

LA PAZ Y BUEN VIAJE. (LA DICHA CIGAR & CIGARETTES FACTORY), PETITIONER VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 17830, March 30, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of Tax Appeals dismissing the claim of petitioner, La Paz y Buen Viaje (La Dicha Cigar & Cigarettes Factory), for the refund of P12,066.00, representing deficiency specific tax assessed and collected by respondent Collector (now Commissioner) of Internal Revenue.

It is not disputed that during the period from September . 1949 to September 1950, petitioner—a domestic corporation engaged in the manufacture of cigarettes in the City of Manila—had produced and sold 6,033,000 "largos" (king size) cigarettes, over 80 millimeters in length, at uniform wholesale price of P7.60 per thousand cigarettes, and paid P4.00 for every thousand thereof, by affixing, with the approval of an agent or representative of respondent herein, the corresponding internal revenue stamps on the packs of said products.

Upon investigation conducted by respondent's agents, it was found, subsequently, that the specific tax for the aforementioned.king size cigarettes was P6.00,per thousand, not P4.00 per thousand, as originally paid by petitioner herein. Consequently, a deficiency tax of P2.00 per thousand of said cigarettes, or the aggregate sum of P2,066.00 was assessed by respondent, who, by letter dated December 4, 1952, demanded from petitioner the payment of, among other items, the said sum of P12,066.00. Petitioner asked respondent to reconsider such action, but respondent refused to do so. An appeal sought to be taken by petitioner to the Court of Tax Appeals was dismissed by the latter for "lack of jurisdiction", upon the ground that the appeal had not been perfected within the reglementary period.

On September 26, 1958, petitioner paid, therefore, said sum of P12.066.00, which, in a letter dated July 20, 1959, it asked respondent to refund. Upon denial of this request by respondent, petitioner once more appealed to the Court of Tax Appeals, which, in due course rendered the decision adverted to above.

This case hinges on the proper interpretation of section 137 of the Tax Code, as amended by Republic Act No. .419, the pertinent part of which. reads:

Specific tax on eigojrs. and cigarettes.—On cigars and cigarettes there shall be collected the following taxes:

* * * * *

"(b) Cigarettes—

"(1) When the manufacturer's or importer's wholesale price, less the amount of the tax, is three pesos and fifty centavos or less per thousand, on each thousand two pesos. .

"(2) When the manufacturer's or importer's wholesale price, less the, amount of the tax, is more than' three

pesos and fifty centavos but not more than four pesos and fifty centavos per thousand, on each thousand, six pesos.

"(3) When the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds four pesos and fifty centavos but not, more than six pesos per thousand, on each thousand, eight pesos.

"(4) "When the manufacturer's or importer's wholesale price, less the amount of the tax, exceeds six pesos per thousand, on each thousand, ten pesos.

* * * * *

And provided, further, That on all cigarettes which have been mechanically packed, or are more than eighty millimeters in length, a minimum tax of four pesos per thousand shall be collected, irrespective of whether the price at which such cigarettes are sold by the manufacturer or importer is three pesos and fifty centavos or less per thousand * * *."

Respondent and the Court of Tax Appeals held that the provision applicable to petitioner herein is subdivision (2) of paragraph (6) of said section 137, because, after deducting the sum of P4.00, paid by petitioner as specific tax, from the P7.60 per thousand it had charged and collected for said cigarettes, there results a balance of P3.60 per thousand of said cigarettes, the actual manufacturer's wholesale therefor, which falls under said subdivision (2) of paragraph (b).

Upon the other hand, petitioner maintains that the above quoted proviso, in relation to subdivision (1) of said paragraph (b) should be applied to the aforementioned cigarettes, inasmuch as, deducting the sum of P6.00 per thousand assessed and collected by respondent, from the wholesale price of P7.60 charged and received by petitioner, the balance remaining in its hands is only P1.60 per thousand, which falls under said proviso of paragraph (6).

We cannot sustain petitioner's contention. Section 19 (a) of Regulations No. 27 of the Bureau of Internal Revenue (promulgated on March 1, 1923), which were in force, at the time of the removal of the cigarettes above referred to, reads:

"Classification of cigars or cigarettes and reclassification due to increase or decrease in price.—The tax on cigars or cigarettes is assessed on the manufacturer's wholesale price. Manufacturers shall file sworn statements with the Collector of Internal Revenue showing the maximum prices without adding the internal revenue tax of the different brands of cigars or cigarettes manufactured by them and the tax must be paid on the basis of the prices so submitted. Manufacturers desiring to reclassify cigars or cigarettes on account of an increase or decrease in prices shall request permission in writing giving reasons for the change. If the Collector of Internal Revenue grants authority for a reclassification of any lot or brand of cigars again be totalled and the manufacturer will continue his entries in the corresponding register book A. If, for instance, cigars or cigarettes are to be changed from the P2.00 to P4.00 class, or from P1.20 to P1.60, the two columns affected will be totalled and deductions or additions made thereto, accordingly, after which they will again be totalled and the manufacturer will continue his entries immediately under the new totals." (Italics supplied: 21 Off. Gaz., page 460.)

Pursuant to this Rule, the validity of which has not been contested, the basis for the determination of the rate of specific tax applicable on cigars and cigarettes is a sworn statement by the manufacturer showing the price charged by the same "without adding, the internal revenue tax". Accordingly, for the manufacturer to be entitled to the application of the proviso of said paragraph (6) of section 137, it is necessary that the manufacturer's net wholesale price, less the specific tax of P4.00 per thousand, be not more than P3.50 per thousand. Since the net wholesale price of petitioner herein, excluding said sum of P4.00, is P3.60 per thousand, it follows necessarily that the rate applicable is that of P6.00 per thousand, as provided in subdivision (2), paragraph (6) of said section

137.

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

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

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