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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CANLUBANG SUGAR ESTATE,
Petitioner,

September 28, 1961

- versus -

C.T.A.
CASE NO. 604

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

This is an appeal from a decision of the respondent Collector (now Commissioner) of Internal Revenue denying petitioner's claim for refund of the amount of ₱3,155.12, representing the 25% surcharge for late payment prescribed by Section 183 of the National Internal Revenue Code, which was collected in addition to the deficiency 2% miller's tax prescribed by Section 189 of the same Code.

The petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal place of business at Canlubang, Calamba, Laguna. It is engaged in business as operator of a sugar central, and also as operator of a registered distillery. During the period from the 4th quarter of 1951 to July, 1957, the petitioner produced molasses in its sugar central valued at ₱882,021.95 which was used by it in its distillery in the manufacture of alcohol, and which is the basis of the present deficiency assessment and surcharge.

It appears that prior to October 15, 1956, when this Court decided C.T.A. Case No. 206, entitled Central Azucarera de Tarlac vs. Collector of Internal Revenue, the consistent and established ruling of the Commissioner of Internal Revenue as regards the taxability of molasses produced by a sugar central and later used by it in the manufacture of alcohol in its own distillery located within the premises of its sugar mill was that the said molasses was not subject to the miller's percentage tax. This implementing interpretation of Section 189 of the Tax Code by the Commissioner of Internal Revenue was embodied in his letter dated June 12, 1940, addressed to one Eulogio P. Revilla of Manila. (Exh. E, p. 50 CTA rec.) And the pertinent portion of said letter of June 12, 1940 was reproduced in the book of former Deputy Collector of Internal Revenue Modesto Formilleza as follows:

> "189.05. Molasses used by producer in producing alcohol exempt from tax.- Molasses belonging to the central and used by it in the production of alcohol in its own distillery is exempt from tax. Ruling, BIR 105.02, June 12, 1940, Bull. 2nd Qr. 1940. (Formilleza, Modesto; Commentaries on the National Internal Revenue Code, Vol. 2, p. 736, 1950 Edition.)

For the information and guidance of all internal revenue officers and others concerned, the respondent Commissioner of Internal Revenue issued General Circular No. 470 which published his opinion-letter of June 12, 1940. Then, the Commissioner of Internal Revenue enjoined all internal revenue officers and others charged with the enforcement of internal revenue laws to enforce the provisions of said circular and give it as wide a publicity as possible. The material portion of said General Circular No. 470 was re-published in Dalupan's National Internal Revenue Code, Annotated, as follows:

"9. By-products of sugar.-

x x x x

"Likewise, molasses used by a sugar central for the production of alcohol or wine in its own distillery located within the premises of the sugar mill is not subject to the tax of 1-1/2%. However, if the distillery is located outside of the premises of the sugar mill, molasses removed or transferred to the distillery is subject to the said tax. (Gen. Circular No. 470)." (Dalupan, Francisco; National Internal Revenue Code, Annotated, Vol. 2, p. 100, 1946 Edition; See also Exh. H, p. 54 CTA rec.)

Pursuant to the above mentioned ruling and general circular issued by the Commissioner of Internal Revenue, the petitioner herein did not return for taxation the molasses in question. But the respondent in a letter dated April 18, 1958, assessed against and demanded from the petitioner the amount of ₱17,640.44 as 2% miller's tax on the value of the molasses which it produced and later used in the manufacture of alcohol. (Exh. B, also marked as Exh. 1, p. 19 BIR rec.) Within the time prescribed by law, the petitioner paid the sum of ₱5,019.95, leaving a balance of ₱12,620.49. Accordingly, the respondent demanded the payment of said amount of ₱12,620.49, plus the 25% surcharge for late payment in the amount of ₱3,155.12, or a total of ₱15,775.61, which the petitioner also paid on November 10, 1958. (Exh. F, p. 51 CTA rec.; Exh. 3, p. 29, BIR rec.)

In view of the decision of this Court reversing the above stated ruling of the Commissioner of Internal Revenue with regard to the taxability of molasses in the case of Central Azucarera de Tarlac vs. Collector of Internal Revenue, supra, which was affirmed by the Supreme Court on July 31, 1958 (G.R. Nos. L-11760 & L-11761), the petitioner now admits and agrees as to the correctness and legality of the collection of the deficiency miller's tax in the amount of ₱12,620.49. However, the petitioner insists that the collection of the amount of ₱3,155.12 as 25% surcharge for late payment, is erroneous and illegal, and now claims for its refund.

The only issue to be decided in this case is whether or not the collection of the amount of ₱3,155.12, as 25% surcharge for late payment under Section 183 of the National Internal Revenue Code is erroneous or illegal.

The pertinent provision of Section 183 of the Tax Code reads as follows:

> "Sec. 183. Payment of percentage taxes.-
>
> x x x x
>
> "If the percentage tax on any business is not paid within the time specified above, (within 20 days after the end of each month) the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax." (Words in parenthesis supplied.)

The petitioner contends that under the circumstances of the present case, the 25% surcharge for late payment should not be imposed and assessed against it. The petitioner argues "that if it failed to return for taxation the value of the molasses involved and consequently did not pay the corresponding tax due, it was because of respondent's General Circular No. 470 as well as his opinion-letter, Exhibit 'E'", dated June 12, 1940. (Pp. 5-6, Memorandum for Petitioner; pp. 59-72, CTA rec.)

We find the contention of the petitioner without merit. As held by the Supreme Court in several cases, the above quoted provision of Section 183 of the Tax Code is mandatory. It provides a plan which works out automatically. It confers no discretion on the Commissioner of Internal Revenue who cannot disregard the law and substitute therefor his own personal judgment. (Lim Co Chui vs. Posadas, 47 Phil. 460; Koppel (Phil) Inc., vs. Collector of Internal Revenue, 87 Phil. 348; Republic vs. Luzon Industrial Corp., G.R. No. L-7992, Oct. 20, 1957; 54 OG 4037.)

Granting without deciding that General Circular No. 470 and the opinion-letter dated June 12, 1940 of the Commissioner of Internal Revenue justifiably delayed the payment of the 2% miller's tax which is admittedly due from the petitioner, we hold that at most, said general circular and opinion-letter delayed the payment of the basic deficiency tax only up to October, 1956, when this Court decided the Central Azucarera de Tarlac case, _supra_.

Hence, the petitioner herein should have at least paid the 2% miller's tax within twenty days after October, 1956, especially considering that the petitioner agrees with our ruling in the said Central Azucarera de Tarlac case. However, the record of the case at bar shows that the petitioner paid the deficiency miller's percentage tax only on November 10, 1958, (Exh. F, p. 51, CTA. rec.) or more than two (2) years after our decision in the Central Azucarera de Tarlac case was promulgated. Undoubtedly, the petitioner was late in paying its 2% miller's tax and therefore the collection of the 25% surcharge for late payment was effected in accordance with law.

Even if we would be very liberal to the petitioner herein and grant without ruling that its tardiness in paying its miller's percentage tax could be justified up to July 31, 1958, when the Supreme Court promulgated its decision (G.R. Nos. L-11760 & L-11761) affirming our judgment in the Central Azucarera de Tarlac case, we would still arrive at the same conclusion. Inasmuch as the petitioner paid the 2% miller's tax only on November 10, 1958, or more than three (3) months after the promulgation of the Supreme Court decision, the payment of the said percentage tax was still late. Hence, the collection of the 25% surcharge for late payment was not erroneous, and much less illegal, and the instant petition for refund must be denied.

In answer to the contention of the petitioner that "under the conditions obtaining in the present case, the imposition of the 25% surcharge is certainly not just nor right to petitioner in whatever angle one will view at the case," (p. 10 Memorandum for Petitioner) it shall suffice to quote from the decision of the Supreme Court in the case of Lim Co Chui vs. Posadas, supra. Mr. Justice George A. Malcolm, speaking for the court said:

> "The twenty-five per cent penalty for non-payment is not 'unjustly assessed' because it is not assessed at all, and is not 'excessive' because it is merely the amount specifically fixed by law. The Collector of Internal Revenue simply collects that which the law has said that he must collect. He is not authorized to refund taxes as a matter of gratuity."

WHEREFORE, in view of the foregoing considerations, the decision of the respondent Collector (now Commissioner) of Internal Revenue denying petitioner's claim for refund of the amount of ₱12,620.49 paid as 2% miller's tax on the value of the molasses which the petitioner produced and later used in the manufacture of alcohol (Central Azucarera de Tarlac vs. Collector of Internal Revenue, G.R. Nos. L-11760 & L-11761) and the amount of ₱3,155.12 paid as 25% surcharge for late payment or a total of ₱15,775.61, is hereby sustained, with costs against the petitioner.

SO ORDERED.

Manila, September 28, 1961.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge