

SINFOROSA ALCA, PETITIONER, VS. HONORABLE COURT OF TAX APPEALS, AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. L-24624. November 27, 1968

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Petition for review of the decision of the Court of Tax Appeals (in CTA Case No. 1043), sustaining the assessment by the Commissioner of Internal Revenue of specific tax on the rubbing alcohol manufactured by the Pacific Industrial Manufacturing (Phil.) and removed from the establishment for the period between June 6, 1953 and August 24, 1960.

It appears from the record that following the promulgation of the decision of this Court in the case of Commissioner of Internal Revenue vs. Central Azucarera Don Pedro, G. R. No. L-14015 on May 31, 1960,[1] the Commissioner of Internal Revenue, by letter of September 12, 1960, assessed Sinforosa Alca, as owner and operator of the Pacific Industrial Manufacturing & nil.), of the sum of P43,359.40, by way of specific tax on the rubbing alcohol produced in and removed from the factory between June 6, 1953 and August 24, 1960, plus compromise penalty of P1,000.00.

The taxpayer protested against the assessment, on various grounds, among them prescription. And when the protest was denied by the Commissioner of Internal Revenue, she filed a petition in the Court of Tax Appeals (CTA Case No. 1043), claiming that the specially denatured alcohol used in the manufacture of rubbing alcohol is exempt from specific tax under Section 128 of the National Internal Revenue Code; that the rubbing alcohol manufactured from specially denatured alcohol is not distilled spirits; that the specific tax on denatured alcohol should properly be imposed on the producer of such denatured alcohol; and that assuming that petitioner taxpayer was liable for payment of specific tax on the denatured alcohol, the assessment of the tax on September 12, 1960 was made beyond the 5-year period prescribed in Section 331 of the Tax Code.

On December 29, 1964, deciding the case on the sole issue of prescription, the Court of Tax Appeals sustained the decision of the Commissioner of Internal Revenue. The taxpayer's contention that the applicable prescriptive period is that provided in Section 331 of the Tax Code was overruled, the Court of Tax Appeals holding that the official transcript sheets submitted by petitioner to the deputy provincial treasurer of the municipality where the manufactory is situated,[2] are not returns for purposes of the prescriptive law; hence, this being a case where no return is filed, assessment of the tax may be made within 10 years, in accordance with Section 332(a) of the Tax Code from this decision, the taxpayer appealed to this Court, raising only the question of prescription.

It is not here denied that petitioner did not file any return for purposes of paying the specific tax due on the manufactured products with denatured alcohol as chief ingredient. And, perhaps aware of the pronouncement of this Court that --

"x x x [W]hen there is no explicit provision imposing the duty to file a return, and penalizing noncompliance

therewith, but the tax is such that its amount cannot be ascertained without data pertinent thereto, the Collector of Internal Revenue may by appropriate regulations require the filing of the necessary returns. In any event, with or without such regulations, it is to the interest of the taxpayer to file said return, if he wishes to avail himself of the benefits of section 331. If, this notwithstanding, he does not file a return, then an assessment may be made within the time stated in section 332(a)." (*Bisaya Land Transportation Co., Inc. vs. Collector*, L-12100 & L-11812, May 29, 1959).,

it is now insisted that the transcript sheets (BIR form 2.41) submitted to the treasurer of the province where the manufactory is located, should be considered as returns. Thus, according to petitioner, on September 12, 1960, the government's right to assess and collect the specific tax on her manufactured products has already prescribed.

There is no merit in this contention. Even assuming to be correct petitioner's pretense that the transcript sheets[3] furnish sufficient data upon which the assessment of specific tax may be based,[4] the assessment in question would still be valid. For while it is true that the demand for payment of the specific tax accruing from June 6, 1953 to August 24, 1960 was only made on September 12, 1960 and, therefore, as far as the taxes due from June 6, 1953 to September 11, 1955 are concerned, the demand therefor had been made beyond the required 5-year period, it appears that on December 9, 1959, petitioner taxpayer had signed a waiver to the running of the prescriptive period "beginning January 20, 1956 x x x but not after December 31, 1966." (Exh. 7, p. 57, BIR rec.) This waiver made timely the assessment of taxes supposedly due for the entire periodas mentioned in the Commissioner's letter-demand.

But then, it is argued that for a written agreement extending the prescriptive period to be valid, it is necessary that the same be made before the period to be extended has expired. The rule would not apply in this case. Note that petitioner's waiver was of the period of prescription beginning January 20, 1956. It is not just an extension, therefore, of the period of limitation, but a renunciation of her right to invoke the defense of prescription which was then already available to her. There is nothing unlawful nor immoral about this kind of waiver; just like any other right, the right to avail of the defense of prescription is waivable (*Sambrano vs. Court of Tax Appeals*, [1957] 101 Phil. 1; *Republic vs. Arcache*, L-15547, Feb. 29, 1964).

The Court of Tax Appeals fully upheld the assessment-demand of the respondent Internal Revenue Commissioner that, as already stated, covers the period of from June 6, 1953 to August 24, 1960. After the Tax Court's decision however, this Court, in the case of *Abad vs. Court of Tax Appeals*,[5] ruled that for the period between the enactment of Republic Act 592 (which took effect on January 1, 1951) and that of Republic Act 1608 (effective August 23, 1956), the specific tax on denatured alcohol was payable by the producer of the taxable finished product; but that upon the entering into effect of the amendment to section 133 of the Tax Code,[6] i.e., starting August 23, 1956, it is the manufacturer, producer, owner or possessor of the distilled spirits who becomes liable for payment of such tax following the foregoing ruling of this Court, petitioner Alca, as producer of rubbing alcohol, can not be held liable for the payment of the specific tax on the denatured alcohol that she may have purchased from the distillers and used in the manufacture of rubbing alcohol after August 23, 1956.

Upon the other hand, as regard the specific tax imposable on the denatured alcohol used between June 6, 1953 and August 22, 1956, there is reason for us to modify the decision of the Commissioner of Internal Revenue, as affirmed by the Court of Tax Appeals.

Petitioner alleged, and this was never disproved by respondents, that she had regularly and faithfully paid the percentage sales tax on the manufactured products involved here, pursuant to the regulations and requirements of the revenue office then in force;[7] and that it was only after the promulgation of our 1960 decision in the *Central Azucarera Don Pedro* case (L-14015) that the revenue authorities realized they have been collecting the wrong tax and Alca was required to pay the specific tax on the same goods for which the percentage tax had already been

imposed and paid.[8] Under the circumstances, and allowing for the fact that errors of the revenue officials will not stop the Government from collecting the correct taxes due it, still elementary principles of equity dictate that in the computation of the corresponding specific taxes that may still be due and owing from petitioner taxpayer, she should be credited with the amounts she had previously paid to the government by way of percentage tax. After all, goods subject to specific tax, by express provision of the Tax Code,[9] are made exempt from further payment of percentage tax; and vice-versa.[10]

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby set aside, and the records are ordered remanded for a re-hearing and computation of petitioner Alca's tax liability, conformably to this opinion. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

[1] It was held in this case that the liability for the payment of specific tax on the denatured alcohol manufactured by the Central between March 23, 1953 and August 13, 1954, and purchased and used by the Pacific Industrial Manufacturing in the manufacture of rubbing alcohol, devolves upon the latter, and not on the Central.

[2] This is required under Regulations No. 3 of the Department of Finance (Exh. 9, p. 70, BIR records).

[3] These sheets indicate the kind and quantity (in terms of gallon liter and proof liter) of the articles produced or manufactured from the raw materials (spirits) delivered to the factory in a given period.

[4] As enforced by the Internal Revenue Office, the specific tax on distilled spirits is based on the "proof-liter" contents of the particular spirit measured (p. 70, BIR rec.).

[5] G. R. Nos. L-20834 & L-20903, Oct. 19, 1966, 18 SCRA 375.

[6] Under Section 133 as amended by Republic Act 1608, the specific tax on distilled spirits attaches 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 by any subsequent process." (Emphasis supplied.)

[7] See Exh. 8, pp. 59-67, BIR records.

[8] There is no allegation that the payments made by petitioner Alca were not the correct amounts due, if percentage ten were indeed proper.

[9] Section 188.

[10] Central Azucarera Don Pedro vs. Court of Tax Appeals, L-21139, April 30, 1966; 16 SCRA 889.

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