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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORO ENTERPRISES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3004

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

4/15/83

D E C I S I O N

The question urged upon our consideration relative to the instant claim for refund of alleged erroneously and illegally imposed and collected percentage and advance sales taxes is whether the product bearing the trade name "Citrobelle Skin Lotion" is a medicinal preparation within the contemplation of the Tax Code.

Petitioner corporation on the sale of its "Citrobelle Skin Lotion" sometime during January, 1977 through December, 1978, paid the amount of ₱440,616.70 as percentage sales taxes at the rate prescribed for cosmetic preparation as so categorized by the respondent Commissioner of Internal Revenue under Section 194(b) of the Tax Code of 1977, quoted insofar as pertinent thus:

> "Sec. 194. Percentage tax on sales of non-essential articles.- There shall be levied, assessed and collected once

> only on every original sale, barter, exchange or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow enumerated a tax equivalent to <u>fifty per centum</u> of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer.
>
> xxx xxx xxx
>
> (b) Perfumes, essences, extracts, toilet waters, <u>cosmetics</u>, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentrifies, tooth paste, talcum and medicated toilet powders, hair oils and pomades. x x x" (Underscoring supplied)

Also paid by petitioner is the sum of ₱61,010.00 as the 50% advance sales tax on its imported essential oils to be used as raw materials in the manufacture of the said product based on the landed cost plus 100% mark-up pursuant to Section 193(b) in relation to Section 194(b), supra, both of the Tax Code.

Section 193(b) insofar as pertinent provides:

> "Sec. 193. Payment of percentage taxes.- x x x
>
> (b) Sales tax on imported articles.- When the articles are imported, the percentage taxes established in Sections 194, 195, 196, 197, 198, 199 and 201 of this Code shall be paid in advance by the importer, in accordance with the regulations promulgated by the Secretary of Finance and prior

> to the release of such articles from customs' custody, based on the home consumption value or price (excluding internal excise taxes) thereof, plus (10%) per cent of such home consumption value or price, including postage, commission, customs duty and all similar charges, except freight and insurance, plus one hundred per centum of such total value in the case of articles enumerated in Sections 194 and 195, fifty per centum in the case of articles under Sections 196 and 197 and twenty-five per centum in the case of articles under Sections 198, 199 and 201. 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: x x x."

Taking exception, petitioner claims, by and large, that its manufactured "Citrobelle Skin Lotion" by formulation and purpose is primarily an antiseptic for pimple and acne medication properly classified as medicinal preparation. And having distilled spirits as chief ingredient it must be subject to the same tax as such chief ingredient as prescribed in Section 138 in relation to Section 145, both of the Tax Code.

The pertinent provisions read as follows:

> "Sec. 138. <u>Tax on preparations containing distilled spirits as chief ingredient</u>.- <u>Medicinal preparations</u>, flavoring extracts, and all other preparations, except toilet preparations, of which, excluding water, distilled spirits form the chief ingredient, shall be subject to the same tax as such ingredient. x x."

> Sec. 145. Specific tax on distilled spirits.- On distilled spirits there shall be collected, subject to the provisions of Section one hundred thirty-nine of this Code, except as hereinafter provided, specific taxes as follows:
>
> xxx xxx xxx
>
> 'Spirits or distilled spirits' is the substance known as ethyl alcohol, ethanol or spirits or wine, including all dilutions and mixtures thereof, from whatever source by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures except compounded liquors taxed under Section 146 of this Code. x x."

BIR General Circular No. 468 dated September 18, 1940 provides that the "term chief ingredient is construed to mean more than 50% of the preparation, excluding water, is alcohol" and as certified by the Food and Drug Administration (Exh. "A"), infra, Citrobelle Skin Lotion contains 90% more or less of ethyl alcohol by volume, excluding water.

On the foregoing note, petitioner filed with the respondent Commissioner of Internal Revenue a written claim for refund of the aggregate amount of ₱501,626.70 representing the percentage and advance sales taxes paid, and instituted this instant petition for review on April 20, 1979.

The record relevantly summarized discloses that the controverted "skin lotion" is a registered drug with the Food and Drug Administration (FDA), which, for the purpose of the instant case issued the certification, quoted as follows:

"5 February 1979

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that on the basis of their formulation, CITROBELLE SKIN LOTION and CITRO SKIN LOTION are MEDICINAL PREPARATIONS containing as active ingredient salicylic acid, a keratolytic agent, and ethyl alcohol, as chief ingredient comprising 90% more or less of the finished product excluding water.

This is to certify also that on the basis of their active ingredient and chief ingredient, CITROBELLE SKIN LOTION act as an antibacterial and antipruritic preparations and have a normalizing effect on dermal osmotic pressures.

This is to certify further that LIME, LEMON and LAVENDER essential oils are vital ingredients in the formulation of the finished product.

This is to certify finally that Boric Acid powder USP grade and Borax powder/granule USP grade are indispensable components of CITROBELLE SKIN LOTION and CITRO SKIN LOTION. These chemical raw materials act as antibacterial agents.

This certification is being issued upon request of ORO LABORATORIES, a division of ORO ENTERPRISES, INC. for Bureau of Internal Revenue (BIR) purposes only.

(Sgd.) ARSENIO N. REGALA, Ph.D.
ADMINISTRATOR"

The testimonies of record, inter alia, show that Citrobelle Skin Lotion was registered as a drug because its active components are found to cure, medicate and alleviate skin disorders like acne and pimples, etc., and that the chief ingredient has germicidal and antiseptic action (Ms. Elisa Caballero of the Drug and Registration Unit, FDA); that the presence of ingredients with different medicinal purposes and therapeutic values makes Citrobelle Skin Lotion a medicinal vis a vis cosmetic, preparation (Professor Natividad De Castro, College of Pharmacy, U.P.); that in the formulation of the formulas for Citrobelle Skin Lotion the mentioned ingredients were specifically chosen because they are traditionally tried and tested drugs used in the treatment of common skin disorders which includes pimples, acne, ringworm or 'anan', athlete's foot, eczematoiditis, itchiness from insect bites, etc. (Ms. Teresita Guanzon Velasco, Vice-President, Oro Laboratories, Chemist and Pharmacist).

What have been just stated and quoted could have the controverted product fit into an appropriate legal cubbyhole for medicinal preparations aptly characterized in an analogous case, "As used in the

Tariff Act of March 3, 1983 (C. 121, Schedule 2, 22 Sta. 494) these medicinal preparations mean such articles, as are of use or believed by the prescriber or user fairly and honestly to be of use, in curing or alleviating or palliating or preventing some disease or affection of the human body." (La Tondeña, Inc. v. Collector of Internal Revenue and CTA, 10 SCRA 713). This well comports with the classification petitioner has given its own product.

In the case at bar we are not to confuse about a rare addendum to pharmacopoeia in which fact and fabrication become indistinguisable but about the usual attributes animating the meaning of medicinal preparations as legally contemplated for tax purpose. It may not therefore be an over-simplication to state that the finding of the Food and Drug Administration furnishes the best means of its own exposition in terms of tractable data openly laid and fully disclosed and as such deserves the credence that should normally be accorded. Respondent points to no irregularity nor error of the relevance and competence required to bash that patina of legitimacy over the certification. The apparent quibble on the descriptive term, "lotion" as creating the impression and evoking the connotation that the preparation is cosmetic, does not change the basic fact that the controverted product by nature, formulation and purpose, as found and certified, is medicinal. "What's in a name?, that which we call a rose, by any other name would smell as sweet!" We do not think the certification is a mere cosmetic effort to disguise the true nature and character of the questioned product. We therefore feel compelled to affirm its import and force lest it be suffered to petrify in futility.

On aspects similar in many or so with the case at bar, the ruling in the La Tondeña case, supra, appears in point, "specially denatured alcohol being deemed distilled spirits and forming as it does the chief ingredient of rubbing alcohol, the latter is considered as medicinal preparation subject to specific tax under Sections 127 (now Sec. 138) and 133 (now Sec. 145), both of the Tax Code." Likewise, on the same focusing question it was again ruled that, "Astringosol" with distilled spirits as its chief ingredient, although denatured, has been classified as medicinal preparation by the Institute of Science and Technology. Accordingly, the ethyl alcohol to be used in its manufacture is subject to the specific tax prescribed in Section 133 (now Sec. 145) in relation to Section 127 (now Sec. 138), both of the Tax Code, prior to its removal from the distillery premises. (BIR Ruling of March 2, 1955) In indignation petitioner rightfully poses, "if rubbing alcohol which is solely an antiseptic is considered a medicinal preparation, what more of Citrobelle Skin Lotion, which is a pimple and acne medication, more than just an antiseptic, what also of "Astringosol" a tooth and mouth wash or antiseptic, used for toilet purpose, which has been excluded from the toilet items subject to 50% percentage tax under Section 194 of the Tax Code as being medicinal preparation by virtue of BIR Ruling of March 2, 1955." The reasoning interposed by the petitioner seems a little more than a statement of the obvious. We uphold.

Of equal significance is a recent ruling of the respondent Commissioner of Internal Revenue on the "Johnson's Baby Cologne" preparation, which circumstances obtaining are of no different mold with the instant case, insofar as pertinent reads, "Accordingly, and as the chief ingredient of the preparation is alcohol, a distilled spirit, the aforesaid product is subject to specific tax as such distilled spirits pursuant to Section 138 of the Tax Code. However, since specific tax on the alcohol used as chief ingredient in the manufacture of Johnson's Baby Cologne has already been paid, no further specific tax is due and payable on the said product. Furthermore, no further percentage tax is due and payable on the same product." (Respondent's letter to Law Office of A.M. Sison, Jr. dated March 30, 1981, Annex "A".) Far be it from a theoretical gobbledygook the ruling lends settling eloquence to the precise issue raised in the case at bar.

Suffice it to state, the above-cited rulings are patent exemplars demonstrative of respondent's understanding of the cases similarly conceived and claimed as preparations which chief ingredients are distilled spirits, thereupon consistently tacked the specific tax imposed on such chief ingredient prescribed in Section 138 in relation to Section 145 of the Tax Code, <u>supra</u>. We see no reason and none is offered as to the random quirk of a variance in the tax treatment of Citrobelle Skin Lotion"which is more than just an antiseptic being compounded for purposes of medicating and preventing skin disorders, such as pimples, acne, and other skin irritations." (Exh. "D".) Respondent's classification of the Skin Lotion as a cosmetic subject to the 50% sales tax under Section 194(b) of the Tax Code, *supra*, (Exh. "C"), would seem a convoluted rendition of an expedient denouement which is not entirely justified. Such a quick shuttle of a contradictory fiat could not be result of policy but suffers from lack of policy.

We thus reach the conclusion that the controverted Citrobelle Skin Lotion being a medicinal preparation and containing distilled spirits as chief ingredient is subject to the same tax as such chief ingredient prescribed under Section 138 in relation to Section 145, both of the Tax Code, *supra*. Consequently, the importation of essential oils to be used as raw materials in the manufacture of the medicinal preparation is exempt from the payment of percentage tax and compensating tax as expressly provided in Section 193(b) and Section 204(a) both of the Tax Code of 1977.

WHEREFORE, petitioner is entitled to the refund of the aggregate amount of ₱501,626.70 representing erroneously paid percentage taxes and advance sales tax for the period involved which respondent is directed to pay without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, April 15, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge