup>[2]</sup> both issued by the Court of Tax Appeals (CTA) *en banc* in CTA E.B. No. 228.

#### BACKGROUND FACTS

Under our tax laws, manufacturers of cigarettes are subject to pay excise taxes on their products. Prior to January 1, 1997, the excises taxes on these products were in the form of *ad valorem* taxes, pursuant to Section 142 of the 1977 National Internal Revenue Code (1977 Tax Code).

Beginning January 1, 1997, Republic Act No. (RA) 8240<sup>[3]</sup> took effect and a shift from *ad valorem* to specific taxes was made. Section 142(c) of the 1977 Tax Code, as amended by RA 8240, reads in part:

Sec. 142. *Cigars and cigarettes.* -- 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:

(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 pesos (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.

X X X X

**The specific tax from any brand of cigarettes within the next three (3) years of effectivity of this Act shall not be lower than the tax [which] is due from each brand on October 1, 1996:**

Provided, however, That in cases where the specific tax rates 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.

X X X X

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

To implement RA 8240 and pursuant to its rule-making powers, the CIR issued Revenue Regulation No. (RR) 1-97 whose Section 3(c) and (d) echoed the above-quoted portion of Section 142 of the 1977 Tax Code, as amended.<sup>[4]</sup>

The 1977 Tax Code was later repealed by RA 8424, or the National Internal Revenue Code of 1997 (*1997 Tax Code*), and Section 142, as amended by RA 8240, was renumbered as Section 145.

This time, to implement the 12% increase in specific taxes mandated under Section 145 of the 1997 Tax Code and again pursuant to its rule-making powers, the CIR issued RR 17-99, which reads:

Section 1. *New Rates of Specific Tax.* The specific tax rates imposed under the following sections are hereby increased by twelve percent (12%) and the new rates to be levied, assessed, and collected are as follows:

<i>Section Description of Articles</i>		<i>Present Specific Tax Rates (Prior to January 1, 2000)</i>	<i>New Specific Tax Rates (Effective January 1, 2000)</i>
145	CIGARS and CIGARETTES B) Cigarettes Packed by Machine (1) Net Retail Price (excluding VAT &	P12.00/pack	P13.44/pack

Excise) exceeds P10.00  
per pack

(2) Net Retail Price

(excluding VAT & Excise) is P6.51 up to P10.00 per pack

P8.00/pack	P8.96/pack
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(3) Net Retail Price

(excluding VAT & Excise) is P5.00 to P6.50 per pack

P5.00/pack	P5.60/pack
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(4) Net Retail Price

(excluding VAT & Excise) is below P5.00 per pack

P1.00/pack	P1.12/pack
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**Provided, however, that the new specific tax rate for any existing brand of cigars [and] cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.**

[emphasis ours]

### **THE FACTS OF THE CASE**

Pursuant to these laws, respondent Fortune Tobacco Corporation (*Fortune Tobacco*) paid in advance excise taxes for the year 2003 in the amount of P11.15 billion, and for the period covering January 1 to May 31, 2004 in the amount of P4.90 billion.<sup>[5]</sup>

In June 2004, Fortune Tobacco filed an administrative **claim for tax refund with the CIR for erroneously and/or illegally collected taxes in the amount of P491 million.**<sup>[6]</sup> Without waiting for the CIR's action on its claim, Fortune Tobacco filed with the CTA a judicial claim for tax refund.<sup>[7]</sup>

In its decision dated May 26, 2006, the CTA First Division ruled in favor of Fortune Tobacco and granted its claim for refund.<sup>[8]</sup> The CTA First Division's ruling was upheld on appeal by the CTA *en banc* in its decision dated July 12, 2007.<sup>[9]</sup> The CIR's motion for reconsideration of the CTA *en banc*'s decision was denied in a resolution dated October 4, 2007.<sup>[10]</sup>

### **THE ISSUE**

**Fortune Tobacco's claim for refund of overpaid excise taxes is based primarily on what it considers as an "unauthorized administrative legislation" on the part of the CIR.** Specifically, **it assails the proviso in Section 1 of RR 17-99** that requires the payment of the "excise tax actually being paid prior to January 1, 2000" if this amount is higher than the **new specific tax rate, i.e.,** the rates of specific taxes imposed in 1997 for each category of cigarette, plus 12%. It claimed that by including the proviso, the CIR went beyond the language of the law and usurped Congress' power. As mentioned, the CTA sided with Fortune Tobacco and allowed the latter to claim the refund.

The CIR disagrees with the CTA's ruling and assails it before this Court through the present petition for review on *certiorari*. **The CIR posits that the inclusion of the proviso in Section 1 of RR 17-99 was made to carry into effect the law's intent and is well within the scope of his delegated legislative authority.**<sup>[11]</sup> He claims that the CTA's strict interpretation of the law ignored Congress' intent "to increase the collection of excise taxes by increasing specific tax rates on `sin' products."<sup>[12]</sup> He cites portions of the Senate's deliberation on House Bill No. 7198 (the precursor of RA 8240) that conveyed the legislative intent to increase the excise taxes being paid.<sup>[13]</sup>

The CIR points out that Section 145(c) of the 1997 Tax Code categorically declares that "[t]he excise tax from any brand of cigarettes within the [three-year transition period from January 1, 1997 to December 31, 1999] shall not be lower than the tax, which is due from each brand on October 1, 1996." He posits that there is no plausible reason why the new specific tax rates due beginning January 1, 2000 should not be subject to the same rule as those due during the transition period. To the CIR, the adoption of the "higher tax rule" during the transition period unmistakably shows the intent of Congress not to lessen the excise tax collection. Thus, the CTA should have construed the ambiguity or omission in Section 145(c) in a manner that would uphold the law's policy and intent.

Fortune Tobacco argues otherwise. To it, Section 145(c) of the 1997 Tax Code read and interpreted as it is written; it imposes a 12% increase on the rates of excise taxes provided under sub-paragraphs (1), (2), (3), and (4) only; it does not say that the tax due during the transition period shall continue to be collected if the amount is higher than the new specific tax rates. It contends that the "higher tax rule" applies only to the three-year transition period to offset the burden caused by the shift from *ad valorem* to specific taxes.

### **THE COURT'S RULING**

Except for the tax period and the amounts involved,<sup>[14]</sup> the case at bar presents the same issue that the Court already resolved in 2008 in *CIR v. Fortune Tobacco Corporation*.<sup>[15]</sup> In the 2008 *Fortune Tobacco* case, the Court upheld the tax refund claims of Fortune Tobacco after finding invalid the proviso in Section 1 of RR 17-99. We ruled:

Section 145 states that during the transition period, *i.e.*, within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date.

By adding the qualification that the tax due after the 12% increase

becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12% - a situation not supported by the plain wording of Section 145 of the Tax Code.<sup>[16]</sup>

Following the principle of *stare decisis*,<sup>[17]</sup> our ruling in the present case should no longer come as a surprise. The proviso in Section 1 of RR 17-99 clearly went beyond the terms of the law it was supposed to implement, and therefore entitles Fortune Tobacco to claim a refund of the overpaid excise taxes collected pursuant to this provision.

The amount involved in the present case and the CIR's firm insistence of its arguments nonetheless compel us to take a second look at the issue, but our findings ultimately lead us to the same conclusion. Indeed, we find more reasons to disagree with the CIR's construction of the law than those stated in our 2008 *Fortune Tobacco* ruling, which was largely based on the application of the rules of statutory construction.

### ***Raising government revenue is not the sole objective of RA 8240***

That RA 8240 (incorporated as Section 145 of the 1997 Tax Code) was enacted to raise government revenues is a given fact, but this is not the sole and only objective of the law.<sup>[18]</sup> Congressional deliberations show that the shift from *ad valorem* to specific taxes introduced by the law was also intended to curb the corruption that became endemic to the imposition of *ad valorem* taxes.<sup>[19]</sup> Since *ad valorem* taxes were based on the value of the goods, the prices of the goods were often manipulated to yield lesser taxes. The imposition of specific taxes, which are based on the volume of goods produced, would prevent price manipulation and also cure the unequal tax treatment created by the skewed valuation of similar goods.

### ***Rule of uniformity of taxation violated by the proviso in Section 1, RR 17-99***

The Constitution requires that taxation should be uniform and equitable.<sup>[20]</sup> Uniformity in taxation requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities.<sup>[21]</sup> This requirement, however, is unwittingly violated when the proviso in Section 1 of RR 17-99 is applied in certain cases. To illustrate this point, we consider three brands of cigarettes, all classified as lower-priced cigarettes under Section 145(c)(4) of the 1997 Tax Code, since their net retail price is below P5.00 per pack:

Brand <sup>[22]</sup>	Net Retail Price	(A)  <i>Ad Valorem</i>	(B)  Specific	(C)  Specific Tax	(D)  New Specific Tax imposing	(E)  <b>New Specific</b>
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