

## SECOND DIVISION

[ G.R. Nos. 167274-75, July 21, 2008 ]

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

#### D E C I S I O N

**TINGA, J,:**

Simple and uncomplicated is the central issue involved, yet whopping is the amount at stake in this case.

After much wrangling in the Court of Tax Appeals (CTA) and the Court of Appeals, Fortune Tobacco Corporation (Fortune Tobacco) was granted a tax refund or tax credit representing specific taxes erroneously collected from its tobacco products. The tax refund is being re-claimed by the Commissioner of Internal Revenue (Commissioner) in this petition.

The following undisputed facts, summarized by the Court of Appeals, are quoted in the assailed Decision<sup>[1]</sup> dated 28 September 2004:

#### **CAG.R. SP No. 80675**

x x x x

Petitioner<sup>[2]</sup> is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at Fortune Avenue, Parang, Marikina City.

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 R.A. No. 4280, to wit:

Brand	Tax Rate
Champion M 100	P1.00
Salem M 100	P1.00
Salem M King	P1.00
Camel F King	P1.00
Camel Lights Box 20's	P1.00
Camel Filters Box 20's	P1.00
Winston F Kings	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 whereby a shift from the *ad valorem* tax (AVT) system to the specific tax system was made and subjecting the aforesaid cigarette brands to specific tax under [S]ection 142 thereof, now renumbered as Sec. 145 of the Tax Code of 1997, pertinent provisions of which are 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 were (sic) 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.** (Emphasis supplied)

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 [M]anila, 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 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, among others, 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, which provides the increase on the applicable tax rates on cigar and cigarettes as follows:

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATES PRIOR TO JAN. 1, 2000	NEW SPECIFIC TAX RATE Effective Jan.. 1, 2000
145	(A) Cigars	P1.00/cigar	P1.12/cigar
	(B)Cigarettes packed by Machine	P12.00/pack	P13.44/pack
	(1) Net Retail Price (excluding VAT and Excise) exceeds P10.00 per pack	P8.00/pack P5.00/pack	P8.96/pack P5.60/pack
	(2) Net Retail Price (excluding VAT and Excise) is P6.51 up to P10.00	P1.00/pack	P1.12/pack

	per pack		
	(3) Net Retail Price (excluding VAT and excise) is P5.00 to P6.50 per pack		
	(4) Net Retail Price (excluding VAT and excise) is below P5.00 per pack)		

Revenue Regulations No. 17-99 likewise provides in the last paragraph of Section 1 thereof, **"(t)hat 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."**

For the period covering January 1-31, 2000, petitioner allegedly paid specific taxes on all brands manufactured and removed in the total amounts of P585,705,250.00.

On February 7, 2000, petitioner filed with respondent's Appellate Division a claim for refund or tax credit of its purportedly overpaid excise tax for the month of January 2000 in the amount of P35,651,410.00

On June 21, 2001, petitioner filed with respondent's Legal Service a letter dated June 20, 2001 reiterating all the claims for refund/tax credit of its overpaid excise taxes filed on various dates, including the present claim for the month of January 2000 in the amount of P35,651,410.00.

As there was no action on the part of the respondent, petitioner filed the instant petition for review with this Court on December 11, 2001, in order to comply with the two-year period for filing a claim for refund.

In his answer filed on January 16, 2002, respondent raised the following Special and Affirmative Defenses;

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
5. The amount of P35,651,410 being claimed by petitioner as alleged overpaid excise tax for the month of January 2000 was not properly documented.
6. In an action for tax refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to its claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Section 204(C) in relation [to] Section 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
8. Claims for refund are construed strictly against the claimant for the same partake of tax exemption from taxation; and
9. The last paragraph of Section 1 of Revenue Regulation[s] [No.]17-99 is a valid implementing regulation which has the force and effect of law."

**CA G.R. SP No. 83165**

The petition contains essentially similar facts, except that the said case questions the CTA's December 4, 2003 decision in CTA Case No. 6612 granting respondent's<sup>[3]</sup> claim for refund of the amount of P355,385,920.00 representing erroneously or illegally collected specific taxes covering the period January 1, 2002 to December 31, 2002, as well as its March 17, 2004 Resolution denying a reconsideration thereof.

x x x x

In both CTA Case Nos. 6365 & 6383 and CTA No. 6612, the Court of Tax Appeals reduced the issues to be resolved into two as stipulated by the parties, to wit: (1) Whether or not the last paragraph of Section 1 of Revenue Regulation[s] [No.] 17-99 is in accordance with the pertinent provisions of Republic Act [No.] 8240, now incorporated in Section 145 of the Tax Code of 1997; and (2) Whether or not petitioner is entitled to a refund of P35,651,410.00 as alleged overpaid excise tax for the month of January 2000.

x x x x

Hence, the respondent CTA in its assailed October 21, 2002 [twin] Decisions[s] disposed in CTA Case Nos. 6365 & 6383:

**WHEREFORE**, in view of the foregoing, the court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby ORDERED to REFUND to petitioner the amount of P35,651.410.00 representing erroneously paid excise taxes for the period January 1 to January 31, 2000.

**SO ORDERED.**

Herein petitioner sought reconsideration of the above-quoted decision. In [twin] resolution[s] [both] dated July 15, 2003, the Tax Court, in an apparent change of heart, granted the petitioner's consolidated motions for reconsideration, thereby denying the respondent's claim for refund.

However, on consolidated motions for reconsideration filed by the respondent in CTA Case Nos. 6363 and 6383, the July 15, 2002