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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DE LA RAMA STEAMSHIP
CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1499

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - -x March 24/67

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue, dated January 7, 1964, assessing and demanding from petitioner the amounts of ₱21,010.20 as fixed and percentage taxes, inclusive of surcharge and compromise penalty, for the years 1951 to 1956, and ₱3,674.69 as 25% surcharge for late payment of commercial broker's tax for 1955 up to the 2nd quarter of 1956, or a total of ₱24,684.89.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. On October 26, 1949, it entered into a contract with the National Development Co. (NDC for short) for the management and operation of three NDC vessels, namely, Doña Nati, Doña Aurora and Doña Alicia. (Exh. A, pp. 45-52, BIR rec.)

The Doña vessels are freight steamers and each has a limited capacity of 12 passengers (pp. 3 & 9, t.s.n.) and a complement of 38 officers and crew members. (p. 12, t.s.n.) Every vessel has a dining hall where meals are served and wines and liquors are displayed for sale to passengers and crew members. Sales of wine and liquors are made only during mealtime because there are no waiters serving after meals. (pp. 3, 10-11, t.s.n.)

Respondent, in a letter dated January 11, 1957, demanded from petitioner the total sum of ₱38,783.65, representing percentage tax on its gross receipts from the year 1955 to the 2nd quarter of 1956 as a commercial broker prescribed in Section 195 of the Revenue Code, plus surcharge, and fixed and percentage taxes, inclusive of surcharge and compromise penalty for the years 1951 to 1956 as keeper of bar pursuant to Section 191 of the same Code. (See Exh. L, pp. 18-19, BIR rec.) On September 9, 1957, respondent reduced the assessment to ₱24,684.89, after crediting petitioner the sum of ₱14,698.76 which it had already paid on September 19, 1956 as commercial broker's tax. (Exh. N-1, p. 20, BIR rec; pp. 65-66, BIR rec.) On June 27, 1958, petitioner, through counsel, requested the withdrawal of the assessment (pp. 79-82, BIR rec.) which was denied in a letter dated May 16, 1960. On January 7, 1964, respondent rendered his final decision denying petitioner's request for reconsideration. (pp. 216-217, BIR rec.)

In his answer, respondent alleges as one of his affirmative defenses that this Court has no jurisdiction to take cognizance of the instant appeal for having been filed beyond the reglementary period of 30 days fixed under Republic Act No. 1125. However, respondent conceded this Court's jurisdiction when petitioner, during the hearing on October 28, 1965, established that the letter-decision dated January 7, 1964 was received by petitioner only on March 11, 1964. (pp. 49-51, t.s.n.)

The dominant issues raised for our consideration are:

1. Whether or not petitioner is liable for the sum of ₱21,010.20 as fixed and percentage taxes, inclusive of surcharge and compromise penalty, for the years 1951 to 1956 as keeper of bar pursuant to Section 191 of the Revenue Code, in relation to Sections 182 and 183 of the same Code; and

2. Whether or not petitioner is liable for the amount of ₱3,674.69 as 25% surcharge for late payment of its commercial broker's tax for 1955 up to the 2nd quarter of 1956 as prescribed in Section 195 of the Revenue Code.

The pertinent provisions of the Revenue Code as regard the first issue run as follows:

> "SEC. 191. Percentage tax on road, building, irrigation, artesian well, waterworks, and construction work contractors, proprietors or operators of dockyards, and others.- x x x
>
> "x x x. Keepers of bars and cafes where wines or liquors are served shall pay a tax of five per centum of their gross receipts: x x" (Underscoring supplied)

Petitioner assails the assessment on the ground that it is not a keeper of bar in any of its vessels. And it contends that, assuming that it is a keeper of bar, the assessment should have been made against the NDC, the owner of the vessels, and not against petitioner which acted merely as an agent.

It has been consistently held that the liability for fixed and percentage taxes does not ipso facto attach, by mere reason of the operation of a bar and restaurant. For the liability to attach, the operator must be engaged in the business as barkeeper, which means in activities where profit is the purpose or livelihood is the motive. (Coll. v. The Club Filipino Inc. de Cebu, L-12719, May 31, 1962; Manila Polo Club v. Meer, L-10854, Jan. 27, 1960; Coll. v. Sweeney, et al., L-12178, Aug. 21, 1959.)

Respondent wishes to impress upon us that the dining hall of a vessel is a bar for the reason that wines or liquors are displayed and sold therein. We are of the opinion, however, that there is no bar in any of the vessels as the word is used and understood in Section 191 of the Revenue Code.

A bar is ordinarily understood as a place where wines or liquors are indiscriminately offered for sale to the public. It is a place which is opened anytime during business hours where customers are generally served wines or liquors in "jiggers" or glasses to be drunk inside the barroom. The case of herein petitioner is different. The dining hall of the vessel is opened only to its crew members and limited passengers; petitioner serves wines or liquors only during mealtime or three times a day so that it is not possible for a passenger or crew member to buy them before and after each meal; and petitioner sells wines or liquors in bottles which implies that passengers or crew members may drink them in and outside the dining hall. Liquors may have been sold in the dining hall of petitioner's vessels but what strikes us is that they were not sold in the manner they are done in bars.

Assuming, arguendo, that petitioner operates a bar, still it is not engaged in business as barkeeper. In operating its vessels, it maintains or keeps at the same time a bar where wines or liquors are displayed and sold as a necessary incident to its main business of transporting freight and passengers. And "where something is done as a mere incident to, or as a necessary consequence of, the principal business, it is not ordinarily taxed as an independent business in itself; and that what is usually taken as essential is the main activity in which the taxpayer is engaged. All the various transactions tending to better accomplish the principal end in view must be treated as merely incidental to the principal purpose of the business, in the absence of circumstances evidencing a different intent." (City of Manila v. Fortune Enterprises, Inc., L-14096, July 26, 1960; Standard-Vacuum Oil Co. v. Antigua, et al., 51 O.G. 2405; Smith, Bell & Co. v. Mun. of Zamboanga, 55 Phil. 466.)

It is the usual practice of operators of vessels to provide for the needs, comfort and convenience of the crew and passengers in order to promote and enhance their business. The sale of wines or liquors during mealtime to its crew members and limited passengers is in keeping with this practice and is indeed a necessary incident in the operation of ocean going vessels like the ships of petitioner.

Respondent cites the case of Maliese vs. Collector of Internal Revenue, 99 Phil. 596, to support his stand. The facts, however, of the Maliese case are different and, therefore, not controlling in this case. In the Maliose case, the taxpayer maintained a hotel and kept a restaurant that catered to the general public where wine or liquor was sold also to the general public, not only to the hotel guests, anytime during business hours. In the case at bar, wines or liquors were sold only to crew members and limited passengers of the vessel and only three times a day. In the Maliose case, the taxpayer in effect considered himself engaged in two separate and independent businesses when he provided himself with privilege tax-receipts, one as keeper of hotel and another as keeper of restaurant. In the case at bar, petitioner is engaged only in the business of transporting freight or as a common carrier. The sale of wines or liquors in the Doña vessels was essentially made to provide for one of the needs of its crew members and limited passengers during its long voyage and not for the profit in it. Liquor has become an essential part in the life of many and it is hard to imagine a vessel out on a long voyage that will overlook such an item as liquor for its crew and passengers. That profit was the motive of the company is indeed in conflict with the admitted fact that sales were made only during meal time and were limited to the crew and passengers.

From all appearances, sales were made only when they were necessary, not to say indespensable, incidents to petitioner's business of transporting freight and passengers. In the Maliese case on the other hand the serving of liquor in the restaurant cannot be said to be a mere incident of a restaurant business for the greater number of restaurants do not serve liquor at all.

Petitioner paid its commercial broker's tax for 1955 up to the 2nd quarter of 1956 only on September 19, 1956. For such delay in the payment of broker's tax, respondent correctly assessed the sum of ₱3,674.69 as 25% surcharge. It is now well settled that the 25% surcharge is imposed automatically upon failure of a taxpayer to pay the percentage tax within the time fixed by law. (Purakan Plantation Co. v. Domingo, CTA Case 693, May 31, 1961, aff'd in L-18571, October 29, 1965; American Express Co., Inc. v. Comm. of Int. Rev., CTA Case 1578, Jan. 4, 1967; Canlubang Sugar Estate v. Comm. of Int. Rev., CTA Case 1172, April 5, 1966; Lim Co Chui v. Posadas, 47 Phil. 460.)

The imposition by respondent of the compromise penalty of ₱600.00 is illegal in the absence of an agreement freely entered into by petitioner, as appearing in this case. (American Express Co., Inc.

v. Comm. of Int. Rev., supra; Calasanz, et al. v. Comm. of Int. Rev., CTA Case 1275, June 7, 1966; Canlubang Sugar Estate v. Comm. of Int. Rev., supra, and cases cited therein.)

WHEREFORE, the decision appealed from is hereby modified. Petitioner is ordered to pay the sum of ₱3,674.69 as 25% surcharge for late payment of commercial broker's tax for 1955 up to the 2nd quarter of 1956. Without pronouncement as to costs.

SO ORDERED.

Quezon City, March 24, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge