

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CENTRAL AZUCARERA DON PEDRO, RESPONDENT.

G.R. No. L-14015. May 31, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

From the decision of the Court of Tax Appeals (in C.T.A. Case No. 387), absolving respondent Central Azucarera Don Pedro from liability for the payment of P33,696.60 as specific tax assessed by him, petitioner Commissioner of Internal Revenue interposed this petition for review.

Respondent is a domestic corporation, duly established and organized under the laws of the Philippines, with principal place of business at Nasugbu, Batangas. Among other things, it is authorized to operate a duly registered distillery plant. Between the period from March 23, 1953 to August 13, 1954, respondent manufactured in its distillery, 284,423 proof liters of denatured alcohol, under a special formula, as follows: "To every 100 gauge liters of rectified Alcohol of not less than 100 degrees proof there shall be added 10 liters of Isoprophyll." This denatured alcohol was sold by respondent to the Pacific Products, Inc. and the Pacific Industrial Manufacturing which used the same in the manufacture of rubbing alcohol compound and other products containing specially denatured alcohol as ingredient. The rubbing alcohol compound produced by said buyers contains 70% alcohol and, as appearing on the labels pasted to the containers (Exhs. 1 and 2), is intended for use as "disinfectant, sterilization, sanitation, bathing, massage, rubbing or other external uses."

The preparation, sale, and withdrawal of said denatured alcohol sold to said buyers was, admittedly, with the permission and authority of petitioner through his Denaturing Committee and, at the time of its sale to, and withdrawal by said buyers, said committee never made any demand from respondent for the payment of the specific tax in question. Respondent, on the other hand, paid the corresponding sales tax on said denatured alcohol sold.

As already stated, the denaturization of said alcohol was done in accordance with the aforementioned formula approved by petitioner. The process of denaturization, as shown by Exhibits A to A-25, was witnessed by a Denaturing Committee consisting of 3 members, all representatives of petitioner. After the process of denaturization, but during the same day, said committee accomplished denaturization certificates (Exhs. A to A-25) attesting to the chief ingredients used, the denaturing agent mixed, the amount of proof liters produced, and the percentage of their alcoholic contents. The resulting denatured alcohol was correspondingly recorded in an official Register Book (Exhs. B. to B-9) under BIR Form No. 2.41, by the owner or manager of respondent, and attested to by an Internal Revenue agent. The denaturization certificates (Exhs. A to A-25), show that the denatured alcohol was exempted from payment of specific tax by said Denaturing Committee.

Later, however, on the basis of a report (Exh. 3) dated May 26, 1955, of Internal Revenue Agents Mariano P. Uy and Venancio V. Ona, petitioner wrote a letter dated May 30, 1955 (Exh. 4) assessing and demanding from respondent the sums of P199,906.10 as specific tax on said 284,423 proof liters of denatured alcohol and

P10,000.00 as compromise penalty.

Subsequently, after a reinvestigation, and finding that out of the total of said 284,423 proof liters of denatured alcohol removed from respondent's distillery, only 48,138 proof liters were actually used by the Pacific Products, Inc. and the Pacific Industrial Manufacturing in the production and manufacture of rubbing alcohol compound, petitioner, on May 24, 1957, wrote a letter (Exh. E), notifying respondent that the original assessment and demand for specific tax against it was reduced from P199,906.10 to P33,696.60, exclusive of the compromise penalty of P10,000.00. It appears that the rest of the denatured alcohol amounting to 236,285 proof liters, was utilized by said corporations in the manufacture of shellac, varnish, lacquer, thinner, wood dye, glass cleanser, and cleaning fluids.

On June 24, 1957, respondent filed with the Court of Tax Appeals, a petition for review (Annex A), praying that said assessment of specific tax made by petitioner against it be declared illegal and void, and that it be absolved from any liability therefor. To this petition, petitioner filed an answer (Annex B) on July 12, 1957.

After the issues were joined, the case was heard and, after hearing, the court, on February 28, 1958, rendered a decision (Annex D) which, in pertinent part, reads:

* * * * *

"Granting that the rubbing alcohol compound in controversy is subject to specific tax, the petitioner maintains that it is not liable for the payment of the same. Petitioner argues that under Section 124 of the National Internal Revenue Code 'specific taxes on domestic products shall be paid by the manufacturer, producer, owner or person having possession of the same * * * before removal from the place of production.' Inasmuch as the rubbing alcohol compound is not a product of petitioner but of Pacific Products, Inc. and Pacific Industrial Manufacturing, the petitioner concludes that the said two corporations should be made to pay the specific tax on the rubbing alcohol.

"We find this last alternative contention of the petitioner to be meritorious. It is true that the denatured alcohol which forms the chief ingredient of the rubbing alcohol compound, was manufactured, by the petitioner. However, the denatured alcohol was never removed by the petitioner from its distillery with the intention of evading the payment of specific taxes thereon. On the contrary, the same was sold by the petitioner to Pacific Products, Inc. and Pacific Industrial Manufacturing, and when the said two corporations assumed control and possession of the denatured alcohol, they acquired the ownership over the same. (Arts. 1477 and 1479, Civil Code of the Philippines.) Subsequently, with the permission and authority of the respondent, they removed the denatured alcohol from petitioner's distillery, and with it as the principal raw material, they manufactured the rubbing alcohol compound on which the respondent assessed and now seeks to collect the disputed specific tax. To our mind, it is clear that Pacific Products, Inc. and Pacific Industrial Manufacturing, are the manufacturers, producers, and or owners of the rubbing alcohol compound, and considering that the law (Sec. 124, National Internal Revenue Code) does not require the specific tax to be paid immediately before the sale (Benito Garcia vs. The Collector of Internal Revenue, 66 Phil. 4A1), we are of the opinion and so hold that the said corporations who purchased the denatured alcohol from the petitioner, are liable for the payment of the specific tax in question, and not the petitioner herein.

Wherefore, the decision of respondent appealed from, should be, as it is hereby reversed. Petitioner Central Azucarera Don Pedro is hereby declared not liable for the payment of the sum of P33,696.60 representing specific tax assessed by the respondent, without prejudice to whatever action the respondent may decide to take against the proper party or parties liable therefor. Without pronouncement as to costs." (Emphasis supplied.)

On April 22, 1958 petitioner filed a motion for reconsideration of said decision, which was denied by the court June 30, 1958. Hence this petition for review.

The only issue to be resolved in this case is whether respondent is liable for the payment of specific tax on the denatured alcohol in question sold by it to the aforementioned corporations and used by the latter as chief ingredient in the manufacture and production of rubbing alcohol.

While the legal question involved as set forth in the preceding paragraph is clear enough, the factual basis seems a little befuddled as to induce the charge made in respondent's brief (pages 56 to 57) that the petitioner has, in this appeal, introduced "a belated twist * * * an entirely new and distinct issue of which Central (herein respondent) was not timely advised at the time it entered into trial before the Court of Tax Appeals."

It would appear that the first assessment made by petitioner on respondent was upon the entire amount of denatured alcohol sold to the Pacific Products, Inc. and Pacific Industrial Manufacturing in the total of 284,423 proof liters for which specific tax amounting to P199,906.10 was demanded. Later, after re-investigation, the assessment was reduced to P33,696.60 only and was based on the 48,138 proof liters which were actually used in the manufacture of rubbing alcohol. Hence, it would seem clear that the specific tax is being levied not as a result of the manufacture or production, or sale of the denatured alcohol, but as a consequence of its conversion or manufacture, by the purchasers, into rubbing alcohol. Otherwise, if the specific tax was due upon the manufacture or production of the denatured alcohol, what could be the purpose of detailing a Denaturing Committee consisting of 3 representatives of petitioner to watch and witness the whole process of denaturation in accordance with a special formula approved by petitioner and of the issuance by this committee of certificates of denaturation (Exhs. A to A-25) to the effect that the denatured alcohol was exempted from payment of specific tax? Or if the tax became due upon the sale of the denatured alcohol, why was the payment of the tax not enforced, as required by Section 124 of the National Internal Revenue Code "immediately before removal (thereof) from the place of production, since such removal was, as found by the trial court, with the permission and authority of the respondent? And again, why was the original assessment of P199,906.10 based on the total denatured alcohol sold and removed, later reduced to P33,696.60 specifically limiting the levy only to the amount of denatured alcohol converted into rubbing alcohol?

There can be only one conclusion that could be drawn from the actuations of petitioner, and that is, that the tax is being imposed on the rubbing alcohol in accordance with Section 124, in relation to Sections 127 and 133 of the National Internal Revenue Code, reading in pertinent parts as follows:

"Sec. 124. Payment of specific tax on domestic products.—Specific taxes on domestic products shall be paid by the manufacturer, producer, owner, or person having possession of the same; and, except as otherwise especially allowed, such taxes shall be paid immediately before removal from the place of production.

"Sec. 127. Tax on preparations containing distilled spirits as chief ingredient.—Medicinal preparations, flavoring extracts, and all other preparations, of which, excluding water, distilled spirits form the chief ingredient, shall be subject to the same tax as such chief ingredient. * * *.

"Sec. 133. Specific tax on distilled spirits.—* * *. 'Distilled spirits,' as here used, include all substances known as ethyl alcohol, hydrated oxide of ethyl, or spirits of wines, 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," (As amended by Rep. Act No. 592, effective January 1, 1951.)

There is no question that the rubbing alcohol is a domestic product (Section 124) and a medicinal and toilet preparation (see uses stated, in labels, Exhibits 1 and 2. *supra*; section 127) of which, excluding water, distilled spirits (section 133) form the chief ingredient. Admittedly, the Pacific Products, Inc. and the Pacific Industrial Manufacturing, and not respondent, are the manufacturers, producers, and owners of the rubbing alcohol. It follows that they, and not the respondent, are the parties liable to the payment of the corresponding specific tax (section 124).

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

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.
Reyes, J.B.L., and Endencia, JJ., on leave, took no part.

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