Library

November 9, 1962

LA TONDEÑA, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 1017

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

D E C I S I O N

This is an action for the recovery of the amount of ₱5,446.00 which petitioner La Tondeña, Inc., claims to have been erroneously and/or illegally assessed and collected by respondent Commissioner of Internal Revenue as 7% advance sales tax prescribed by Section 183(b), in relation to Section 186 of the National Internal Revenue Code.

The petitioner is a domestic corporation whose principal business is the manufacture, bottling and selling of wines and liquors. It has a distillery located in Tondo, Manila (Par. 1, Petition for Review; Par. 2, Answer).

Sometime in January, 1959, the petitioner imported from the United States of America 94 rolls of kraft board valued at $23,179.66 or ₱46,359.32 (Par. 2, Petition for Review; Par. 3, Answer). On February 25, 1959, prior to the arrival of the shipment, the petitioner addressed a letter to the respondent requesting that it be exempted from the payment of the advance sales tax on said importation for the reason that the 94 rolls of kraft board would be made into carton containers of petitioner's bottled wine and liquor products on which it pays specific taxes (Par. 3 & Annex A, Petition for Review). However, on the same day, February 25, 1959, the respondent denied petitioner's request for exemption from the payment of the advance sales tax. (Annex B, Petition for Review; Exh. F, p. 6, BIR rec.).

In view of the denial by the respondent of the request for exemption from the payment of the advance sales tax in question, the petitioner, on March 3, 1959, paid under protest to the Collector of Customs for the Port of Manila, the sum of ₱5,446.00 (Par. 5 & Annex C, Petition for Review; Par. 5, Answer; Exh. G, p. 8, BIR rec.). And on March 10, 1959, the petitioner filed with the respondent its claim for refund of the said amount (Par. 6 & Annex D, Petition for Review; Par. 6, Answer; Exh. H, pp. 9-11, BIR rec.).

Inasmuch as the two-year period prescribed by Section 306 of the Tax Code within which to file the action for refund was going to expire on March 2, 1961, the petitioner filed with this Court the present petition for review on February 28, 1961, without waiting for the decision of the respondent on the claim for refund.

The only issue in this case is whether or not the petitioner is exempt from the payment of the 7% advance sales tax on the importation of 94 rolls of kraft board under Section 183(b) in relation to Section 186, both of the National Internal Revenue Code.

The pertinent provisions of Sections 183(b) and 186 of the Tax Code read as follows:

> "Sec. 183. Payment of percentage taxes. -
>
> x x x
>
> (b) Sales tax on imported articles.- When the articles are imported, the percentage taxes established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the importer x x x. The tax imposed in this section shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to specific tax or those for consignment abroad and are to form part thereof." (Underscoring supplied.)
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> "Sec. 186. Percentage tax on sales of other articles. - There shall be levied, assessed and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: x x x."

Under the above-quoted provisions of the Tax Code, in order to be exempt from the payment of the advance sales tax, the importer must show and prove the presence of the following three (3) requisites: (1) that the articles were imported into the Philippines by the importer-manufacturer; (2) that the articles were used by the importer in the manufacture or preparation of articles subject to specific tax or for consignment abroad; and (3) that the imported articles actually form part of the manufactured products.

In the case at bar, the respondent admits that it was the petitioner who imported the 94 rolls of kraft board. However, he contends that said imported kraft board were not used by the petitioner in the manufacture or preparation of its bottled wines and liquor products, and that they do not form part of petitioner's manufactured products. Respondent further avers that "the moment the wine or liquor is poured into the bottles and sealed, the manufacturing process is completed". And he concludes: "In fact, the bottled wines and liquors could be sold and distributed to buyers without said (corrugated carton) containers". (P. 3, Memorandum for the Respondent, pp. 169-171, CTA rec.).

We find the interpretation given by the respondent to the provision of Section 183(b) of the Tax Code much too unreasonable, impractical and stringent. In a number of American cases, the words "manufacture" and "manufacturing business" were interpreted to embrace the following:

> "The incidents of 'manufacture', as such, consist of the acquisition of material and the disposal of the product. State v. Coastal Petroleum Corp., 198 So. 610, 613, 240 Ala. 254"
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> "'Manufacture,' as applied to property designed for manufacturing liquor, refers to whole process of preparing article for sale. U.S. v. G. Wilkenfeld & Co., D.C.N.Y., 46 F.2d 462, 464"
>
> "The argument was that empty containers and other apparatus described cannot be used in, or designed for, the manufacture of liquor because the 'manufacture' is completed before that apparatus comes into play. Containers, corks labels, and cartons, held forfeitable as designed for 'manufacture' of liquor, if offered for sale in mode purposely attracting purchasers wanting them for unlawful manufacture. Danovitz v. U.S., Pa., 50 S. Ct. 344, 345, 281 U.S. 389, 74 L. Ed. 923"
>
> "Disposition of product after its manufacture is an integral part of the 'manufacturing business'. State v. Holt, Ala., 38 So. 2d 602, 604." (All underscorings supplied. Words & Phrases, Vol. 26, pp. 616, 617, 618 & 692)

In the instant case, we take judicial notice of the fact that it is customary for manufacturers of bottled wines and liquors to sell their products, either for local consumption or for export, or for consignment abroad, in containers. And this fact was impliedly admitted by the respondent when he stated in his memorandum that the corrugated carton boxes were used by the petitioner "to facilitate the distribution" of its manufactured products.

Furthermore, we know of no instance, and none has been cited by the respondent, wherein a manufacturer like the petitioner herein, has sold its bottled wines and liquers, only in bottles and not in carton containers. And it is ridiculous to entertain, even if only for a moment, the idea advanced by the respondent, that the petitioner herein could have sold and sent its manufactured products, namely, "Kulafu" Chinese wine and "Manila Rum", to its customers in the Visayas and Mindanao and in foreign countries, only in bottles tied to each other, and not in corrugated carton boxes as was actually done by the petitioner in the case under consideration. Therefore, applying the above-quoted and accepted definitions of the words "manufacture" and "manufacturing business" to the present case, we are of the opinion and so hold that the petitioner actually used the 94 rolls of kraft board in the manufacture or preparation of its products, and to hold otherwise, would be to turn back the wheels of manufacturing progress.

Now - did the imported kraft board actually form part of the manufactured products of the petitioner?

On this point, the Supreme Court has the following to say on the meaning of the term "forming part thereof":

> "Hence, the question to determine is whether under the provisions of section 3, Republic Act No. 601, the Hessian (Fiji) cloth, upon which a special excise tax was assessed and imposed, when converted into bags to contain centrifugal sugar exported

to the United States, comes under the exception to the general intent and purpose of the law. If the imported Hessian (Fiji) cloths in question were not containers because cutting and sewing were to be done to convert them into bags, then the same could be deemed as articles used by the importer in the manufacture or preparation of the centrifugal sugar to be exported abroad, as long as said articles "formed part" of the centrifugal sugar which was actually exported. Even if the imported Hessian (Fiji) cloths were not used by the importer in the manufacture of the centrifugal sugar, yet it was used in the preparation of such sugar for consignment or export abroad. The term 'forming part thereof' does not mean that the imported article should be merged into the local product by mechanical process, or physically or materially mixed, or chemically combined, so as to lose its identity. It seems that the imported article is needed to accomplish the export abroad of the product locally manufactured. Until bottoms are built or space or room is provided in ocean-going ships to carry in bulk the sugar to be exported, the bags of whatever fiber used to contain the centrifugal sugar forms part of the centrifugal sugar locally manufactured to be consigned or shipped abroad." (Underscoring supplied. Central Azucarera Don Pedro v. Central Bank of the Phil., G.R. No. L-7731, Sept. 29, 1958; 55 OG 2084)

Considering the meaning of the term "to form part thereof" as interpreted by the Supreme Court, and in line with the recommendation of respondent's Revenue Examiner to whom petitioner's claim for refund was assigned for verification and comment (See pp. 12-13, BIR rec.), we believe and so hold that the imported kraft board in question which were converted into corrugated carton containers of petitioner's bottled wines and liquor products actually formed part of said products. It seems that in the present case, the 94 rolls of kraft board were needed by the petitioner to accomplish the sale of its manufactured products locally and abroad.

WHEREFORE, in view of the foregoing considerations, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner La Tondeña, Inc., the sum of ₱5,446.00 representing erroneously collected 7% advance sales tax on the 94 rolls of kraft board imported from the United States of America, without interest. No costs.

SO ORDERED.

Manila, November 9, 1962.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge