

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

G.R. No. L-14875. September 29, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

The petitioner La Tondeña, Inc., has for its principal business the manufacture of wines and liquors with a distillery at 1068 Velasquez, Tondo, Manila. As such manufacturer, La Tondeña buys its alcohol, commonly termed "crude spirits" from different sugar centrals, which are low test alcohol, which it subjects to further rectification or distillation in order to suit its purposes of producing only high quality products. In the May 21, 1951 to February 26, 1954, purchases of the petitioner, from the Binalbagan Isabela Company (BISCOM for short), differences in the number or proof liters originally shipped from the BISCOM to the petitioner's distillery in Tondo, Manila, had been found by the respondent Collector. For such shortages, the petitioner was assessed by respondent on different dates in various amounts, which totalled P6,019.30, representing the specific tax on 6,655 proof liters of crude alcohol, admittedly lost while the alcohol was in transit from BISCOM to petitioner's distillery.

On July 18, 1955, petitioner paid to the respondent Collector, the amount of P6,019.30, under protest. On June 4, 1957, before the expiration of the period within which to claim or recover taxes illegally collected or erroneously paid, petitioner formally requested the refund of said amount, but which request, however, did not merit any reply from the respondent Collector. On June 12, 1957, petitioner brought the assessment to the Court of Tax Appeals, under a petition for review, alleging therein that under the law then in force when the shortages were found, petitioner was not liable for taxes on crude alcohol lost in transit, for rectification purposes, but on finished products only. Respondent Collector claimed otherwise. After due trial, the Tax Court rendered judgment the pertinent portions of which are reproduced hereunder.

"In the case at bar, the crude alcohol which were removed from Biscom's Central were lost in transit and not as a consequence of the transformation thereof into a finished product. In fact, it had not reached the state of rectification which was one of the conditions imposed for the withdrawal of the same, without the pre-payment of the specific tax. Obviously, the purpose (the rectification and transformation into a finished product) for which the postponement of the payment of the tax was allowed, was not attained. Under such circumstances, the alcohol in question should be deemed subject to the general rule that the specific tax on such "domestic products shall be paid by the manufacturer, producer, owner" and not being covered by the special condition contemplated by law, "such taxes shall be paid immediately before removal from the place of production" (Sec. 123, Tax Code). In other words, upon the failure of the condition subsequent, the tax is deemed to have already attached upon the removal of the alcohol from Biscom's compound in Negros Occidental. Indeed, petitioner, under the alcohol sale contract (see Annex I, p. 2 of Petition for Review) had bound itself to pay for the corresponding specific tax on the alcohol shortages occurring in the course of transportation.

As is readily seen, our decision in the prior case of La Tondeña, Inc., supra, is distinguishable from and inapplicable to the instant case because in the former what was held as not subject to specific tax was the

alcohol which had been lost through evaporation during the process of transformation. In this case, what is involved is the alcohol lost in transit from the distillery of the supplier-vendor to the place of further rectification or manufacture of petitioner-vendee.

In view of the foregoing, we are therefore of the opinion and so hold that respondent lawfully collected the specific tax in question. Consequently, the instant petition for the refund of such tax is without merit and the same should be, as it is hereby dismissed, with costs against petitioner."

Judge Umali of the Court registered a dissenting vote, on the ground of lack of jurisdiction, stating that before a claim for refund of an internal revenue tax, could be entertained, there should be a decision of the Collector, which is wanting in this particular case.

The majority opinion is now before Us for Review on three (3) propositions: (1) What provisions of law govern this particular case; (2) In view of the applicable legal provisions, when and under what conditions will the specific tax attach; and (3) Whether or not the petitioner is liable for the specific tax on the crude alcohol lost in transit. In order to resolve the first and second issues posed herein, we are quoting at length excerpts from the recent decision of this Court (Coll. of Int. Rev., vs. La Tondeña & CTA, G.R. No. L-10431, July 31, 1962), identical in facts and legal issues involved, to those of the case at bar.

* * *. "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 Tondeña, Inc., is hereby ordered to pay the respondent Collector of Internal Revenue the sum of P672.15, by way of specific tax. However, with respect to the balance of the assessment amounting to P153,990.95, 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 Tondeña, 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 some syrup or sap, including all dilutions or mixtures; and the tax shall attach to this substance as soon as it is in existence as such, 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 has 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 pre-payment 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 Stevedoring 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, no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the specific tax due on such losses" (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, 1956 that the government woke up from its lethargy and hastened to fill the hiatus."

It is, therefore, clear that during the period covered by the assessment at bar (May 21, 1951 to February 26, 1954), the status of the law was, as defined and construed in the above decision.

But the respondent Tax Court and Collector contend that (1) in the present case, the crude alcohol was lost in transit thru leakage, unlike the case of *Collector vs. La Tondeña*, where the loss was thru evaporation, in the process of rectification; and (2) the petitioner as buyer, agreed that "all alcohol shortages occurring in transit as well as any specific tax that may be due on same shall be for the buyer's account", which amounts to an acquiescence by the petitioner to pay such losses.

According to the Tax Code, "specific taxes on domestic products shall be paid by the manufacturer, producer or person having possession of the same; and, except as otherwise specially allowed, such taxes shall be paid immediately, before removal from the place of production". (Section 124). The exception mentioned in said section 124, is section 129 of the same Tax Code, (*supra*) which fixes a different time of payment for specific taxes on "alcohol requiring rectification". As must be observed, in the case heretofore cited, the alcohol lost due to evaporation was crude alcohol, like the one involved in the present, which are undoubtedly "spirits, requiring rectification". Until the spirits requiring rectification has been converted into a finished product, no specific tax shall be due from the rectifier receiving them. The law makers, as heretofore shown, in the case cited, had intended to exclude from the computation of said specific tax all losses that may be incurred or sustained from the time the spirits requiring rectification are removed from the place of their production for the purposes of rectification, until they are rectified and converted into a finished product. The law did not limit that the losses should be caused by natural evaporation, in order to enjoy the exemption provided by law. As long as the alcohol requires rectification, all unintentional, casual, unavoidable and/or natural losses prior to the conversion into some finished product, should not be subject to specific tax. That was the intention of the lawmakers when they introduced the amendment, eliminating a portion of section 133. This intention was further reflected in the amendment to section 129 of the tax Code, which states that "loss for rectification and handling" shall no longer be allowed beginning August 23, 1956 (See Sec. 5, Act No. 1608). In other words, before the amendments, "loss for rectification and handling" were allowed, which may reasonably be inferred to include unintentional leakage or spillage, occurring while the alcohol is in transit or in the course of transportation or as a consequence of the rectification. Even in the United States, where the law expressly provides that the tax on distilled spirits shall attach as soon as the said substance is in existence as such, the tax paid on losses thru evaporation, or other shrinkage, leakage, casualty or unavoidable cause during warehousing, storage, transfer, etc., may be remitted or refunded by the Commissioner provided the said alcohol lost has not been diverted to any illegal use (Sec. 2800 (c), Int. Rev. Code, Act of Feb. 10, 1939; CCH Liquor Control Law Service, Fed. 2d Ed., par. 23126, pp. 2381-3; par. 23533, p. 2431). The reason for the rule, as applied to the case at bar, is that no material or practical benefit was derived by the rectifier or distiller from the loss of the alcohol; it is tyrannical to tax him for a thing which did not exist, in the face of the law then extant.

The argument that the crude alcohol had not actually undergone the process of rectification is unavailing. Section 129 of the Tax Code did not require actual rectification; it provides merely that the removal from the place of the distiller should be for the purpose of rectification, so as to bring the case within the pale of said section. If the crude alcohol upon reaching the rectifier had not been refined, for some reason or another, then it remained to be a crude alcohol just the same, and if it is at all subject to the payment of specific tax as such, the basis of computation should be the quantity of proof liters it had at the time it reached the rectifier, which, in this particular case, was the number of proof liters it had when it left the BISCOP, minus the loss in transit.

Petitioner's promise, as buyer, that all alcohol shortages occurring in transit as well as any specific tax that may be due on the same shall be for this account, should be subject to the condition that the payment of such specific tax

is sanctioned by law.

Finding that the decision appealed from is contrary to the law applicable on the matter, the same should be, as it is hereby reversed and another entered ordering the respondent Collector of Internal Revenue to REFUND to the petitioner the amount involved herein. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Dizon, Regala, and Makalintal, JJ., concur.

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