

CRISPULO MALICSE, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-7578. July 24, 1956

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

During the years 1950 and 1951, petitioner Crispulo Malicse was the proprietor and operator of the Palo Alto Hotel and Restaurant located at 417 Isaac Peral, Manila, where he maintained rooms for lodging of his hotel guests, a restaurant where meals, wines and liquors are served not only to hotel guests but also to other customers who are not hotel guests, and a place where cigars and cigarettes are sold to everybody. He was duly provided with the required privilege tax receipts as hotelkeeper, keeper of a restaurant, fermented liquor dealer and retail tobacco dealer as prescribed in section 182 in relation to section 191, section 193 (k) and section 193 (n) of the Tax Code. And for the aforesaid years, he rendered separate returns: one for his business as hotel keeper and another for his business as keeper of a restaurant. As hotel-keeper, he paid the 3 per cent percentage tax on his gross receipts and for his business as keeper of a restaurant where wines or liquors are served, he paid the 5 per cent percentage tax prescribed in section 191 of the Tax Code amounting to P6,433.53.

On March 31, 1952, the petitioner demanded refund of the amount claiming that the restaurant which he operated in the Palo Alto Hotel and Restaurant is not separate nor distinct from his hotel business; that the operation of said restaurant is merely incidental to and necessarily connected with the hotel business and as such his receipts from said restaurant should be considered receipts of his hotel business, subject to the 3 per cent percentage tax due from him as hotelkeeper and, lastly, that the sales of cigars and cigarettes in said restaurant do not form part of his gross receipts as restaurant keeper and therefore not subject to the 5 per cent percentage tax. On January 21, 1953, the demand was denied by the respondent who ruled that a keeper of a restaurant where wines and liquors are served is subject to 5 per cent percentage tax prescribed in section 191 of the Tax Code and that petitioner's receipts from sales of cigars and cigarettes in his restaurant form part of his gross receipts as keeper of the restaurant. Thereupon the petitioner requested the respondent that his petition be submitted, for resolution, to the Conference Staff of the Bureau of Internal Revenue; the request was granted and the Conference Staff took cognizance of the case. It found, however, no reason to reverse or modify the decision of the respondent and, accordingly, the petitioner was notified of the final decision denying the demand for refund of the alleged overpayment of the 5 per cent percentage tax on the gross receipts from his restaurant business. Not satisfied with the decision, petitioner appealed to the Board of Tax Appeals in accordance with the provisions of Executive Order No. 401—A, series of 1951. On February 4, 1954, the Board of Tax Appeals affirmed the decision of the respondent, hence this present petition for review of the decision of the Board of Tax Appeals in accordance with section 20 of Executive Order No. 401-A, dated January 5, 1951.

The facts of the case are not disputed. Petitioner admits that during the years 1950 and 1951 he engaged in hotel business, operating at the same time a restaurant within the premises of the hotel, and that in said restaurant he served meals, wines or liquors and sold cigars and cigarettes not only to hotel guests but also to outsiders. And the

evidence on record conclusively shows that petitioner was then duly provided with privilege tax-receipt as hotel keeper and another privilege tax receipt as keeper of a restaurant, which clearly proves that during the aforesaid years the petitioner ran and operated a restaurant business distinct from his business as hotelkeeper.

The present case calls for the interpretation and application of section 191 of the Tax Code which reads as follows: "Keepers of restaurants, refreshment parlors and other eating places shall pay a tax of 3%, and keepers of bars and cafes where wines or liquors are served, 5% of their gross receipts."

The word "restaurant" seems not to be included in the aforequoted provision of law, where there are only mentioned the "keepers of bars and cafes where wines or liquors are served" as the persons bound to pay 5 per cent percentage tax on their gross receipts. But, as correctly contended by the respondent, "cafe" is a general term which includes restaurants; "cafe" is denned in Webster's International Dictionary as "a coffee-house; a room for coffee and light refreshment; a restaurant; formerly in the U. S. a barroom." Consequently, a restaurant where wines or liquors are served comes within the purview of the phrase "bars and cafes where wines or liquors are served" as contemplated in section 191 of the Tax Code and therefore subject to the 5 per cent percentage tax prescribed therein.

Petitioner contends, however, that his restaurant business cannot be subject to the 5 per cent percentage tax because section 191 of the Tax Code is only applicable to, purely drinking establishments. This contention is untenable for, as pointed out by the Solicitor General in his brief, "if this theory is sustained, it would be easy for taxpayers to evade the payment of the 5 per cent percentage tax prescribed in section 191 on bars and cafes where wines or liquors are served by the simple expedient of not maintaining a purely drinking establishment and keeping just a sort of an eating establishment but at the same time serving therein wines or liquors—which could not have been the intention of our legislators."

In conclusion, we find that the petitioner rendered separate returns for his business as hotelkeeper and as keeper of a restaurant; that he paid 3 per cent percentage tax on the gross receipts from hotel guest for lodging, meals, drinks, cigars and cigarettes and other services furnished them; that he paid the questioned 5 per cent percentage tax for his restaurant business on the gross receipts from meals, wines, liquors, cigars and cigarettes served or sold to his customers who were not hotel guests, and for these gross receipts, he was properly taxed under section 191 of the Tax Code.

Wherefore, finding no errors in the decision appealed from, the same is hereby affirmed.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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