

## COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. LA TONDENA INC. AND THE COURT OF TAX APPEALS, RESPONDENTS.

*G. R. No. L-10431. July 31, 1962*

Ponente: PAREDES, J.

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### PAREDES, J.:

The respondent "La Tondena, Inc." a duly licensed rectifier, has been engaged in the business of manufacturing wines and liquors, with a distillery at 1068 Velasquez, Tondo, Manila. The principal products of the respondent are "Ginebra San Miguel", "Manila Rum", "Oak Barrel Rum", "Mallorca Wine", "Anizado", "Creme de Mente", "Creme de Cacao", etc. Since 1929, respondent has been purchasing the alcohol used in the manufacture of its products, principally from Binalbagan Isabela Sugar Central, Negros Occidental and Central Azucarera Don Pedro in Nasugbu, Batangas and has been removing this alcohol from the centrals to respondent's distillery under joint bonds, without prepayment of specific taxes, with the express permission and approval of the petitioner Collector of Internal Revenue. The quantity of alcohol purchased and received by the respondent from the centrals are recorded and entered in the BIR Official Register Books of "La Tondena, Inc. A-Account", under the column "CRUDE spirit" (Exhs. A, A-I, G, G-I), attested by the Inspector of the Bureau assigned to respondent's distillery. In the manufacture of "Manila Rum", respondent uses as basic materials low test alcohol, purchased in crude form from the suppliers, which it re-rectifies or subjects to further distillation, in order to suit the purpose of respondent in producing only high quality products. In the process of further rectification or distillation, losses thru evaporation had necessarily been incurred, for which the petitioner in the past had given the respondent allowance of not exceeding 7% for said losses. Respondent stated that the process adopted by it in the manufacture of its "Manila Rum", has now made this product the largest selling rum in the Philippines and the specific taxes that it had been paying the government, had steadily increased from P3,172,515.30 in 1950 to P4,973,123.40 in 1954. On May 8, 1954, petitioner wrote a demand letter to respondent for the payment of specific taxes, in the total amount of P154,663.10 on alcohol lost by evaporation, thru re-rectification or redistillation, covering the period from June 7, 1950 to February 7, 1954. A first extension of 30 days within which to reply was granted the respondent by the petitioner. On July 26, 1954, it asked for another 30-day extension to reply (Exh. I-3). On August 2, 1954, petitioner granted 5 days only, from August 2, 1954 (Exh. I-7), or until August 7, 1954. On August 6, 1954, respondent answered the demand letter dated May 8, 1954 (Exh. I), protesting against the said assessment (Exhs. I-5 and I-b). In a letter dated August 26, 1954, the petitioner made manifest its refusal to reconsider the assessment and urged the respondent to pay within 3 days from receipt, the amount of the assessment, which communication was received by the respondent on August 31, 1954 (Exh. I-7). On September 1, 1954, the respondent appealed the decision to the Conference Staff in the same Bureau (Exh. I-8). On September 3, 1954, the Conference Staff gave the appeal due course (Exh. I-9).

Before any hearing could be had in the Conference Staff, on January 8, 1955, the respondent received a letter from the petitioner dated December 22, 1954, requiring it to comply with Department of Finance Order No. 213, to deposit one-half of the amount of assessment in cash and the balance guaranteed by a surety bond (Exh. I-11). Respondent requested for reconsideration of this requirement (Exh. I-1a) on January 10, 1955, which was denied

on February 10, 1955 (Exh. I-13). A second motion for reconsideration presented on February 15, 1955 (Exh. I-14), followed by a supplementary letter (Exh. I-15) dated February 17, 1955 was denied, same having been received by respondent on March 16, 1955, and gave the respondent 5 days from receipt thereof, within which to comply with the said Order. Not satisfied with the said rulings, the La Tondena, Inc. presented an action with the respondent Court of Tax Appeals on March 18, 1955. The Tax Court on December 7, 1955, rendered the following judgment.—

"IN VIEW OF THE FOREGOING CONSIDERATION, the decision of respondent Collector of Internal Revenue, dated May 8, 1954, is hereby modified, and petitioner La Tondena, Inc., is hereby ordered to pay the respondent Collector of Internal Revenue the sum of ₱672.15, by way of specific tax. However, with respect to the balance of the assessment amount to ₱153,990.95, which corresponds to the period after January 1, 1951 and up to February 27, 1954, pursuant to Republic Act No. 592, the petitioner is declared exempt from liability for the specific taxes assessed therefor. "Without pronouncement as to costs."

On appeal to this Court, the petitioner alleges that the Court of Tax Appeals erred (1) In exempting the respondent La Tondena, Inc. from the payment of the specific tax on rectified alcohol lost in process of further rectification, during the period from January 1, 1951 to February 27, 1954; and (2) In assuming jurisdiction over the case.

It appears that the specific taxes in question were assessed by the petitioner "in accordance with section 133 of the Tax Code". Up to December 31, 1950, said section reads:

"Sec. 133. Specific tax on distilled spirits.—On distilled spirits there shall be collected, except, as hereinafter provided, specific taxes as follows:

'(a) If produced from sap of the nipa, coconut, cassava, camote, or buri palm, or from the juice, syrup, or sugar of the cane, per proof liter, forty-five centavos.

'(b) If produced from any other material, per proof liter, one peso and seventy centavos.

'This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits.

'Distilled spirits', as here used, includes all substances known as ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, which are commonly produced by the fermentation and subsequent distillation of grain, starch, molasses, or sugar, or of some syrup or sap, including all dilutions or mixtures; and the tax shall attach to the substance as soon as it is in existence as much, whether it be subsequently separated as pure or impure spirits, or be immediately or at any subsequent time transformed into any other substance either in process of original production or by any subsequent process.' "

Pursuant to the above provision of law, therefore, "the tax shall attach to this substance as soon as it is in existence as such" etc. However, on January 1, 1951, Republic Act No. 592 took effect, amending section 133 and the clause underlined above had been eliminated. The evident intention of the law maker in deleting the all embracing underlined clause, was to subject to specific tax not all kinds of alcoholic substances, but only distilled spirits as finished products, actually removed from the factory or bonded warehouse. The said amendment could not mean anything else; it is in harmony with section 129, of the same Tax Code which provides—

"Sec. 129. Removal of spirits or cigar under bond.—Spirits requiring rectification may be removed from the place of their manufacture to some other establishment for the purpose of rectification without the prepayment of the specific tax, provided the distiller removing such spirits and the rectifier receiving them shall file with the Collector of Internal Revenue their joint bond conditioned upon the future payment by the rectifier of the specific tax that may be due on any finished product. \* \* \*".

And if one would consider that the Tax Code does not prohibit further rectification or distillation and defines in section 194 thereof, a rectifier as a person who rectifies, purifies or refines distilled spirits, the conclusion is

logical that when alcohol, even if already distilled (as in the present case) or rectified, is again rectified, purified or refined, the specific tax should be based on the finished product, and not on the evaporated alcohol. The intention not to subject to specific tax all kinds of alcoholic substances but only distilled spirits as finished products, is reflected in former Senator Garcia's observations on the floor of the Senate, during the discussion of House Bill No. 1443 (now Rep. Act No. 592), when he proposed the elimination of the phrase "and the tax shall attach to this substance as soon as it is in existence as such, etc." He said—

"That is why, Mr. President, in Section 1 of this Bill now under consideration, I have some serious objections to the provisions where all kinds of alcoholic substance which falls under the definition of proof spirits in the last paragraph of the same Section I of the proposed measure are taxable because this is one of those that I consider of deterrent effect to the industrialization of this country . . . (Senate Diario No. 6, Jan. 15, 1951, Original, 4th Special Session); Italics supplied."

And on August 23, 1956, upon the recommendation of the Bureau of Internal Revenue itself, Rep. Act No. 1608 was passed, amending section 133 of the Tax Code, as amended by R.A. No. 592, restoring the very same clause which was eliminated (Sec. 7, R.A. No. 1608). The inference, therefore, is clear that from January 1, 1951, when Rep. Act No. 592, took effect, until August 23, 1956, when R.A. No. 1608 became a law, the tax on alcohol did not attach as soon as it was in existence as such, but on the finished product. And this must be so, otherwise a great injustice would be caused upon a duly licensed rectifier, who, like the respondent herein, will be made to pay the specific tax on the alcohol lost thru evaporation, from which no one has been benefited, based on the provision of laws then extant, of doubtful application. In every case of doubt, tax statutes are construed most strongly against the government and in favor of the citizens, because burdens are not to be imposed beyond what the statutes expressly and clearly import (MRR Co. vs. Coll. of Customs, 52 Phil., 950; Luzon Stev. Co. vs. Trinidad, 43 Phil., 803, 809). It should be pointed out also that said section 129 was amended by adding the following—

"And provided, further, That in cases where alcohol has already been rectified either by original and continuous distillation or by redistillation is further rectified, so less for rectification and handling shall be allowed and the rectifier thereof shall pay the specific tax due on such loses" (Sec. 5, Rep. Act No. 1608),

which obviously reveals that the purpose of the amendment is to tax, only now, alcohol lost, in further distillation or rectification. This law certainly should not be given a retroactive effect, so as to cover the period in question (January 1, 1951 to February 27, 1954). It is only after August 23, 1954 that the government woke up from its lethargy and hastened to fill the hiatus.

The second assignment of error is predicated upon the proposition, that the respondent Court of Tax Appeals has no jurisdiction over the case, because the petition for review was not filed within the 30-day period as provided by section 11 of Rep. Act No. 1125 (Law creating the CTA), which states—

"Sec. 11. Who may appeal; effect of appeal.—Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs \* \* \* or any provincial or city Board of Assessment Appeals, may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. \* \* \*".

Conceding for the purpose of argument that the ruling appealable was the letter-assessment dated May 8, 1954, still we believe that the petition for review to the Tax Court was filed within the time. The intraroffice arrangement in the Bureau of Internal Revenue allowed a tax payer to appeal from the ruling of the Collector to a Conference Staff of the same Bureau. The appeal made on September 1, 1954, to the Conference Staff, from said letter-assessment dated May 8, 1954 (received by the respondent on May 28, 1954), which was reiterated in petitioner's letter of August 26, 1954, (received by the respondent on August 31, 1954), had suspended the period

because it was a remedy prescribed by the petitioner himself, made available to the respondent. (Coll. of Int. Rev. vs. Suyoc Consolidated Mining Co. 104 Phil. 819). When the Conference Staff gave due course to the appeal on September 3, 1954, the petitioner gave the impression that his letter-assessments of May 8 and August 26, 1954, were still subject to review by his Conference Staff. And when the Conference Staff finally refused to reconsider its ruling requiring respondent to deposit 1/2 of the amount of the tax in cash, and payment of the balance guaranteed by a surety bond, after the submission of two requests for reconsideration, the second denial having been received by respondent only on March 16, 1955 (Exh. I-16), it was then only, that the petitioner may or can be said to have rejected the administrative appeal and gave finality to his letter of August 26, 1954. We believe that petitioner did not create the Conference Staff and permitted a tax payer to appeal to it from his ruling, as a mere administrative expediency, to delay the tax payer from appealing to the Tax Court, and thus allow the period of his appeal to lapse. We should presume that this injurious result was not intended by the Government. This being the case, a sit is the case, when respondent lodged its petition for review with the Tax Court on' March 18, 1955, only three (3) days in all, had elapsed out of the period. The period within which the review must be sought, should be counted from the denial of the motion for reconsideration because of the principle that all administrative remedies must be exhausted before recourse to the courts can be had against orders or decisions of administrative bodies (Sec. of Agriculture, etc. et al. vs. Hora, et al. 97 Phil., 125). If, as it should be, the final appealable ruling of the petitioner, was that received by respondent on March 6, 1955, then only two (2) days had been consumed by the respondent of the statutory period. In either case, the appeal to the Tax Court was presented on time and the latter has jurisdiction to take cognizance of the case.

Wherefore, the decision appealed from is hereby affirmed, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Dizon, Regala and Makalintal, JJ., concur.

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