



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

**SECRETARY OF FINANCE
CESAR V. PURISIMA and
COMMISSIONER OF INTERNAL
REVENUE KIM S. JACINTO-HENARES,**
Petitioners,

G.R. No. 210251

Present:

CARPIO, *J.*, Chairperson,
PERALTA,
MENDOZA,
LEONEN, and
MARTIRES, *JJ.*

- versus -

**PHILIPPINE TOBACCO INSTITUTE,
INC.,**
Respondent.

Promulgated:
APR 17 2017

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X

DECISION

CARPIO, *J.*:

This is a petition for review on certiorari¹ assailing the Decision² dated 7 October 2013 of the Regional Trial Court (RTC) of Las Piñas City, Branch 253 in SCA Case No. 13-0003. The RTC declared null and void certain portions of Revenue Regulations No. 17-2012³ (RR 17-2012) and Revenue Memorandum Circular No. 90-2012⁴ (RMC 90-2012) and ordered petitioners to cease and desist from implementing Section 11 of RR 17-2012 and RMC 90-2012 which refer to cigarettes packed by machine.

¹ Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

² *Rollo*, pp. 35-45. Penned by Presiding Judge Salvador V. Timbang, Jr.

³ Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 10351 and to Clarify Certain Provisions of Existing Revenue Regulations. Issued on 21 December 2012 by the Secretary of Finance.

⁴ Revised Tax Rates of Alcohol and Tobacco Products under Republic Act No. 10351, "An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, otherwise known as The National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes." Issued on 27 December 2012 by the Commissioner of Internal Revenue.

The Facts

On 20 December 2012, President Benigno S. Aquino III signed Republic Act No. 10351⁵ (RA 10351), otherwise known as the Sin Tax Reform Law. RA 10351 restructured the excise tax on alcohol and tobacco products by amending pertinent provisions of Republic Act No. 8424,⁶ known as the Tax Reform Act of 1997 or the National Internal Revenue Code of 1997 (NIRC).

Section 5 of RA 10351, which amended Section 145(C) of the NIRC, increased the excise tax rate of cigars and cigarettes and allowed cigarettes packed by machine to be packed in other packaging combinations of not more than 20. The relevant portions state:

SEC. 5. Section 145 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, is hereby further amended to read as follows:

SEC. 145. *Cigars and Cigarettes.* –

x 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:

Effective on January 1, 2013

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, the tax shall be Twelve pesos (₱12.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, the tax shall be Twenty-five pesos (₱25.00) per pack.

Effective on January 1, 2014

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, the tax shall be Seventeen pesos (₱17.00) per pack; and

⁵ An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for Other Purposes. Approved on 19 December 2012 and took effect on 21 December 2012.

⁶ An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes. Cited as The Tax Reform Act of 1997, signed on 11 December 1997, and took effect on 1 January 1998.

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, the tax shall be Twenty-seven pesos (₱27.00) per pack.

Effective on January 1, 2015

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, the tax shall be Twenty-one pesos (₱21.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, the tax shall be Twenty-eight pesos (₱28.00) per pack.

Effective on January 1, 2016

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, the tax shall be Twenty-five pesos (₱25.00) per pack; and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, the tax shall be Twenty-nine pesos (₱29.00) per pack.

Effective on January 1, 2017, the tax on all cigarettes packed by machine shall be Thirty pesos (₱30.00) per pack.

The rates of tax imposed under this subsection shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance.

Duly registered cigarettes packed by machine shall only be packed in twenties and other packaging combinations of not more than twenty.

x x x x

On 21 December 2012, the Secretary of Finance, upon the recommendation of the Commissioner of Internal Revenue (CIR), issued RR 17-2012. Section 11 of RR 17-2012 imposes an excise tax on individual cigarette pouches of 5's and 10's even if they are bundled or packed in packaging combinations not exceeding 20 cigarettes. The provision states:



SEC. 11. Revised Provisions for the Manner of Packaging of Cigarettes. – All Cigarettes whether packed by hand or packed by machine shall only be packed in twenties (20s), and through other packaging combinations which shall result to not more than twenty sticks of cigarettes: *Provided*, That, in case of cigarettes packed in not more than twenty sticks, whether in 5 sticks, 10 sticks and other packaging combinations below 20 sticks, the net retail price of each individual package of 5s, 10s, etc. shall be the basis of imposing the tax rate prescribed under the Act.

Pursuant to Section 11 of RR 17-2012, the CIR issued RMC 90-2012 dated 27 December 2012. Annex “D-1” of RMC 90-2012 provides for the initial classifications in tabular form, effective 1 January 2013, of locally-manufactured cigarette brands packed by machine according to the tax rates prescribed under RA 10351 based on the (1) 2010 Bureau of Internal Revenue (BIR) price survey of these products, and (2) suggested net retail price declared in the latest sworn statement filed by the local manufacturer or importer. Some relevant portions provide:

Annex “D-1”

LIST OF LOCALLY MANUFACTURED CIGARETTE BRANDS
AS OF DECEMBER 2012

1. List of brands Based on 2010 BIR Price Survey

BRAND NAMES	Content/Unit (pack)	Net Retail Price (Based on 2010 BIR Price Survey)	Applicable Excise Tax Rates Effective Jan.1, 2013 under R.A. No. 10351
A. Cigarettes Packed by Machine			
A.1. Net Retail Price (NRP) is Php 11.50 per Pack and below			
1. Astro Filter King	20 sticks/pack	10.92	12.00
x x x x			
22. Fortune Int'l Extra Filter King	20 sticks/pack	10.84	12.00
23. Fortune Int'l Extra Filter King (10's)*	10 sticks/pack	6.58	12.00
x x x x			
44. Marlboro Filter (2x10's) Flip Top*	10 sticks/pack	8.27	12.00
45. Marlboro Filter KS (5's)*	5 sticks/pouch	4.11	12.00
x x x x			
61. Miller Filter Silver KS SP	20 sticks/pack	10.27	12.00
x x x x			
63. Miller Filter Silver-(5's) KS Pouch*	5 sticks/pouch	2.88	12.00

x x x x			
76. Philip Morris Menthol KS FTB-(10's)*	10 sticks/pack	6.25	12.00
77. Philip Morris Menthol-(5's) 100's Pouch*	5 sticks/pouch	3.84	12.00
x x x x			

* NRP is converted into individual package of 5s or 10s pursuant to Section 11 of RR No. 17-2012

PMFTC, Inc., a member of respondent Philippine Tobacco Institute, Inc. (PTI), paid the excise taxes required under RA 10351, RR 17-2012, and RMC 90-2012 in order to withdraw cigarettes from its manufacturing facilities. However, on 16 January 2012, PMFTC wrote the CIR prior to the payment of the excise taxes stating that payment was being made under protest and without prejudice to its right to question said issuances through remedies available under the law.

As a consequence, on 26 February 2013, PTI filed a petition⁷ for declaratory relief with an application for writ of preliminary injunction with the RTC. PTI sought to have RR 17-2012 and RMC 90-2012 declared null and void for allegedly violating the Constitution and imposing tax rates not authorized by RA 10351. PTI stated that the excise tax rate of either ₱12 or ₱25 under RA 10351 should be imposed only on cigarettes packed by machine in packs of 20's or packaging combinations of 20's and should not be imposed on cigarette pouches of 5's and 10's.

In a Decision dated 7 October 2013, the RTC granted the petition for declaratory relief. The dispositive portion of the Decision states:

WHEREFORE, premised on the foregoing, the Petition for Declaratory Relief is GRANTED. The assailed portions of Revenue Regulation 17-2012 and Revenue Memorandum Circular 90-2012 are declared NULL AND VOID and OF NO FORCE AND EFFECT. Respondents are to immediately cease and desist from implementing Sec. 11 of Revenue Regulation 17-2012 and Revenue Memorandum Circular 90-2012 insofar as the cigarettes packed by machine are concerned.

The tax rates imposed by RA No. 10351 should be imposed on the whole packaging combination of 20's, regardless of whether they are packed by pouches of 2x10's or 4x5's, etc.

SO ORDERED.⁸

⁷ Docketed as SCA Case No. 13-0003.

⁸ *Rollo*, pp. 44-45.

Hence, the instant petition filed by the Secretary of Finance and the CIR through the Office of the Solicitor General.

Meanwhile, in a Resolution dated 9 June 2014, this Court issued a temporary restraining order against PTI and the RTC. The dispositive portion states:

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, the respondent, the RTC, Br. 253, Las Piñas City, their representatives, agents or other persons acting on their behalf are hereby RESTRAINED from enforcing the assailed Decision dated 7 October 2013 of the RTC, Br. 253, Las Piñas City in SCA Case No. 13-0003.

x x x⁹

The Issue

Whether or not the RTC erred in nullifying Section 11 of RR 17-2012 and Annex “D-1” of RMC 90-2012 in imposing excise tax to packaging combinations of 5’s, 10’s, etc. not exceeding 20 cigarette sticks packed by machine.

The Court’s Ruling

The petition lacks merit.

Petitioners contend that RA 10351 imposes the excise tax “per pack,” regardless of the content or number of cigarette sticks of each pack. Thus, the RTC erred in ruling that RR 17-2012 and RMC 90-2012 have gone beyond the plain meaning of RA 10351. Petitioners assert that the two regulations merely clarify the tax rates set out in RA 10351 but have neither amended nor added any new taxes. Petitioners maintain that the excise tax rates imposed by RA 10351 on cigarettes packed by machine are based on the net retail price per pack. The pack, therefore, is the unit on which the tax rates are imposed and is understood to be the packaging unit that reaches the ultimate consumer. Each pack of 5, 10, or 20 cigarettes is meant to be sold at retail individually. On the other hand, bundles of smaller packs resulting in 20 cigarettes are meant to be sold wholesale. Thus, petitioners insist that the excise tax imposable on a bundle of 20 is computed on the net retail price of each individual pack or pouch of the bundle and not on the bundle as one unit.

⁹ Id. at 200.

PTI, on the other hand, contends that RA 10351 allows a cigarette manufacturer to adopt packaging combinations, such as the bundling of four pouches with five sticks per pack (4 x 5's), or two pouches of ten sticks per pack (2 x 10's), provided that such packaging combination does not exceed 20 sticks. Thus, individual cigarette pouches of 5's and 10's bundled together into a single packaging of not more than 20 sticks are considered as one pack and should be subjected to excise tax only once. Otherwise, a cigarette pouch of 5's, for example, will be subjected to an excise tax of ₱48.00 since the BIR will impose an individual excise tax of ₱12.00 upon each and every pouch of 5's. While the same brand in a pack of 20's will only be subjected to an excise tax rate of ₱12.00. Thus, PTI maintains that Section 11 of RR 17-2012 and Annex "D-1" pertaining to Cigarettes Packed by Machine of RMC 90-2012 disregarded the clear provision of RA 10351 and imposed excise tax on each cigarette pouches of 5's and 10's regardless of whether they are packed together into 20 sticks per pack. As a result, the affected cigarette brands that should have been taxed only either ₱12.00 or ₱25.00 per pack are subjected to a different and higher excise tax rate not provided in RA 10351. Further, PTI asserts that petitioners did not publish or circulate notices of the then proposed RR 17-2012 or conduct a hearing to afford interested parties the opportunity to submit their views prior to the issuance of RR 17-2012 which deprived it of its due process rights.

The pertinent portions of Section 145(C) of the NIRC, as amended by Section 5 of RA 10351, state:

SEC. 5. Section 145 of the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, is hereby further amended to read as follows:

SEC. 145. *Cigars and Cigarettes.* –

x 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:

Effective on January 1, 2013

(1) If the net retail price (excluding the excise tax and the value-added tax) is Eleven pesos and fifty centavos (₱11.50) and below per pack, **the tax shall be Twelve pesos (₱12.00) per pack;** and

(2) If the net retail price (excluding the excise tax and the value-added tax) is more than Eleven pesos and fifty centavos (₱11.50) per pack, **the tax shall be Twenty-five pesos (₱25.00) per pack.**

x x x x



Duly registered cigarettes packed by machine shall only be packed in twenties and other packaging combinations of not more than twenty.

x x x x (Emphasis supplied)

Section 145(C) of the NIRC is clear that the excise tax on cigarettes packed by machine is imposed per pack. "Per pack" was not given a clear definition by the NIRC. However, a "pack" would normally refer to a number of individual components packaged as a unit.¹⁰ Under the same provision, cigarette manufacturers are permitted to bundle cigarettes packed by machine in the maximum number of 20 sticks and aside from 20's, the law also allows packaging combinations of not more than 20's – it can be 4 pouches of 5 cigarette sticks in a pack (4x5's), 2 pouches of 10 cigarette sticks in a pack (2x10's), etc.

Based on this maximum packaging and allowable combinations, the BIR, with RA 10351 as basis, issued RR 17-2012. Section 11 of RR 17-2012, which provides for the manner of packaging cigarettes, states:

SEC. 11. Revised Provisions for the Manner of Packaging of Cigarettes. – All Cigarettes whether packed by hand or packed by machine shall only be packed in twenties (20s), and through other packaging combinations which shall result to not more than twenty sticks of cigarettes: *Provided, That, in case of cigarettes packed in not more than twenty sticks, whether in 5 sticks, 10 sticks and other packaging combinations below 20 sticks, the net retail price of each individual package of 5s, 10s, etc. shall be the basis of imposing the tax rate prescribed under the Act.* (Emphasis supplied)

The BIR also released RMC 90-2012, specifically Annex "D-1" on Cigarettes Packed by Machine, in accordance with RA 10351 and RR 17-2012, showing in tabular form the different brands of locally-manufactured cigarettes packed by machine with the brand names, content/unit (pack), net retail price, and the applicable excise tax rates effective 1 January 2013. The net retail price of some brand names was converted into individual packages of 5's or 10's pursuant to Section 11 of RR 17-2012.

The RTC, in its Decision dated 7 October 2013, ruled in favor of PTI and declared that RA 10351 intends to tax the packs of 20's as a whole, regardless of whether they are further repacked by 10's or 5's, as long as they total 20 sticks in all. Thus, the tax rate to be imposed shall only be either for a net retail price of (1) less than ₱11.50, or (2) more than ₱11.50, applying the two excise tax rates from 2013 until 2016 as mentioned under RA 10351. The RTC added "that the fact the law allows 'packaging combinations,' as long as they will not exceed a total of 20 sticks, is indicative of the lawmakers' foresight that these combinations shall be sold

¹⁰ Merriam Webster Dictionary <<https://www.merriam-webster.com/dictionary/pack>> (visited on 12 April 2017).

at retail individually. Yet, the lawmakers did not specify in the law that the tax rate shall be imposed on each packaging combination.” Thus, the RTC concluded that the interpretation made by the Secretary of Finance and the CIR has no basis in the law.

We agree.

In the laws preceding RA 10351 – RA 8240¹¹ and RA 9334,¹² both amendments to the excise tax rates provisions of the NIRC dealing with cigarettes packed by machine, which took effect in 1997 and 2005, respectively, provided that all “duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.”

The confusion set in when RA 10351 amended the NIRC once again in 2012 and introduced packaging combinations to cigarettes packed by machine, providing that “duly registered cigarettes packed by machine shall only be packed in twenties **and other packaging combinations of not more than twenty.**”

Thereafter, RR 17-2012 followed, where the BIR, in Section 11, reiterated the provision in the NIRC that cigarettes shall only be packed in 20’s and in other packaging combinations which shall not exceed 20 sticks. However, the BIR added “x x x **That, in case of cigarettes packed in not more than twenty sticks, whether in 5 sticks, 10 sticks and other packaging combinations below 20 sticks, the net retail price of each individual package of 5s, 10s, etc. shall be the basis of imposing the tax rate x x x.**”

The basis of RR 17-2012 is RA 10351. RA 10351, in amending Section 145(C) of the NIRC provided that “duly registered cigarettes packed by machine shall only be packed in twenties and other packaging combinations of not more than twenty.” However, nowhere is it mentioned that the other packaging combinations of not more than 20 will be imposed individual tax rates based on its different packages of 5’s, 10’s, etc. In such a case, a cigarette pack of 20’s will only be subjected to an excise tax rate of ₱12.00 per pack as opposed to packaging combinations of 5’s or 10’s which will be subjected to a higher excise tax rate of ₱24.00 for 10’s and ₱48.00 for 5’s.

During the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 3299 and House Bill No. 5727 dealing with the Sin Tax bills of the 15th Congress, before these bills were enacted into

¹¹ An Act Amending Sections 138, 140, & 142 of the National Internal Revenue Code, as amended, and for Other Purposes. Took effect on 1 January 1997.

¹² An Act Increasing the Excise Tax Rates Imposed on Alcohol and Tobacco Products, Amending for the Purpose Sections 131, 141, 142, 143, 144, 145 and 288 of the National Internal Revenue Code of 1997, as amended. Took effect on 1 January 2005.

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RA 10351, our lawmakers and Kim S. Jacinto-Henares, the CIR at the time, deliberated on the packaging of cigarettes. The relevant excerpts state:

Rep. Villafuerte: Just a point of clarification. The Senate says, 'twenties.' Okay, that's very reasonable. But can two packs put together in tens, is that prohibited? Because in rural areas, they don't necessarily have to sell.

The Chairman (Sen. Drilon): Can we ask our resource person, Congressman?

Ms. Jacinto-Henares: No, sir, as long as they take the two ten packs together or four, five packs together, that is considered twenty.

Rep. Villafuerte: Okay. As long as the twenty packs is paid even if they are separable in packaging for retail purposes, that's allowed. Because I got the impression from some people that that is being prohibited that's why I sought to clarify.

The Chairman (Sen. Drilon): On record, yes.

x x x x

Sen. Recto: But you could have five, five, five, five and put a tape.

Ms. Jacinto-Henares: Yeah. But it should be taped together.

Sen. Recto: Okay.

Sen. P. Cayetano: Can I ask a question about that? When you say that you can have numbers divisible, I guess, by five, so you have five, 10, 15, 20, right? So you can have two or four packaged together for tax purposes. And then for retail purposes, you can divide that up. Is that what we're saying?

x x x x

Ms. Jacinto-Henares: Yes.

x x x x

Sen. A. Cayetano: Mr. Chair. Mr. Chair. The point is, we're taxing by pack. If they sell less than 20, that's advantageous to the government. So, if they want to pack it by 10 but not combine it, we will tax them twice. So, it's good for the government. But if you allow combinations without limiting it to 20, they will pack three of 10s together and you will be taxing 30s and the government will be getting less. So it's an irony that our problem now with the sin tax is our sin tax.

So, can I propose this wording, 'In twenties and other packaging combinations not more than 20' or not more than 20 or not more than 20 sticks.

Ms. Jacinto-Henares: Yes, sir.¹³

¹³ *Rollo*, pp. 260-261.



From the above discussion, it can be gleaned that the lawmakers intended to impose the excise tax on every pack of cigarettes that come in 20 sticks. Individual pouches or packaging combinations of 5's and 10's for retail purposes are allowed and will be subjected to the same excise tax rate as long as they are bundled together by not more than 20 sticks. Thus, by issuing Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012, the BIR went beyond the express provisions of RA 10351.

It is an elementary rule in administrative law that administrative rules and regulations enacted by administrative bodies to implement the law which they are entrusted to enforce have the force of law and are entitled to great weight and respect. However, these implementations of the law must not override, supplant, or modify the law but must remain consistent with the law they intend to implement. It is only Congress which has the power to repeal or amend the law.

In this case, Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 clearly contravened the provisions of RA 10351. It is a well-settled principle that a revenue regulation cannot amend the law it seeks to implement. In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,¹⁴ we held that a mere administrative issuance, like a BIR regulation, cannot amend the law; the former cannot purport to do any more than implement the latter. The courts will not countenance an administrative regulation that overrides the statute it seeks to implement.

In the present case, a reading of Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 reveals that they are not simply regulations to implement RA 10351. They are amendatory provisions which require cigarette manufacturers to be liable to pay for more tax than the law, RA 10351, allows. The BIR, in issuing these revenue regulations, created an additional tax liability for packaging combinations smaller than 20 cigarette sticks. In so doing, the BIR amended the law, an act beyond the power of the BIR to do.

In sum, we agree with the ruling of the RTC that Section 11 of RR 17-2012 and Annex "D-1" on Cigarettes Packed by Machine of RMC 90-2012 are null and void. Excise tax on cigarettes packed by machine shall be imposed on the packaging combination of 20 cigarette sticks as a whole and not to individual packaging combinations or pouches of 5's, 10's, etc.

¹⁴ 491 Phil. 317, 347 (2005).

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 7 October 2013 of the Regional Trial Court of Las Piñas City, Branch 253 in SCA Case No. 13-0003.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

WE CONCUR:



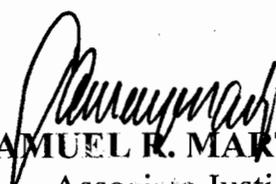
DIOSDADO M. PERALTA
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice