

## FIRST DIVISION

[ G.R. No. 145275, November 15, 2001 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. LA CAMPANA FABRICA DE TABACOS, INC., RESPONDENT.**

### DECISION

**PARDO, J.:**

#### The Case

Appeal *via* certiorari from the decision of the Court of Appeals<sup>[1]</sup> affirming the decision of the Court of Tax Appeals canceling the assessment issued against respondent for deficiency specific tax on stemmed leaf tobacco in the amount of P2,785,338.75, covering the period from January 1, 1986 to June 30, 1989.

#### The Facts

The facts, as found by the Court of Appeals, are as follows:

"Respondent is a domestic corporation engaged in, among others, the importation and local purchase of stemmed leaf tobacco which it uses as raw material in the production and manufacture of cigar and cigarettes.

"On January 4, 1990, Respondent received from Petitioner a letter dated December 18, 1989, demanding payment of P2,785,338.75 representing deficiency excise tax, exclusive of surcharge and interest on Respondent's purchases of stemmed leaf tobacco covering the period from January 1, 1986 to June 30, 1989. The demand letter was essentially based on Sec. 141(b) of the National Internal Revenue's interpretation that:

"Sec. 141 of the Code provides that there should be collected a tax of P0.75 on each kilogram of the following products of tobacco;

"(b) tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened. Stemmed leaf tobacco is partially-prepared tobacco as provided under Section 1(L) of Revenue Regulations No. 17-67.

"Further, under the penultimate paragraph of the same section, it provides that fine-cut shorts and refuse, scraps, clipping, stems and sweepings of tobacco resulting from handling and stripping of whole leaf tobacco may be transferred, disposed of or otherwise, sold, without the

prepayment of the specific tax when the same are to be used in the manufacture of other tobacco products on which the excise tax will eventually be paid on the finished product. It will be noted from the above enumeration, however, that stemmed leaf tobacco is not among the products exempted from the payment of tax." (*idem supra*), (*underscoring supplied*)

"On January 12, 1990, Respondent wrote Petitioner a letter protesting the aforementioned deficiency assessment and requesting the reconsideration and withdrawal of said assessment. In the same letter, Respondent stressed that the BIR assessment was based solely on Section 141(b) of the NIRC without, however, applying Section 137 thereof, the more specific provision which expressly allows the sale of stemmed leaf tobacco as raw material by one manufacturer directly to another without payment of the (excise) tax considering that Respondent purchased stemmed leaf tobacco from manufacturers. Additionally, Respondent made reference to a BIR Ruling dated December 12, 1972, wherein the BIR expressly ruled that, under Section 137 of the NIRC, the sale of partially manufactured tobacco from a wholesale leaf tobacco dealer (L-3R) to a manufacturer of tobacco products (L-71/2) for use in the manufacture of cigar and cigarettes may also be allowed without prepayment of the tax.

"On November 26, 1990, Respondent received a letter from Petitioner dated August 31, 1990 denying Respondent's protest on the grounds, *inter alia*, that:

"In Support of your contention you cited BIR Ruling dated 12 December 1972 wherein it was held that `x x x the subsequent sale or transfer by the L-6/L-3R permittee of the redried or reprocessed product to another L-6 permittee for export or to an L-71/2 for use in the manufacture of cigars or cigarettes may also be allowed without the prepayment of specific tax.'

"Clearly from the aforequoted ruling, the transfer or sale of partially manufactured tobacco, as a rule, is subject to specific tax unless there is an express grant of exemption from the payment of tax. The tax-payers up to this point in time have not presented any authority issued by the BIR granting them exemption."

"On November 26, 1990, Respondent likewise received another letter from the Petitioner dated October 17, 1990 denying Respondent's protest with finality and reiterating the demand to pay the amount of P2,785,338.75, representing deficiency specific tax, exclusive of increments, computed as follows, to wit:

<b>STEMMED LEAF TOBACCO</b>	<b>RATE OF TAX</b>	<b>SPECIFIC TAX</b>
Local 3,713.785	0.75	P2,785,338.75

kls.

"On December 6, 1990, Respondent filed with the Court of Tax Appeals a "Petition for Review" seeking for the annulment of the deficiency assessment.

"On August 31, 1995, the Tax Court a quo rendered its Decision, the decretal portion of which reads, to wit:

"WHEREFORE, in all the foregoing, the assessment of alleged deficiency specific tax in the amount of P2,785,338.75 issued by the Respondent is hereby CANCELLED for lack of merit.

"SO ORDERED." (at page 33, Rollo)

"On September 22, 1995, Respondent filed a Motion for Reconsideration of the aforesaid decision, but the same was denied in a Resolution of the Tax Court a quo, dated May 7, 1996."<sup>[2]</sup>

On June 10, 1998, petitioner filed with the Court of Appeals a petition for review of the decision of the Court of Tax Appeals.<sup>[3]</sup>

On September 28, 2000, the Court of Appeals promulgated a decision denying the petition and affirming the decision of the Court of Tax Appeals.<sup>[4]</sup>

Hence, this appeal.<sup>[5]</sup>

#### The Issue

The issue raised is whether respondent is liable for deficiency specific tax under Section 141(b) of the Tax Code in the amount of P2,785,338.75 on purchases of stemmed leaf tobacco for the period January 1, 1986 to June 30, 1989.

#### The Court's Ruling

We reverse the decision of the Court of Appeals.

Section 137 (now Sec. 140)<sup>[6]</sup> of the Tax Code reads in part:

"SECTION 137. *Removal Of Tobacco products without prepayment of tax.*

- Products of tobacco entirely unfit for chewing or smoking may be removed free of tax for agricultural or industrial use, under such conditions as may be prescribed in the regulations of the Department of Finance. Stemmed leaf tobacco, fine-cut shorts, the refuse of fine-cut chewing tobacco, scraps, cuttings, clippings, stems or midribs, and sweeping of tobacco may be sold in bulk as raw material by one manufacturer directly to another, without payment of the tax under such conditions as may be prescribed in the regulations of the Department of Finance.

"Stemmed leaf tobacco," as herein used means leaf tobacco which has