

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

G.R. No. L-14336. April 30, 1964

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Facts.—The petitioner is a domestic corporation engaged in manufacturing wines and liquors, rectifying and denaturing ethyl alcohol. It prepares especially denatured alcohol either for its own use or for the production of its rubbing alcohol commercially sold under the name "Jai- Alai"; or for sale to different grantees of special permits issued by the Bureau of Internal Revenue.

After more than 23 years of consistently holding that such especially denatured alcohol manufactured by petitioner was tax free, the Bureau of Internal Revenue assessed and demanded from it in 1955, payment of specific tax on 391,396 proof-liters of denatured alcohol used in the production of rubbing alcohol and other medicinal preparations. The specific tax due thereon, covering the period from July, 1951 to May, 1954, amounted to P273,977.20; but as petitioner had already paid the sum of P5,823.47 as the 7% sales tax thereon, an assessment and demand for the payment of P268,153.73 was issued. The amount of P10,000 was also demanded as penalty for the illegal removal of alcohol from the place of production without the prepayment of the specific tax due thereon (violation of Section 124 in relation to Sections 127 and. 133 and penalized under Section 174, all of the Tax Code).

In due time, La Tondeña submitted said assessment and demand for review to the Court of Tax Appeals; but the latter concurred with the Bureau's stand, for lack of jurisdiction, it took no action as to the penalty. Within the statutory period, petitioner filed a motion for reconsideration and for new trial. The Tax Court denied the motion. Wherefore, the present appeal.

Question.—As stated, the subject matter of the controverted assessment and demand is the specially denatured alcohol manufactured by petitioner and used in the preparation of its "Jai-Alai" rubbing alcohol, or sold to the different grantees.

Sections 127 and 133 of the Tax Code provides as follows:

Sec. 127.—Tax on Preparation's Containing Distilled Spirits as Chief Ingredient.—Medicinal preparations, flavoring extracts, and all other preparations, of which excluding water, distilled spirits the chief ingredient, shall be subject to the same tax as such chief ingredient. * * *."

Sec. 133.—Specific Tax on Distilled Spirits.—On distilled spirits there shall be collected subject to the provisions of section one hundred and twenty-eight of this act, except as hereinafter provided, specific taxes as follows: * * *

'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; 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 substances either in process of original production or by any subsequent process. * * *."

Ruling of the Tax Court.—On the basis of the meaning of the term "medicinal preparation" as found in the law dictionaries, and in accordance with the opinion of expert witnesses, the Tax Appeals Court held that petitioner's aforesaid rubbing alcohol is a medicinal preparation as contemplated by law. As to the term "distilled spirits", upon examination of its definition under Section 133 of the Tax Code, the said court concluded that such especially denatured alcohol is distilled spirits.

The Tax Court dismissed petitioner's theory that under Section 127 of the Tax Code, a preparation, the chief ingredient of which is distilled spirits must be potable to be subject to specific tax. It considered such theory as contrary to the statutory rule of construction "ubi lex non distinguit, nec nos distinguere debemus". It viewed the said Section 127 as speaking of medicinal and toilet preparations and all other preparations in general, without distinction as to potability.

As regards petitioner's contention that under Section 128 of the Tax Code, alcohol used in industries, like its especially denatured alcohol which is used in the "industry of manufacturing medicinal preparations", is exempt from the specific tax, the said court ruled that the exemption applies only to domestic denatured alcohol used in the operation of industries and not to denatured alcohol used as an ingredient in the preparation of another product which turns out to be medicinal.

Petitioner also contends that the Collector's interpretation of Section 127 and 128 of the Code should not be given retroactive effect-taxing products made before the ruling because of long-continued practice with apparent legislative approval by reenactment of the sections of law as already construed and applied. However, the Tax Appeals Court rejected this contention, citing as authority therefor, the ruling in *Hilado vs. Collector of Internal Revenue, et al.*[1] wherein it was held that the Secretary of Finance is vested with authority to revoke, repeal or abrogate the acts or previous rulings of his predecessors in office; that the construction of a statute by those administering it, is not necessarily binding on their successors.

Appellant's Theses.—In the instant appeal, petitioner reiterates the same arguments it presented in the Tax Court. It again insists that the rubbing alcohol in question is not medicinal preparation because:

- The word "medicinal" is derived from the term "medicine", that is, to be taken internally. The medicinal preparations mentioned by law are those intended for oral intake. The rubbing alcohol and especially denatured alcohol manufactured by petitioner are not fit for human consumption.

- Section 127 uses the term "distilled spirits" as forming the chief ingredient of a medicinal preparation to be subject to specific tax. "Distilled spirits" mean purified alcohol and when it is purified, it is potable or drinkable. * * *.

As alternative argument, petitioner submits that granting that the rubbing alcohol and the specially denatured alcohol are medicinal preparations, distilled, spirits do not form the chief ingredient and therefore the preparation is not covered by the law. Petitioner explains that the "Jai-Alai" rubbing alcohol has for its chief ingredient the especially denatured alcohol; that scenting substances and water have been added; that the especially denatured alcohol is not anymore the distilled spirits or ethyl alcohol defined under Section 133 of the Tax Code, because this ethyl alcohol has already been modified by the addition of a denaturant that destroys the purity of alcohol.

Petitioner attempts to bolster its position by reproducing before this Court, the policy basis of the specific tax on alcohol. It is alleged that from the socio-economic point of view, the specific tax upon alcohol is essentially

sumptuary in nature; that the tax is principally aimed to discourage excessive oral consumption.

Another defense against petitioner's tax liability is that the especially denatured alcohol being used in the manufacture of rubbing alcohol and other medicinal preparations, a sort of industry, is exempt from specific tax under Section 128 of the Tax Code.

Lastly, petitioner believes that granted its liability, the tax should correspond only to the quantity of denatured alcohol used in the manufacture of its own product, the "Jai-Alai" rubbing alcohol—not to alcohol sold to others.

Discussion.—The issue involved in this appeal is petitioner's tax liability under Section 127 in relation to Section 133 both of the Tax Code hereinabove quoted; and it hinges on the interpretative connotations of the words "medicinal preparations" and "distilled spirits".

"Medicinal preparations" consists of two words, "medicinal" and "preparations". "Medicinal" means curative or alleviative, used for the cure or alleviation of body disorders.[2] "Preparations" are those which are prepared or something equipped or compounded for particular purposes.[3] "Medicinal preparations" are therefore descriptive of and refer to substances used in medicine and prepared for the use of the apothecary or the physician to be administered as a remedy for diseases.[4] As used in the Tariff Act of March 3, 1883[5], these medicinal preparations mean such articles as are of use or believed by the prescriber or user fairly and honestly to be of use, in curing or alleviating or palliating or preventing some diseases or affection of the human body.[6]

This Court shall avoid confusing itself with terms that have been well and clearly defined. It shall hesitate to state that petitioner's products, especially the rubbing alcohol are medicinal preparations. The rubbing alcohol which is essentially denatured ethyl alcohol is used as an antiseptic to inhibit the growth of bacteria. Petitioner, itself, advertises the "Jai-Alai" rubbing alcohol as "alcohol 70%" and its uses as disinfectant, sterilizer, antiseptic and other external medical purposes.

As aptly observed by respondent Collector, petitioner does not categorically deny that the alcohol in question is medicinal in character. The essence of its argument is that the taxable medicinal preparations contemplated by law are those intended for oral intake. We cannot subscribe to such a proposition. Firstly, Section 127 makes no distinction as to medicinal preparations intended for internal or external use. Secondly, the policy of the state to discourage the indiscriminate purchase and excessive consumption of alcohol as the basis of the prohibitive treatment and the imposition of specific tax is true only with respect to wines or liquors.

In fact in *Com. of Internal Revenue vs. Central Azucarera, Don Pedro*, this Court held that rubbing alcohol is a medicinal preparation of which distilled spirits form the chief ingredient.

Insisting on exemption, the petitioner advances the argument that even if its rubbing alcohol be considered a medical preparation, and that denatured alcohol is its chief ingredient, still, denatured alcohol is not "distilled spirits" because to the ethyl alcohol, something is added. We find no merit in the argument because the law expressly considers as distilled spirits "ethyl alcohol" including all "dilutions or mixtures". It is admitted that denatured alcohol is made by pouring certain additives into ethyl alcohol. It is improbable that the Legislature intended to distinguish between dilutions and mixtures on the one hand and compounds on the other, as appellant attempts to do.

Judgment.—This appellant is liable; but we agree that its liability attached not upon its manufactured ethyl alcohol but upon its medicinal product—the rubbing alcohol.

Accordingly, in the instant case, above petitioner (La Tondeña) shall pay only for the specific tax corresponding to the quantity of rubbing alcohol it marketed or only on 35,298 proof liters. Needless to add, the appellant is not

responsible for taxes on the alcohol it sold to permittees of the Internal Revenue Office.

The decision appealed from is hereby modified. Petitioner is liable only for the amount of P24,708.60 representing the tax liability on the 35,298 proof liters of rubbing alcohol. So ordered.

Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

[1] 100 Phil., 288.

[2] Words and Phrases, Vol. 25A, p. 616.

[3] Words and Phrases, Vol. 33, p. 380.

[4] Law Dictionary with pronunciation, Ballantine, Phil. Ed.

[5]C. 121, Schedule 2, 22 Stat. 494.

[6] Words and Phrases, Vol. 26A p. 617.

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