REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CENTRAL AZUCARERA DON PEDRO,
Petitioner,

- versus -

C.T.A.
CASE NO. 645

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the respondent holding the petitioner liable for the sum of ₱40,522.86, representing alleged deficiency sales tax and surcharge on sales of denatured alcohol for industrial purposes during the period from October 1, 1947 to October 31, 1952.

It appears that during the period in question, petitioner removed from its distillery and sold 4,218,749 liters of denatured alcohol on which it paid the specific tax pursuant to Section 142 (d) of the National Internal Revenue Code. Upon investigation of the books and records of petitioner by agents of the Bureau of Internal Revenue, respondent determined that the said alcohol was removed from petitioner's distillery not for motive power but for industrial purposes and, therefore, it is exempt from the specific tax. However, sales of such alcohol are subject to the sales tax under Section 186 of the Revenue Code. Accordingly, an assessment was made against petitioner for deficiency sales tax, plus

83

the corresponding surcharge, after crediting the specific tax paid against the sales tax due on sales of said alcohol.

On the other hand, petitioner insists that said alcohol was denatured and sold for motive power which is subject to the specific tax and not to the sales tax. At any rate, it is alleged that the right of respondent to assess the deficiency sales tax has already prescribed.

Section 133 of the Revenue Code imposes a specific tax on distilled spirits (alcohol). Where alcohol is denatured for motive power, it is subject to a lesser amount of specific tax under Section 142 (d). In the case of alcohol not taxable under Section 133 or Section 142(d), such as denatured alcohol for industrial uses (Sec. 128, Rev. Code) it is subject to the sales tax under Section 186.[1]

The main issue presented is one of fact - whether the alcohol in question was removed from petitioner's distillery for motive power, as contended by petitioner, or for industrial uses, as alleged by respondent.

Petitioner relies solely on the presumption established in Section 142(d) of the Revenue Code, which provides:

> "For the purposes of this sub-section, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety *per centum* absolute alcohol) shall be

---

[1] See Sec. 188(a), Revenue Code, which exempts from sales tax articles subject to specific tax. Conversely articles which are exempt from specific tax are subject to the sales tax.

deemed to have been removed for motive power, unless shown to the contrary."

In determining that the alcohol in question was removed from petitioner's distillery for industrial purposes and not for motive power, respondent relies on the records of petitioner which show that alcohol denatured with gasoline was sold to persons who used the alcohol for motive power, while alcohol denatured with denaturants other than gasoline were sold to persons who used such alcohol for industrial uses. The names of the persons who allegedly bought said alcohol are listed in Exhibit 1-A. We think such evidence is sufficient to overthrow the presumption established in Section 142(d). It was incumbent upon petitioner to prove that the denatured alcohol in question, although denatured with denaturants other than gasoline, was removed from its distillery for motive power and not for industrial uses. It has a complete record of the names and addresses of the purchasers. If it is true, as alleged, that the purchasers bought the denatured alcohol from petitioners for motive power, no better evidence could have been presented in support of that fact except the testimony of said purchasers, or at least some of them. That petitioner did not find it necessary to produce such evidence is a strong indication that, if presented, the same would have been adverse.

In connection with the issue of prescription, petitioner failed to prove that any sales tax return was filed by it during the period under review. Apparently, the issue has been abandoned.

WHEREFORE, finding respondent's assessment in the sum of ₱40,522.86 as deficiency sales tax and surcharge against petitioner in order, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, February 25, 1963.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

86