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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS

B.C.

December 29, 1964

SINFOROSA ALCA,
Petitioner,

- versus -

C.T.A. CASE NO. 1043

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

Petitioner is the owner and operator of the Pacific Industrial Manufacturing (Philippines), which is engaged in the manufacture of rubbing alcohol and other allied products from denatured alcohol it purchased from the Central Azucarera Don Pedro.

On September 12, 1960, respondent demanded from petitioner the sum of ₱43,359.40, as specific tax on the rubbing alcohol manufactured and removed from her establishment between June 6, 1953 and August 24, 1960, plus ₱1,000.00, as compromise penalty.

Petitioner protested against said demand in a letter to the Commissioner dated October 25, 1960, and at the same time requested for a reconsideration. Upon receipt of the protest, respondent agreed to give petitioner's request for reconsideration due course provided she waived the statute of limitation, which petitioner accordingly did. (See Exhibit "7" p. 57 BIR rec.).

Subsequently, On February 10, 1961, petitioner once more requested respondent to withdraw the assessment.

which request was denied by the latter in a letter, dated March 3, 1961.

On April 19, 1961, petitioner filed the present petition for review.

In her petition for review, petitioner questions solely the legality of the assessment and collection of the specific tax on the ground of prescription.

The sole issue therefore hinges on which section of the Tax Code is applicable, whether section 331 or section 332(a), over which, petitioner's counsel centered all his discussion in his memorandum.

Said sections provide:

> "Sec. 331. Period of limitation upon assessment and collection.- Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. x x x x x ."

> "Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.-(a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission."

Petitioner claims that the official transcript sheets she filed in compliance with Regulation No. 3 of the Department of Finance partake of the nature of a return and, therefore, section 331 applies. Accordingly, respondent's right to assess and collect the specific tax in question has already prescribed.

Respondent, on the other hand, maintains that the transcript sheets are not the "returns" contemplated by section 331 and, therefore, section 332(a) is the applicable provision of law. He argues that inasmuch as her failure to file the return was discovered only on August 30, 1960, respondent's assessment and demand of September 12, 1960 is within the period of ten (10) years provided for in the afore-cited section.

We agree with respondent that the applicable provision is section 332(a) of the Tax Code. The Supreme Court, in commenting on the applicability of above-quoted sections, said:

> "To our mind, the pertinent provisions of our Tax Code are clear enough to warrant, a reasonable interpretation. There are instances, as in the case of income tax, in which the Code requires the filing of a return under penalty of criminal prosecution. In such cases, the failure to file the return would have two (2) effects, namely: (1) the guilty party may be prosecuted criminally, and (2) he is deprived of the benefits of section 331- that is to say, the Collector of Internal Revenue may make the corresponding assessment within ten (10) years, as prescribed in section 332(a). When there is no explicit provision imposing the duty to file a return, and penalizing non-compliance therewith, but, the tax is such that its amount cannot be ascertained without data pertinent thereto, the Collector of Internal Revenue, may by appropriate regulations require the filing of the necessary returns. In any event, with or without such regulations, it is to the interest of the taxpayer to file said return, if he wishes to avail himself of the benefits of section 331. If this notwithstanding, he does not file a return, then an assessment may be made within the time stated in section 332(a)." (Bisaya Land Transportation Co., Inc. vs. Coll. of Int. Revenue, G. R. Nos. L-12100 & L-11812, May 29, 1959)

The transcript sheets filed by petitioner merely showed the raw materials entering the factory or distillery, as the case may be, and the finished products produced and removed everyday (See Exhibit "9" p. 70 BIR rec.) They did not contain the information necessary and required to permit the computation and assessment of specific tax. Consequently, they cannot be treated as returns for purposes of the prescriptive law.

Furthermore, respondent's right to assess and collect the tax in question has not prescribed because of petitioner's waiver of the provision of the statute of limitation under section 332 of the Tax Code, which fact estops her from interposing the defense of prescription (See Exhibit "7" p. 57 BIR rec.).

Having thus resolved in favor of the respondent the sole issue of prescription raised by petitioner in her appeal, we find it unnecessary to delve on the merits of the case.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, December 29, 1964.

R M Umali	
ROMAN M. UMALI	AUGUSTO M. LUCIANO
Associate Judge	Acting Presiding Judge