REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LA TONDEÑA, INC.,
Petitioner,

September 30, 1958

- versus -

C.T.A. CASE NO. 393

ACTING COLLECTOR OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a petition for the recovery of the sum of ₱6,019.30 alleged to have been illegally collected by and paid to respondent as specific taxes on 6,655 (or 8,599) proof liters of crude alcohol. This case was submitted for decision on the basis of facts established in the pleadings of the parties and Exhibit "A" (Petitioner) which is Official Receipt No. 1169067 dated July 18, 1955 evidencing payment of the tax in question. The following are the undisputed facts involved in this case.

Petitioner is engaged in the manufacture of wines and liquors with a distillery at 1068 Velasquez, Tondo, Manila. It buys its alcohol from various sugar centrals, among others, from Binalbagan-Isabela Sugar Central (hereinafter to be referred as Biscom) which is in Negros Occidental. All the alcohol it purchased from the Biscom is removed from the latter's place of manufacture to petitioner's distillery under a joint bond filed pursuant to section 129 of the Tax Code and made with the approval of respondent. The alcohol obtained from Biscom is admittedly crude alcohol (low test alcohol), which always required further distillation or rectification in order to suit petitioner's purpose of producing only high quality products. Under the sales contracts entered into by and between petitioner and Biscom, all alcohol shortages occurring in transit as well as any specific tax that may be due on same would be for the former's account.

On June 11, 12 and 18, 1952, respondent assessed against and demanded from petitioner the respective amounts of ₱3,192.00, ₱589.40 and ₱425.60 as specific tax on the various shipments of alcohol made during the period between December 26, 1951 and February 26, 1952, totalling 6,066 proof liters but which were lost in transit while being delivered from Biscom's compound in Negros Occidental to petitioner's distillery in Manila (see Annexes "A", "B" and "C" of Petition for Review). Petitioner however protested these assessments by its letter dated July 7, 1952 (Annex "D", Petition for Review).

On July 16, 1952, respondent assessed against and demanded from petitioner the sum of ₱3,001.60 as specific tax on 4,288 proof liters of alcohol, which represents the difference between the total quantity of alcohol removed from Biscom's distillery and that received by the latter (Annex "E", Petition for Review). This assessment was likewise protested by petitioner

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on July 31, 1952 (Annex "F", Petition for Review).

Again on August 4, 1952, respondent assessed against and demanded from petitioner the sum of ₱132.30 as specific tax on 189 proof liters of alcohol lost in transit (Annex "G", Petition for Review). This assessment was also protested on August 29, 1952 (Annex "H", Petition for Review).

Finally, on October 29, 1952, respondent assessed against and demanded from petitioner the amount of ₱2,079.70 as specific tax on 2,971 proof liters of alcohol lost in transit (Annex "I", Petition for Review). This assessment was the subject of a protest by petitioner in its letter of November 6, 1952 (Annex "J", Petition for Review).

However, on September 10, 1953, respondent, in reply to the various protests, reduced the assessments of July 16, 1952 and October 29, 1952 to ₱1,400.00 and ₱280.00, respectively, on the ground that the losses were found to be due to the change in grade on account of the defective or inaccurate grading instruments of Biscom, but affirmed all other assessments. Consequently, the demand for the deficiency specific tax was reduced to a total amount of ₱6,019.30 as specific tax (Annex "K", Petition for Review). On July 18, 1955, petitioner paid under protest the last-named assessment of ₱6,019.30 as shown by Official Receipt No. 1169067(Exhibit A, petitioner).

On June 4, 1957 petitioner requested for the refund of the said ₱6,019.30. Not having received a reply to the request for refund, petitioner filed the instant petition on July 12, 1957 in order to beat the deadline of July 17, 1957 which is allegedly the last day of the two-year period from June 18, 1955 within which to initiate the judicial proceedings for refund of an internal-revenue tax alleged to have been erroneously or illegally assessed or collected.

The only issue involved in this case is whether or not petitioner is entitled to the refund of the specific tax paid on the alcohol lost in transit during the delivery from Biscom's compound in Negros Occidental to its distillery in Manila. The loss of the alcohol in question is admittedly not arising from loss on evaporation in the course of manufacture or rectification.

Respondent justifies the collection of the specific tax on the alcohol in question as having been effected pursuant to sections 124 and 133 of the Tax Code and in view of the sales contract entered into between petitioner and Biscom, by virtue of which petitioner undertook to pay specific tax that may be due on all alcohol shortages.

The foregoing issue therefore boils down to two subordinate questions, to wit: (a) when does the specific tax attach? and (b) whether or not the petitioner is liable for the specific tax on the said crude alcohol lost in transit.

The provisions of law that are involved here are found in sections 124, 129 and 133 (the latter as amended by Republic Act No. 592) of the Tax Code, which are reproduced 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 or cigars 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 x."

> "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:
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> (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 proportionately increased for any strength of the spirits taxed over proof spirits.
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> '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, molasses, or sugar, or of some syrup or sap, including all dilutions or mixtures.

> '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".

Respondent contends that, there being no law or regulation which allows the exemption from taxes of alcohol lost in transit, whenever the alcohol is intended for rectification, such alcohol lost is nevertheless subject to specific tax. Upon the other hand, petitioner's claim for exemption therefrom is based upon said Section 129 of the Tax Code, which allows the removal of spirits requiring rectification to some other establishment for the purpose of rectification without the prepayment of the specific tax, provided, as in the instant case, that the distiller and the rectifier 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. Petitioner accordingly argues that in enacting this section, Congress intended to exempt from specific tax all losses thru evaporation, leakage, handling, etc. that may be sustained by the rectifier until the alcohol is converted into a finished product. It is thus maintained that losses on the alcohol while in transit from the place of production to the rectifier's establishment, for the purpose of rectification, are not subject to tax and said tax shall be based only on the finished product. In support of this proposition, petitioner cites our decision in La Tondeña, Inc. v. Collector of Internal Revenue (CTA Case No. 99, December 7, 1955).

Before proceeding to the resolution of the questions here involved, we wish to make the observation that prior to the enactment of Republic Act No. 592, Section 133 of the Tax Code contained a proviso to the effect that the "tax (specific) shall attach to this substance (distilled spirits) 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". This proviso was deleted from said section by Republic Act No. 592 although it had been subsequently restored. In the prior La Tondeña case, supra, and referred to by petitioner, we opined in connection with the deletion of this proviso, as follows:

> "x x x
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> "To our mind, the evident intention of Congress in eliminating from Section 139 of the National Internal Revenue Code the all-embracing phrase 'and the tax shall attach to this substance as soon as it is in existence as such. . . x x x' was to subject to specific tax not all kinds of alcoholic substances, <u>but only distilled spirits as finished products, actually removed from the factory or bonded warehouse</u>. x x x"

Thus in the aforecited case, we computed the specific taxes only on the "distilled spirits as finished products" which excluded those lost by evaporation in the process of the transformation of spirits into any other substance either in process of original production or by any subsequent process. Petitioner now seeks to apply the foregoing theory to the alcohol which was lost not through evaporation but lost in the course of transportation from the place of production of the crude alcohol to the place of rectification.

Under the general law (Sec. 124, Tax Code), as afore-quoted, specific taxes on domestic products shall be paid immediately before removal from the place of production <u>unless otherwise especially allowed</u>. However, this requirement of prepayment of the tax is waived or dispensed with in case the alcohol is removed for further rectification and a joint bond is filed by the distiller and the rectifier conditioned upon the future payment by the rectifier of the specific tax that may be due on any finished product (see Sec. 129, Tax Code). Should the alcohol be removed under the conditions set forth by said section 129, the payment of the tax is in effect postponed until the completion of the rectification at which time the specific tax due shall be determined on the quantity of the distilled spirits constituting the finished products.

From the context of the provisions cited above, it would seem clear that it was the intention of Congresss that as a general rule, the specific tax should attach to the alcohol or distilled spirits as soon as they are produced (Thompson v. U. S. 142 US 471 at 475) and that the limit of time for making payment thereof is when the product is sold or removed from the place of production (Liggett & Meyers Tobacco Co. v. U.S. 299 U.S. 383 at 386; Rogan v. Conterno, 132 F 2d 726 at 727). However, by way of exception, the distiller or rectifier may "put his finger upon some clause which relieves him from its (specific tax) payment", as when Congress under Republic Act No. 592 evidently intended to impose the specific tax only upon the distilled spirits as finished products. As we have previously held, it was the legislative intent to allow the exclusion from the computation of the specific tax those distilled spirits lost by evaporation in the process of the transformation of such spirits into any other substance, whether by distillation or rectification (La Tondeña, Inc. v. Collector, supra). Nevertheless, where the distilled spirits already produced and removed from the place of production have been subsequently lost, but not under the specific circumstances contemplated by the enactment of Republic Act No. 592, the exemption from the payment of the specific tax thereon cannot be allowed (see St. Paul Mercury-Indemnity Co. v. U.S., 156 F 2d 425 at 428 citing Greenbrier Distillery Co. v. Johnson, 88 Fed 638, 641).

In the case at bar, the crude alcohol which were removed from Biscom's Central were lost in transit and not as a consequence of the transformation thereof into a finished product. In fact, it had not reached the stage of rectification which was one of the conditions imposed for the withdrawal of the same, without the prepayment of the specific tax. Obviously, the purpose (the rectification and transformation into a finished product) for which the postponement of the payment of the tax was allowed, was not attained. Under such circumstances, the alcohol in question should be deemed subject to the general rule that the specific tax on such "domestic products shall be paid by the manufacturer, producer, owner" and not being covered by the special condition contemplated by law, "such taxes shall be paid immediately before removal from the place of production" (Sec. 124, Tax Code). In other words, upon the failure of the condition subsequent, the tax is deemed to have already attached upon the removal of the alcohol from Biscom's compound in Negros Occidental. Indeed, petitioner, under the alcohol sale contract (see Annex I, p. 2 of Petition for Review) had bound itself to pay for the corresponding specific tax on the alcohol shortages occurring in the course of transportation.

As is readily seen, our decision in the prior case of La Tondeña, Inc., supra, is distinguishable from and inapplicable to the instant case because in the former what was held as not subject to specific tax was the alcohol which had been lost through evaporation during the process of transformation. In this case, what is involved is the alcohol <u>lost in transit</u> from the distillery of the supplier-vendor to the place of further rectification or manufacture of petitioner-vendee.

IN VIEW OF THE FOREGOING, we are therefore of the opinion and so hold that respondent lawfully collected the specific tax in question. Consequently, the instant petition for the refund of such tax is without merit and the same should be, as it is hereby dismissed, with costs against petitioner.

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SO ORDERED.

Manila, September 30, 1958.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

I dissent. It is my opinion that this case should be dismissed for lack of jurisdiction, no decision having been rendered by respondent on petitioner's claim for refund. (See my dissenting opinions in Paracale Gumaus Consolidated Mining Co. v. Blaquera, C.T.A. No. 211, Aug. 22, 1956; Victorias Milling Co. v. Collector of Int. Rev., C.T.A. No. 499, Sept. 8, 1958.) That there must be a decision of the Commissioner of Internal Revenue on the claim for refund of an internal revenue tax is a mandatory requirement of Section 11 of Republic Act No. 1125 before an appeal may be filed with this Court. (College of Oral and Dental Surgery v. Collector of Int. Rev., G.R. No. L-10446, Jan. 28, 1958.)

ROMAN M. UMALI
Associate Judge

Reversed in G.R. L-14875, Sept. 29, 1962.