REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SMITH, BELL & CO.,
(PHIL.) INC.,
Petitioner,

versus

CTA CASE NO. 1733

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Oct. 5/67

x - - - - - - - - - - x

DECISION

This is an appeal from the decision of respondent dated October 11, 1965, which imposed a deficiency specific tax of ₱11,713.90 on 119 cases of "Chauteau Gay" wine imported by petitioner from August 1963 to August 1965. The case has been submitted by the parties to this Court for resolution on the basis of the pleadings on record.

Petitioner, a duly registered domestic corporation with office at Km. 13, South Super Highway, Parañaque, Rizal, is engaged, among others, in the importation of wines. From August 1963 to August 1965, it imported 119 cases of "Chauteau Gay" wine which it declared as still wine and paid thereon a specific tax at the rate of ₱1.00 per liter of volume capacity under Section 134(b) of the Tax Code (p. 6, BIR rec.).

For the purpose of determining the correct amount of specific tax due on the imported wine, the same was tested and analysed by the Bureau of Internal Revenue Laboratory Center. The analyst who conducted the laboratory test reported and declared that "Chateau Gay" is a delicate light table wine, with alcohol content of 9.5% by volume (volume 745 cc @ 29°C), characterized with explosion upon opening and effervescence due CO_2 (residual). It should, therefore, be classified as <u>sparkling wine</u> (p. 12, BIR rec.). Accordingly, respondent assessed petitioner for deficiency specific tax on October 11, 1965 (Annex A), relative to the 119 cases of imported "Chateau Gay" wine, calling for the payment of ₱11,713.90 computed as follows:

nd No. of ases	Total No. of Bot.	Content Per Bottle	No. of G. L.	Proof Grade	Rate	Specific Tax Paid	Due
. Chateau-Gay							
8/63	24	745 cc	17.880	9.5%	₱12	₱ 17.68	214.
" 10/63	60	"	44.700	"	"	44.32	536.
" 4/64	144	"	107.280	"	"	106.12	1,287.
" 3/64	300	"	223.500	"	"	221.10	2,682.
" 9/64	300	"	223.500	"	"	221.10	2,682.
" 8/65	600	"	447.000	"	"	442.20	5,364.
es		Totals				₱1,052.42	12,766.
							1,052.
		Deficiency specific tax on Chateau Gay					₱11,713.

(Annex A, p. 5, CTA rec.)

Petitioner does not dispute the amount of deficiency specific tax computed by respondent.

He only assails the validity and legality of the said assessment based on Section 134(a) of the Tax Code, infra, because the determination made by respondent of what constitute sparkling wine is an undue delegation of legislative power.

The only issue, therefore, is whether or not Section 134(a) of the National Internal Revenue Code, upon which the deficiency tax assessment under review is based, is constitutional. The pertinent provisions of the Tax Code involved herein read as follows:

> SEC. 134. Specific tax on wines.— On wines and imitation wines there shall be collected, per liter of volume capacity, the following taxes:
>
> (a) Sparkling wines, regardless of proof, twelve pesos.
>
> (b) Still wines containing fourteen *per centum* of alcohol or less, except those produced from *casuy* and *duhat*, one peso.

Petitioner assails and challenges the constitutionality of Section 134(a) of the Tax Code and contends that the provisions thereof do not provide or give respondent a sufficient guide or standard in determining what "sparkling wine" is. Petitioner contends that the determination made by respondent of what constitute sparkling wine is an undue exercise of legislative power which, by constitutional mandate, is exclusively vested in Congress.

In defense of the legality of the tax assessment, respondent contends that the action taken by his office in determining under Section 134(a) of the Tax Code what constitute sparkling wine is merely an exercise of delegated administrative power to carry out the purpose and intent of the law (Sec. 134/a/ of the Tax Code), and is not a delegation of legislative power.

The determination by respondent that "Chateau Gay" is a sparkling wine, based on chemical analysis by the BIR Laboratory Center of its alcoholic contents and characteristics, does not constitute an exercise of legislative power. The laboratory examination of the wine is a mere administrative ascertainment of the facts and conditions under which Section 134(a) of the Revenue Code will be enforced. The general rule consistently followed by courts is to distinguish between the delegation of power to make the law and conferring authority or discretion as to its execution. It has been said: "The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made." (Cincinnati, W. & Z. R. Co. v. Clinton County Comrs., 1 Ohio St. 88.)

In line with the doctrine quoted above, our Supreme Court held that a law empowering an administrative board, among other things, to classify and grade Philippine fibers, and determine the official standards for the various fibers for export, "is nothing more than a delegation of administrative power in the Fiber Board to carry out the purpose and intent of the law, and not a delegation of legislative power." (Alegre v. Insular Collector of Customs, 53 Phil., 394.) Delegation of authority to boards of special inquiry in immigration cases is valid (Lorenzo v. McCoy, 15 Phil. 559). Likewise, where the law (Commonwealth Act No. 454) empowers the Public Service Commission to determine the conditions and facts under which certificates of public convenience or certificates of public necessity and convenience shall be issued, the grant of administrative power is not a violation of the constitutional prohibition. It was ruled that "all that has been delegated to the commission x x x is the administrative function involving the use of discretion, to carry out the will of the National Assembly having in view, in addition, the promotion of public interests in a proper and suitable manner." (Pangasinan Transportation Co., Inc. v. The Public Service Commission, 70 Phil. 221.) Similarly, where the law (Commonwealth Act No. 548) empowers the Director of Public Works and the Secretary of Public Works and Communications to promulgate rules and regulations to regulate and control the traffic and use of roads and streets designated as national roads, the disputed law has been held as constitutionally valid in that "the delegated power, if at all, therefore, is not the determination of what the law shall be, but merely the ascertainment of the facts and circumstances upon which the application of said law is to be predicated. x x x an administrative function which cannot be directly discharged by the National Assembly." (Calalang v. Williams, 70 Phil., 726.)

In the case of Pangasinan Transportation Co., Inc. v. The Public Service Commission, supra, our Supreme Court recognized the validity of delegating legislative powers when it held as follows:

". . . One thing, however, is apparent in the development of the principle of separation of powers and that is that the maxim of delegatus non potest delegari or delegata potestas non potest delegari, attributed to Bracton (De Legibus et Consuetedinious Angliae, edited by G. E. Woodbine, Yale University Press, 1922, vol. 2, p. 167) but which is also recognized in principle in the Roman Law (D. 17. 18.3), has been made to adapt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of 'subordinate legislation,' not only in the United States and England but in practically all modern governments. (People vs. Rosenthal and Osmeña, G.R. Nos. 46076 and 46077, promulgated June 12, 1939.) Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts. (Dillon Catfish Drainage Dist. v. Bank of Dillon, 141 S. E. 274, 275, 143 S. Ct. 178; State v. Knox County, 54 S. W. 2d. 973, 976, 165 Tenn. 319.) In harmony with such growing tendency, this Court, since the decision in the case of Compañia General de Tabacos de Filipinas vs. Board of Public Utility Commissioners (34 Phil., 136), relied upon by the petitioner, has, in instances, extended its seal of approval to the 'delegation of greater powers by the legislature.' (Inchausti Steamship Co. vs. Public Utility Commissioner, 44 Phil., 366; Alegre vs. Collector of Customs, 53 Phil., 394; Cebu Autobus Co. vs. De Jesus, 56 Phil., 446; People vs. Fernandez & Trinidad, G. R. No. 45655, promulgated June 15, 1938; People vs.

Rosenthal & Osmeña, G. R. Nos. 46076, 46077, promulgated June 12, 1939; and Robb and Hilscher vs. People, G. R. No. 45866, promulgated June 12, 1939.) (Underlining supplied)

The analytical findings of the BIR Laboratory Center that "Chateau Gay" has 9.5% alcohol by volume, with explosion upon opening and effervescence due to CO_2 (residual) should be classified as "sparkling wine". The said findings and conclusion of respondent is supported by Herstein and Jacobs, who in their book entitled "Chemistry & Technology of Wines and Liquors," wrote as follows:

> "(f) Sparkling wines are bottled before the fermentation has ceased so that they contain carbon dioxide gas in solution at greater than atmospheric pressure. When they are served, the carbon dioxide is liberated with effervescence. This gas and alcoholic contents vary according to the market for which they are intended. They may be dry or sweet, light or strong. Champagne, sparkling Burgundy, and Asti-Spumante are examples of sparkling wines." (p. 185, Chemistry & Technology of Wines and Liquors by Herstein & Jacobs, 2nd Edition.)

When respondent found that "Chauteau Gay" is a sparkling wine subject to the specific tax provided in Sec. 134(a) of the Revenue Code, the said official merely exercised a discretion conferred by law without, in any way, determining what the law should be. Hence, no undue delegation of legislative power existed in this case.

WHEREFORE, finding no error in the decision of respondent appealed from, the same is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, October 5, 1967.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

In the result
R. M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge