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is merely sound public policy to cause elective offices to be filled by those who are the unquestioned choice of the majority.[10]

WHEREFORE, premises considered, the petitioner is ***GRANTED***, and the challenged COMELEC *En Banc* resolution of 7 August 1995 is hereby ***SET ASIDE.*** Further, respondent COMELEC is directed to deny respondent Gata's Motion for Reconsideration.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and *Torres, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. 119761. August 29, 1996]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* HON. COURT OF APPEALS, HON. COURT OF TAX APPEALS and FORTUNE TOBACCO CORPORATION, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; RULE MAKING POWERS; LEGISLATIVE RULE AND

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[10] Frivaldo *vs.* Commission on Elections, et al., G.R. No. 120295 and Lee *vs.* Commission on Elections, et al., G.R. No. 123755, June 28, 1996.

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INTERPRETATIVE RULE; DISTINGUISHED.— Let us distinguish between two kinds of administrative issuances - a *legislative rule* and an *interpretative rule*. In *Misamis Oriental Association of Coco Traders, Inc., vs. Department of Finance Secretary*, (238 SCRA 63) the Court expressed: "xxx a legislative rule is in the *nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing.* In this connection, the Administrative Code of 1987 provides: "Public Participation. - If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule. "(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon. "(3) In case of opposition, the rules on contested cases shall be observed. "In addition such rule must be published. On the other hand, *interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.*" It should be understandable that when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. When, upon the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially adds to or increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.

2. **ID.; ID.; ID.; ID.; ID.; REVENUE MEMORANDUM CIRCULAR NO. 37-93; A LEGISLATIVE RULING;**

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DUE OBSERVANCE OF THE REQUIREMENTS OF NOTICE, OF HEARING AND OF PUBLICATION FOR ITS VALIDITY SHOULD NOT HAVE BEEN IGNORED.— A reading of RMC 37-93, particularly considering the circumstances under which it has been issued, convinces us that the circular cannot be viewed simply as a corrective measure (revoking in the process the previous holdings of past Commissioners) or merely as construing Section 142(c)(1) of the NIRC, as amended, but has, in fact and most importantly, been made in order to place "Hope Luxury," "Premium More" and "Champion" within the classification of locally manufactured cigarettes bearing foreign brands and to thereby have them covered by RA 7654. Specifically, the new law would have its amendatory provisions applied to locally manufactured cigarettes which *at the time of its effectivity* were not so classified as bearing foreign brands. Prior to the issuance of the questioned circular, "Hope Luxury," "Premium More," and "Champion" cigarettes were in the category of locally manufactured cigarettes *not* bearing foreign brand subject to 45% *ad valorem* tax. Hence, without RMC 37-93, the enactment of RA 7654, would have had no new tax rate consequence on private respondent's products. Evidently, in order to place "Hope Luxury," "Premium More," and "Champion" cigarettes within the scope of the amendatory law and subject them to an increased tax rate, the now disputed RMC 37-93 had to be issued. In so doing, the BIR not simply interpreted the law; verily, it legislated under its quasi-legislative authority. The due observance of the requirements of notice, of hearing, and of publication should not have been then ignored.

3. **POLITICAL LAW; LEGISLATIVE DEPARTMENT; UNIFORMITY OF TAXATION RULE; VIOLATED IN CASE AT BAR.**— Article VI, Section 28, paragraph 1, of the 1987 Constitution mandates taxation to be uniform and equitable. Uniformity requires that all subjects or objects of taxation, similarly situated, are to be treated alike or put on equal footing both in privileges and

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liabilities. Thus, all taxable articles or kinds of property of the same class must be taxed at the same rate and the tax must operate with the same force and effect in every place where the subject may be found. Apparently, RMC 37-93 would only apply to "Hope Luxury," "Premium More" and "Champion" cigarettes and, unless petitioner would be willing to concede to the submission of private respondent that the circular should, as in fact my esteemed colleague Mr. Justice Bellosillo so expresses in his separate opinion, be considered *adjudicatory* in nature and thus violative of due process following the *Ang Tibay* doctrine, the measure suffers from lack of uniformity of taxation.

BELLOSILLO, *J., separate opinion:*

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; POWERS AND FUNCTIONS.—** Administrative agencies possess quasi-legislative or rule making powers and quasi-judicial or administrative adjudicatory powers. Quasi-legislative or rule making power is the power to make rules and regulations which results in *delegated legislation* that is within the confines of the granting statute and the doctrine of nondelegability and separability of powers.

2. **ID.; ID.; ID.; ID.; RULE MAKING POWERS; INTERPRETATIVE RULE; CONSTRUED.—** Interpretative rule, one of the three (3) types of quasi-legislative or rule making powers of an administrative agency (the other two being supplementary or detailed legislation, and contingent legislation), is promulgated by the administrative agency to interpret, clarify or explain statutory regulations under which the administrative body operates. The purpose or objective of an interpretative rule is merely to construe the statute being administered. It purports to do no more than interpret the statute. Simply, the rule tries to say what the statute means. Generally, it refers to no single person or party in particular but concerns all those belonging to the same class which may be covered

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by the said interpretative rule. It need not be published and neither is a hearing required since it is issued by the administrative body as an incident of its power to enforce the law and is intended merely to clarify statutory provisions for proper observance by the people. In *Tañada vs. Tuvera,* (No. L-63915, 29 December 1986, 146 SCRA 446) this Court expressly said that "[i]nterpretative regulations xxx need not be published."

3. **ID.; ID.; ID.; ID.; QUASI-JUDICIAL POWERS; CONSTRUED.**— Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature. Since rights of specific persons are affected it is elementary that in the proper exercise of quasi-judicial power due process must be observed in the conduct of the proceedings.

4. **ID.; ID.; ID.; ID.; ID.; WHEN AN ADMINISTRATIVE PROCEEDING IS QUASI-JUDICIAL IN CHARACTER, NOTICE AND FAIR OPEN HEARING ARE ESSENTIAL TO THE VALIDITY OF THE PROCEEDING.**— The importance of due process cannot be underestimated. Too basic is the rule that no person shall be deprived of life, liberty or property without due

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process of law. Thus when an administrative proceeding is quasi-judicial in character, notice and fair open hearing are essential to the validity of the proceeding. The right to reasonable prior notice and hearing embraces not only the right to present evidence but also the opportunity to know the claims of the opposing party and to meet them. The right to submit arguments implies that opportunity otherwise the right may as well be considered impotent. And those who are brought into contest with government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposal before it issues its final command.

5. **ID.; ID.; ID.; ID.; ID.; CARDINAL PRIMARY RIGHTS WHICH MUST BE RESPECTED IN ADMINISTRATIVE PROCEEDINGS.—** There are cardinal primary rights which must be respected in administrative proceedings. The landmark case of *Ang Tibay vs. The Court of Industrial Relations* (69 Phil. 635 [1940]) enumerated these rights: (1) the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have something to support itself; (4) the evidence must be substantial; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the tribunal or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision; and, (7) the tribunal should in all controversial questions render its decision in such manner that the parties to the proceeding may know the various issues involved and the reasons for the decision rendered.

6. **ID.; ID.; ID.; ID.; ID.; REVENUE MEMORANDUM CIRCULAR 37-93; AN ADJUDICATORY RULE; PRIOR NOTICE AND HEARING ARE REQUIRED**

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FOR ITS VALIDITY.— It is evident that in issuing RMC 37-93 petitioner Commissioner of Internal Revenue was exercising her quasi-judicial or administrative adjudicatory power. She cited and interpreted the law, made a factual finding, applied the law to her given set of facts, arrived at a conclusion, and issued a ruling aimed at a specific individual. Consequently prior notice and hearing are required. It must be emphasized that even the text alone of RMC 37-93 implies that reception of evidence during a hearing is appropriate if not necessary since it invokes BIR Ruling No. 410-88, dated August 24, 1988, which provides that "in cases where it cannot be established or there is dearth of evidence as to whether a brand is foreign or not xxx" Indeed, it is difficult to determine whether a brand is foreign or not if it is not established by, or there is dearth of, evidence because no hearing has been called and conducted for the reception of such evidence. In fine, by no stretch of the imagination can RMC 37-93 be considered purely as an interpretative rule - requiring no previous notice and hearing and simply interpreting, construing, clarifying or explaining statutory regulations being administered by or under which the Bureau of Internal Revenue operates.

7. **ID.; ID.; ID.; ID.; ID.; IN PROPERLY DETERMINING WHETHER A MEMORANDUM CIRCULAR IS MERELY AN INTERPRETATIVE RULE OR AN ADJUDICATORY RULE, ITS VERY TENOR AND TEXT, AND THE CIRCUMSTANCES SURROUNDING ITS ISSUANCE WILL HAVE TO BE CONSIDERED.** — It is true that both RMC 47-91 in *Misamis Oriental Association of Coco Traders v. Department of Finance Secretary,* and RMC 37-93 in the instant case reclassify certain products for purposes of taxation. But the similarity between the two revenue memorandum circulars ends there. For in properly determining whether a revenue memorandum circular is merely an interpretative rule or an adjudicatory rule, its very tenor and text, and the circumstances surrounding its issuance will have to be considered.

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HERMOSISIMA, *J.*, *dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; POWERS AND FUNCTIONS; THE COMMISSIONER OF INTERNAL REVENUE IS DULY AUTHORIZED BY LAW TO ISSUE REVENUE MEMORANDUM CIRCULAR 37-93.— Section 245 of the National Internal Revenue Code, as amended, provides: "Sec. 245. *Authority of Secretary of Finance to promulgate rules and regulations. - The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code xxx without prejudice to the power of the Commissioner of Internal Revenue to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including rulings on the classification of articles for sales tax and similar purposes."* The subject of the questioned Circular is the reclassification of cigarettes subject to excise taxes. It was issued in connection with Section 142 (c) (1) of the National Internal Revenue Code, as amended, which imposes *ad valorem* excise taxes on locally manufactured cigarettes bearing a foreign brand. The same provision prescribes the ultimate criterion that determines which cigarettes are to be considered "locally manufactured cigarettes bearing a foreign brand." It provides: *"xxx Whenever it has to be determined whether or not a cigarette bears a foreign brand, the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern."* There is only one World Tobacco Directory for a given current year, and the same is mandated by law to be the BIR Commissioner's controlling basis for determining whether or not a particular locally manufactured cigarette is one bearing a foreign brand. In so making a determination, petitioner should inquire into the entries in the World Tobacco Directory for the given current year and shall

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be held bound by such entries therein. She is not required to subject the results of her inquiries to feedback from the concerned cigarette manufacturers, and it is doubtlessly not desirable nor managerially sound to court dispute thereon when the law does not, in the first place, require debate or hearing thereon. Petitioner may make such a determination because she is the Chief Executive Officer of the administrative agency that is the Bureau of Internal Revenue in which are vested quasi-legislative powers entrusted to it by the legislature in recognition of its more encompassing and unequalled expertise in the field of taxation. *"The vesture of quasi-legislative and quasi-judicial powers in administrative bodies is not unconstitutional, unreasonable and oppressive. It has been necessitated by 'the growing complexity of the modern society' (Solid Homes, Inc. vs. Payawal, 177 SCRA 72, 79). More and more administrative bodies are necessary to help in the regulation of society's ramified activities. 'Specialized in the particular field assigned to them, they can deal with the problems thereof with more expertise and dispatch than can be expected from the legislature or the courts of justice' xxx"* Statutorily empowered to issue rulings or opinions embodying the proper determination in respect to classifying articles, including cigarettes, for purposes of tax assessment and collection, petitioner was acting well within her prerogatives when she issued the questioned Circular. And in the exercise of such prerogatives under the law, she has in her favor the presumption of regular performance of official duty which must be overcome by clearly persuasive evidence of stark error and grave abuse of discretion in order to be overturned and disregarded.

2. **ID.; ID.; ID.; ID.; QUASI-LEGISLATIVE POWERS; REVENUE MEMORANDUM CIRCULAR 37-93; HAVE NOT BEEN PROVEN TO BE ERRONEOUS OR ILLEGAL AS TO RENDER ITS ISSUANCE AN ACT OF GRAVE ABUSE OF DISCRETION.—** The petitioner was well within her prerogatives, in the exercise

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of her rule-making power, to classify articles for taxation purposes, to interpret the laws which she is mandated to administer. In interpreting the same, petitioner must, in general, be guided by the principles underlying taxation, *i.e.*, taxes are the lifeblood of Government, and revenue laws ought to be interpreted in favor of the Government, for Government can not survive without the funds to underwrite its varied operational expenses in pursuit of the welfare of the society which it serves and protects. Private respondent claims that its business will be destroyed by the imposition of additional *ad valorem* taxes as a result of the effectivity of the questioned Circular. It claims that under the vested rights theory, it cannot now be made to pay higher taxes after having been assessed for less in the past. Of course private respondent will trumpet its losses, its interests, after all, being its sole concern. What private respondent fails to see is the loss of revenue by the Government which, because of erroneous determinations made by its past revenue commissioners, collected lesser taxes than what it was entitled to in the first place. It is every citizen's duty to pay the correct amount of taxes. Private respondent will not be shielded by any vested rights, for there are no vested rights to speak of respecting a wrong construction of the law by administrative officials, and such wrong interpretation does not place the Government in estoppel to correct or overrule the same.

3. **ID.; ID.; ID.; ID.; ID.; MERELY AN INTERPRETATIVE RULING.—** Petitioner made a determination as to the classification of cigarettes as mandated by the aforecited provisions in the National Internal Revenue Code, as amended. Such determination was an interpretation by petitioner of the said legal provisions. If in the course of making that interpretation and embodying the same in the questioned circular which the petitioner subsequently issued after making such a determination, private respondent's cigarette products, by their very nature of being foreign brands as evidenced by their enlistment in

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the World Tobacco Directory, which is the controlling basis for the proper classification of cigarettes as stipulated by the law itself, have come to be classified as locally manufactured cigarettes bearing foreign brands and as such subject to a tax rate higher than what was previously imposed thereupon based on past rulings of other revenue commissioners, such a situation is simply a consequence of the performance by petitioner of her duties under the law. No adjudication took place, much less was there any controversy ripe for adjudication. The natural consequences of making a classification in accordance with law may not be used by private respondent in arguing that the questioned circular is in fact adjudicatory in nature. Such an exercise in driving home a point is illogical as it is fallacious and misplaced.

4. **ID.; ID.; ID.; ID.; ID.; NOT VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION.**— Private respondent anchors its claim of violation of its equal protection rights upon the too obvious fact that only its cigarette brands, *i.e.*, "Hope," "More" and "Champion," are mentioned in the questioned circular. Because only the cigarettes that they manufacture are enumerated in the questioned circular, private respondent proceeded to attack the same as being discriminatory against it. On the surface, private respondent seems to have a point there. A scrutiny of the questioned Circular, however, will show that it is undisputedly one of general application for all cigarettes that are similarly situated as private respondent's brands. The new interpretation of Section 142 (1) (c) has been well illustrated in its application upon private respondent's brands, which illustration is properly a subject of the questioned Circular. Significantly, indicated as the subject of the questioned circular is the "reclassification of cigarettes subject to excise taxes." The reclassification resulted in the foregrounding of private respondent's cigarette brands, which incidentally is largely due to the controversy spawned no less by private respondent's own action of conveniently

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changing its brand names to avoid falling under a classification that would subject it to higher ad *valorem tax* rates. This caused then Commissioner Bienvenido Tan to depart from his initial determination that private respondent's cigarette brands are foreign brands. The consequent specific mention of such brands in the questioned Circular, does not change the fact that the questioned Circular has always been intended for and did cover, all cigarettes similarly situated as "Hope," "More" and "Champion." Petitioner is thus correct in stating that: *"xxx RMC 37-93 is not discriminatory. It lays down the test in determining whether or not a locally manufactured cigarette bears a foreign brand using the cigarette brands 'Hope,' 'More' and 'Champion' as specific examples. Such test applies to all locally manufactured cigarette brands similarly situated as the cigarette brands aforementioned. While it is true that only 'Hope,' 'More' and 'Champion' cigarettes are actually determined as locally manufactured cigarettes bearing a foreign brand, RMC 37-93 does not state that ONLY cigarettes fall under such classification to the exclusion of other cigarettes similarly situated. Otherwise stated, RMC 37-93 does not exclude the coverage of other cigarettes similarly situated as locally manufactured cigarettes bearing a foreign brand. Hence, in itself, RMC 37-93 is not discriminatory."* Both the respondent Court of Appeals and the Court of Tax Appeals held that the questioned Circular reclassifying "Hope," "More" and "Champion" cigarettes, is defective, invalid and unenforceable and has rendered the assessment against private respondent of deficiency *ad valorem* excise taxes to be without legal basis. The majority agrees with private respondent and respondent Courts. As the foregoing opinion chronicles the fatal flaws in private respondent's arguments, it becomes more apparent that the questioned Circular is in fact a valid and subsisting interpretative ruling that the petitioner had power to promulgate and enforce.

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APPEARANCES OF COUNSEL

Estelito P. Mendoza, Pio de Roda & Associates and *Sycip, Salazar, Hernandez & Gatmaitan* for private respondent.

DECISION

VITUG, *J.*:

The Commissioner of Internal Revenue ("CIR") disputes the decision, dated 31 March 1995, of respondent Court of Appeals [1] affirming the 10th August 1994 decision and the 11th October 1994 resolution of the Court of Tax Appeals[2] ("CTA") in C.T.A. Case No. 5015, entitled "Fortune Tobacco Corporation *vs.* Liwayway Vinzons-Chato in her capacity as Commissioner of Internal Revenue."

The facts, by and large, are not in dispute.

Fortune Tobacco Corporation ("Fortune Tobacco") is engaged in the manufacture of different brands of cigarettes.

On various dates, the Philippine Patent Office issued to the corporation separate certificates of trademark registration over "Champion," "Hope," and "More" cigarettes. In a letter, dated 06 January 1987, of then Commissioner of Internal Revenue Bienvenido A. Tan, Jr., to Deputy Minister Ramon Diaz of the Presidential Commission on Good Government, "the initial position of the Commission was to classify 'Champion,' 'Hope,'

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[1] Through Associate Justices Justo P. Torres, Jr. (*ponente*), Corona Ibay-Somera and Conrado M. Vasquez, Jr. (members).

[2] Penned by Presiding Judge Ernesto D. Acosta and concurred in by Associate Judges Ramon O. De Veyra and Manuel K. Gruba.

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and 'More' as foreign brands since they were listed in the World Tobacco Directory as belonging to foreign companies. However, Fortune Tobacco changed the names of 'Hope' to Hope *Luxury*' and 'More to '*Premium* More,' thereby removing the said brands from the foreign brand category. Proof was also submitted to the Bureau (of Internal Revenue ['BIR']) that 'Champion' was an original Fortune Tobacco Corporation register and therefore a local brand."[3] *Ad Valorem* taxes were imposed on these brands,[4] at the following rates:

"BRAND	*AD VALOREM* TAX RATE		
	E.O. 22 and 06-23-86 07-01-86	E.O. 273 07-25-87 01-01-88	RA 6956 06-18-90 07-05-90
Hope Luxury M. 100's Sec. 142, (c), (2)	40%		45%
Hope Luxury M. King Sec. 142, (c), (2)	40%		45%
More Premium M. 100's Sec. 142, (c) (2)	40%		45%
More Premium International Sec. 142, (c), (2)	40%		45%
Champion Int'l. M. 100's Sec. 142, (c), (2)	40%		45%
Champion M. 100's Sec. 142, (c), (2)	40%		45%
Champion M. King Sec. 142, (c), last par.	15%		20%
Champion Lights Sec. 142, (c), last par.	15%		20%"[5]

[3] Underscoring supplied. *Rollo*, pp. 55-56.

[4] Since the institution of Executive Order No. 22 on 23 June 1986.

[5] *Rollo*, p. 56.

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A bill, which later became Republic Act ("RA") No. 7654,[6] was enacted, on 10 June 1993, by the legislature and signed into law, on 14 June 1993, by the President of the Philippines. The new law became effective on 03 July 1993. It amended Section 142(c)(1) of the National Internal Revenue Code ("NIRC") to read; as follows:

"SEC. 142. Cigars and Cigarettes. —

"xxx xxx xxx.

"(c). Cigarettes packed by machine. — There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below based on the constructive manufacturer's wholesale price or the actual manufacturer's wholesale price, whichever is higher:

"(1) On locally manufactured cigarettes which are *currently classified and taxed at fifty-five percent (55%)* or the exportation of which is not authorized by contract or otherwise, fifty-five (55%) provided that the minimum tax shall not be less than Five Pesos (P5.00) per pack.

"(2). On *other locally manufactured cigarettes, forty-five percent (45%)* provided that the minimum tax shall not be less than Three Pesos (P3.00) per pack.

"xxx xxx xxx.

"When the registered manufacturer's wholesale price or the actual manufacturer's wholesale price whichever is higher of existing brands of cigarettes, including the amounts intended to cover the taxes, of cigarettes packed in twenties does not exceed Four Pesos and eighty centavos (P4.80) per pack, the rate shall be twenty percent (20%)."[7] (Italics supplied.)

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[6] An Act Revising The Excise Tax Base, Allocating a Portion Of The Incremental Revenue Collected For The Emergency Employment Program For Certain Workers Amending For The Purpose Section 142 Of The National Internal Revenue Code, As Amended, And For Other Purposes.

[7] Official Gazette, Vol., 89., No. 32, 09 August 1993, p. 4476.

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About a month *after* the enactment and two (2) days *before* the effectivity of RA 7654, Revenue Memorandum Circular No. 37-93 ("RMC 37-93"), was issued by the BIR the full text of which expressed:

"REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

July 1, 1993

REVENUE MEMORANDUM CIRCULAR NO. 37-93

SUBJECT: Reclassification of Cigarettes Subject to Excise Tax

TO : All Internal Revenue Officers and Others Concerned.

"In view of the issues raised on whether 'HOPE,' 'MORE' and 'CHAMPION' cigarettes which are locally manufactured are appropriately considered as locally manufactured cigarettes bearing a foreign brand, this Office is compelled to review the previous rulings on the matter.

"Section 142(c)(1) National Internal Revenue Code, as amended by R.A. No. 6956, provides:

> "On locally manufactured cigarettes bearing a foreign brand, fifty-five percent (55%) Provided, That this rate shall apply regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. Whenever it has to be determined whether or not a cigarette bears a foreign brand, the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern."

"Under the foregoing, the test for imposition of the 55% *ad valorem* tax on cigarettes is that the locally manufactured cigarettes bear a foreign brand regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. The brand must be

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originally owned by a foreign manufacturer or producer. If ownership of the cigarette brand is, however, not definitely determinable, 'x x x the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern. x x x'

"'HOPE' is listed in the World Tobacco Directory as being manufactured by (a) Japan Tobacco, Japan and (b) Fortune Tobacco, Philippines. 'MORE' is listed in the said directory as being manufactured by: (a) Fills de Julia Reig, Andorra; (b) Rothmans, Australia; (c) RJR-Macdonald, Canada; (d) Rettig-Strenberg, Finland; (e) Karellas, Greece; (f) R.J. Reynolds, Malaysia; (g) Rothmans, New Zealand; (h) Fortune Tobacco, Philippines; (i) R.J. Reynolds, Puerto Rico; (j) R.J. Reynolds, Spain; (k) Tabacalera, Spain; (l) R.J. Reynolds, Switzerland; and (m) R.J. Reynolds, USA. 'Champion' is registered in the said directory as being manufactured by (a) Commonwealth Bangladesh; (b) Sudan, Brazil; (c) Japan Tobacco, Japan; (d) Fortune Tobacco, Philippines; (e) Haggar, Sudan; and (f) Tabac Reunies, Switzerland.

"Since there is no showing who among the above-listed manufacturers of the cigarettes bearing the said brands are the real owner/s thereof, then it follows that the same shall be considered foreign brand for purposes of determining the *ad valorem* tax pursuant to Section 142 of the National Internal Revenue Code. As held in BIR Ruling No. 410-88, dated August 24, 1988, 'in cases where it cannot be established or there is dearth of evidence as to whether a brand is foreign or not, resort to the World Tobacco Directory should be made.'

"In view of the foregoing, the aforesaid brands of cigarettes, *viz*: 'HOPE,' 'MORE' and 'CHAMPION' being manufactured by Fortune Tobacco Corporation are hereby considered locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax on cigarettes.

"Any ruling inconsistent herewith is revoked or modified accordingly.

(SGD) LIWAYWAY VINZONS-CHATO
Commissioner"

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On 02 July 1993, at about 17:50 hours, BIR Deputy Commissioner Victor A. Deoferio, Jr., sent *via telefax* a copy of RMC 37-93 to Fortune Tobacco but it was addressed to no one in particular. On 15 July 1993, Fortune Tobacco received, by ordinary mail, a certified xerox copy of RMC 37-93.

In a letter, dated 19 July 1993, addressed to the appellate division of the BIR, Fortune Tobacco, requested for a review, reconsideration and recall of RMC 37-93. The request was denied on 29 July 1993. The following day, or on 30 July 1993, the CIR assessed Fortune Tobacco for *ad valorem* tax deficiency amounting to P9,598,334.00.

On 03 August 1993, Fortune Tobacco filed a petition for review with the CTA.[8]

On 10 August 1994, the CTA upheld the position of Fortune Tobacco and adjudged:

"WHEREFORE, Revenue Memorandum Circular No. 37-93 reclassifying the brands of cigarettes, *viz*: 'HOPE,' 'MORE' and 'CHAMPION' being manufactured by Fortune Tobacco Corporation as locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax on cigarettes is found to be defective, invalid and unenforceable, such that when R.A. No. 7654 took effect on July 3, 1993, the brands in question were not CURRENTLY CLASSIFIED AND TAXED at 55% pursuant to Section 1142(c)(1) of the Tax Code, as amended by R.A. No. 7654 and were therefore still classified as other locally manufactured cigarettes and taxed at 45% or 20% as the case may be.

"Accordingly, the deficiency *ad valorem* tax assessment issued on petitioner Fortune Tobacco Corporation in the amount of P9,598,334.00, exclusive of surcharge and interest, is hereby canceled for lack of legal basis.

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[8] The petition was subsequently amended on 12 August 1993.

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"Respondent Commissioner of Internal Revenue is hereby enjoined from collecting the deficiency tax assessment made and issued on petitioner in relation to the implementation of RMC No. 37-93.

"SO ORDERED."[9]

In its resolution, dated 11 October 1994, the CTA dismissed for lack of merit the motion for reconsideration.

The CIR forthwith filed a petition for review with the Court of Appeals, questioning the CTA's 10th August 1994 decision and 11th October 1994 resolution. On 31 March 1993, the appellate court's Special Thirteenth Division affirmed in all respects the assailed decision and resolution.

In the instant petition, the Solicitor General argues: That

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"I. RMC 37-93 IS A RULING OR OPINION OF THE COMMISSIONER OF INTERNAL REVENUE INTERPRETING THE PROVISIONS OF THE TAX CODE.

"II. BEING AN INTERPRETATIVE RULING OR OPINION, THE PUBLICATION OF RMC 37-93, FILING OF COPIES THEREOF WITH THE UP LAW CENTER AND PRIOR HEARING ARE NOT NECESSARY TO ITS VALIDITY, EFFECTIVITY AND ENFORCEABILITY.

"III. PRIVATE RESPONDENT IS DEEMED TO HAVE BEEN NOTIFIED OR RMC 37-93 ON JULY 2, 1993.

"IV. RMC 37-93 IS NOT DISCRIMINATORY SINCE IT APPLIES TO ALL LOCALLY MANUFACTURED CIGARETTES SIMILARLY SITUATED AS 'HOPE,' 'MORE' AND 'CHAMPION' CIGARETTES.

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[9] *Rollo*, pp. 115-116.

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"V. PETITIONER WAS NOT LEGALLY PROSCRIBED FROM RECLASSIFYING 'HOPE,' 'MORE' AND 'CHAMPION' CIGARETTES BEFORE THE EFFECTIVITY OF R.A. NO. 7654.

"VI. SINCE RMC 37-93 IS AN INTERPRETATIVE RULE, THE INQUIRY IS NOT INTO ITS VALIDITY, EFFECTIVITY OR ENFORCEABILITY BUT INTO ITS CORRECTNESS OR PROPRIETY; RMC 37-93 IS CORRECT."[10]

In fine, petitioner opines that RMC 37-93 is merely an interpretative ruling of the BIR which can thus become effective without any prior need for notice and hearing, nor publication, and that its issuance is not discriminatory since it would apply under similar circumstances to all locally manufactured cigarettes.

The Court must sustain both the appellate court and the tax court.

Petitioner stresses on the wide and ample authority of the BIR in the issuance of rulings for the effective implementation of the provisions of the National Internal Revenue Code. Let it be made clear that such authority of the Commissioner is not here doubted. Like any other government agency, however, the CIR may not disregard legal requirements or applicable principles in the exercise of its quasi-legislative powers.

Let us first distinguish between two kinds of administrative issuances — a *legislative rule* and an *interpretative rule.*

In *Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary,*[11] the Court expressed:

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[10] *Rollo*, pp. 21-22.

[11] 238 SCRA 63.

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"x x x a legislative rule is in the *nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing.* In this connection, the Administrative Code of 1987 provides:

"Public Participation. — If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

"(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

"(3) In case of opposition, the rules on contested cases shall be observed.

"In addition such rule must be published. On the other hand, *interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.*"[12]

It should be understandable that when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. When, upon the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially adds to or increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.

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[12] Italics supplied. At p. 69.

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A reading of RMC 37-93, particularly considering the circumstances under which it has been issued, convinces us that the circular cannot be viewed simply as a corrective measure (revoking in the process the previous holdings of past Commissioners) or merely as construing Section 142(c)(1) of the NIRC, as amended, but has, in fact and most importantly, been made in order to place "Hope Luxury," "Premium More" and "Champion" within the classification of locally manufactured cigarettes bearing foreign brands and to thereby have them covered by RA 7654. Specifically, the new law would have its amendatory provisions applied to locally manufactured cigarettes which *at the time of its effectivity* were not so classified as bearing foreign brands. Prior to the issuance of the questioned circular, "Hope Luxury," "Premium More," and "Champion" cigarettes were in the category of locally manufactured cigarettes *not* bearing foreign brand subject to 45% *ad valorem* tax. Hence, without RMC 37-93, the enactment of RA 7654, would have had no new tax rate consequence on private respondent's products. Evidently, in order to place "Hope Luxury," "Premium More," and "Champion" cigarettes within the scope of the amendatory law and subject them to an increased tax rate, the now disputed RMC 37-93 had to be issued. In so doing, the BIR not simply interpreted the law; verily, it legislated under its quasi-legislative authority. The due observance of the requirements of notice, of hearing, and of publication should not have been then ignored.

Indeed, the BIR itself, in its RMC 10-86, has observed and provided:

"RMC NO. 10-86

Effectivity of Internal Revenue Rules and Regulations

"It has been observed that one of the problem areas bearing on compliance with Internal Revenue Tax rules and regulations

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is lack or insufficiency of due notice to the tax paying public. Unless there is due notice, due compliance therewith may not be reasonably expected. And most importantly, their strict enforcement could possibly suffer from legal infirmity in the light of the constitutional provision on 'due process of law' and the essence of the Civil Code provision concerning effectivity of laws, whereby due notice is a basic requirement (Sec. 1, Art. IV, Constitution; Art. 2, New Civil Code).

"In order that there shall be a just enforcement of rules and regulations, in conformity with the basic element of due process, the following procedures are hereby prescribed for the drafting, issuance and implementation of the said Revenue Tax Issuances:

> "(1). This Circular shall apply only to (a) Revenue Regulations; (b) Revenue Audit Memorandum Orders; and (c) **Revenue Memorandum Circulars** and Revenue Memorandum Orders bearing on internal revenue tax rules and regulations.
>
> "(2). Except when the law otherwise expressly provides, the aforesaid internal revenue tax issuances shall not begin to be operative until after due notice thereof may be fairly presumed.
>
> "Due notice of the said issuances may be fairly presumed only after the following procedures have been taken:
>
> "xxx xxx xxx
>
> "(5). Strict compliance with the foregoing procedures is enjoined.[13]

Nothing on record could tell us that it was either impossible or impracticable for the BIR to observe and comply with the above requirements before giving effect to its questioned circular.

Not insignificantly, RMC 37-93 might have likewise infringed on uniformity of taxation.

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[13] *Rollo*, pp. 65-66.

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Article VI, Section 28, paragraph 1, of the 1987 Constitution mandates taxation to be uniform and equitable. Uniformity requires that all subjects or objects of taxation, similarly situated, are to be treated alike or put on equal footing both in privileges and liabilities.[14] Thus, all taxable articles or kinds of property of the same class must be taxed at the same rate[15] and the tax must operate with the same force and effect in every place where the subject may be found.

Apparently, RMC 37-93 would only apply to "Hope Luxury," Premium More" and "Champion" cigarettes and, unless petitioner would be willing to concede to the submission of private respondent that the circular should, as in fact my esteemed colleague Mr. Justice Bellosillo so expresses in his separate opinion, be considered *adjudicatory* in nature and thus violative of due process following the *Ang Tibay*[16] doctrine, the measure suffers from lack of uniformity of taxation. In its decision, the CTA has keenly noted that other cigarettes bearing foreign brands have not been similarly included within the scope of the circular, such as —

"1. Locally manufactured by ALHAMBRA INDUSTRIES, INC.

(a) 'PALM TREE' is listed as manufactured by office of Monopoly, Korea (Exhibit 'R')

"2. Locally manufactured by LA SUERTE CIGAR and CIGARETTE COMPANY

(a) 'GOLDEN KEY' is listed being manufactured by United Tobacco, Pakistan (Exhibit 'S')

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[14] See Juan Luna Subdivision *vs.* Sarmiento, 91 Phil. 371.

[15] City of Baguio *vs.* De Leon, 25 SCRA 938.

[16] Ang Tibay *vs.* Court of Industrial Relations, 69 Phil. 635.

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(b) 'CANNON' is listed as being manufactured by Alpha Tobacco, Bangladesh (Exhibit 'T')

"3. Locally manufactured by LA PERLA INDUSTRIES, INC.

(a) 'WHITE HORSE' is listed as being manufactured by Rothman's, Malaysia (Exhibit 'U')

(b) 'RIGHT' is listed as being manufactured by SVENSKA, Tobaks, Sweden (Exhibit 'V-1')

"4. Locally manufactured by MIGHTY CORPORATION

(a) 'WHITE HORSE' is listed as being manufactured by Rothman's, Malaysia (Exhibit 'U-1')

"5. Locally manufactured by STERLING TOBACCO CORPORATION

(a) 'UNION' is listed as being manufactured by Sumatra Tobacco, Indonesia and Brown and Williamson, USA (Exhibit 'U-3')

(b) 'WINNER' is listed as being manufactured by Alpha Tobacco, Bangladesh; Nanyang, Hongkong; Joo Lan, Malaysia; Pakistan Tobacco Co., Pakistan; Premier Tobacco, Pakistan and Haggar, Sudan (Exhibit 'U-4')."[17]

The court quoted at length from the transcript of the hearing conducted on 10 August 1993 by the Committee on Ways and Means of the House of Representatives; *viz*:

"THE CHAIRMAN. So you have specific information on Fortune Tobacco alone. You don't have specific information on other tobacco manufacturers. Now, there are other brands which are similarly situated. They are locally manufactured bearing foreign brands. And may I enumerate to you all these brands, which are also listed in the World Tobacco Directory x x x. Why were these brands not reclassified at 55 if your want to give a level playing field to foreign manufacturers?

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[17] *Rollo*, pp. 97-98.

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"MS. CHATO. Mr. Chairman, *in fact, we have already prepared a Revenue Memorandum Circular that was supposed to come after RMC No. 37-93 which have really named specifically the list of locally manufactured cigarettes bearing a foreign brand for excise tax purposes and includes all these brands that you mentioned at 55 percent* except that at that time, when we had to come up with this, we were forced to study the brands of Hope, More and Champion because we were given documents that would indicate the that these brands were actually being claimed or patented in other countries because we went by Revenue Memorandum Circular 1488 and we wanted to give some rationality to how it came about but we couldn't find the rationale there. And we really found based on our own interpretation that the only test that is given by that existing law would be registration in the World Tobacco Directory. So we came out with this proposed revenue memorandum circular which we forwarded to the Secretary of Finance except that at that point in time, we went by the Republic Act 7654 in Section 1 which amended Section 142, C-1, it said, that on locally manufactured cigarettes which are currently classified and taxed at 55 percent. *So we were saying that when this law took effect in July 3 and if we are going to come up with this revenue circular thereafter, then I think our action would really be subject to question* but we feel that . . . Memorandum Circular Number 37-93 would really cover even similarly situated brands. *And in fact, it was really because of the study, the short time that we were given to study the matter that we could not include all the rest of the other brands that would have been really classified as foreign brand if we went by the law itself.* I am sure that by the reading of the law, you would without that ruling by Commissioner Tan they would really have been included in the definition or in the classification of foregoing brands. These brands that you referred to or just read to us and in fact just for your information, *we really came out with a proposed revenue memorandum circular for those brands.* (Italics supplied)

"Exhibit 'FF-2-C', pp. V-5 TO V-6, VI-1 to VI-3).

"xxx xxx xxx.

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"MS. CHATO, x x x But I do agree with you now that it cannot and in fact that is why I felt that we . . . *I wanted to come up with a more extensive coverage and precisely why I asked that revenue memorandum circular that would cover all those similarly situated would be prepared but because of the lack of time and I came out with a study of RA 7654, it would not have been possible to really come up with the reclassification or the proper classification of all brands that are listed there.* x x x' (italics supplied) (Exhibit 'FF-2d', page IX-1)

"xxx xxx xxx.

"HON. DIAZ. But did you not consider that there are similarly situated?

"MS. CHATO. That is precisely why, Sir, after we have come up with this Revenue Memorandum Circular No. 37-93, the other brands came about the would have also clarified RMC 37-93 by I was saying really because of the fact that I was just recently appointed and the lack of time, the period that was allotted to us to come up with the right actions on the matter, we were really caught by the July 3 deadline. *But in fact, We have already prepared a revenue memorandum circular clarifying with the other. . . does not yet, would have been a list of locally manufactured cigarettes bearing a foreign brand for excise tax purposes which would include all the other brands that were mentioned by the Honorable Chairman.* (Italics supplied) (Exhibit 'FF-2-d', par. IX-4)."[18]

All taken, the Court is convinced that the hastily promulgated RMC 37-93 has fallen short of a valid and effective administrative issuance.

WHEREFORE, the decision of the Court of Appeals, sustaining that of the Court of Tax Appeals, is AFFIRMED. No costs.

SO ORDERED.

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[18] *Rollo*, pp. 98-100.

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Kapunan, J., concurs.

Padilla, J., I join Mr. Justice Hermosisima, Jr., in his dissenting opinion.

Bellosillo, J., See separate opinion.

Hermosisima, Jr., J., See dissenting opinion.

BELLOSILLO, *J., separate opinion:*

RA 7654 was enacted by Congress on 10 June 1993, signed into law by the President on 14 June 1993, and took effect 3 July 1993. It amended partly Sec. 142, par. (c), of the National Internal Revenue Code (NIRC) to read —

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 based on the constructive manufacturer's wholesale price or the actual manufacturer's wholesale price, whichever is higher:

(1) On locally manufactured cigarettes which are *currently classified and taxed at fifty-five percent (55%)* or the exportation of which is not authorized by contract or otherwise, fifty-five percent (55%) provided that the minimum tax shall not be less than Five Pesos (P5.00) per pack (italics supplied).

(2) On other locally manufactured cigarettes, forty-five percent (45%) provided that the minimum tax shall not be less than Three Pesos (P3.00) per pack.

Prior to the effectivity of RA 7654, cigarette brands *Hope Luxury, Premium More* and *Champion* were considered local brands subjected to an *ad valorem* tax at the rate of 20-45%. However, on 1 July 1993 or two (2) days before RA 7654 took effect, petitioner Commissioner of Internal Revenue issued RMC 37-93 reclassifying "*Hope, More* and *Champion* being manufactured by Fortune Tobacco Corporation x x x (as) locally manufactured

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cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax on cigarettes."[1] RMC 37-93 in effect subjected *Hope Luxury, Premium More* and *Champion* cigarettes to the provisions of Sec. 142, par. (c), subpar. (1) NIRC, as amended by RA 7654, imposing upon these cigarette brands an *ad valorem* tax of "fifty-five percent (55%) provided that the minimum tax shall not be less than Five Pesos (P5.00) per pack."

On 2 July 1993, Friday, at about five-fifty in the afternoon, or a few hours before the effectivity of RA 7654, a copy of RMC 37-93 with a cover letter signed by Deputy Commissioner Victor A. Deoferio of the Bureau of Internal Revenue was sent by facsimile to the factory of respondent corporation in Parang, Marikina, Metro Manila. It appears that the letter together with a copy of RMC 37-93 did not immediately come to the knowledge of private respondent as it was addressed to no one in particular. It was only when the reclassification of respondent corporation's cigarette brands was reported in the column of Fil C. Sionil in *Business Bulletin* on 4 July 1993 that the president of respondent corporation learned of the matter, prompting him to inquire into its veracity and to request from petitioner a copy of RMC 37-93. On 15 July 1993 respondent corporation received by ordinary mail a certified machine copy of RMC 37-93.

Respondent corporation sought a review, reconsideration and recall of RMC 37-93 but was forthwith denied by the Appellate Division of the Bureau of Internal Revenue. As a consequence, on 30 July 1993 private respondent was assessed an *ad valorem* tax deficiency amounting to P9,598,334.00. Respondent corporation went to the Court of Tax Appeals (CTA) on a petition for review.

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[1] See penultimate paragraph of RMC 37-93.

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On 10 August 1994, after due hearing, the CTA found the petition meritorious and ruled —

> Revenue Memorandum Circular No. 37-93 reclassifying the brands of cigarettes, *viz*: *Hope*, *More*, and *Champion* being manufactured by Fortune Tobacco Corporation as locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax on cigarettes is found to be defective, invalid and unenforceable x x x Accordingly, the deficiency ad valorem tax assessment issued on petitioner Fortune Tobacco Corporation in the amount of P9,598,334.00, exclusive of surcharge and interest, is hereby cancelled for lack of legal basis."[2]

The CTA held that petitioner Commissioner of Internal Revenue failed to observe due process of law in issuing RMC 37-93 as there was no prior notice and hearing, and that RMC 37-93 was in itself discriminatory. The motion to reconsider its decision was denied by the CTA for lack of merit. On 31 March 1995 respondent Court of Appeals affirmed *in toto* the decision of the CTA.[3] Hence, the instant petition for review.

Petitioner now submits through the Solicitor General that RMC 37-93 reclassifying *Hope Luxury, Premium More* and *Champion* as locally manufactured cigarettes bearing foreign brands is merely an interpretative ruling which needs no prior notice and hearing as held in *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*.[4] It maintains that neither is the assailed

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[2] Decision penned by Presiding Judge Ernesto D. Acosta, concurred in by Associate Judges Manuel K. Gruba and Ramon O. De Veyra.

[3] Special Thirteenth Division; Decision penned by Associate Justice Justo P. Torres as Chairman, concurred in by Associate Justices Corona Ibay-Somera and Conrado M. Vazquez, Jr.

[4] G.R. No. 108524, 10 November 1994; 238 SCRA 63.

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revenue memorandum circular discriminatory as it merely "lays down the test in determining whether or not a locally manufactured cigarette bears a foreign brand using (only) the cigarette brands *Hope, More* and *Champion* as specific examples."[5]

Respondent corporation on the other hand contends that RMC 37-93 is not a mere interpretative ruling is adjudicatory in nature where prior notice and hearing are mandatory, and that *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary* on which the Solicitor General relies heavily is not applicable. Respondent Fortune Tobacco Corporation also argues that RMC 37-93 discriminates against its cigarette brands since those of its competitors which are similarly situated have not been reclassified.

The main issues before us are (a) whether RMC 37-93 is merely an interpretative rule the issuance of which needs no prior notice and hearing, or an adjudicatory ruling which calls for the twin requirements of prior notice and hearing, and, (b) whether RMC 37-93 is discriminatory in nature.

A brief discourse on the powers and functions of administrative bodies may be instructive.

Administrative agencies possess quasi-legislative or rule making powers and quasi-judicial or administrative adjudicatory powers. Quasi-legislative or rule making power is the power to make rules and regulations which results in *delegated legislation* that is within the confines of the granting statute and the doctrine of nondelegability and separability of powers.

Interpretative rule, one of the three (3) types of quasi-legislative or rule making powers of an administrative

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[5] Petition for Review, p. 28; *Rollo*, p. 38.

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agency (the other two being supplementary or detailed legislation, and contingent legislation), is promulgated by the administrative agency to interpret, clarify or explain statutory regulations under which the administrative body operates. The purpose or objective of an interpretative rule is merely to construe the statute being administered. It purports to do no more than interpret the statue. Simply, the rule tries to say what the statue means. Generally, it refers to no single person or party in particular but concerns all those belonging to the same class which may be covered by the said interpretative rule. It need not be published and neither is a hearing required since it is issued by the administrative body as an incident of its power to enforce the law and is intended merely to clarify statutory provisions for proper observance by the people. In *Tañada v. Tuvera*,[6] this Court expressly said that "[i]nterpretative regulations x x x need not be published."

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.[7] The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.[8] In carrying out their quasi-judicial functions

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[6] No. L-63915, 29 December 1986, 146 SCRA 446.

[7] *Hormed v. Helvering*, 312 U.S. 552; *Reetz v. Michigan*, 188 U.S. 505; *Gudmindson v. Cardollo*, 126 F 2d. 521.

[8] *Collins v. Selectmen of Brookline*, 91 N.E. 2d, 747.

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the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature. Since rights of specific persons are affected it is elementary that in the proper exercise of quasi-judicial power due process must be observed in the conduct of the proceedings.

The importance of due process cannot be underestimated. Too basic is the rule that no person shall be deprived of life, liberty or property without due process of law. Thus when an administrative proceeding is quasi-judicial in character, notice and fair open hearing are essential to the validity of the proceeding. The right to reasonable prior notice and hearing embraces not only the right to present evidence but also the opportunity to know the claims of the opposing party and to meet them. The right to submit arguments implies that opportunity otherwise the right may as well be considered impotent. And those who are brought into contest with government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposal before it issues its final command.

There are cardinal primary rights which must be respected in administrative proceedings. The landmark case of *Ang Tibay v. The Court of Industrial Relations*[9] enumerated these rights (1) the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have something to support itself; (4) the evidence must be substantial; (5) the decision must be rendered on the evidence presented at the hearing, or at least contained

[9] 69 Phil. 635 (1940).

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in the record and disclosed to the parties affected; (6) the tribunal or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision; and, (7) the tribunal should in all controversial questions render its decision in such manner that the parties to the proceeding may know the various issues involved and the reasons for the decision rendered.

In determining whether RMC No. 37-93 is merely an interpretative rule which requires no prior notice and hearing, or an adjudicatory rule which demands the observance of due process, a close examination of RMC 37-93 is in order. Noticeably, petitioner Commissioner of Internal Revenue at first interprets Sec. 142, par. (c), subpar. (1), of the NIRC, as amended, by citing the law and clarifying or explaining what it means —

> Section 142 (c) (1), National Internal Revenue Code, as amended by R.A. No. 6956, provides: On locally manufactured cigarettes bearing a foreign brand, fifty-five (55%) Provided, That this rate shall apply regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. Whenever it has to be determined whether or not a cigarette bears a foreign brand, the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern.

Under the foregoing, the test for imposition of the 55% *ad valorem* tax on cigarettes is that the locally manufactured cigarettes bear a foreign brand regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. The brand must be originally owned by a foreign manufacturer or producer. If ownership of the cigarette brand is, however, not definitely determinable, "x x x the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern x x x"

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Then petitioner makes a factual finding by declaring that *Hope (Luxury), (Premium) More* and *Champion* are manufactured by other foreign manufacturers —

Hope is listed in the World Tobacco Directory as being manufactured by (a) Japan Tobacco, Japan and (b) Fortune Tobacco, Philippines. *More* is listed in the said directory as being manufactured by: (a) Fills de Julia Reig, Andorra; (b) Rothmans, Australia; (c) RJR-MacDonald, Canada; (d) Rettig-Strenberg, Finland; (e) Karellas, Greece; (f) R.J. Reynolds, Malaysia; (g) Rothmans, New Zealand; (h) Fortune Tobacco, Philippines; (i) R.J. Reynolds, Puerto Rico; (j) R.J. Reynolds, Spain; (k) Tabacalera, Spain; (l) R.J. Reynolds, Switzerland; and (m) R.J. Reynolds, USA. "Champion" is registered in the said directory as being manufactured by: (a) Commonwealth Bangladesh; (b) Sudan, Brazil; (c) Japan Tobacco, Japan; (d) Fortune Tobacco, Philippines; (e) Haggar, Sudan; and (f) Tabac Reunies, Switzerland.

From this finding, petitioner thereafter formulates an inference that since it cannot be determined who among the manufacturers are the real owners of the brands in question, then these cigarette brands should be considered foreign brands —

Since there is no showing who among the above-listed manufacturers of the cigarettes bearing the said brands are the real owner/s thereof, then it follows that the same shall be considered foreign brand for purposes of determining the *ad valorem* tax pursuant to Section 142 of the National Internal Revenue Code. As held in BIR Ruling No. 410-88, dated August 24, 1988, "in cases where it cannot be established or there is dearth of evidence as to whether a brand is foreign or not, resort to the World Tobacco Directory should be made."

Finally, petitioner caps RMC 37-93 with a disposition specifically directed at respondent corporation reclassifying its cigarette brands as locally manufactured bearing foreign brands —

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In view of the foregoing, the aforesaid brands of cigarettes, *viz*: *Hope, More* and *Champion* being manufactured by Fortune Tobacco Corporation are hereby considered locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax on cigarettes.

Any ruling inconsistent herewith is revoked or modified accordingly.

It is evident from the foregoing that in issuing RMC 37-93 petitioner Commissioner of Internal Revenue was exercising her quasi-judicial or administrative adjudicatory power. She cited and interpreted the law, made a factual finding, applied the law to her given set of facts, arrived at a conclusion, and issued a ruling aimed at a specific individual. Consequently prior notice and hearing are required. It must be emphasized that even the text alone of RMC 37-93 implies that reception of evidence during a hearing is appropriate if not necessary since it invokes BIR Ruling No. 410-88, dated August 24, 1988, which provides that "in cases where it cannot be established or there is dearth of evidence as to whether a brand is foreign or not x x x" Indeed, it is difficult to determine whether a brand is foreign or not if it is not established by, or there is dearth of, evidence because no hearing has been called and conducted for the reception of such evidence. In fine, by no stretch of the imagination can RMC 37-93 be considered purely as an interpretative rule — requiring no previous notice and hearing and simply interpreting, construing, clarifying or explaining statutory regulations being administered by or under which the Bureau of Internal Revenue operates.

It is true that both RMC 47-91 in *Misamis Oriental Association of Coco Traders v. Department of Finance Secretary,* and RMC 37-93 in the instant case reclassify certain products for purposes of taxation. But the similarity between the two revenue memorandum circulars ends there.

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For in properly determining whether a revenue memorandum circular is merely an interpretative rule or an adjudicatory rule, its very tenor and text, and the circumstances surrounding its issuance will have to be considered.

We quote RMC 47-91 promulgated 11 June 1991 —

Revenue Memorandum Circular No. 47-91

SUBJECT : Taxability of Copra

TO : All Revenue Officials and Employees and Others Concerned.

For the information and guidance of all officials and employees and others concerned, quoted hereunder in its entirety is VAT Ruling No. 190-90 date August 17, 1990:

COCOFED MARKETING RESEARCH CORPORATION
6th Floor Cocofed Building
144 Amorsolo Street
Legaspi Village, Makati
Metro Manila

Attention: *Ms. Esmyrna E. Reyes*
Vice President — Finance

Sirs:

This has reference to your letter dated January 16, 1990 wherein you represented that inspite of your VAT registration of your copra trading company, you are supposed to be exempt from VAT on the basis of BIR Ruling dated January 8, 1988 which considered copra as an agricultural food product in its original state. In this connection, you request for a confirmation of your opinion as aforestated.

In reply, please be informed that copra, being an agricultural non-food product, is exempt from VAT only if sale is made by the primary producer pursuant to Section 103 (a) of the Tax Code, as amended. Thus as a trading

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company and a subsequent seller, your sale of copra is already subject to VAT pursuant to Section 9(b)(1) of Revenue Regulations 5-27.

This revokes VAT Ruling Nos. 009-88 and 279-88.

Very truly yours,

(Sgd.) JOSE U. ONG
Commissioner of Internal Revenue

As a clarification, this is the present and official stand of this Office unless sooner revoked or amended. All revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

(Sgd.) JOSE U. ONG
Commissioner of Internal Revenue

Quite obviously, the very text of RMC 47-91 itself shows that it is merely an interpretative rule as it simply quotes a VAT Ruling and reminds those concerned that the ruling is the present and official stand of the Bureau of Internal Revenue. Unlike in RMC 37-93 where petitioner Commissioner manifestly exercised her quasi-judicial or administrative adjudicatory power, in RMC 47-91 there were no factual findings, no application of laws to a given set of facts, no conclusions of law, and no dispositive portion directed at any particular party.

Another difference is that in the instant case, the issuance of the assailed revenue memorandum circular operated to subject the taxpayer to the new law which was yet to take effect, while in *Misamis*, the disputed revenue memorandum circular was issued simply to restate and then clarify the prevailing position and ruling of the administrative agency, and no new law yet to take effect was involved. It merely interpreted an existing law which had already been in effect for some time and which was not set to be amended. RMC 37-93 is thus prejudicial to private respondent alone.

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A third difference, and this likewise resolves the issue of discrimination, is that RMC 37-93 was ostensibly issued to subject the cigarette brands of respondent corporation to a new law as it was promulgated two days before the expiration of the old law and a few hours before the effectivity of the new law. That RMC 37-93 is particularly aimed only at respondent corporation and its three (3) cigarette brands can be seen from the dispositive portion of the assailed revenue memorandum circular —

> In view of the foregoing, the aforesaid brands of cigarettes, *viz*: *Hope, More,* and *Champion* being manufactured by Fortune Tobacco Corporation are hereby considered locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax on cigarettes.
>
> Any ruling inconsistent herewith is revoked or modified accordingly.

Thus the argument of the Solicitor General that RMC 37-93 is not discriminatory as "[i]t merely lays down the test in determining whether or not a locally manufactured cigarette bears a foreign brand using the cigarette brands *Hope, More* and *Champion* as specific examples," cannot be accepted, much less sustained. Without doubt, RMC 37-93 has a tremendous effect on respondent corporation — and solely on respondent corporation — as its deficiency *ad valorem* tax assessment on its removals of *Hope Luxury, Premium More,* and *Champion* cigarettes for six (6) hours alone, *i.e.*, from six o'clock in the evening of 2 July 1993 which is presumably the time respondent corporation was supposed to have received the facsimile message sent by Deputy Commissioner Victor A. Deoferio, until twelve o'clock midnight upon the effectivity of the new law, was already P9,598,334.00. On the other hand, RMC 47-91 was issued with no purpose except to state and declare what has been the official stand of the administrative agency on the specific subject matter, and was indiscriminately directed to *all* copra traders with no particular individual in mind.

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That petitioner Commissioner of Internal Revenue is an expert in her field is not attempted to be disputed; hence, we do not question the wisdom of her act in reclassifying the cigarettes. Neither do we deny her the exercise of her quasi-judicial powers. But most certainly, by constitutional mandate, the Court must check the exercise of these powers and ascertain whether petitioner has gone beyond the legitimate bounds of her authority.

In the final analysis, the issue before us is not the expertise, the authority to promulgate rules, or the wisdom of petitioner as Commissioner of Internal Revenue in reclassifying the cigarettes of private respondents. It is simply the faithful observance by government of the basic constitutional right of a taxpayer to due process of law and the equal protection of the laws. This is what distresses me no end — the manner and the circumstances under which the cigarettes of private respondent were reclassified and correspondingly taxed under RMC 37-93, an adjudicatory rule which therefore requires reasonable notice and hearing before its issuance. It should not be confused with RMC 47-91, which is a mere interpretative rule.

In the earlier case of G.R. No. 119322, which practically involved the same opposing interests, I also voted to uphold the constitutional right of the taxpayer concerned to due process and equal protection of the laws. By a vote of 3-2, that view prevailed. In *sequela*, we in the First Division who constituted the majority found ourselves unjustly drawn into vortex of a nightmarish episode. The strong ripples whipped up by my opinion expressed therein — and of the majority — have yet to vanish when we are again in the *imbroglio* of a similar dilemma. The unpleasant experience should be reason enough to simply steer clear of this controversy and surf on a pretended *loss of judicial objectivity*. Such would have been an easy way out, a gracious exit, so to speak, albeit lame. But to camouflage

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my leave with a sham excuse would be to turn away from a professional vow I keep at all times; I would not be true to myself, and to the people I am committed to serve. Thus, as I have earlier expressed, if placed under similar circumstances in some future time, I shall have to brave again the prospect of another *vilification* and a *tarnished image* if only to show proudly to the whole world that *under the present dispensation judicial independence in our country is a true component of our democracy.*

In fine, I am greatly perturbed by the manner RMC No. 37-93 was issued as well as the effect of such issuance. For it cannot be denied that the circumstances clearly demonstrated that it was hastily issued — without prior notice and hearing, and singling out private respondent alone — when two days before a new tax law was to take effect petitioner reclassified and taxed the cigarette brands of private respondent at a higher rate. Obviously, this was to make it appear that even before the anticipated date of effectivity of the statute — which was undeniably priorly known to petitioner — these brands were already *currently classified and taxed at fifty-five percent (55%),* thus shoving them into the purview of the law that was to take effect two days after!

For sure, private respondent was not properly informed before the issuance of the questioned memorandum circular that its cigarette brands *Hope Luxury, Premium More* and *Champion* were being reclassified and subjected to a higher tax rate. Naturally, the result would be to lose financially because private respondent was still selling its cigarettes at a price based on the old, lower tax rate. Had there been previous notice and hearing, as claimed by private respondent, it could have very well presented its side, either by opposing the reclassification, or by acquiescing thereto but increasing the price of its cigarettes to adjust to the higher tax rate. The reclassification and the ensuing

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imposition of a tax rate increase therefore could not be anything but confiscatory if we are also to consider the claim of private respondent that the new tax is even higher than the cost of its cigarettes.

Accordingly, I vote to deny the petition.

HERMOSISIMA, JR., *J., dissenting opinion:*

Private respondent Fortune Tobacco Corporation in the instant case disputes its liability for deficiency *ad valorem* excise taxes on its removals of "Hope," "More," and "Champion" cigarettes from 6:00 p.m. to 12:00 midnight of July 2, 1993, in the total amount of P9,598,334.00. It claims that the circular, upon which the assessment was based and made, is defective, invalid and unenforceable for having been issued without notice and hearing and in violation of the equal protection clause guaranteed by the Constitution.

The majority upholds these claims of private respondent, convinced that the Circular in question, in the first place, did not give prior notice and hearing, and so, it could not have been valid and effective. It proceeds to affirm the factual findings of the Court of Tax Appeals, which findings were considered correct by respondent Court of Appeals, to the effect that the petitioner Commissioner of Internal Revenue had indeed blatantly failed to comply with the said twin requirements of notice and hearing, thereby rendering the issuance of the questioned Circular to be in violation of the due process clause of the Constitution. It is also its dominant opinion that the questioned Circular discriminates against private respondent Fortune Tobacco Corporation insofar as it seems to affect only its "Hope," "More," and "Champion" cigarettes, to the exclusion of other cigarettes apparently of the same kind or classification as these cigarettes manufactured by private respondent.

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With all due respect, I disagree with the majority in its disquisition of the issues and its resulting conclusions.

Section 245 of the National Internal Revenue Code, as amended, empowers the Commissioner of Internal Revenue to issue the questioned Circular

Section 245 of the National Internal Revenue Code, as amended, provides:

> *"Sec. 245. Authority of Secretary of Finance to promulgate rules and regulations. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code x x x without prejudice to the power of the Commissioner of Internal Revenue to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including rulings on the classification of articles for sales tax and similar purposes."*

The subject of the questioned Circular is the reclassification of cigarettes subject to excise taxes. It was issued in connection with Section 142(c) (1) of the National Internal Revenue Code, as amended, which imposes *ad valorem* excise taxes on locally manufactured cigarettes bearing a foreign brand. The same provision prescribes the ultimate criterion that determines which cigarettes are to be considered "locally manufactured cigarettes bearing a foreign brand." It provides:

> *"x x x Whenever it has to be determined whether or not a cigarette bears a foreign brand, the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern."*

There is only one World Tobacco Directory for a given current year, and the same is mandated by law to be the

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BIR Commissioner's controlling basis for determining whether or not a particular locally manufactured cigarette is one bearing a foreign brand. In so making a determination, petitioner should inquire into the entries in the World Tobacco Directory for the given current year and shall be held bound by such entries therein. She is not required to subject the results of her inquiries to feedback from the concerned cigarette manufacturers, and it is doubtlessly not desirable nor managerially sound to court dispute thereon when the law does not, in the first place, require debate or hearing thereon. Petitioner may make such a determination because she is the Chief Executive Officer of the administrative agency that is the Bureau of Internal Revenue in which are vested quasi-legislative powers entrusted to it by the legislature in recognition of its more encompassing and unequalled expertise in the field of taxation.

"The vesture of quasi-legislative and quasi-judicial powers in administrative bodies is not unconstitutional, unreasonable and oppressive. It has been necessitated by 'the growing complexity of the modern society' (Solid Homes, Inc. vs. Payawal, 177 SCRA 72, 79). More and more administrative bodies are necessary to help in the regulation of society's ramified activities. 'Specialized in the particular field assigned to them, they can deal with the problems thereof with more expertise and dispatch that can be expected from the legislature or the courts of justice' x x x"[1]

Statutorily empowered to issue rulings or opinions embodying the proper determination in respect to classifying articles, including cigarettes, for purposes of tax assessment and collection, petitioner was acting well within her prerogatives when she issued the questioned Circular. And

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[1] Phil. Association of Service Exporters, Inc. *vs.* Torres, 212 SCRA 304.

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in the exercise of such prerogatives under the law, she has in her favor the presumption of regular performance of official duty which must be overcome by clearly persuasive evidence of stark error and grave abuse of discretion in order to be overturned and disregarded.

It is irrelevant that the Court of Tax Appeals makes much of the effect of the passing of Republic Act No. 7654[2] on petitioner's power to classify cigarettes. Although the decisions assailed and sought to be reviewed, as well as the pleadings of private respondent, are replete with alleged admissions of our legislators to the effect that the said Act was intended to freeze the current classification of cigarettes and make the same an integral part of the said Act, certainly the repeal, if any, of petitioner's power to classify cigarettes must be reckoned from the effectivity of the said Act and not before. Suffice it to say that indisputable is that plain fact that the questioned Circular was issued on July 1, 1993, while the said Act took effect on July 3, 1993.

The contents of the questioned circular have not been proven to be erroneous or illegal as to render issuance thereof an act of grave abuse of discretion on the part of petitioner Commissioner

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Prior to the effectivity of R.A. No. 7654, Section 142 (c) (1) of the National Internal Revenue Code, as amended, levies the following *ad valorem* taxes on cigarettes in accordance with their predetermined classifications as established by the Commissioner of Internal Revenue:

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[2] Entitled, "An Act Revising the Excise Tax Base, Allocating a Portion of the Incremental Revenue Collected for the Emergency Employment Program for Certain Workers Amending for the Purpose Section 142 of the National Internal Revenue Code, as amended, and for Other Purposes," 89 O.G. 4475-4480, August 9, 1993.

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"x x x based on the manufacturer's registered wholesale price:

(1) On locally manufactured cigarettes bearing a foreign brand, fifty-five percent (55%) Provided, That this rate shall apply regardless of whether or not the right to use or title to the foreign brand was sold or transferred by its owner to the local manufacturer. Whenever it has to be determined whether or not a cigarette bears a foreign brand, the listing of brands manufactured in foreign countries appearing in the current World Tobacco Directory shall govern.

(2) Other locally manufactured cigarettes, forty five percent (45%). x x x"

Prior to the issuance of the questioned Circular, assessed against and paid by private respondent as *ad valorem* excise taxes on their removals of "Hope," "More," and "Champion" cigarettes were amounts based on paragraph (2) above, *i.e.*, the tax rate made applicable on the said cigarettes was 45% at the most. The reason for this is that apparently, petitioner's predecessors have all made determinations to the effect that the said cigarettes were to be considered "other locally manufactured cigarettes" and not "locally manufactured cigarettes bearing a foreign brand." Even petitioner, until her issuance of the questioned Circular, adhered to her predecessors' determination as to the proper classification of the above-mentioned cigarettes for purposes of *ad valorem* excise taxes. Apparently, the past determination that the said cigarettes were to be classified as "other locally manufactured cigarettes" was based on private respondent's convenient move of changing the names of "Hope" to "Hope Luxury" and "More" to "Premium More." It also submitted proof that "Champion" was an original Fortune Tobacco Corporation register and, therefore, a local brand. Having registered these brands with the Philippine Patent Office and with corresponding evidence to that effect, private respondent paid *ad valorem*

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excise taxes computed at the rate of not more than 45% which is the rate applicable to cigarettes considered as locally manufactured brands.

How these past determination pervaded notwithstanding their erroneous basis is only tempered by their innate quality of being merely errors in interpretative rulings, the formulation of which does not bind the government. Advantage over such errors may precipitously be withdrawn from those who have been benefiting from them once the same have been discovered and rectified.

Petitioner correctly emphasizes that:

"x x x the registration of said brands in the name of private respondent is proof only that it is the exclusive owner thereof in the Philippines; it does not necessarily follow, however, that it is the exclusive owner thereof in the whole world. Assuming arguendo that private respondent is the exclusive owner of said brands in the Philippines, it does not mean that they are local. Otherwise, they would not have been listed in the WTD as international brands manufactured by different entities in different countries. Moreover, it cannot be said that the brands registered in the names of private respondent are not the same brands listed in the WTD because private respondent is one of the manufacturers of said brands listed in the WTD."[3]

Private respondent attempts to cast doubt on the determination made by petitioner in the questioned Circular that Japan is a manufacturer of "Hope" cigarettes. Private respondent's own inquiry into the World Tobacco Directory reveals that Japan is not a manufacturer of "Hope" cigarettes. In pointing this out, private respondent concludes that the entire Circular is erroneous and makes such error the principal proof of its claim that the nature of the

[3] Petition for Review dated May 9, 1995, p. 38, *Rollo*, p. 48.

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determination embodied in the questioned Circular requires a hearing on the facts and a debate on the applicable law. Such a determination is adjudicatory in nature and, therefore, requires notice and hearing. Private respondent is, however, apparently only eager to show error on the part of petitioner for acting with grave abuse of discretion. Private respondent conveniently forgets that petitioner, equipped with the expertise in taxation, recognized in that expertise by the legislature that vested in her the power to make rules respecting classification of articles for taxation purposes, and presumed to have regularly exercised her prerogatives within the scope of her statutory power to issue determinations specifically under Section 142 (c) (1) in relation to Section 245 of the National Internal Revenue Code, as amended, simply followed the law as she understood it. Her task was to determine which cigarette brands were foreign, and she was directed by the law to look into the World Tobacco Directory. Foreign cigarette brands were legislated to be taxed at higher rates because of their more extensive public exposure and international reputation; their competitive edge against local brands may easily be checked by imposition of higher tax rates. Private respondent makes a mountain of the mole hill circumstance that "Hope" is listed, not as being "manufactured" by Japan but as being "used" by Japan. Whether manufactured or used by Japan, however, "Hope" remains a cigarette brand that can not be said to be limited to local manufacture in the Philippines. The undeniable fact is that it is a foreign brand the sales in the Philippines of which are greatly boosted by its international exposure and reputation. The petitioner was well within her prerogatives, in the exercise of her rule-making power, to classify articles for taxation purposes, to interpret the laws which she is mandated to administer. In interpreting the same, petitioner must, in general, be guided by the principles underlying taxation, *i.e.*, taxes are the lifeblood of Government, and revenue

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laws ought to be interpreted in favor of the Government, for Government can not survive without the funds to underwrite its varied operational expenses in pursuit of the welfare of the society which it serves and protects.

Private respondent claims that its business will be destroyed by the imposition of additional *ad valorem* taxes as a result of the effectivity of the questioned Circular. It claims that under the vested rights theory, it cannot now be made to pay higher taxes after having been assessed for less in the past. Of course private respondent will trumpet its losses, its interests, after all, being its sole concern. What private respondent fails to see is the loss of revenue by the Government which, because of erroneous determinations made by its past revenue commissioners, collected lesser taxes than what it was entitled to in the first place. It is every citizen's duty to pay the correct amount of taxes. Private respondent will not be shielded by any vested rights, for there are no vested rights to speak of respecting a wrong construction of the law by administrative officials, and such wrong interpretation does not place the Government in estoppel to correct or overrule the same.[4]

The questioned Circular embodies an interpretative ruling of petitioner Commissioner which as such does not require notice and hearing

As one of the public offices of the Government, the Bureau of Internal Revenue, through its Commissioner, has grown to be a typical administrative agency vested with a fusion of different governmental powers: the power to investigate, initiate action and control the range of investigation, the power to promulgate rules and regulations

[4] Tan Guan *vs.* Court of Appeals, 19 SCRA 903; Compania General de Tabacos de Filipinas *vs.* City of Manila, 8 SCRA 367.

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to better carry out statutory policies, and the power to adjudicate controversies within the scope of their activities.[5] In the realm of administrative law, we understand that such an empowerment of administrative agencies was evolved in response to the needs of a changing society. This development arose as the need for broad social control over complex conditions and activities became more and more pressing, and such complexity could no longer be dealt with effectively and directly by the legislature or the judiciary. The theory which underlies the empowerment of administrative agencies like the Bureau of Internal Revenue, is that the issues with which such agencies deal ought to be decided by experts, and not be a judge, at least not in the first instance or until the facts have been sifted and arranged.[6]

One of the powers of administrative agencies like the Bureau of Internal Revenue, is the power to make rules. The necessity for vesting administrative agencies with this power stems from the impracticability of the lawmakers providing general regulations for various and varying details pertinent to a particular legislation.[7]

The rules that administrative agencies may promulgate may either be legislative or interpretative. The former is a form of subordinate legislation whereby the administrative agency is acting in a legislative capacity, supplementing the statute, filling in the details, pursuant to a specific delegation of legislative power.[8]

Interpretative rules, on the other hand, are "those which purport to do no more than interpret the statute being administered, to say what it means."[9]

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[5] 1 Am. Jur. 2d., p. 816.

[6] 73 C.J.S. pp. 295-296.

[7] 1 Am. Jur. 2d., p. 890.

[8] 1 Am. Jur. 2d., p. 892.

[9] de Leon, Hector, Administrative Law, 1989 ed., p. 67.

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"There can be no doubt that there is a distinction between an administrative rule or regulation and an administrative interpretation of a law whose enforcement is entrusted to an administrative body. When an administrative agency promulgates rules and regulations, it 'makes' a new law with the force and effect of a valid law, while when it renders an opinion or gives a statement of policy, it merely interprets a pre-existing law (Parker, Administrative Law, p. 197; Davis, Administrative Law, p. 194.). Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law. This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times left to the administrative agency entrusted with its enforcement. In this sense, it has been said that rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law. (Davis, op. cit. p. 194.)

A rule is binding on the courts as long as the procedure fixed for its promulgation is followed and its scope is within the statutory authority granted by the legislature, even if the courts are not in agreement with the policy stated therein or its innate wisdom (Davis, op. cit. pp. 195-197). On the other hand, administrative interpretation of the law is at best merely advisory, for it is the courts that finally determine what the law means."[10]

"Whether a given statutory delegation authorizes legislative or interpretative regulations depends upon whether the statute places specific 'sanctions' behind the regulations authorized, as for example, by making it criminal offense to disobey them, or by making conformity with

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[10] Victorias Milling Co. Inc. *vs.* Social Security Commission, 114 Phil. 558.

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their provisions a condition of the exercise of legal privileges."[11] This is because interpretative regulations are by nature simply statutory interpretations, which have behind them no statutory sanction. Such regulations, whether so expressly authorized by statute or issued only as an incident of statutory administration, merely embody administrative findings of law which are always subject to judicial determination as to whether they are erroneous or not, even when their issuance is authorized by statute.

The questioned Circular has undisputedly been issued by petitioner in pursuance of her rule-making powers under Section 245 of the National Internal Revenue Code, as amended. Exercising such powers, petitioner re-classified "Hope," "More" and "Champion" cigarettes as locally manufactured cigarettes bearing foreign brands. The re-classification, as previously explained, is the correct interpretation of Section 142 (c) (1) of the said Code. The said legal provision is not accompanied by any penal sanction, and no detail had to be filled in by petitioner. The basis for the classification of cigarettes has been provided for by the legislature, and all petitioner has to do, on behalf of the government agency she heads, is to proceed to make the proper determination using the criterion stipulated by the lawmaking body. In making the proper determination, petitioner gave it a liberal construction consistent with the rule that revenue laws are to be construed in favor of the Government whose survival depends on the contributions that taxpayers give to the public coffers that finance public services and other governmental operations.

The Bureau of Internal Revenue which petitioner heads, is the government agency charged with enforcement of the laws pertinent to this case and so, the opinion of the

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[11] de Leon, *supra*, p. 69.

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Commissioner of Internal Revenue, in the absence of a clear showing that it is plainly wrong, is entitled to great weight. Private respondent claims that its rights under previous interpretations of Section 142 (c) (1) may not abruptly be cut by a new interpretation of the said section, but precisely the said section is subject to various and changing construction, and hence, any ruling issued by petitioner thereon is necessarily interpretative and not legislative. Private respondent insists that the questioned circular is adjudicatory in nature because it determined the rights of private respondent in a controversy involving his tax liability. It also asseverates that the questioned circular involved administrative action that is particular and immediate, thereby rendering it subject to the requirements of notice and hearing in compliance with the due process clause of the Constitution.

We find private respondent's arguments to be rather strained.

Petitioner made a determination as to the classification of cigarettes as mandated by the aforecited provisions in the National Internal Revenue Code, as amended. Such determination was an interpretation by petitioner of the said legal provisions. If in the course of making that interpretation and embodying the same in the questioned circular which the petitioner subsequently issued after making such a determination, private respondent's cigarette products, by their very nature of being foreign brands as evidenced by their enlistment in the World Tobacco Directory, which is the controlling basis for the proper classification of cigarettes as stipulated by the law itself, have come to be classified as locally manufactured cigarettes bearing foreign brands and as such subject to a tax rate higher than what was previously imposed thereupon based on past rulings of other revenue commissioners, such a situation is simply a consequence of the performance by

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petitioner of her duties under the law. No adjudication took place, much less was there any controversy ripe for adjudication. The natural consequences of making a classification in accordance with law may not be used by private respondent in arguing that the questioned circular is in fact adjudicatory in nature. Such an exercise in driving home a point is illogical as it is fallacious and misplaced.

Private respondent concedes that under general rules of administrative law, "a ruling which is merely 'interpretative' in character may not require prior notice to affected parties before its issuance as well as a hearing" and "for this reason, in most instances, interpretative regulations are not given the force of law."[12] Indeed, "interpretative regulations and those merely internal in nature x x x need not be published."[13] And it is now settled that only legislative regulations and not interpretative rulings must have the benefit of public hearing.[14]

Because (1) the questioned circular merely embodied an interpretation or a way of reading and giving meaning to Section 142 (c) (1) of the National Internal Revenue Code, as amended; (2) petitioner did not fill in any details in the aforecited section but only classified cigarettes on the basis of the World Tobacco Directory in the light of the paramount principle of construing revenue laws in favor of the Government to the end that Government collects as much tax money as it is entitled to in order to fulfill its public purposes for the general good of its citizens; (3) no penal sanction is provided in the aforecited section

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[12] Comment of Fortune Tobacco Corporation, p. 52; *Rollo*, p. 199.

[13] Tañada *vs.* Tuvera, 146 SCRA 454.

[14] Misamis Oriental Association of Coco Traders, Inc. *vs.* Department of Finance Secretary, 238 SCRA 63.

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that was construed by petitioner in the questioned circular; and (4) a similar circular declassifying copra from being an agricultural food to non-food product for purposes of the value added tax laws, resulting in the revocation of an exemption previously enjoyed by copra traders, has been ruled by us to be merely an interpretative ruling and not a legislative, much less, an adjudicatory, action on the part of the revenue commissioner,[15] this Court must not be blind to the fact that the questioned Circular is indeed an interpretative ruling not subject to notice and hearing.

Neither is the questioned Circular tainted by a violation of the equal protection clause under the Constitution.

Private respondent anchors its claim of violation of its equal protection rights upon the too obvious fact that only its cigarettes brands, *i.e.*, "Hope," "More" and "Champion," are mentioned in the questioned circular. Because only the cigarettes that they manufacture are enumerated in the questioned circular, private respondent proceeded to attack the same as being discriminatory against it. On the surface, private respondent seems to have a point there. A scrutiny of the questioned Circular, however, will show that it is undisputedly one of general application for all cigarettes that are similarly situated as private respondent's brands. The new interpretation of Section 142 (1) (c) has been well illustrated in its application upon private respondent's brands, which illustration is properly a subject of the questioned Circular. Significantly, indicated as the subject of the questioned circular is the "reclassification of cigarettes subject to excise taxes." The reclassification resulted in the foregrounding of private respondent's cigarette brands, which incidentally is largely due to the

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[15] *Ibid.*

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controversy spawned no less by private respondent's own action of conveniently changing its brand names to avoid falling under a classification that would subject it to higher *ad valorem* tax rates. This caused then Commissioner Bienvenido Tan to depart from his initial determination that private respondent's cigarette brands are foreign brands. The consequent specific mention of such brands in the questioned Circular, does not change the fact that the questioned Circular has always been intended for and did cover, all cigarettes similarly situated as "Hope," "More" and "Champion." Petitioner is thus correct in stating that:

> *"x x x RMC 37-93 is not discriminatory. It lays down the test in determining whether or not a locally manufactured cigarette bears a foreign brand using the cigarette brands 'Hope,' 'More' and 'Champion' as specific examples. Such test applies to all locally manufactured cigarette brands similarly situated as the cigarette brands aforementioned. While it is true that only 'Hope,' 'More' and 'Champion' cigarettes are actually determined as locally manufactured cigarettes bearing a foreign brand, RMC 37-93 does not state that ONLY cigarettes fall under such classification to the exclusion of other cigarettes similarly situated. Otherwise stated, RMC 37-93 does not exclude the coverage of other cigarettes similarly situated. Otherwise stated, RMC 37-93 does not exclude the coverage of other cigarettes similarly situated as locally manufactured cigarettes bearing a foreign brand. Hence, in itself, RMC 37-93 is not discriminatory."*[16]

Both the respondent Court of Appeals and the Court of Tax Appeals held that the questioned Circular reclassifying "Hope," "More" and "Champion" cigarettes, is defective, invalid and unenforceable and has rendered the assessment against private respondent of deficiency *ad valorem* excise

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[16] Petition for Review dated May 9, 1995, pp. 28-29, *Rollo*, pp. 38-39.

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taxes to be without legal basis. The majority agrees with private respondent and respondent Courts. As the foregoing opinion chronicles the fatal flaws in private respondent's arguments, it becomes more apparent that the questioned Circular is in fact a valid and subsisting interpretative ruling that the petitioner had power to promulgate and enforce.

WHEREFORE, I vote to grant the petition and set aside the decisions of the Court of Tax Appeals and the Court of Appeals, respectively, and to reinstate the decision of petitioner Commissioner of Internal Revenue denying private respondent's request for a review, reconsideration and recall of Revenue Memorandum Circular No. 37-93 dated July 1, 1993.

SECOND DIVISION

[G.R. No. 107462. August 30, 1996]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* DELIA REYES y DELA CRUZ, *accused-appellant,* REY ARNEL REYES y GARBONELLA, *accused.*

SYLLABUS

CRIMINAL LAW; KIDNAPPING; ELEMENTS; ESTABLISHED IN CASE AT BAR.— The crime of kidnapping under Article 270 of the Revised Penal Code is committed: (1) when the offender is entrusted with the custody of a minor person; and (2) the offender deliberately fails to restore the said minor to his parents or guardian. Appellant concedes that she was hired by the Mohamad