REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

TUASON & LEGARDA, LTD.,
Petitioner,

- versus - C.T.A. CASE NO. 746

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

DECISION

This is a petition to review the decision of the Commissioner of Internal Revenue requiring petitioner Tuason & Legarda, Ltd. to pay the amount of ₱2,814.95, as specific tax on distilled spirits and compounded liquor, plus ₱300.00 as compromise penalty.

Petitioner Tuason & Legarda, Ltd., owner and operator of La Rosario Distillery (t.s.n. pp. 5-6), was a licensed distiller until 1938 (t.s.n. p. 101). On June 27, 1939, it became a compounder of liquor (Exh. K-2, CTA rec., p. 28; t.s.n. p. 98). Since its stocktaking by the Bureau of Internal Revenue on July 13, 1950, it has ceased to operate (Exh. 1, BIR rec. p. 8).

As early as 1910 (t.s.n. pp. 16 and 88), petitioner had within the compound of La Rosario Distillery grain and rectified alcohol upon which the corresponding specific tax has not been paid. This stock of alcohol was carried over from month to month in its official register books (Exh. 1, BIR rec. p. 8; Exh.

54

L-1, CTA rec. p. 29; Exh. M-1, CTA rec. p. 30). In the course of a spot-checking and verification, the BIR special investigators noticed the stock of 998 proof liters of grain alcohol and 72 proof liters of compounded liquor in question (t.s.n. pp. 52-53). Consequently, they recommended the collection of ₱3,525.40, as specific tax. (Exh. 1, BIR rec. pp. 6-9).

In a letter dated December 16, 1958 (Exhs. 2 & A, BIR rec. p. 11) and received by petitioner on January 9, 1959 (see Exhs. 3 & B, BIR rec. p. 22), respondent demanded of La Rosario Distillery the payment of ₱3,525.40, as specific tax on the stock of alcohol in question, plus ₱300.00, as compromise penalty. In reply thereto, petitioner requested respondent to send an agent to supervise the destruction of grain alcohol and compounded liquor for the reason that the same were no longer fit for human consumption (Exhs. 3 & B, BIR rec. p. 22). In view of this request, a re-investigation of the case was made. The investigators found the grain alcohol and compounded liquor in question no longer fit for human consumption due to bad odor and therefore recommended their destruction (Exhs. I, J & J-1, BIR rec. pp. 34-35). However, a laboratory examination and analysis of the spirits in question, subsequently conducted by the laboratory section of the Bureau of Internal Revenue, showed that the same were still fit for human consumption (Exhs. 4, 4-A, BIR rec. p. 38; t.s.n. p. 66), and that the alcohol content thereof was at variance with the entries in petitioner's register books. Hence, on July 3, 1959, the assessment for specific tax was reduced to ₱2,814.95 (Exhs. 5 & C, C-1, C-2, BIR rec. pp. 48-49). This amended assessment was admittedly received by petitioner on August 12, 1959 (Exhs. 6 & D, BIR rec. p. 52).

In a letter dated August 15, 1959 (Exhs. 6 & D, BIR rec. p. 52) and filed with respondent on August 15, 1959 (see Memorandum for Respondent, CTA rec. p. 45), petitioner reiterated its request for authority to destroy the grain alcohol and compounded liquors, invoking the provisions of Section 131 of the National Internal Revenue Code. Respondent, in his letter dated September 30, 1959 (Exhs. 7 & E, BIR rec. p. 57) and received by petitioner about the middle of October, 1959 (t.s.n. p. 41), denied the request and again demanded the payment of ₱2,814.95 as specific tax, plus ₱300.00, as compromise penalty.

Once more, petitioner, in its letter dated November 25, 1959 (Exhs. 8 & F, BIR rec. pp. 59-60) and received by respondent on November 25, 1959 (see Memorandum for Respondent, CTA rec. p. 45), requested that it be allowed to destroy the grain alcohol and compounded liquor for the reason that the same were not up to standard (Exhs. 8 & F, BIR rec. pp. 59-60). This letter was never answered by respondent. Instead, on December 15, 1959, he issued a warrant of distraint and levy to enforce the collection of the specific tax herein involved (Exh. G, BIR rec. p. 68). On February 1, 1960, petitioner requested that the warrant of destraint and levy be lifted, and formally tendered all the grain alcohol and compounded liquor to respondent in full discharge of the tax sought to be collected (Exh. H, BIR rec. p. 72).

On February 11, 1960, petitioner instituted the instant appeal (CTA rec. p. 1).

The issues involved in this case are:

1. Whether or not the petition for review was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125; and

2. Whether or not petitioner is liable for the payment of specific tax on its stock of grain alcohol and compounded liquor.

In his answer to the petition for review, respondent raised the issue of jurisdiction of this Court to take cognizance of this case. He maintains that this Court has no jurisdiction over the instant case inasmuch as the petition for review was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125. He contends that his letter dated July 3, 1959 wherein he demanded of petitioner the payment of the reduced assessment of ₱2,814.95, plus the compromise penalty, is the decision which is appealable to this Court. Hence, he concludes that the 30-day period should be counted from its receipt by petitioner.

On the other hand, petitioner claims that the petition for review was seasonably filed, arguing that the 30-day period should be counted from January 20, 1960, the date when it was served the warrant of distraint and levy.

Upon the foregoing facts, we find that the amended assessment of July 3, 1959 is the decision which should be appealed to this Court. It is a definite determination of petitioner's tax liability (Pangasinan Transportation Co., Inc. vs. Blaquera, G.R. No. L-13101, April 29, 1960; see also St. Stephen's Association and St. Stephen's Chinese Girls School vs. The Collector of Internal Revenue, G.R. No. L-11238, August 21, 1958). Therefore, the period within which to perfect the appeal commenced to run from the receipt of this assessment by petitioner on August 12, 1959. It was interrupted by the filing on August 15, 1959 of petitioner's letter of the same date. The interruption ended on October 15, 1959 when petitioner received the denial of its request for reconsideration. At the same time, it resumed to run until interruption once more supervened on November 29, 1959. All in all, petitioner consumed 44 days, tabulated below:

58

From August 12, 1959 - date petitioner received respondent's decision of July 3, 1959 to August 15, 1959 - date petitioner filed its 1st request for reconsideration dated August 15, 1959	- 3 days
From October 15, 1959 - date of receipt by petitioner of respondent's letter denying its 1st request for reconsideration dated August 15, 1959 to November 25, 1959 - filing of petitioner's 2nd request for reconsideration dated November 25, 1959	- 41 days

The instant petition for review having been filed out of time, this Court has no jurisdiction to take cognizance of this case.

In view of the finding that this Court has no jurisdiction over the case at bar, we shall not pass upon the legality of assessment in question.

WHEREFORE, the petition for review in this case is hereby dismissed for lack of jurisdiction, with costs against petitioner.

SO ORDERED.

Manila, February 17, 1961.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

59