

101 Phil. 106

[G. R. No. L-9415. April 22, 1957]

**LIGGETT & MYERS TOBACCO COMPANY, PETITIONER AND APPELLANT, VS.
COLLECTOR OF INTERNAL REVENUE, RESPONDENT AND APPELLEE.**

D E C I S I O N

CONCEPCION, J.:

This is a petition, by Liggett & Myers Tobacco Company, for review of a decision of the Court of Tax Appeals affirming another of the Collector of Internal Revenue, denying the claim of said appellant for the refund of P17.60 allegedly overpaid by way of specific tax on four (4) cartons of King Size L & M Filter Cigarettes.

Both parties have stipulated:

1. "That petitioner is a foreign corporation duly licensed to do business in the Philippines and respondent is the Acting Collector of Internal Revenue of the Philippines;
2. "That on or about September 28, 1954, petitioner received a shipment of 4 cartons of King Size L & M Filter Cigarettes (40 packages of 800 cigarettes);
3. "That the King Size L & M Filter Cigarettes are made of Virginia type tobacco, wrapped in tin foil and cellophane and mechanically wrapped or packed;
4. " That the total length of each King Size L & M Filter Cigarettes is 85 millimeters and the average length of the portion thereof containing tobacco is 70 millimeters, while the average length of the filter element of each of said cigarette which does not contain tobacco is 15 millimeters;
5. "That the total average weight of King Size L & M Filter Cigarette is 1.2871 kilos per thousand and the average weight of the tobacco content of the aforesaid cigarette is 1.0773 kilos per thousand and the average weight of

- the filter element of the said number of cigarettes is 2098 kilos;
6. "That the Collector of Customs in his capacity as Deputy of the respondent, required the petitioner to pay the amount of P35.20 as specific tax on the aforesaid cigarettes at the rate of P44.00 per thousand, which amount of P35.20 was paid by petitioner under Official Receipts Nos. 136616 and 125370, issued by the Collector of Customs on October 11 and 21, 1954, respectively;
 7. "That on or about October 18, 1954, petitioner, through counsel, filed in the respondent's office a formal claim for refund of P17.60;
 8. "That on November 22, 1954, the undersigned attorneys received the letter of the Deputy Collector of Internal Revenue dated October 27, 1954, denying petitioner's claim for refund of the amount of P17.60;
 9. "The parties reserve the right to present additional evidence at the trial of the case."

When the case was heard, in the Court of Tax Appeals, the following took place, in the language of the decision thereof:

" * * * the petitioner limited itself to the presentation of Exhibit A, a sample of an L & M King Size Filter Cigarette; Exhibit A-1, the same brand of cigarette cut longitudinally showing its filter and tobacco contents; Exhibit A-2, the filter of the same brand of cigarette separated from the tobacco portion; and Exhibit B, which consists of a sample of one package of the same brand of cigarette. The respondent on the other hand, adopted as his own exhibits, Exhibits A and B of the petitioner, making them as Exhibits 1 and 2, respectively. His Exhibit 3 is a letter of the Deputy Collector of Internal Revenue addressed to Messrs. Ross, Selph, Carrascoso & Janda, denying the request of the petitioner for refund of the sum of P17.60, and his Exhibit 3-A is a letter of the Acting Collector of Internal Revenue addressed to the General Manager of the petitioner company wherein the former opined that the specific tax on cigarettes is based on the over-all length or weight of the cigarettes. No other evidence was presented by the parties."

The case hinges on the construction of section 137 of the National Internal Revenue Code, as amended, pertinent parts of which we quote:

“Sec. 137. *Specific tax on cigars and cigarettes.*—On cigars and cigarettes there shall be collected the following” taxes:

“(b) Cigarettes—

* * * * *

“(2) On cigarettes containing Virginia type tobacco and/or flue-cured tobacco of seventy-one millimeters or less in length weighing one and one-fourth kilos or less per thousand, wrapped in tinfoil or cellophane or packed in cartons covered with paraffin or wax paper or in tin cans, on each thousand, ten pesos: *Provided*, That if the length exceeds seventy-one millimeters or if the weight per thousand exceeds one and one-fourth kilos, the tax shall be increased by one hundred per centum.

* * * * *

“(4) If the cigarettes taxable under subparagraphs. (1), (2) and (3) hereof are mechanically wrapped or packed, the tax shall be *Liggett & Myers Tobacco Co. vs. Coll. of Int. Rev.* increased by one hundred and twenty per centum per thousand cigarettes.”

The issue is whether the cigarettes in question fall under the first sentence, or under the proviso, of paragraph (b) subdivision (2), in relation to subdivision (4), of said section 137. In this connection, it will be noted that the over-all length of King Size L & M Filter Cigarettes is 85 millimeters and the total average weight thereof 1.2871 kilos per thousand; that each one of said cigarettes has two parts, namely, (a) the main, or bigger, portion, which contains finely cut tobacco, and (b) a smaller portion, on one end thereof, consisting of a filter element—correctly described in petitioner’s brief as a “white fibrous and non-tobacco material”—without any tobacco therein; that these two portions form one integral unit, wrapped in one whole *single piece*, cigarette paper, with a thicker band of paper over the portion thereof enclosing the filter, evidently to: add consistency and strength to the fine thin cigarette paper covering said portion; that the average length of the portion containing tobacco is 70 millimeters and its average weight 1.0773 kilos per thousand; and that the average length of said filter is 15 millimeters and the average weight thereof

0.2098 kilos per thousand.

Thus, if the term "cigarettes," as used in said section 137, were construed to refer only to the portion containing tobacco, the specific tax thereon would be P22 per thousand, whereas the rate of tax would be P44 per thousand, if the filter were considered included within the purview of said term, the Court of Tax Appeals adopted the latter view, for the following reasons, among others:

*** A casual reading of the provisions of the law involved will readily show that the tobacco contents of a cigarette is not the primordial factor in ascertaining its length and weight for the purpose of the specific tax. It merely states 'that if the length exceeds seventy-one millimeters or if the weight per thousand exceeds one and one-fourth kilos, the tax shall be increased by one-hundred per centum,' The aforesaid provision of our Tax Code imposes a specific tax on cigarettes as a whole without limiting or qualifying what portion of the cigarette is subject to tax and it is not for us to make distinctions if the law does not make any. The word 'cigarette' as used in section 137 of the National Internal Revenue Code should be applied in its general and literal sense. Webster defines 'cigarette' as a little roll of finely cut tobacco, enclosed usually in paper, tobacco leaf or corn husk used for smoking. From the standard definition itself of the word cigarette, one could readily infer that the paper or corn husk with which the finely cut tobacco is enclosed is considered a part of the cigarette. In the same way, the modern filters which are attached to the latest brand of cigarettes and forming part of it should be considered a part of the cigarette itself. Otherwise, if we are to follow the view of the petitioner to its logical conclusion, an absurdity would result for we might as well also exclude the paper wrapper of the cigarette in determining the weight thereof.

*** The language of the law is to us clear and unambiguous, and it is within its word, as well as its spirit, that no distinction should be made, for the purposes of the amount of specific tax, of a cigarette provided with a filter and a cigarette without any filter, as long as both of them are cigarettes. The petitioner does not dispute that the L & M King Size Filter Cigarettes are cigarettes and the package containing them (Exhibits B and Exhibit 2) bears among others, the following notation: 'Notice The manufacturer of the *cigarettes* herein contained ***. We do not believe it would be necessary to state that the articles in question having

been designated as ‘cigarettes,’ a term certain and definite in its significance and understood by everybody to be such, the law imposing a specific tax on cigarettes should be interpreted in such a way that the filters thereof being part and parcel of the cigarettes, should be included in determining their actual length and weight.

We are substantially in agreement with the foregoing conclusion. Indeed, the filter of King Size L & M Filter Cigarettes is part and parcel thereof. It is, from the viewpoint of cigarette smokers, the main feature, or, at least, one of the principal features of L & M Filter Cigarettes and what distinguishes the same from many—though not all—other cigarettes. It is one of the major devices resorted to to induce the smoking public to buy L & M Filter Cigarettes in preference to other cigarettes. In fact, it cannot be separated or detached from the portion containing tobacco without breaking, tearing, or cutting the cigarette paper that wraps the two portions and keeps the same together, as a single, *whole* cigarette. What is more, the expression “King Size L & M Filters” is printed at the bottom, and the term “L & M Filters” appears on four (4) sides, of the package. As if this were not enough to emphasize the importance of the filter, the phrase “The Miracle Tip” is, likewise, printed in a prominent part on both sides of the package.

Petitioner-appellant stresses the alleged effects of heavy smoking of cigarettes upon the development of some diseases, particularly lung cancer, as an argument in favor of the application to the cigarettes in question of the low rate of specific tax fixed in the first sentence of paragraph (b) (2) of said section 137; but the courts and the executive department merely apply the law as it is. If cigarette smoking without filter really has injurious effects upon health, and Congress felt that the use of filters should be encouraged, it could—and, surely, would—enact appropriate legislation therefor. As long, however, as the law does not distinguish between filter cigarettes and non-filter cigarettes, and said section 137 does not do so, neither the executive department nor the courts may distinguish the one from the other, for purposes of taxation.

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner-appellant. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Buutisto, Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.

Date created: October 13, 2014