

LA SUERTE CIGAR AND CIGARETTE FACTORY, BATAAN CIGAR AND CIGARETTE FACTORY, INC., LA PERLA INDUSTRIES, INC., PIONEER TOBACCO CORPORATION, INSULAR-YEBANA TOBACCO CORPORATION, LAS ...*G.R. No. L-36130. January 17, 1985*

Ponente: CUEVAS, J.

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Petition for Review on Certiorari of the decisions[1] of the Court of Tax Appeals in CTA Cases Nos. 2048 and 2031, denying petitioners' claims for the refund of P1,606,509.83 imposed and collected by respondent Commissioner of Internal Revenue as tobacco inspection fees on cigars and cigarettes manufactured for domestic sale and/or consumption.

These two cases were heard jointly by the Court of Tax Appeals the parties being represented by one and the same counsel and involving as they do, the same legal issues. The amounts involved are not disputed.

On August 22, 1967, respondent Commissioner of Internal Revenue issued Memorandum Circular No. 30-67[2], requiring the inspection of (a) all locally produced leaf tobacco and partially manufactured tobacco intended for domestic sale, for factory use or for export; (b) all manufactured products of tobacco contemplated in Sec. 194(m) of the Tax Code intended for domestic sale; and (c) all imported foreign leaf tobacco and partially manufactured tobacco for domestic sale or factory use, and the collection of the corresponding inspection fees.

Pursuant to said Memorandum, respondent collected from petitioners, over the latter's vehement protests, the following inspection fees:

- (a) P199,632.19 during the period from September 1967 to April 1969, in CTA Case No. 2031;
- (b) P1,406,877.64 during the period from September 1967 to August 1969, in CTA Case No. 2048.

Petitioners in two separate cases, sought the refund of the aforementioned inspection fees collected from them. CTA Case No. 2031 was submitted by petitioners for summary judgment. In a decision dated November 28, 1970, CTA denied the claim for the refund of the amount of P199,632.19.

Before the finality of the said decision, however, petitioners moved for a reconsideration thereby praying that in case of a denial, CTA Case No. 2031 be reopened for the reception of evidence in support of their argument that there was no inspection made by the BIR nor were inspection labels affixed to the boxes and packages containing the cigars and cigarettes which would warrant the imposition and collection of the disputed tobacco inspection fees.

On September 28, 1971, the CTA granted petitioners' motion to reopen but denied the motion for re-consideration. Said court likewise ordered that CTA Cases Nos. 2048 and 2031, be heard jointly. After hearing, the CTA on December 15, 1972 denied both claims.

Petitioners contend that the CTA erred:

“I

IN REACHING A CONCLUSION CONTRARY TO PETITIONERS' POSITION THAT INSPECTION FEES COLLECTED FROM THEM BY RESPONDENT ON THE CIGARS AND CIGARETTES MANUFACTURED BY THEM FOR DOMESTIC SALE OR CONSUMPTION WERE SO COLLECTED ILLEGALLY AND HENCE, SHOULD BE REFUNDED TO THEM;

II

IN REFUSING TO HOLD THAT RESPONDENT COMMISSIONER'S REVENUE MEMORANDUM CIRCULAR WHICH PURPORTS TO DECLARE PETITIONERS LIABLE FOR THE AFORESAID INSPECTION FEES, AND IN VIRTUE OF WHICH, THE SAID FEES WERE COLLECTED, IS WITHOUT ANY BINDING FORCE AND EFFECT ON THE LATTER, BECAUSE OF THE ADMITTED FACT THAT IT IS NOT A REGULATION PROMULGATED BY THE SECRETARY OF FINANCE, AS REQUIRED BY SECTION 4(j) AND 338 OF THE NIRC, AND FURTHER, BECAUSE OF THE EQUALLY ADMITTED FACT THAT IT HAS NEVER BEEN PUBLISHED IN THE OFFICIAL GAZETTE, AS REQUIRED NOT ONLY BY ART. 2 OF THE CIVIL CODE, BUT ALSO BY SEC. 79(b) OF THE REVISED ADMINIS-TRATIVE CODE;

III

IN DISREGARDING THE FACT BORNE OUT BY UNDISPUTED EVIDENCE THAT NO INSPECTION OF THE CIGARS AND CIGARETTES AFOREMENTIONED WAS ACTUALLY CONDUCTED FOR WHICH REASON NO COLLECTION OF INSPECTION FEES WAS LEGALLY WARRANTED; and

IV

IN FAILING TO HOLD THAT THE PROVISIONS OF THE TOBACCO INSPECTION LAW (SEC. 6(c)) UNDER WHICH THE SAID RE-VENUE MEMORANDUM CIRCULAR PURPORTS TO DECLARE PETITIONERS' CIGAR AND CIGARETTES FOR DOMESTIC SALE OR CONSUMPTION SUBJECT TO INSPECTION AND THE PAYMENT OF INSPECTION FEES, REFER ALONE TO LEAF TOBACCO FOR DOMESTIC SALE OR FACTORY USE, NOT TO CIGARS AND CIGARETTES FOR DOMESTIC CONSUMPTION, AND HENCE, THE SAID MEMORANDUM CIRCULAR IS ULTRA VIRES AND VOID."

Section 6(c) of Act 2613 (Tobacco Inspection Law), before its amendment by Republic Act No. 31, provides:

"Sec. 6. The Commissioner of Internal Revenue shall have the power and it shall be his duty:

x x x x

(c) To require, whenever it shall be deemed expedient, the inspection of and affixture of inspection labels to tobacco removed from the province of its origin to another or other pro-vinces before such removal."

As amended, (by RA 31) said Section 6, Republic Act No. 31 (October 1, 1946) now reads:

"Sec. 6. The Commissioner of In-ternal Revenue shall have the power and it shall be his duty:

x x x x

(c) To require, whenever it shall be deemed expedient, the inspection of and affixture of inspection labels to tobacco removed from province of its origin to another or other provinces before such removal or to tobacco for domestic sale or factory use." (Under-scoring supplied)

The amendatory bill (House Bill No. 735) which later on became Republic Act No. 31, carried the follow-ing explanatory note:

"EXPLANATORY NOTE

Under Section 6 of the Tobacco Inspection Law (Act No. 2613), the Collector of Internal Revenue is authorized to promulgate rules relative to the classification, marking and packaging of leaf tobacco for domestic sale or for exportation in order to insure the use of leaf tobacco of good quality and its handling under sanitary conditions. Section 1 of the attached bill seeks to extend this regulatory power of the Collector of Internal Revenue to leaf tobacco intended for factory use.

x x x x

x x x x

Under the present law only leaf and manufactured tobacco for export to the United States are subject to inspection. Under the proposed amendment, the standard type and packing of all leaf and manufactured tobacco for export to any foreign country will come under the regulatory power of the Collector of Internal Revenue." (Underscoring supplied)

It was petitioners' contention that the amendatory portion reading "or to tobacco for domestic sale or factory use" in Sec. 6(c) of Act 2613, refers to leaf tobacco whether for local sale or factory use and does not include cigars and cigarettes for domestic sale or consumption.

We do not agree.

Prior to the amendment of said Act, Sec. 6 and 7 thereof, already covered the inspection of leaf tobacco, partially manufactured tobacco for local sale and leaf tobacco and its products for export. If the intention of Congress was to apply the amendment to those items already covered by Act 2613, then the word "leaf" should have been easily included to modify the term "tobacco". The omission of the word "leaf" is a clear indication that Congress intended to include within the purview of the law a new item; namely, manufactured tobacco products for domestic sale and imported tobacco for factory use.

As aptly held by the CTA:

" x x x x

Petitioners' contention that the phrase 'tobacco for domestic sale' refers to leaf tobacco alone is restrictive, misleading, and against sound statutory construction.

Webster's New International Dictionary 2nd Edition, p. 2653 defines tobacco as the leaves of the tobacco plant, prepared by drying and various manufacturing processes, and use either for smoking or showing, or as snuff, or the manufactured products from tobacco leaves; smoking or chewing tobacco cigars, cigarettes, etc., collectively.

From the above definition, it is clear that the word "tobacco" refers both to leaf and manufactured tobacco such as cigars, and cigarettes. It is to be noted that either Section 6(c) of Act No. 2613 or the amendatory law does not make a distinction as to the meaning of the word "tobacco". Since our lawmaking body used the word tobacco in the general sense without any qualification, this Court is powerless to give it a restrictive meaning.

x x x x

If Congress of the Philippines really intended to restrict the meaning of the word 'tobacco' under Republic Act No. 31, which took effect on October 1, 1946, in order to limit the scope of the term tobacco under the law originally passed in 1916 and its implementing Regulations Nos. 17 and 47, it could have easily inserted the word "leaf" to modify "tobacco" contained in the amendatory law. An examination of Sections 6(a), 6(b) and 7, supra, reveals that, if our lawmaking body intended to limit the coverage of said sections to either leaf or manufactured tobacco, it qualified the word 'tobacco' with such antecedent words. In Section 6(c) of Act 2613, as amended, no such qualification was made by Congress, thereby showing the broad scope and meaning of the word tobacco. For the Court to adopt petitioners' construction that tobacco means 'leaf tobacco' would be engaging in unauthorized judicial legislation by rewriting the law and inserting words and phrases not found

in it.

x x x x"

Settled is the rule that where the law does not distinguish, we should not distinguish.[3]

The validity and efficacy of Revenue Memorandum Circular No. 30-67 is now being assailed by petitioners on the ground that it is not a regulation promulgated by the Secretary of Finance (now Minister of Finance) and that it has never been published in the Official Gazette as required by the Civil Code and the Revised Administrative Code.

As herein earlier mentioned, the word "leaf", although used to modify the term "tobacco" only in the Explanatory Note to then House Bill No. 735 was omitted when the Bill was signed into law (RA 31). However, when General Circular No. V-27 dated October 29, 1946 was issued by then Collector of Internal Revenue Bibiano L. Meer to implement the provisions of Sections 6, 7 and 14 of Act 2613 (Tobacco Inspection Law), the word "leaf" was erroneously included therein, causing damage to the financial stability of the Government as the inspection fees due on cigars and cigarettes for domestic sale and imported leaf and partially manufactured tobacco for factory use were not collected for more than twenty (20) years. Such error was only discovered when an Assistant Chief of the Tobacco Inspection Service of the BIR appeared in a public hearing of the Joint Legislative-Executive Tax Commission. As a result thereof, the Philippine Tobacco Board, a policy making body of the National Government on Tobacco Authority, adopted Resolution No. 2-67 interpreting the phrase "tobacco for domestic sale" as referring to wholesale disposal of tobacco products by cigar and cigarettes factories to its dealers while the phrase "tobacco for factory use" meant "imported leaf tobacco" intended for use by cigar and cigarette factories in the manufacture of tobacco products. The approval of this Resolution on May 31, 1967 prompted respondent Commissioner to promulgate Memorandum Circular No. 30-67 which was approved by then Secretary of Finance Eduardo Z. Romualdez and the effectivity of which is specifically dated September 1, 1967 and not contingent on its publication in the Official Gazette.

Thus, the assailed Revenue Memorandum Circular was issued to rectify the error in General Circular No. V-27 and to interpret the phrase "tobacco for domestic sale or factory use" with the view of arresting huge losses of tobacco inspection fees which were not collected and imposed since the said Circular (No. V-27) took effect. Furthermore, the questioned Revenue Memorandum Circular was also issued to apprise those concerned of the construction and interpretation which should be accorded to Act No. 2613, as amended, and which respondent is duty bound to enforce. It is an opinion on how the law should be construed and there was no attempt whatsoever to enlarge or restrict the meaning of the law.

The basis for the issuance of said Memorandum Circular was so stated in Resolution No. 2-67 of the Tobacco Board, wherein petitioners as members of the Manila Tobacco Association, Inc. were duly represented, the pertinent portions of which read:

"x x x x

WHEREAS, this original recommendation of Mr. Hernandez was perfectly in accordance with existing law, more particularly Sec. 1 of Republic Act No. 31 which took effect since September 25, 1946, but perhaps thru oversight by the former Commissioners and officers of the Tobacco Inspection Service the propriety and legality of effecting the inspection of tobacco products for local sales and imported leaf tobacco for factory use might have overlooked resulting in huge losses of tobacco inspection fees x x x x x". (Underscoring supplied)

As admitted by counsel for petitioners, the latter were each furnished with a copy of the Revenue Memorandum Circular in question and the purpose of the law, that is to inform or notify those who may be affected, has been

substantially complied with. Since it was further admitted by petitioners that said Memorandum is but a "Memorandum Circular for purposes, of the internal administration of the BIR and not a regulation within the contemplation of Sections 4 and 338 of the NIRC and Section 79(b) of the Revised Administrative Code", said circular needs no publication in the Official Gazette as erroneously argued by the petitioners.

Section 79(b) of the Revised Administrative Code so provides:

"Chiefs, of bureaus or offices, may, however, be authorized to promulgate circulars or information or instructions for the government of the officers and employees in the interior administration of the business of each bureau or office, and in such case said circular shall not be required to be published."

When an administrative agency renders an opinion by means of a circular or Memorandum, it merely interprets a pre-existing law, and no publication is necessary for its validity.[4] Construction by an executive branch of government of a particular law although not binding upon courts must be given weight as the construction come from the branch of the government called upon to implement the law.[5]

The promulgation of Revenue Memorandum Circular No. 30-67 being in accordance with the Revised Administrative Code, having been issued by the Commissioner of Internal Revenue with the approval of the Secretary (now Minister) of Finance for the implementation of the Tobacco Inspection Law, has therefore the force and effect of law.

Tobacco Inspection fees are undoubtedly National Internal Revenue taxes, they being one of the miscellaneous taxes provided for under the Tax Code. Section 228 (formerly Section 302) of Chapter VII of the Code specifically provides for the collection and manner of payment of the said inspection fees. It is within the power and duty of the Commissioner to collect the same, even without inspection, should tobacco products be removed clandestinely or surreptitiously from the establishment of the wholesaler, manufacturer or redrying plant and from the customs custody in case of imported leaf tobacco. Errors, omissions or flaws committed by BIR inspectors and representatives while in the performance of their duties cannot be set up as estoppel nor estop the Government from collecting a tax legally due.[6] Tobacco inspection fees are levied and collected for purposes of regulation and control and also as a source of revenue since fifty percentum (50%) of said fees shall accrue to the Tobacco Inspection Fee Fund created by Sec. 12 of Act No. 2613, as amended and the other fifty percentum, to the Cultural Center of the Philippines. (Sec. 88, Chapter VII, NIRC)

Under the circumstances, a refund of the tobacco inspection fees collected from petitioners is not legally warranted.

As disclosed by the records, the party-litigants agreed that Mr. Vicente Chua's, (Production Manager of La Suerte Cigar & Cigarette Factory) testimony shall be considered as the Procedure of inspection followed in all factories of petitioners, thus:[7]

"x x x before the cigarettes were removed from the factory, they were invoiced by the revenue agents assigned there to check on the number of cases of cigarettes to be removed; revenue agents checked the quantity of cigarettes manufactured, quantity of cigarettes removed, strip stamps affixed; and early in the morning before the start of the operation, the revenue agents checked the cigarette bobbins, strip stamps and saw to it that cigarettes removed were properly recorded in the books."

From the testimonies of other witnesses for petitioners, it was shown that revenue agents and tobacco inspectors "saw to it that all raw materials for use in the manufacture of the finished products were duly recorded; and in the process of manufacture, all tobacco products found unfit for sales were segregated by the factory employees through the supervision of the revenue agents."

The CTA held that the foregoing belie petitioners' assertions that no actual inspection was conducted to justify the collection of the tobacco inspection fees. The findings of the Tax Court are duly supported by evidence. We find no cogent reason to disturb the same. They are therefore binding on this Court.

Accordingly, the petition for review is hereby DISMISSED. Costs against petitioners.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

[1] CTA Decision, pages 40-60, Rollo.

[2] Pages, 61-62, Rollo.

[3] Colgate-Palmolive (Phils.), Inc. vs. Gimenez, 1 SCRA 267.

[4] Romualdez vs. Arca, 27 SCRA 828.

[5] Salaria vs. Buenviaje, 81 SCRA 722.

[6] Phil. American Drug Co. vs. Collector of BIR, 106 Phil. 161.

[7] Pages 57-58, Rollo.

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