Republic of the Philippines
COURT OF TAX APPEALS
Manila

ARMANDO L. ABAD, doing business under the trade name of Republic Alcohol Distillery,
Petitioner,

- versus -

C.T.A. CASE NO. 620

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

The respondent assessed against the petitioner the sum of ₱19,204.20 as specific tax on 42,676 proof liters of distilled spirits which were allegedly illegally removed from petitioner's bonded warehouse without payment of said tax. In addition, petitioner was also asked to pay the sum of ₱10,000.00 as penalty (compromise) for violation of Section 174 of the National Internal Revenue Code. Having failed to secure reconsideration of the assessment, petitioner has appealed.

It appears that petitioner is the owner of the Republic Alcohol Distillery located at 273 F. Roxas, Grace Park, Caloocan, Rizal, which is engaged in the manufacture of denatured alcohol for industrial uses. Denatured alcohol for use in industry is exempt from the specific tax prescribed in Section 133 of the National Internal Revenue Code, pursuant to Section 128, but sales of which by the manufacturer are subject to the sales tax provided in Section 186. The manufacture of dena-

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tured alcohol is subject to the supervision and control of the Bureau of Internal Revenue. (Secs. 149, 164, Revenue Code; General Circular No. 420, June 23, 1939.)

On August 14, 1958, petitioner applied for the denaturation of 33,000 gauge liters of rectified alcohol. The denaturation was effected on August 21, 1958 by the Denaturing Committee of the Bureau of Internal Revenue composed exclusively of three officers of said Bureau without the intervention of petitioner or any of his agents. The circumstances surrounding the denaturation are as follows:

> "In his letter dated August 14, 1958 (Exhibit E), petitioner applied for the denaturation of 33,000 gauge liters of rectified alcohol of not less than 180 degress proof under Formula No. 1 prescribed in section 40 of Chapter V, Circular No. 16, to wit: To every 100 parts by volume of ethyl alcohol of not less than 180 degrees proof, there shall be added 2 parts by volume of approved methyl alcohol (or methanol) and one-half of 1 part by volume of approved pyridine. Upon receipt of petitioner's application, the Chief of respondent's Alcohol Tax Division prepared the corresponding authority addressed to the Chief, Laboratory Section to analyze the denaturants needed for denaturation (pp. 15-16, t.s.n.; Exhibits E-1 and E-2). Samples of the denaturants were taken from petitioner's bonded denaturing warehouse by a BIR employee, Mr. Manuel Cariñgal, and brought to the BIR Laboratory Section for analysis (p. 79, t.s.n.), and the reports of analysis were duly accomplished (Exhibits E-1, E-2 and E-3), showing that the denaturants passed the commercial grade and could be used for denaturing (pp. 80-82, t.s.n.). Upon receipt of the laboratory analysis reports on the denaturants, the Chief, Alcohol Tax Division, pursuant to Memorandum Order No. V-799 of the Bureau of Internal Revenue, dated January

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29, 1958, directed the Denaturing Committee, composed of Mr. Marcelino de Leon, Chairman, and Drug Inspector Mercedes Ylagan and Mr. Inocencio Gonzales, Jr., Chief, Laboratory Section, Members, who are all internal revenue officers, to proceed, on August 21, 1958, to the bonded denaturing warehouse of the petitioner at Grace Park, Caloocan, Rizal, and to denature the 33,000 gauge liters of rectified ethyl alcohol of petitioner. The Denaturing Committee denatured the rectified alcohol of the petitioner in accordance with the standard procedures prescribed by the internal revenue law and regulations (please see testimony of Mr. Marcelino de Leon, pp. 27-77, t.s.n., and testimony of Mr. Inocencio Gonzales, Jr., pp. 77-98, t.s.n.), and after the denaturation, the said Denaturing Committee took, through the manholes on top of the three denaturing tanks used in the denaturation, two samples from each of the three tanks and sealed the said samples, on which seals were affixed the signature of the members of the Denaturing Committee and that of the resident manager of the bonded denaturing plant. One set of the samples was left at the denaturing plant and the other set was taken by the Denaturing Committee to the Laboratory Section of the Bureau of Internal Revenue for analysis. After the denaturation and before leaving the premises, the Denaturing Committee duly sealed all the openings of the denaturing tanks. The quantity of the rectified alcohol and the denaturants used in denaturation were duly entered in the Official Register Book of the denaturing plant (Exhibit I) by the BIR storekeeper-gauger and the resident manager of the plant, and the members of the Denaturing Committee accomplished the requisite certificates of denaturation (Exhibits G, G-1 and G-2). The samples of the denatured alcohol taken by the Denaturing Committee were brought to the BIR Laboratory Section and upon analysis, were found to be duly denatured (p. 91, t.s.n.)." (Pages 2-5, Memorandum for Petitioner, Jan. 18, 1961.)

The facts narrated above are not disputed by respondent.

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However, upon surprise inspection on August 25, 1958, it was found that the remaining alcohol (10,420 gauge liters or 19,694 proof liters) in the tanks where the denatured alcohol was stored was not completely denatured and that "the same can be used in the manufacture of Siu Hoc Tong, Rum, Chinese wines and other highly flavored alcoholic beverages." Accordingly, steps were taken to completely denature said alcohol. With respect to the 22,580 gauge liters or 42,676 proof liters already removed or sold prior to the surprise inspection, respondent required petitioner to pay the specific tax of ₱19,204.20, plus the "penalty" of ₱10,000.00.

It is contended on behalf of petitioner that, assuming that the alcohol in question was not completely denatured as alleged, he cannot be held liable for the specific tax because the denaturation was made by the Denaturing Committee of the Bureau of Internal Revenue without his intervention or of any of his agents. On the other hand, respondent contends that the denaturation of the alcohol was the sole responsibility of petitioner, and since it turned out that the alcohol was not completely denatured, he must pay the corresponding specific tax. We agree with petitioner that he cannot be held legally liable for the specific tax.

There is no question that the denaturation was made by the Denaturing Committee of the Bureau of Internal Revenue without the intervention of petitioner or of any of his agents. The Committee certified that the

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alcohol in question was completely denatured in accordance with existing regulations. Petitioner was entitled to rely on such certification and to dispose of the alcohol in accordance with his license. The case of Central Azucarera de Tarlac v. Collector of Internal Revenue, G. R. No. L-11092, September 30, 1958, is not in point. In that case, it appears that the denaturation was made by a committee, a member of which was an agent or representative of the taxpayer. In this case, the Bureau of Internal Revenue required that the denaturation be made, as it was actually made, by a committee composed exclusively of officers of said Bureau without the participation or intervention of petitioner or his agents. Surely, it would be unjust to make petitioner liable for the negligence of said committee over which he had no control.

Respondent relies on the principle that the Government cannot be prejudiced by the negligence of its agents. Said principle appears to us inapplicable to the instant case. Petitioner applied for the denaturation of 33,000 gauge liters of alcohol to be sold for industrial purposes on which no specific tax is due. While it may be true that the alcohol was not completely denatured, the fact that the same was sold for industrial purposes on which the sales tax was undoubtedly paid did not prejudice the Government. Even admitting the correctness of the allegation that incompletely denatured alcohol could have been used in the manufacture of Chinese wines, etc., the fact remains that the alcohol was not so used. The evidence shows that it was disposed of as industrial alcohol. The Government was not, therefore, defrauded of lawful revenues. To require petitioner to pay the tax as assessed would establish a dangerous precedent. It would make taxpayers the helpless victims of scheming government agents. If in this case the Government was prejudiced, the remedy is against its own agents, not against the taxpayer who has not been shown to have anything to do with the acts of said agents.

Finding no legal basis for the assessment, the decision appealed from is hereby reversed. No costs.

SO ORDERED.

Manila, February 26, 1962.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

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