Supreme Court of Justice of the Nation

Buenos Aires, August 14, 2025

Having reviewed the case files: “Tabacalera Sarandí S.A. v. EN − AFIP − DGI s/proceso de conocimiento.”

Considering:

1) That Chamber IV of the National Chamber of Appeals in Federal Administrative Disputes partially upheld the judgment of the first instance judge, insofar as this judgment had declared Articles 103, 104, and 106 of Law 27,430 unconstitutional in relation to Tabacalera Sarandí S.A. (hereinafter TSSA), and warned that the application provided for in General Resolution (AFIP) 5113/21 −as a consequence of the regulation mentioned above−(hereinafter, RG 5113) had to be adapted to the decision in this proceeding and had imposed costs on the defendant and the interested third party −Massalin Particulares S.R.L. (hereinafter MP) −, in their capacity as the losing parties (Article 68, first paragraph of the National Code of Civil and Commercial Procedure −hereinafter CPCCN−).

To decide, first of all, the first instance judge pointed out that the declaratory action was admissible insofar as, with the issuance of Resolution 84/2022 (DV SRR1), which had initiated the ex officio determination procedure relating to “Internal Tax/Tobacco/Cigarette Manufacturing Law 23,562 and the amendment introduced by Law 27,430 to Article 15 of Law 24,674 on Internal Taxes” for the fiscal periods 3/2018 to 7/2018, the existence of an act of the Administration with direct, current, and sufficient specificity was apparent (Rulings: 325:474 and 327:2529) and confirmed the adverse outcome of the claims brought by the AFIP in relation to the formal requirements that the action attempted should meet.

Regarding the merits of the case, after reviewing Articles 103, 104, and 106 of Law 27,430, as well as the explanatory memorandum accompanying the draft law mentioned above and its legislative debate, the first instance judge presented the evidence provided by the parties and the respective challenges made in a timely manner.

On this basis, the Chamber noted that the “internal tobacco tax” constituted a selective consumption tax, the taxable event being the sale (in this case, the exit from the factory or tax warehouse); that it was calculated on the basis of the retail price (Rulings: 184:170; 208:380, among others); and that it ultimately fell on the consumer (Rulings: 115:48; 170:180; 182:370; 190:159 and 321:1812).

The Chamber then indicated that this was a tax established for a single stage of the production process (the first), whose “taxable event” was attributed to the producer, manufacturer, or importer, who was the taxpayer subject to the tax obligation—or “responsible for their own debt”— notwithstanding the provision of the law regarding the possibility of the latter charging and collecting the amount paid at the time of sale (see Article 2, first paragraph, of Law 24,674).

The Chamber defined excise taxes as “taxes on particular goods or services (...) which, in theory, are passed on to the purchasers of products by raising the prices of goods relative to the income of the factors, so that the tax reduces real income in proportion to the expenditure on the taxed goods,” stating that it was an “indirect tax,” insofar as it taxed a mediate and indirect manifestation of the final consumer's (de facto taxpayer) ability to pay, so that the transfer was precisely the desired objective.

In this way, it understood that it was logical for the law to authorize the taxpayer to transfer the tax to its co-contractor, initiating the long chain of returns until the product reached the final consumer, who would ultimately bear the tax burden. The Chamber indicated that the Supreme Court had recognized the transferable nature of internal taxes on tobacco (see CSJ 495/1995 (31-M)/CS1 “Massalin Particulares S.A. v. Fisco Nacional (D.G.I.) s/ repetición D.G.I.”, judgment of November 24, 1998).

The Chamber pointed out that the “transferable” nature of the tax in question did not prevent the taxpayer from deciding, “for market reasons or commercial convenience,” to absorb its burden, which would qualify as a “voluntary choice on their part.” It therefore stated that the classification between “direct” and “indirect” taxes, based on the transfer of the tax burden, could not be made, but that it was necessary to wait to see the effects of each tax on each taxpayer (and each period) a priori, to assess whether its behavior had implied its transfer, leaving between one extreme and the other an immense number of cases in which the transfer would have been partial and to varying degrees and in different directions, since the actual functioning of wealth depended on the various circumstances that arose for each taxpayer at each moment and in each market in which they operated (see the opinion of February 17, 2011, of the Attorney General before the Court, in Rulings: 335:2117).

On the other hand, it also stated that it could be that the lack of transfer of the tax (inherent in its nature) was not due to the will of the taxpayer, but to the existence of regulated prices in which the incidence of the tax involved was not provided for (Rulings: 322:1245−dissenting opinion of Judge Vázquez−; case CSJ 535/2009 (43−T)/CS1 “Transportes Automotores La Estrella S.A. v. Mendoza, Province of s/ action of unconstitutionality,” judgment of March 6, 2012; and in Rulings: 336:1415; 343:2039 −dissenting opinion of Judge Rosenkrantz− and 344:936).

Furthermore, it emphasized that with the internal taxes applied to cigarettes, due to the “inelasticity of demand,” significant levels of revenue could be obtained with little administrative effort on the part of the State.

Next, after reviewing the Court's extensive case law on confiscation, the Chamber considered that the “transferable” nature of the tax involved and its “extra-fiscal” purpose did not exempt it from specific constitutional limitations or prevent, per se, the tax from being examined in light of the guarantee prohibiting confiscation. In this regard, it noted that, in general terms, the disproportionate amount of the tax in relation to the value of the merchandise would not be sufficient, on its own, to consider it confiscatory, since it had to be examined, in any case, in light of the buyer's purchasing power and their possible inability to obtain the product. Therefore, the Chamber considered that it could be inferred that an indirect and transferable tax

could be regarded as confiscatory if, when added to the price of the goods, they ceased to be in demand, thereby destroying the industry or trade generated around them.

With that in mind, and after transcribing the relevant parts of the expert report, the Chamber asserted that the same evidence that prevented the confiscatory nature of the tax from being proven led to the admission of the existence of specific damage to the marketing of the plaintiff's products, which had been systematically justified by the “extra-fiscal purpose” of the minimum tax. In effect, he stated that the mere reference by the legislature to the need to eradicate “cheap” and “ultra-cheap” cigarettes from the market (products marketed by the plaintiff) corroborated this point.

In this regard, the Chamber recalled that the Court had stated that “the power to impose taxes is a valuable regulatory instrument, a necessary complement to the constitutional principle that provides for the general good, which leads to the clearly extra-fiscal purpose of promoting the expansion of economic forces” (Rulings: 298:341; 302:508; 314:1293, and 318:676). It indicated that, when intervening in this process in the context of the precautionary measure, this Court had pointed out that, when "weighing the principle of equality and contributory capacity, the extra-fiscal purposes that the legislator may have had in creating taxable events and quantifying taxes should not be ruled out, as these are matters pertaining to the design of a fiscal policy outside the jurisdiction of the Judiciary, except in cases of discrimination or arbitrary or unfair distinction (arg. doct. Rulings: 289:508; 300:1027; 307:993) [...]344:1051). In effect, the guarantee enshrined in Article 16 of the National Constitution gives the Legislative Branch broad discretion and wisdom to organize and group, distinguish, and classify the objects of legislation (Rulings: 313:411 and 320:1166).

In this regard, the Chamber recalled that this Court had considered it "reasonable for the State, based on its taxing power and in pursuit of the objectives of its government plan, to apply a differentiated tax to certain activities, provided that there is a solid basis for the distinction that justifies it and that it is not established for the purpose of harassing or favoring certain persons or classes of persons with considerations that are not related to the duties of taxpayers (Rulings: 325:2600), admitting that the establishment of classifications and categories for the collection of taxes is compatible with the principle of equality (Rulings: 180:39; 181:203; 182:355, among many others), which requires identical taxes to be imposed on taxpayers who are in similar circumstances (Rulings: 138:313; 328:1750).

Thus, the Chamber stated that “the guarantee enshrined in Article 16 of the Constitution concerning taxes serves no other purpose than to prevent arbitrary distinctions inspired by the manifest intention of hostility toward certain individuals or classes” (Rulings: 150:419). Therefore, it indicated that the possibility of determining different categories of taxpayers for reasons other than the economic capacity revealed by the value of the taxed wealth had been previously accepted. Specifically, it recalled that this Court had admitted that taxes transcend exclusively fiscal purposes in their determination so that, in addition to the ability to pay, a greater or lesser duty to contribute may also be considered depending on the characteristics of the assets, the manner of owning or exploiting them, the greater or lesser connection of the owner with the country in which the taxable wealth is located or has its source, and the type of activity carried out with it (Rulings: 314:1293).

Notwithstanding this, the Chamber warned that this Court had also stated that "taxation that serves as an instrument to benefit some to the detriment of others, altering the basis on which all taxation should be based and going so far as to effectively eliminate all industrial competition in order to cement a situation of privilege, violates the guarantees of Articles 16 and 17 of the National Constitution" (Rulings: 179:98). It considered that this conclusion was consistent with the principle that "the payment of the tax established by the internal tax law must comply with the principle of equal application of the law (Rulings: 312:912) and responds to the purpose that inspired its enactment" (Rulings: 316:2390, among others). It stated that it had also been considered that the use of tax mechanisms to regulate industries was a lawful means provided that "the principle of tax equality is not violated, or illegitimate monopolies are created (Rulings: 153:277)."

Thus, it found that it was admissible that an essentially transferable tax could harm the exercise of an industry considered lawful and the principle of equality, even though the tax burden involved did not ultimately fall on the plaintiff (see Rulings: 317:619). Consequently, it concluded that the scope and impact of an indirect, transferable, and extra-fiscal tax could affect constitutional rights other than the prohibition of confiscation.

In that stage, the first instance judge noted that, although it was correct to consider that competition and market regulation involved "issues of constitutional relevance that have specific protection mechanisms unrelated to the tax claim" (Rulings: 344:1051), it could not be ignored that, in this case, Congress had introduced motivations related to those purposes when enacting Law 27,430, so that it was precisely this circumstance that enabled and required determining whether the new tax scheme had resulted in arbitrary discrimination and/or the violation of the right to industrial development that the National Constitution guaranteed to TSSA.

Next, after thoroughly analyzing the evidence presented in the case, the court concluded that the minimum tax amounted to the establishment of a tax burden that, nominally, applied to all cigarettes on the market (premium, cheap, and ultra-cheap) but, in fact, only affected those with sale prices below the so-called Equalization Price (i.e., the price that ensured that the ad valorem amount was equal to the fixed minimum tax).

The Chamber added that the National Congress had justified its action based on the "extra-fiscal" objective pursued: to standardize market prices to avoid the risk of substitution and reduce the consumption of a product that is harmful to health. He added that, simultaneously with the incorporation of the minimum tax, the legislature had reduced the ad valorem rate from 75% to 70%, which entailed a reduction in the tax burden on the best-selling products on the market. Thus, the first instance judge concluded that the amendments incorporated into Article 15 of the internal tax law resulted in unequal and more burdensome treatment for cheap and ultra-cheap products that had a lower incidence in terms of units sold. All this took place in a context of growing competitiveness of small and medium-sized enterprises (SMEs) vis-à-vis large tobacco companies.

From this perspective, a study of Law 27,430, taking into account the reality of the market for which it was intended, allowed the chamber to note that its provisions were not aimed at

achieving a uniform increase in prices but rather at standardizing them in line with those recorded for brands marketed by large tobacco companies.

The Chamber stated that the tool used by the legislator, aimed at “leveling the playing field in the industry,” sought to reduce the possibility that the products of large companies (and the best sellers) would be replaced by others of lesser value, thus ensuring the maintenance (and/or consolidation) of their dominant position in the tobacco market, with the consequent impact on the level of competitiveness of the products marketed by the SME segment.

It considered that it was logical to infer that the incorporation of the “minimum tax” in the retail price of most TSSA cigarette brands would cause it to leave the usual market in which it sold its products (the SME segment) and move into the large companies segment, with the consequent commercial disadvantages that this situation would entail, namely the lack of competitiveness of its most economical products and the loss that this would generate. Thus, the Chamber argued that the regulations challenged by the plaintiff affected its economic sustainability and essentially interfered with the sale of most of its products, demonstrating the existence of an impairment of the right to engage in lawful industry (contrary to the jurisprudential doctrine of Rulings: 338:1110).

The Chamber emphasized that it was a “lawful” industry despite being openly considered an activity “harmful to health,” and that this circumstance had not led to the consistent exercise of state police power, even in its traditional and most restricted form (relating to the protection of the health, safety, and morality of the Nation; cf. Rulings: 7:150, among others). On the contrary, it stated that, alongside provisions such as those involved in the proceedings, regulations had been enacted that—paradoxically—had established a policy of subsidies and promotion of the industry, as highlighted by tobacco farmers in their submission in these proceedings on September 19, 2022.

Consequently, it stated that the contested regulatory provisions did not lead to the conclusion that the objective of the law was to increase the prices of all tobacco products, regardless of who manufactured or imported them, but rather that a minimum tax was incorporated that, in practical terms, only impacted a portion of the affected items, which, moreover, had lower sales volumes, a circumstance that constituted an affront to the constitutional requirements of equality, equity, and proportionality that must characterize the taxes imposed by Congress (arg. Articles 4 and 16 of the National Constitution).

It added that the foregoing demonstrated that the quantification of the minimum tax was, in itself, conclusive to assess the tax’s impact on the tobacco market. This market was not classified as either SMEs or large companies; that classification stems from the various pieces of evidence submitted to the case by the defendant and even weighed by the Public Prosecutor's Office to support part of its defense.

On the other hand, after recalling that “the correctness or error, merit or appropriateness of legislative solutions are not matters on which the Judiciary should rule” (Rulings: 313:410), the Chamber indicated that case law had recognized "the power of the Legislative Branch to restrict the exercise of the rights established in the National Constitution, in order to preserve other

rights that are also considered therein, because the legal system does not recognize the existence of absolute rights, but rather rights limited by the laws that regulate their exercise, with the sole condition of not altering them in substance and respecting the limits imposed by higher-level norms" (Articles 14, 28, and 31 of the National Constitution and Rulings: 31:273; 249:252; 257:275; 262:205; 296:372; 300:700; 310:1045; 311:1132; 316:188, among many others).

In this regard, it pointed out that this Court had established that "the substantive limit that the Constitution imposes on all state actions, and in particular on laws that restrict individual rights, is that of reasonableness" (Rulings: 288:240; 330:3098, dissent by Justices Lorenzetti and Zaffaroni; and 338:1110, vote by Justice Lorenzetti). The Chamber recalled that this principle required "that: (i) laws pursue a constitutionally valid purpose; (ii) the restrictions imposed be justified by the reality they seek to regulate; and (iii) the means chosen be proportionate and adequate to achieve the objectives sought (Rulings: 248:800; 243:449; 334:516; 335:452, among others; 338:1110, vote of Judge Lorenzetti)."

In this regard, it pointed out that the Court had already examined the legal restrictions related to the tobacco industry in the case of Fallos: 338:1110. It noted that, on that occasion, it had ruled in favor of those limitations, due to the effects of tobacco consumption on public health. Specifically, the Chamber emphasized that it had admitted the possibility "that for these constitutionally valuable purposes, restrictions may be imposed on business and the protected sphere of commercial speech."

The Chamber noted that case law had also warned of "the need to carry out a proportionality test to determine the validity of the balance between means and ends, with regard to the restrictions imposed on tobacco advertising and the discouragement of consumption, especially in relation to individuals requiring special protection."

Thus, it recalled that it had previously classified cigarette smokers as "a particularly vulnerable group, insofar as, for many of them, smoking has become an addiction" and justified the existence of provisions aimed at achieving "a more effective application of consumer rights" in light of Article 42 of the National Constitution (vote of Judge Lorenzetti in the precedent mentioned above).

In this context, the first instance judge considered that the means used by the legislator—that is, the incorporation of a minimum tax on cigarettes at the rate set in Article 15 of the Internal Tax Law—to achieve an extra-fiscal objective not only violated the principle of equality and the right to engage in lawful industry. In his view, such measure also contravened the principle of reasonableness, inasmuch as the requirement of a minimum tax that was above the sale price of cheap and ultra-cheap cigarettes, which were those consumed to a lesser extent, and the simultaneous reduction of the ad valorem rate that applied to premium cigarettes, did not seem adequate or suitable for achieving the ultimate goal pursued (to reduce overall tobacco consumption among the entire population). This is all the more so when it had not even been proven how the increase in tax pressure on lower-priced products—and its simultaneous reduction on higher-priced products—would have encouraged high-price strategies for all companies in the tobacco sector, with the consequent decrease in consumption of the products affected.

Furthermore, it indicated that it should also be kept in mind that the use of taxing power as an instrument of economic regulation endorsed by this Court was one that converged “towards the primary, and certainly extra-fiscal, purpose of promoting the full and fair development of economic forces” (Rulings: 289:443).

In other words, the Chamber pointed out that, considering the extra-fiscal purposes pursued, there was no evidence to support limiting the market position of SMEs instead of implementing regulations that would affect all competitors in the industry.

It emphasized that the analysis laid out highlighted the proportionality of the means used by the legislature, which required assessing the restrictions imposed based on the nature of the asset to be protected, avoiding abstract judgments (Rulings: 313:1638; 330:855; 334:516 and 338:1110, vote of Judge Lorenzetti).

The Chamber noted that Article 103 of Law 27,430 had incorporated an unnamed and general “minimum tax” that was actually intended to increase the price of less consumed cigarettes (in terms of units sold), marketed by SMEs, in a segment with competitive advantages over large tobacco companies. These companies had seen most of their products benefit from the reduction in the tax rate, all of which led to the conclusion that the minimum ad valorem tax had represented arbitrary discrimination and was therefore unconstitutional with respect to TSSA.

It stated that the link between smoking and poverty did not alter the above, as there was no concrete evidence to prove the effectiveness of substantially increasing the price of “cheap” and “ultra-cheap” cigarettes in reducing health and poverty inequalities that certainly affected the most vulnerable sectors of society.

The Chamber emphasized that both the constitutional grievances of the plaintiff (specifically, the confiscatory nature of the tax alleged in the terms required by the criteria developed by the first instance judge) and the defenses of the defendant (i.e., the effectiveness of the minimum tax in combating smoking in economically vulnerable sectors) had to be thoroughly proven to be admitted in court, as assumptions and conjectures, even if reasonable at face value, were insufficient.

Finally, it pointed out that the information published by the Ministry of Agroindustry regarding the increase in TSSA's share of the tobacco market—a fact that was also reflected in the data included in the accounting report on the evolution of TSSA's net worth—did not alter the solution it adopted, as this circumstance reflected a change in the distribution of the tobacco market that had not led to a significant increase in cigarette consumption (in total units sold).

The first instance judge considered that, in response to the allegations of the National Treasury and the MP related to TSSA's commercial alliance with Imperial Tobacco Int. Ltd., it was sufficient to refer to the classification and analysis of the tobacco market arising from official statistics to validate the SME status of the company acting as plaintiff here (cf. its inclusion as a member of the SME segment of the tobacco market according to the classification contained in

the report issued by the Secretariat for Access to Health of the Ministry of Health of the Nation on December 3, 2021, and the MIPyME certificate accompanying it on October 20, 2020).

The Chamber made clear that it did not disregard the supremacy of consumer rights protected by Article 42 of the National Constitution, to which the Public Prosecutor's Office referred in its brief. In fact, he recalled that the Supreme Court of Justice of the Nation had stated that "the general economic interest sought to be preserved by the competition law (Article 1, Laws 25,156 and 27,442) does not protect 'both market participants' equally, but rather that legal protection is primarily aimed at the good of the community" (cf. the opinion of the Attorney General's Office, referred to by the Court in Rulings: 330:2192), pointing out that, when examining the impact on the general economic interest, the Court had noted that the legislature had left intact conduct that "may appear anti-competitive but is in fact beneficial to the community."

However, applying the line of argument outlined by MP, the first instance judge stated that it was not clear how the modification of competition in the tobacco market, as analyzed in its ruling, protected the general economic interest—and the consequent good of the community—as the primary purpose of the legislation referred to in his brief.

On the contrary, the Chamber indicated that, as stated in the conclusions, the implementation of the minimum tax—in the amount set and in the scenario described above—to reduce the consumption of a product that is highly harmful to health: (i) made less consumed cigarettes more expensive; and (ii) affected the SME segment in that it was forced to compete (on price) with the large tobacco companies, which benefited from the simultaneous reduction in the rate provided for by the same ad valorem legislator in the above mentioned Article 103.

Finally, taking into account the complexity of the subject matter involved, the novel nature of the issue under debate, the result obtained by the plaintiff, and the existence of well-founded reasons for litigation on the part of both the defendant and the intervening third party—departing here from the decision of the first instance judge—he distributed the costs of the proceedings, in both instances, in the order in which they were incurred (see Articles 68, second part, and 279 of the Code of Procedure).

2) That, against this ruling, the National Treasury and MP filed separate extraordinary appeals, which were granted by the first instance court on the grounds of federal jurisdiction and denied on the grounds of arbitrariness. Concerning the latter, both the National Treasury and MP filed the relevant complaints identified before this Court under numbers CAF 8093/2018/3/RH14 "Tabacalera Sarandí S.A. v. EN - AFIP - DGI on proceedings" and CAF 8093/2018/5/RH16 "Tabacalera Sarandí S.A. v. EN - AFIP - DGI on proceedings," respectively.

The National Treasury, insofar as it is relevant to the case, argues that the chamber's decision constitutes judicial interference in the health and fiscal policies adopted by the National Congress, disregarding a substantial amount of technical data, opinions, and reports provided by various levels of government. It posits that the contested regulations are part of the fight that nations are waging to combat smoking. The National Treasury asserts that the law imposes a minimum tax to make these products more expensive and prevent their excessive proliferation. It argues that a presumption of constitutionality for the law, based on the legality of its enactment,

should prevail. It argues that the chamber's ruling violates the principle of equality (insofar as all tobacco companies are in the same situation), while ignoring the extra-fiscal purpose of the rule and the international treaties related to the matter. It considers the chamber's decision a serious institutional matter, as it leads to a reduction in tax revenue and an increase in public spending. Finally, the National Treasury points out that the chamber's ruling declared a national public health regulation unconstitutional without the plaintiff demonstrating the respective infringement of rights and guarantees invoked in a timely manner.

For its part, MP, concerning the merits of the case, considers that the ruling is arbitrary in that it violates Articles 16 and 17 of the National Constitution. MP argues that the plaintiff did not prove that the application of the minimum tax caused it to lose market share, thereby also affecting the principle of generality protected by Article 33 of the Constitution. It points out that the purpose of creating the minimum tax was to guarantee tax revenue and, at the same time, discourage tobacco consumption. It asserts that the chamber errs in stating that the maximum price of cigarettes is not affected by the minimum tax. It argues that not paying the tax led to a 470% increase in TSSA's market share in five years. Finally, it argues that the chamber is making a partial and biased interpretation of all the regulations involved, ignoring their extra-fiscal purpose.

3) That on March 11, 2021, the Court accepted the recusal filed by Justice Rosenkrantz in case CAF 8093/2018/4/3/RH6 "Tabacalera Sarandí S.A. v. EN – AFIP – DGI re: request for preliminary injunction." As a result, by order of the Court, a hearing was convened on June 10, 2025, for the purpose of integrating this Supreme Court with three associate judges, with Justices Patricia Marcela Moltini, Mariano Llorens, and Mario Osvaldo Boldú being selected as associate justices, and Justices Ramón Luis González, Beatriz Estela Aranguren, and Guillermo Antelo as alternate associate justices (see record dated June 10, 2025, uploaded to the Lex 100 computer system).

4) That subsequently, on June 25, 2025, this Court dismissed the recusals against Justices Rosatti and Llorens filed by the plaintiff and also rejected the recusal filed by Judge Boldú.

However, on July 14, 2025, the TSSA's lawyer made a presentation in which he argued for the absolute nullity of the treatment of the recusals, requesting the formation of an impartial court for that purpose, preserving all the arguments of nullity and recusals made in a timely manner. This presentation, for the reasons that will be explained, must be rejected outright.

5) That, with the Court constituted as indicated, it is appropriate, on a preliminary basis, to address the argument made by the plaintiff regarding the justices of the Public Prosecutor's Office on July 5, 2024.

In fact, on that date, TSSA's legal counsel made a presentation inviting the Attorney General of the Nation (interim), Dr. Eduardo Ezequiel Casal, and the Prosecutor before this Court, Dr. Laura Mercedes Monti, to recuse themselves from participating in the present case, pursuant to Article 30 of the CPCCN, and, alternatively, recused them with grounds, on the understanding that their actions—according to various newspaper articles attached to his brief—constituted the grounds provided for in Article 17, paragraph 7, of the aforementioned code.

6) That, in view of the content of this argument, it is appropriate to resolve this issue first, because the progress of the examination of the remaining grievances presented before this Court will depend on its outcome.

7) That, along these lines, it should be emphasized that the institution of recusal with grounds, created by the legislature, is an exceptional mechanism, subject to restrictive interpretation, with strictly established conditions (Article 17 of the Code of Civil Procedure) for extraordinary cases, taking into account that its application causes the displacement of the legal and normal jurisdiction of judges and the consequent alteration of the constitutional principle of the natural judge (Article 18 of the National Constitution; Rulings: 319:758; 326:1512, among others).

8) That it is helpful to recall that, according to the settled case law of the Court, the appropriate time to raise the challenge of a Justice of the Court is “when filing the extraordinary appeal, a procedural act that may open the proceedings under Article 14 of Law 48” (doctrine of Rulings: 329:5136; 340:188, and 342:1508). This doctrine is also applicable to this case and to the examination of the submission referring to the members of the Public Prosecutor's Office acting before this Supreme Court, whose participation in the case was entirely foreseeable (Articles 1, 2, and related provisions, Law 27,148).

In this regard, it should be noted that the challenge under review is manifestly untimely, since the event that allegedly supports its filing occurred earlier, that is, at least on October 10, 2023—the date on which the newspaper article was published. This date precedes the issuance of the chamber's ruling on October 31, 2023.

Therefore, given that that TSSA’s lawyer did not allege any harm to justify a federal remedy, since the court *a quo* confirmed, in substance, the ruling of the first instance judge who had upheld the claim, it can be concluded that, following the doctrine of this Court, the procedural opportunity to challenge the interim Attorney General or the Prosecutor was when responding to the federal remedies sought by the AFIP and Massalin Particulares S.R.L. Those procedural acts occurred on November 30, 2023, and March 18, 2024, respectively, and, as already noted, it did not do so at that time.

9) That, concerning the plaintiff's claim of unconstitutionality regarding Article 33 of the CPCCN, it should be noted that a declaration of this nature is the most delicate of the functions that may be entrusted to a court of law, since it constitutes an act of the utmost gravity that must be considered as the ultima ratio of the legal system, and therefore should not be resorted to except when strictly necessary (Rulings: 327:1899 and 342:685).

Likewise, it has been said that declaring a norm unconstitutional should not be made unless the conflict between the legal provision and the constitutional clause invoked is manifest, requiring, without exception, a solid argument and the demonstration of a specific and determined grievance (Rulings: 249:51; 299:291; 335:2333; 338:1444; 338:1504; 339:323; 339:1277; 340:669 and 341:1768).

In the present case, the petitioner's generic allegation of unconstitutionality regarding Article 33 of the Code must be dismissed, as it is insufficient to justify such a claim, disregarding the legal value of that provision. Such an allegation lacks the rigorous argumentative and justificatory burden according to which the challenger must provide “conclusive evidence” of the “substantial” inconsistency of the challenged provision with the National Constitution (arg. of Rulings: 334:1703). In fact, the petitioner's argument is “devoid of consistent factual and legal support, [and therefore] insufficient for [the Court] to exercise the power that it has repeatedly described as the most delicate of the functions that can be entrusted to a court of justice” (arg. Of Rulings: 344:2123).

10) That TSSA, in addition to the challenges already resolved and upheld, requested the annulment of all proceedings (brief dated September 2, 2024), the suspension of the process (June 4, 2025), and, specifically, the annulment of the decision of June 25, 2025, referred to in recital 4 (submission of July 14, 2025).

These are requests with generic and insufficient statements that call into question the procedural process of the case, seeking a declaration of nullity for the sake of nullity itself (see Rulings 322:507 and 339:480, among others).

11) That, having clarified the above, it is necessary to examine the grievances raised by the appellants that are the subject of this Court's review. In this regard, this Court has stated that “when the grievances based on the arbitrariness of the judgment are inextricably linked to the analysis of the federal rules involved in the case, it is appropriate to analyze both assumptions together, even when the appeal was granted only in relation to the interpretation of rules of that nature” (Rulings: 345:1394; 345:1457; 346:1082, among many).

12) That, as has been repeatedly pointed out by the Court, it is beyond the jurisdiction of judges to rule on the appropriateness or fairness of taxes or contributions created by the National Congress or provincial legislatures (Rulings: 242:73; 249:99; 286:301). Except for the insurmountable barrier posed by constitutional limitations, the powers of these bodies are broad and discretionary, so that the criteria of opportunity or accuracy with which they exercise them cannot be reviewed by any other power (Rulings: 7:331; 51:349; 137:212; 243:98). Consequently, they have the power to choose the taxable objects, determine the purposes of collection, and establish the methods of evaluation of the goods or things subject to taxation, provided that, it should be reiterated, constitutional precepts are not violated (Rulings: 314:1293).

13) That, as is evident throughout the proceedings of this case, the contested rules have a framework based on two distinct but inextricably linked pillars: one purely tax-related and aimed at revenue collection, and the other extra-fiscal in nature, with clear foundations.

14) That, with regard to the extra-fiscal function of taxes, this Court cannot ignore in the interpretation proposed here the recommendations that arise from various international organizations, since it has indicated that it is admissible to resort to the wisdom of comparative law; However, as emphasized on that occasion, this recourse to legal wisdom does not imply the analogous or supplementary application of rules, but rather that it is integrated through reason,

knowledge, and other factors (doctrine of Rulings: 310:2478, dissent of Judge Fayt; arg. of Rulings: 329:5123, paragraph 6).

Furthermore, as this Court has pointed out in its case law for almost 100 years, "This Supreme Court would not remain within the legal sphere of its jurisdictional powers if, departing from the specific issue brought before it for examination, it became involved in the public debate on this matter; but it is not prohibited from generalizing about assessments and concepts relating to said controversy in order to relate them [to] the case at hand (...)" (Rulings: 149:260).

15) That, under the umbrella of this interpretation, it is worth mentioning the 2024 report by the Organization for Economic Cooperation and Development (OECD) entitled “Tobacco Taxation in Latin America and the Caribbean” [OECD (2024), *Tobacco Taxation in Latin America and the Caribbean (abridged version): The Urgency of Tobacco Tax Reform*, OECD Publishing, Paris], which points to the potential of Latin American countries to strengthen the effectiveness of their tobacco tax policies and administration in order to reduce the prevalence of smoking and the costs it generates for society. The report examines trends and effects of tobacco consumption, analyzes tobacco tax revenue collection, and provides a comprehensive overview of tobacco tax policy design in the region.

In this regard, it is worth noting that this report is a continuation of its predecessor, which was cited in the evidence presented by the National Government in its response to the lawsuit —a document that was available for review by all parties involved.

In this sense, it should be noted that the contested regulations are in line with the best practices suggested by the World Health Organization (WHO) in terms of tobacco tax policy, which are compiled in the aforementioned OECD report and demonstrate that the laws in question have the necessary international consensus, as they seek to discourage tobacco consumption through various fiscal policy tools.

16) That, likewise, it should be remembered that on September 25, 2003, the Argentine State joined the WHO Framework Convention on Tobacco Control, and that, although it is true that to date this has not been ratified by Parliament, as two bills are pending in this regard, it is nonetheless important to note that its guidelines were the parliamentary basis for Law 27,430 and the country's health policy. Indeed, the convention establishes a comprehensive package of practical measures that countries must implement to control the tobacco epidemic, which is expected to cause one billion deaths in the 21st century. The measures—which include a ban on advertising, promotion, and sponsorship of tobacco products; the inclusion of health warnings on cigarette packaging; increased tobacco taxes; and total protection from exposure to tobacco smoke in enclosed spaces and transportation—are already largely covered by national regulations. It should therefore be emphasized that the contested articles of Law 27,430 are a consequence of the international directives established in the aforementioned agreements and reports.

17) That, in line with the international framework described above, it is necessary to recall that this Court, when ruling on appeals against the precautionary measure that had been brought before it, and which led to the ruling of May 13, 2021 (Rulings: 344:1051), warned that "when

assessing the plausibility of the right to the precautionary measure and weighing the principle of equality and contributory capacity, the extra-fiscal purposes that the legislature may have had in creating taxable events and quantifying taxes should not be ruled out, as these are matters pertaining to the design of fiscal policy that are beyond the jurisdiction of the Judiciary, except in cases of discrimination or arbitrary or unfair distinction (arg. doct. Rulings: 289:508; 300:1027; 307:993).

From this perspective, it is worth remembering that taxes are not only used by the State to collect revenue and fulfill its objectives, but are also instruments of financial, economic, or social policy, depending on the interests of the State itself, and thus can be used to encourage or discourage certain activities or social practices for the development of the country, provided that the constitutional principles governing taxation are not violated, since, ultimately, "both national and provincial taxing power constitutes an instrument of regulation, a necessary complement to the constitutional principle that provides for the general good, which leads to the certainly extra-fiscal purpose of promoting the expansion of economic forces" (Rulings: 316:42) and, in this regard, they function as an instrument of fiscal policy with the aim of protecting certain assets such as the environment and the health of the population, among others.

In this regard, it is useful to highlight, by way of example, that according to the information document prepared in 2023 by the Inter-American Heart Foundation (FIC by its Spanish acronym), fiscal policies that increase taxes and, therefore, the price of tobacco have been recognized by the WHO as the most effective individual measure to reduce tobacco consumption and protect the health of the population, as they encourage people to quit, prevent relapses in consumption, and/or prevent children and adolescents from starting to smoke, since the latter are the sectors of the population that, due to the stage of life they are going through, do not have their own income and therefore have less purchasing power than adults. The report highlights that increasing tobacco taxes, which lead to higher prices, has a greater impact on the age of initiation of consumption.

18) That, in line with the above consideration, we must not lose sight of the fact that Article 24 of the Convention on the Rights of the Child, which has constitutional status in accordance with Article 75, paragraph 22, of the National Constitution, establishes the obligation of States Parties to recognize the right of children to enjoy the highest possible standard of health, and this has direct consequences for the tobacco industry, as the interpretation of the scope of the right to comprehensive health care for children and adolescents has been carried out by the Committee on the Rights of the Child through General Comment No. 15 of 2013, which emphasized that the realization of children's right to health is indispensable for the enjoyment of all other rights contemplated in the Convention.

Concerning the consumption of tobacco and other addictive substances in adolescence, General Comment No. 15 of the committee mentioned above expressly addresses this issue in paragraphs 65 and 66, and in paragraph 81, urges private companies to refrain from advertising, marketing, and selling tobacco to children. Focusing specifically on adolescents, the committee drafted General Comment No. 4 in 2003, which states in the relevant part of paragraph 2 that "*Although adolescents are generally a healthy population group, adolescence also poses new challenges to*

health and development due to their relative vulnerability and the pressure exerted by society, including by adolescents themselves, to engage in behaviors that are risky to health."

Finally, and in line with the above, it should be remembered that in the Constitution of the World Health Organization, States agreed to understand health as a state of complete physical, mental, and social well-being, and it is emphasized that this positive concept of health lays the foundation for the field of public health; Section 38 emphasizes the Committee's concern about "*(...) the increase in poor mental health among adolescents, specifically developmental and behavioral disorders, depression, eating disorders, anxiety, and psychological trauma resulting from (...) tobacco abuse (...). There is growing awareness of the need to pay greater attention to social and behavioral issues that undermine children's mental health, psychosocial well-being, and emotional development*."

19) That, given the context described above, there is an urgent need to verify, on the one hand, whether the evidence offered and produced by TSSA succeeded in demonstrating that the contested legislation contradicts the extra-fiscal purposes relating to tobacco taxation, which ultimately seek to protect the health of the entire population; on the other hand, that compliance with the law mentioned above would have such a scope that—as the plaintiff argued in its initial submission—it would inevitably lead to the unviability of its commercial activity.

It should be noted, at this point that, given the extra-fiscal nature of the issue, linked to a matter of public health and the protection of the rights of vulnerable sectors, on the one hand, and the demanding requirements of the preventive procedural route freely chosen by TSSA to file its lawsuit in defense of its rights, on the other, the standard of proof required was clearly high and demanding.

In this regard, it is easy to conclude that, from a comparison of the evidence offered and produced, none of this has been addressed, even tangentially, by the means chosen by the plaintiff, which shows that her lack of support on this point—as mentioned above—seals the adverse fate of her claim.

20) That it is the doctrine of this High Court that the brief and dogmatic allegation of unconstitutionality of a law, devoid of consistent factual and legal support, is not sufficient for judges to exercise the power that this Court has repeatedly described as the most delicate of the functions that can be entrusted to a court of justice, as it constitutes an act of the utmost gravity that must be considered as the ultima ratio of the legal order (see Rulings: 344:3006, among many others). The institutional gravity of the petition requires, as a sine qua non, that the relationship between the rule and the constitutional clause, as this Court has emphasized since its earliest precedents in which it performed this most eminent jurisdictional function (see the case of "Avegno, José Leonardo," published in Rulings: 14:425), be "absolutely incompatible" and that "there be evident opposition between them," in order to enter the realm of the unreasonable, unjust, or arbitrary (see Rulings: 318:1256).

21) That, following these interpretative guidelines, with regard to the impact of the provisions of Article 17 of the National Constitution argued by the plaintiff, this Court has defined the constitutional protection of property by establishing that it is not limited to a formal guarantee

but rather tends to prevent that right from being deprived of its real content. In this vein, for example, it has pointed out that, for the charge of confiscation to be successful, it is necessary to demonstrate that the tax in question exceeds the economic or financial capacity of the taxpayer (Rulings: 271:7, considering 10 and its citation; 312:2467, among others) and, in particular with regard to taxes on specific consumption, it has emphasized that such an effect would occur if it were demonstrated that the amount of the tax absorbs a substantial part of what the owner of the product obtains by selling it to the consumer, or that it "killed or made trade or industry impossible" (Rulings: 205:562).

Thus, the premise of such a conclusion is obviously based on the existence of a manifestation of wealth or contributory capacity as an indispensable requirement for the validity of any tax, which is verified even in cases where it is not required to be strictly proportional to the amount of the taxable matter (Rulings: 210:855; 312:2467, considering 8°; 319:1725, among others).

Under these conditions, it can only be concluded that in the present case the infringement of the right to property is not apparent since, as noted above, these points have not been duly proven in accordance with the doctrine of this Court, which requires the person alleging unconstitutionality to demonstrate that this is the case (see arguments in Rulings: 327:5147, among others).

22) That, in relation to the substantial limit that the Constitution imposes on all state acts, that is, that of reasonableness (Rulings: 288:240), it should be remembered that this implies that laws must pursue a valid purpose in light of the National Constitution; that the restrictions imposed must be justified by the reality they seek to regulate; and that the means chosen must be proportionate and adequate to achieve the stated objectives (Articles 14 and 28 of the National Constitution, and doctrine of Rulings: 243:449; 248:800; 334:516; 335:452, among others).

In the precedent set in Rulings: 338:1110, when examining a provincial law prohibiting cigarette advertising, this Court had the opportunity to point out that the National Constitution not only allows but also obliges public authorities to adopt measures and policies aimed at protecting the health of the population. Furthermore, the law in force in our country recognizes and pursues, as a legitimate objective, the reduction of demand for tobacco products for human consumption, "regardless of the possible disadvantages this could generate for companies involved in the distribution chain for this type of product" (Rulings: 338:1110, vote of Justice Lorenzetti).

In this line of reasoning, when evaluating this type of tax for non-fiscal purposes, the principle of reasonableness serves as an effective constitutional check. Indeed, given the possible insufficiency of other parameters, this rule enables the examination of the appropriateness of tax obligations in cases where tax measures aim to achieve socially relevant objectives and, based on the protection of the right to health, are applied more heavily to discourage harmful consumption.

23) As already noted, the contested law sought to reduce tobacco consumption by establishing a so-called "minimum tax." Therefore, the analysis must consider the background of this tax, the specific characteristics of this mechanism, and the objectives that justify its nature as a selective consumption tax.

The immediate precedent to the contested minimum tax was the enactment of Law 26,467, which had “the purpose of establishing economic measures to discourage the consumption of tobacco products...” (see Article 1). The legislature provided for the creation of a minimum tax on tobacco with a reference market price—the best-selling category of cigarettes—in Article 15, second paragraph, of the Internal Tax Law as an economic deterrent measure.

This minimum tax was ratified by Law 27,430, discussed here, which established a different method of calculation based on a fixed amount that can be updated quarterly in accordance with the Consumer Price Index (CPI).

According to the message accompanying Bill 27,430 sent by the Executive Branch to the National Congress, the minimum fixed specific tax is a selective consumption tax—on tobacco—that seeks to tax a product that has a negative social impact. Specifically, the message stated that the implementation of the adopted tax mechanism is internationally recommended to achieve a simpler and more efficient tax system; it has advantages over pure ad valorem systems; it has been implemented by other countries in the region (Chile, Colombia, Ecuador, Peru, and Uruguay); is common practice in the rest of the world, and contributes to reducing consumption by increasing prices more uniformly, among other reasons. Similarly, in its response to the lawsuit, the National Treasury argued that Law 27,430 adopted the establishment of a minimum tax as a relevant measure to enforce the right to health, in order to make a product that is highly harmful to the population more expensive and prevent its excessive proliferation due to its very low price. It added that “mid-range cigarettes cause the same harm as high-end cigarettes, so there is no justification for taxing them at different rates.”

Under these premises, in the precedent of Rulings: 347:596, this Court emphasized that, if the legislature has sought to discourage tobacco consumption, the impact that this decision could have on supply in that market would constitute an inherent aspect of the fiscal mechanism adopted. If the effect were hypothetically adverse on such activities and sectors, judges could not ignore that this was precisely the purpose pursued in order to protect the population's health. Such an effect would not only prevent the disqualification of this type of selective consumption tax, but would also endorse the fulfillment of the extra-fiscal purposes that the law sought to achieve.

24) That concerning the purely tax-related aspect of the contested rules, the core of the appellants' grievances focuses specifically on two issues: a) the procedural route chosen by the plaintiff; and b) the suitability of the evidence produced, which must be analyzed in advance, in order to address then, if necessary, the constitutionality of the contested rules in the proceedings.

25) That, as stated in the complaint filed in this case, TSSA opted to use the declaratory action provided for in Article 322 of the National Code of Civil and Commercial Procedure, in which it offered only two pieces of evidence, namely: a) instrumental evidence: by which it attached, insofar as the case is concerned, an updated price list of the products it sold in the market; and b) it requested an accounting expert opinion “for the purpose of comparing the tax payable by applying the direct rate on total sales, and [...] the impact of applying the minimum tax on the products sold” (see pages 32/33 of the statement of claim).

26) That, in this vein, it should be remembered that the purpose of declaratory action must be to prevent the consequences of an act that is considered unlawful and harmful to the federal constitutional regime, and to establish the legal relationships that bind the parties in conflict (Rulings: 307:1379; 310:606; 311:421; 320:1556 and 325:474, among others). In this regard, this Court has considered that, for such an action to be admissible, the following requirements must be met: a) there must be an administrative activity that affects a legitimate interest; b) the degree of impact must be sufficiently direct; c) that activity must be sufficiently specific (Rulings: 307:1379; 325:474 and 327:2529), requirements that are even reviewable ex officio, because otherwise it would mean allowing the provisions of Articles 116 and 117 of the National Constitution to be contravened, insofar as the federal justice system acts exclusively in "cases" and does not have the power to issue opinions in the abstract (Rulings: 322:528, consideration 3).

27) That, given the foregoing, it is important to note that, since the plaintiff has chosen to assert its claims through the declaratory action provided for in Article 322 of the CPCCN, and with the evidence offered in its initial complaint, taking into account the allegations made in its complaint, it must be concluded, as stated above, that there is no other possible outcome than its dismissal.

Indeed, it is worth remembering that this Court has clearly stated that in declaratory actions "it is necessary to prove not only [...] the facts surrounding the existence or non-existence of the right, but also those that specifically give rise to the interest in filing the request for a declaration of certainty" (Rulings: 305:1715) and, in this case, that legal interest has not been sufficiently demonstrated.

28) That from a review of the case file under consideration, it appears that the expert accounting evidence was produced on September 22, 2021, and was challenged by TSSA, MP, and AFIP on October 12, 15, and 14, 2021, respectively, and that the response from the court clerk occurred on November 23, 2021. In this regard, it should be noted that from its examination, as well as from its challenges and their due responses, it is clear that, despite the effort made, this evidence failed to prove in an inexorable, inescapable, complete, and conclusive manner the unviability of TSSA's industry or commercial activity, nor did it succeed in demonstrating the eventual loss of market share due to the application of the tax. In other words, the evidence offered failed to prove conclusively, or even by circumstantial evidence, that the dire consequences denounced in bringing this action—all of them resulting from the changes in the tax in question following the enactment of Law 27,430—would occur if the plaintiff's claim were not upheld.

In this regard, it is clear that it is the doctrine of this Court that the exercise of judicial power requires litigants to demonstrate the existence of harm, the impairment of a legally protected interest that is personal, specific, concrete, and also susceptible to judicial review, requirements that must be examined with particular rigor when the constitutionality of an act performed by one of the other branches of government is being debated (Rulings: 321:1252).

In fact, from a comparison of the evidence, it does not appear that the actual occurrence of the alleged damage has been proven beyond doubt, as was necessary, since there is no complete and indisputable proof of the damage that was predicted, which, in short, was the irreversible and

fatal consequences for the plaintiff's industry due to the payment of the tax in question, in its minimum tax form.

Furthermore, there is no concrete evidence, even circumstantial, to support the alleged causal link between the alleged damage (loss of market share and industrial and commercial unviability of TSSA) and the contested tax laws, i.e., that the financial loss it claims to have suffered could be caused solely, necessarily, and without a doubt by the enactment of such rules and compliance with them, to which it attributed, exclusively, the distortion in the cigarette market, in a sort of dogmatic monocausalism (argument from the ruling: 326:1007, to which this Court referred).

At this point, it should be added that the plaintiff should have proven—using all means at its disposal for that purpose—that the repeal of Articles 103, 104, and 106 of Law 27,430 would not affect TSSA —as it claimed—both in terms of its assets and its commercial and industrial development, and that compliance with the provisions of those rules would inevitably cause the damage it claimed, circumstances that irremediably hinder the success of its lawsuit.

29) That, lastly, it should be remembered that the most sensitive task of the Judiciary is to remain within the scope of its jurisdiction, avoiding undermining the functions of the other branches of government or substituting for the decisions that they must make (Rulings: 155:248; 272:231; 311:2553; 328:3573; 338:488; 339:1077, among many others).

However, instead of focusing on the examination—proper to the judicial function—of the possible impact on constitutional principles, the first instance court engages in extra-legal assessments of the "big tobacco companies" and the "reality of the market," and makes inferences devoid of any legal basis, based on factors unrelated to the provisions contained in the law. In these statements, it even contradicts itself by dismissing arguments of the same nature that do not support its position. It points out, for example, that the plaintiff's increased share of the tobacco market does not alter the solution adopted (see paragraph 18 of the appealed judgment).

In the same vein, the first instance judge goes on to discuss what different measures it would take when it states—concerning the effectiveness of the regulation— "instead of incorporating a regulation that affects all competitors in the industry" (see recital 17), in an apparent intrusion into the sphere of the Legislative Branch. And, in that same paragraph 17, it allows itself to warn the legislator about the absence of "the incorporation of minimum taxes that encourage price increases for products containing alcohol or sugars."

Along the same lines, it claims to understand "the true intention of the legislator," stating that "an analysis of Law 27,430 integrated with the reality of the market for which it was intended shows that its provisions are not aimed at achieving a *uniform increase in prices* —as proclaimed by the Legislative Branch— but rather to *standardize prices* based on those recorded by the brands marketed by the large tobacco companies" (see paragraph 16).

Two other issues are equally serious. On the one hand, the court's express disregard for this Court's ruling in these same proceedings when revoking the precautionary measure; that is, that the possible effects that tax laws may have on competition and market regulation are matters that

have specific protection mechanisms, unrelated to the tax claim (see paragraph 15, in fine). On the other hand, it cannot be overlooked that, throughout the judgment, the first instance court reverses the order of argumentation, reasoning, and burden of proof regarding the alleged "unreasonableness" of the rule, by attempting to place the burden of proof of its "reasonableness" on the Treasury, thus forgetting the presumption of legitimacy enjoyed by legislative acts, and that it is the plaintiff who should have proven, in a conclusive, clear, and unquestionable manner, the alleged unreasonableness (arg. Rulings: 314:424; 320:1166, among others). Indeed, various passages of the text emphasize that "no concrete evidence has been presented to demonstrate its effectiveness..." (see, in particular, paragraph 17, in fine).

From all of this, it can only be concluded that the lower court has departed from the consistent criteria of this Court, according to which a declaration of unconstitutionality is the most sensitive of the functions that can be entrusted to a court of law, constituting an act of the utmost seriousness that must be considered as a last resort in the legal system (Rulings: 260:153; 286:76; 288:325; 300:241; 300:1087; 301:1062; 302:457; 302:1149; 303:1708 and 324:920, among many others).

30) That, taking into account the foregoing, and considering that the choice of declaratory relief was unsuccessful for the taxpayer, inasmuch as it failed to prove the alleged damage due to insufficient evidence in the proceedings, the appealed judgment should be reversed and the claim dismissed.

31) That it does not escape the Court that on August 7 of this year, the plaintiff stated that "[its] client has availed itself of the regularization regime of Law No. 27,743..." thereby withdrawing from the proceedings. It requested that the case be returned to the court of origin, citing two interlocutory decisions of this Court that referred to adherence to the said moratorium, which would impose a course of procedural action on the Court.

This is an insufficient and therefore inadmissible submission, which does not prevent the Supreme Court of the Nation from issuing a final judicial ruling on a critical case before it. In fact:

i) adherence to a payment plan is declared, which requires the attachment of form F-408 or other supporting documentation, which was not complied with;
ii) it merely withdraws from the proceedings without complying with Article 3, paragraph a, of Law 27,743, which it seeks to enforce and which requires an unconditional waiver and/or withdrawal (a) of the action and the right; (b) including the right of repetition; (c) and (d) to assume the payment of costs and legal fees. All of these requirements have not been met;
iii) without any supporting documentation regarding the hypothetical moratorium to which it would have adhered, it is intended that the Court adopt a procedural course that prevents the timeliness of its possible acceptance from being verified with rigor and certainty, given the term of validity of the invoked exception regime (Law 27,743);
iv) two interlocutory decisions adopted by this Court are invoked in which taxpayers had provided relevant documentation of their adherence to the aforementioned regime while failing to note whether those cases resulted in the withdrawal of the action and the taxpayer's right. In other words, the analogy between those cases and this lawsuit is not duly substantiated.

In short, the plaintiff's brief alleges adherence to a tax regularization plan and seeks to render the subject matter of the proceedings irrelevant by complying with the fundamental procedural maxim that whoever asserts a fact has the burden of proving it.

Therefore, having ruled that the Attorney General: I) in accordance with the provisions of Article 21 of the National Code of Civil and Commercial Procedure, it is resolved to reject in limine the challenges raised, their corresponding motions for nullity, and the filing of August 7; II) the complaints are upheld, the extraordinary appeals filed are formally declared admissible, the appealed judgment is revoked, and the claim is rejected. Costs of all instances are awarded to the losing party; III) the complaints are referred together with the main case files and the deposit provided for in Article 286 of the code of procedure, made by Massalin Particulares S.R.L. on April 23, 2024, as shown in the Lex 100 computer system, and exempt it from paying said deposit to the National Treasury, the payment of which was deferred under the terms of Agreement 47/91. Notify and return.

Extraordinary appeals filed by the **National Treasury**, represented by **Dr. María del Rosario Creixent Laborde**, with legal representation by **Dr. Raúl Martínez Pita**; and by **Massalin Particulares S.R.L.**, represented by **Dr. Gustavo Grinberg**.

Appeals answered by **Tabacalera Sarandí S.A.**, represented by **Dr. José Manuel Gonzalo Iglesias**.

Appeals filed by the **National Treasury**, represented by **Dr. Carlos Santiago Ure**, with legal representation by **Dr. María del Rosario Creixent Laborde**; and by **Massalin Particulares S.R.L.**, represented by **Dr. Gustavo Grinberg**.

Court of origin: **Fourth Chamber of the National Court of Appeals in Federal Administrative Disputes**.

Court that previously intervened: **National Court of First Instance in Federal Administrative Disputes No. 6**.