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LA TONDEÑA, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 467

COLLECTOR OF INTERNAL REVENUE,
Respondent.

March 23, 1959

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DECISION

This is an appeal from two (2) decisions of the respondent, Collector (now Commissioner) of Internal Revenue, assessing against and demanding from the petitioner, respectively the amounts of ₱5,558.70 and ₱3,938.20, or a total sum of ₱9,496.90, as specific tax on alcohol allegedly lost thru rectification and handling of already rectified alcohol, in pursuance of Section 129 of the National Internal Revenue Code, as amended by Section 5 of Republic Act No. 1608.

The petitioner, La Tondeña, Inc., a corporation duly organized and existing under the laws of the Philippines, is engaged, among other activities, in the business of manufacturing wines and liquors. It used as basic raw material, in the manufacture of its products, alcohol that was already rectified through the process of "original and continuous distillation" and which was purchased from sugar centrals, principally from the Central Azucarera Don Pedro in Nasugbu, Batangas. The alcohol purchased from these sugar centrals had been removed therefrom without prepayment of specific tax, but was covered by joint bonds executed by the said centrals and the herein petitioner and approved by the respondent, pursuant to Section 129 of the Tax Code. The joint bonds were conditioned upon the future payment by the rectifier (the petitioner) of the specific tax that may be due on any finished product it manufactures.

The alcohol purchased from the sugar centrals was further rectified by the petitioner in order to produce high quality products to meet the growing competition in the liquor market. For many years, it has been rectifying the alcohol purchased from these sugar centrals by the use of an apparatus which it called "rectifying column," or through a physical process of rectification. The use of these processes of rectification was however discontinued by the petitioner on August 17, 1956, or a few days before Republic Act No. 1608 took effect on August 23, 1956. But rectified alcohol purchased after August 23, 1956 was re-rectified by the petitioner by a process which it called the "carbon treatment," or a process of rectification wherein chemicals are used. The alcohol which was re-rectified either before or after August 23, 1956 was placed in wooden barrels and cemented tanks stored inside the petitioner's distillery compound for the purpose of aging. The storing of alcohol in wooden (oak) barrels is a natural process in the distillation of rum.

On August 24, 1956, the day after the effectivity of Republic Act No. 1608, the respondent, through his representatives, conducted a stocktaking to determine the amount of alcohol the petitioner had in stock. On February 13, 1957, the respondent, through his agents, conducted another stocktaking of the petitioner's alcohol and ascertained a loss of 7,941 proof liters on rectified alcohol (Exhs. 1 & 2, pp. 2-4, BIR rec.). This loss was apparently incurred during the period between the two stocktakings, that is, from August 24, 1956 to February 13, 1957. On the basis of this finding, the respondent, on August 15, 1957, assessed and demanded from the petitioner the payment of ₱5,558.70, representing specific taxes computed at ₱0.70 per proof liter of alcohol lost on account of rectification and handling incident to further rectification of already rectified alcohol (Exh. B).

The petitioner, on September 9, 1957 (Exh. C), protested against the assessment on the ground that the further re-rectification of said alcohol took place prior to August 23, 1956, the date Republic Act No. 1608 took effect. The protest was, however, denied by the respondent in a letter dated September 23, 1957 (Exh. D), and received by petitioner on September 30,1957. On October 4, 1957 the petitioner filed a request for the reconsideration (Exh. E) of the said ruling, which request was however denied by the respondent, in a letter dated November 25, 1957 (Exh. F) and received by the former on December 18, 1957.

Meanwhile, on September 10, 1957, the respondent's agents conducted another stocktaking of the petitioner's alcohol in which it was ascertained that during the period from February 13, 1957 to September 10, 1957, another 5,626 proof liters of rectified alcohol were lost, similarly, on account of rectification and handling (Exhs. 3 & 4, pp. 22-24, BIR rec.). Based on the findings of his agents, the respondent, on October 9, 1957, assessed and demanded from the petitioner the payment of the sum of ₱3,938.20 as specific tax computed at the rate of ₱0.70 per proof liter of re-rectified alcohol lost (Exh. G). The petitioner disputed the last mentioned assessment in his letter dated October 24, 1957 (Exh. H) on the ground that the alcohol lost in the process of re-rectification is exempt from specific tax. However, the respondent denied the protest in a letter dated November 25, 1957 (Exh. I), stating, among others, that Section 129 of the Tax Code, as amended by Section 5 of Republic Act No. 1608, imposes specific tax on losses from rectification and handling in the further rectification of already rectified alcohol. This last named letter was received by the petitioner on December 13, 1957.

Not satisfied with the decisions of the respondent in connection with the two aforementioned disputed tax assessments, the petitioner, on January 8, 1958, filed its "Petition for Review" with this Court. As a special defense in his answer, the respondent raised the incidental issue of jurisdiction of this Court insofar as it concerns his decision on the disputed assessment holding petitioner liable for the payment of the sum of ₱5,558.70.

The issues raised by the parties may be summarized as follows:

> 1. Whether or not this Court has jurisdiction to take cognizance of this case insofar as it concerns the decision of respondent Collector holding petitioner liable for the payment of the sum of ₱5,558.70; and
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> 2. Whether or not the petitioner is liable for the specific tax covered by the two assessments.

With reference to the first issue, the respondent contends that the instant appeal insofar as it affects the first named assessment of ₱5,558.70 was not seasonably filed and thus is not within the jurisdiction of this Court. He argues that the thirty-day period within which to appeal to this Court under Section 11 of Republic Act No. 1125 should be counted from September 4, 1957, the day the petitioner received the respondent's decision, and that, counting from that date to the time the petition for review was filed on January 8,1958, more than thirty (30) days have elapsed.

We find the respondent's contention not well taken. The letter of the respondent of August 15, 1957 was an assessment of specific taxes in the sum of ₱5,558.70, allegedly due the government. The assessment was disputed by the petitioner in his letter dated September 9, 1957. Hence, the decision of the respondent on the said disputed assessment is contained in his letter dated September 23, 1957, and received by the petitioner on September 30, 1957. It is this letter-decision which is appealable to this Court pursuant to Sections 7 and 11 of Republic Act No. 1125.

> "x x x. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with par. (1) Sec. 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review '<u>decisions</u> of the Collector of Internal Revenue in cases involving <u>disputed</u> assessments x x x'"(emphasis supplied).
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> "The period for appeal to the respondent Court in this case must, therefore, be computed from the time petitioners received the decision of the respondent Collector of Internal Revenue on the disputed assessment, and not from the time they received said assessment." (St. Stephen's Association et al. vs. Collector of Internal Revenue, G.R. No. L-11238, August 21, 1958.)

Consequently, the thirty-day period within which to appeal to this Court, pursuant to said Section 11 started to run from September 30, 1957, but the same was suspended on October 4, 1957 upon the filing of the petitioner's request for reconsideration. (Thomson Shirts Factory (Aaron Go & Co.) vs. The Collector of Int. Rev., C.T.A. No. 377, October 15, 1958, <u>citing</u> Rufino Lopez & Sons vs. Court of Tax Appeals, G.R. No. L-9274, February 1, 1957; Gonzalo P. Nava vs. Comm. of Int. Rev., C.T.A. No. 568, October 6, 1958 and Dy Peh, and/or Victory Rubber Mfg. vs. Collector of Int. Rev., C.T.A. No. 531, October 30,1958 both <u>citing</u> Muller & Phipps, Manila, Ltd. v. Collector of Int. Rev., G.R. No. L-10694, March 20, 1958.) The respondent having denied the request for reconsideration, the period to appeal resumed to run on

December 18, 1958, when the petitioner received said denial. The reglementary period was then interrupted only upon the filing of the instant petition for review on January 8, 1958. All in all therefore, the petitioner used a total of 25 days out of the thirty (30) days allowed by law within which to appeal to this Court. The appeal having been seasonably filed, it follows that this Court has jurisdiction over the same.

We will now proceed to determine the remaining issue as to whether or not the petitioner is liable for the specific tax assessments in question. This issue ultimately boils down to the question of whether or not the alcohol in question was lost through rectification and handling incident to the re-rectification of already rectified alcohol. The law involved in this case is found in Sections 124, 129 and 133 of the Revenue Code, as amended by Republic Act No. 1608, which provide 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. 129. Removal of spirits x x x under bond.- Spirits requiring rectification may be removed from the place of their manufacture to some other establishment for the purpose of rectification without the prepayment of the specific tax, provided the distiller removing such spirits and the rectifier receiving them shall file with the

Collector of Internal Revenue their joint bond conditioned upon the future payment by the rectifier of the specific tax that may be due on any finished product; x x x; And provided, further, That in cases where alcohol has already been rectified either by original and continues distillation or by redistillation is further re-rectified, no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the specific tax due on such losses. (As amended by sec. 5, R.A. No. 1608)" (Emphasis supplied.)

"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:

(a) If produced from sap of the nipa, coconut, cassava, camote, or buri palm, or from the juice, syrup, or sugar of the cane, per proof liter, seventy centavos;

(b) If produced from any other materials, per proof liter, ten pesos.

"This tax shall be proportionally increased for any strength of the spirits taxed over proof 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, molases, 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. (As amended by sec. 7, R.A. No. 1608.)

'Proof spirits' is liquor containing one half of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten-thousandths at fifteen degrees centigrade. A proof liter means a liter of proof spirits."

The petitioner contends that the losses, subject of the assessments in question, are not losses incurred in further rectification after Republic Act No. 1608 took effect on August 23, 1956.

We find the petitioner's contention not meritorious. There is evidence on record that, although the petitioner stopped re-rectifying, by the use of physical process, previously rectified alcohol on August 17, 1956, which date was six (6) days prior to the effectivity of Republic Act No. 1608, nevertheless it further rectified the already rectified alcohol purchased after that date by the use of a chemical process which it called the "carbon treatment." Under this latter process of rectification, we presume that carbon, which is a chemical substance, was mixed with or added to the alcohol and then filtered out for the purpose of removing the impurities from the alcohol to produce a higher quality product of alcohol.

There is "rectification" when carbon is added to gather certain substances and then filtered out (Parrott & Co. v. U.S., 156 F 2d 943, at 946). This is ordinarily accomplished by mixing original distillate with other substances resulting in each instance a product different from the original product (Austin, Nichols & Co., v. U.S., 87 F Supp. 766, at 767). After subjecting the alcohol to this treatment, the alcohol is then placed in wooden barrels and cemented tanks for aging, which, in our opinion, is a part of the process of rectification (see Parrott & Co. vs. U.S., <u>supra</u>, at pp. 944, 947). There is no doubt, therefore, that the process adopted by the petitioner subsequent to August 23, 1956 was in further rectification of the alcohol purchased from the sugar centrals.

Moreover, the term "further re-rectified" in said Section 129 does not distinguish between rectifications through the physical process and through the chemical process. When the law, by its terms, does not distinguish one process of rectification from another, we should not make any distinction. Ubi lex non distinguit, nec nos distinguere debemus. Both processes of rectification, the physical and the chemical, are, we believe, within the contemplation of Section 129 of the Tax Code.

The petitioner furthermore contends that the losses in alcohol were due to evaporation as a consequence of its volatile nature during its storage and not due to further rectification and handling. It also asserts that Section 129 of the Tax Code intended to impose specific tax only on alcohol lost in further rectification and excluded the losses due to evaporation, storage and other unavoidable causes. And it is claimed that the rectified alcohol stored in its distillery for the purpose of aging was under lock and key and was not touched by anybody so that the losses in the stored alcohol were simply due to evaporation. Consequently, it is urged that the loss, which was due to evaporation, was an unavoidable result in the process of manufacture and is allowed under Section 150 of the Tax Code which authorizes a reasonable allowance for unavoidable loss in manufacture, and under Revenue Regulations which allow

2% of loss in compounding and 1% loss in stock handling.

It is probable that the losses in alcohol were partly due to evaporation while they were placed in storage for the purpose of aging. However, we are of the belief that the placing of re-rectified alcohol in storage for purposes of aging is still a part of the process of rectification (see Parrott & Co. v. U.S. supra). Hence, it can readily and reasonably be concluded that the losses in alcohol by the natural process of evaporation were incident to the further re-rectification of already rectified alcohol. Part of the losses may also have occurred in the course of the handling of the alcohol by the laborers of the petitioner during the compounding thereof. In either or both cases, we believe that the loss is one that arises from or in the course of "rectification and handling" for which the law allows no deductions and in fact requires that "the rectifier thereof shall pay the specific tax due on such losses" (Sec. 129, Tax Code).

The proviso in Section 129 disallowing losses incident to the further re-rectification of already rectified alcohol or in the handling thereof during such period, which was added by Republic Act No. 1608, was intended to "curb the abuse of the privilege granted under present provisions (then) allowing rectifier to receive spirits under bond and to pay the specific tax on the finished product." (See Explanatory Note, H.B. No. 5808, Congressional Record, House of Reps., 3rd Cong., Third Special Session, Vol. III, No. 3, p. 3094.) Since one of the general aims of the amendatory act is the "correlation of sections affected with the proposed amendments (Ibid.), Section 133 of the Tax Code, which was similarly amended, and Section 129 of the same Code should, therefore, be correlated and construed accordingly.

Section 133 was amended so as to restore definitely "the time when the specific tax shall be attached to the distilled spirits" and the "purpose (of the amendment) is to erase all doubts as to the accrual of the specific tax on distilled spirits" (Congressional Record, supra). The insertion of the amendatory provision fixed the time when the specific tax attaches to alcohol or distilled spirits, that is, "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 substance either in process of original production or by any subsequent process." And pursuant to the general provision, the specific tax which attached to the distilled spirits must necessarily be paid immediately before removal from the place of production unless otherwise specially allowed. (Section 124, Revenue Code.)

Section 129 is the provision in the Tax Code which allows the removal of distilled spirits without the prepayment of specific tax. However, the removal of the alcohol must be for the purpose of rectification and that a joint bond be filed by the distiller and the rectifier.

conditioned upon the future payment by the latter of the specific tax that may be due on any finished product. In effect, the payment of the tax is merely postponed until the rectification is completed, at which time the specific tax due shall be determined on the quantity of the distilled spirits constituting the finished products (La Tondeña, Inc. v. Acting Collector of Int. Rev., C.T.A. No. 393, September 30, 1958). However, said Section 129 must be enforced in such manner as to attain the legislative intent, which is to avoid the reduction of the amount of the specific tax which should have been paid, had the tax been paid at the time of removal as ordinarily required.

Before the amendment of Section 129, the payment of specific tax on alcohol or distilled spirits removed under bond was based on such alcohol or distilled spirits as a finished product, and losses incurred by evaporation in the process of transformation of spirits into any other substance either in the process of original production or by any subsequent process was allowed. (La Tondeña, Inc. v. Collector of Int. Rev., C.T.A. No. 99, December 7, 1955.) However, the clear legislative intent in amending this provision is, in our opinion, to impose the specific tax not only on the alcohol or distilled spirits as finished product but also on those alcohol or distilled spirits which were lost incident to further re-rectification. In other words, the law now, in letter and spirit, imposes the specific tax on the finished product, including losses attendant to its manufacture, as long as the alcohol or distilled spirits used as raw materials were subjected to further re-rectification. Therefore, the only remaining privilege of the rectifier granted by Section 129 is the postponement of the payment of the specific tax to a future date, that is, when the product is finally manufactured. Consequently, when the distilled spirits are lost in any manner before such manufacture, the rectifier is liable to the payment of specific tax on such losses. The provision may be taken as having impliedly withdrawn the previous privilege granted to rectifiers allowing them certain percentage of losses incident to rectification, compounding and stockhandling.

FOR THE FOREGOING CONSIDERATIONS, the decisions appealed from are hereby affirmed. With costs against petitioner.

SO ORDERED.

Manila, March 23, 1959.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote.

ROMAN M. UMALI
Associate Judge