REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALCA BROS., INC., doing business under the name of Mabuhay Chemical Products,
Petitioner,

- versus -

G.T.A. CASE NO. 1902

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

3/7/77

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D E C I S I O N

This is an appeal from the decision of respondent assessing against and demanding from petitioner the amount of ₱949,203.50 as specific tax on 717,463 gauge liters equivalent to 1,356,005 proof liters of crude alcohol. The following are the undisputed facts involved in this case.

Petitioner is a duly registered domestic corporation organized and existing under and by virtue of the laws of the Philippines. It owned and operated the Mabuhay Chemical Products which is a rectifier of distilled spirits otherwise known as A-1-1. From time to time it procured alcohol from Canlubang Sugar Estate for rectification under joint bond filed pursuant to Section 129 of the Tax Code, conditioned upon future payment by the rectifier of the specific tax that may be due on the finished products. Its plant is located at Barrio Lecheria, Calamba, Laguna which was totally destroyed by fire on July 14, 1964, including alcohol deposited in its bonded warehouse.

Consequently, an investigation was conducted on the available records and/or books of the Mabuhay Chemical Products and the following entries or book balances were found out for the month of May 1964:

A-1-1: Crude Spirits Account

	Gauge Liters	Grade	Proof Liters
	533,463	189%	1,008,245
Rect. Alc. (C.Process)	184,000	"	347,760
TOTAL . . .	717,463	189%	1,356,005

(pp. 4-5, BIR rec.)

On October 13, 1964, petitioner, through its counsel, requested respondent to waive or condone any tax which may be due on the stocks that were burned (p. 14, BIR rec.) On July 10, 1967, respondent, in a memorandum to the Chief, Alcohol Division, ruled that petitioner is liable for the payment of the specific tax on the 1,356,005 proof liters of crude alcohol destroyed by fire in its premises on July 14, 1964 (pp. 25-26, BIR rec.)

In a letter dated August 14, 1967, counsel for petitioner registered their protest and requested reconsideration of respondent's ruling (pp. 34-37, BIR rec.) However, on November 3, 1967, respondent denied the request and urged the taxpayer to pay the amount of ₱949,203.50 as specific tax on the 1,356,005 proof liters of crude spirits in question (pp. 44-45, BIR rec.) Subsequently, respondent sent petitioner Demand No. AT-67-41 dated December 27, 1967 requiring the latter to pay the aforementioned amount of ₱949,203.50 (pp. 49 & 50, BIR rec.)

It appears that the petition for review in this case was filed with this Court on December 22, 1967 before petitioner was formally assessed. Nevertheless, respondent filed on March 7, 1968 a motion to dismiss said petition on the ground that Mabuhay Chemical Products has no legal capacity to sue. Thereafter, an amended petition for review was filed with this Court on March 16, 1968 and respondent filed his answer thereto on May 10, 1968.

This case was submitted for decision on the basis of the facts established in the pleadings of the parties and records.

The sole issue to decide is whether or not the crude alcohol lost due to fire pending rectification is subject to specific tax.

The pertinent provisions involved in this case are Sections 124, 129, and 133 of the Tax Code, which read as follows:

"SEC. 124. Payment of specific tax on domestic products.- Specific taxes on domestic products shall be paid by the manufacturer, producer, owner or person having possession of the same; and, except as otherwise especially allowed, such taxes shall be paid immediately before removal from the place of production."

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"SEC. 129. Removal of spirits or cigars under bond.- Spirits requiring rectification may be removed from the place of their manufacture to some other establishment for the purpose of rectification without the prepayment of the specific tax provided the distiller removing such spirits and the rectifier receiving them shall file with the Commissioner of Internal Revenue their joint bond conditioned upon the future payment by the rectifier of the specific tax that may be due on the finished product; x x x And provided, further, That in cases where alcohol has already been rectified either by original and continuous distillation or by redistillation is further re-rectified, no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the specific tax due on such losses. (As amended by sec. 5, Republic Act No. 1608.)

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"SEC. 133. Specific tax on distilled spirits.- x x x

"Distilled spirits," as here used, include all substances known as ethyl alcohol, hydrated oxide of ethyl, or spirits of wines, which are commonly produced by the fermentation and subsequent distillation of grain, starch, molasses, or sugar or of some syrup or sap, including all

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> dilutions of mixtures; and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately or at any subsequent time transformed into any other substances either in process of original production or by any subsequent process."

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Petitioner contends that unless crude alcohol is converted into finished product, it is not bound to pay the specific tax thereon. It argues that specific tax may only be imposed on the finished products, produced out of crude alcohol, the moment said finished product shall have been removed from the premises of the rectifier.

In other words, petitioner maintains that inasmuch as there were no finished products to speak of as the crude alcohol from which they could have been produced were burned, nothing therefore is subject to the payment of specific tax. Petitioner invoked the case of La Tondeña vs. Collector of Internal Revenue, G.R. No. L-14875, September 29, 1962, 6 SCRA 82, decided by the Supreme Court which ruled to the effect that until the spirits requiring rectification have been converted into finished products, no specific tax shall be due from the rectifier receiving them.

Respondent, on the other hand, maintains that

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Section 129 of the Tax Code which allows the postponement of the payment of the tax does not preclude the accrual of the tax immediately upon removal. He stated at this point that under BIR ruling No. 29, dated January 29, 1962, alcohol removed under bond for rectification which are lost in transit, or by fire, or by reason of other fortuitous events, while stored in the premises of the rectifier, are nonetheless subject to specific tax.

It is further argued on the part of respondent that the intention of the Legislature is not to exempt lost alcohol from specific tax, and this is clearly expressed in the Explanatory Note to House Bill No. 5808, (Congressional Record, House of Representatives, Vol. III, No. 3, June 25, 1956, p. 3094.), amending Section 129 of the Tax Code, which later became Republic Act No. 1608, the pertinent portion of which states as follows:

> "4. Adding a proviso to Section 129 disallowing losses incident to the further rerectification of already rectified alcohol by original or continuous distillation or redistillation. This will curb the abuse of the privilege granted under the present provision allowing the rectifiers to receive spirits under bond and to pay the specific tax on the finished products."

And that under Section 133 of the Tax Code, the specific tax attaches as soon as the distilled

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spirit comes into existence as such and that the tax accrues and becomes payable thereon upon removal of said distilled spirit from the place of production.

We find the view of respondent well taken. Under the general provision of law, Section 124 of the Tax Code, the principle laid down therein is that specific taxes on domestic products shall be payable by the manufacturer, producer, owner or person having possession of the same immediately before their removal from their place of production, unless otherwise especially allowed. However, the requirement of prepayment of the tax under Section 124 is dispensed with in the case where the alcohol is removed for further rectification and a joint bond is filed by the distiller and the rectifier conditioned upon the future payment by the rectifier of the specific tax that may be due on any finished product. (Section 129, Tax Code.) Should the alcohol be removed under the conditions set forth in said Section 129 of the National Internal Revenue Code, the payment of the tax is in effect postponed until the completion of the rectification, at which time the specific tax due shall be determined on the quantity of the distilled spirits used and constituting the finished product, provided that where alcohol has already been rectified, whether by original and continuous distillation, or by redistillation, is further re-rectified, no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the specific tax due on such losses. Thus, where distilled spirits already produced and removed from the place of production have been subsequently lost by any cause, whether an act of man or due to fortuitous event, the lost alcohol is obviously subject to specific tax.

In the case at bar, the crude alcohol which were deposited in petitioner's bonded warehouse was lost by fire and not as a consequence of the transformation thereof into a finished product. Under such circumstances, the alcohol in question should be subject to the general rule under Section 124 of the Tax Code that the specific tax on such domestic product shall be paid by the manufacturer, producer, owner or person having possession of the same, and said tax is deemed to have already attached to the alcohol from the time and in the place it was produced under Section 133 of the Tax Code. Consequently, a loss of the alcohol by fire will not bring about exemption from the imposition of the specific tax under Section 129 of the Tax Code, as amended by Section 5 of

Republic Act No. 1608.

The allegation of petitioner that since there was no finished product to speak of and, therefore, there is nothing to subject to specific tax is without merit. The doctrine in the La Tondeña case, *supra*, cited in support of the position of petitioner does not hold true under the present situation. Admittedly, it was held in said case that "until the spirits requiring rectification has been converted into a finished product, no specific tax shall be due from the rectifier receiving them x x x." However, we must not lose sight of the fact that during the period covered by the assessment in said case (May 21, 1951 to Feb. 26, 1954), the status of the law was different. The law (Section 129, Tax Code) did not then contain the proviso:

> " x x x That in case where alcohol has already been rectified either by original and continuous distillation or by redistillation is further re-rectified no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the specific tax due on such losses. (As amended by Sec. 5, R.A. No. 1608)."

It is to be noted that assessment in this case covered the year 1967, after Republic Act No. 1608 became a law, Section 5, of which amends Section 129 and Section 133 of the Tax Code. Besides, it was explained by the Supreme Court in said case that:

x x x "In order to resolve the first and second issues posed herein, we are quoting at length excerpts from the recent decision of the Court (Coll. of Int. Rev. vs. La Tondeña & CTA, G.R. No. L-10431, July 31, 1962) identical in facts and legal issues involved, to those of the case at bar.

x x x "The Tax Cort on December 7, 1955, rendered the following judgment-

"IN VIEW OF THE FOREGOING CONSIDERATION, the decision of respondent Collector of Internal Revenue, dated May 8, 1954, is hereby modified, and petitioner La Tondeña, Inc., is hereby ordered to pay the respondent Collector of Internal Revenue the sum of ₱672.15, by way of specific tax. However, with respect to the balance of the assessment amounting to ₱153,990.95, which corresponds to the period after January 1, 1951 and up to February 27, 1954, pursuant to Republic Act No. 592, the petitioner is declared exempt from liability for the specific taxes assessed therefor. Without pronouncement as to costs."

On appeal to this Court, the petitioner alleges that the Court of Tax Appeals erred (1) In exempting the respondent La Tondeña, Inc. from payment of the specific tax on rectified alcohol lost in process of further rectification, during the period from January 1, 1951 to February 27, 1954; and (2) In assuming jurisdiction over the case.

It appears that the specific taxes in question were assessed by the petitioner "in accordance with Section 133 of the Tax Code." Up to December 31, 1950, said section reads:

Sec. 133. Specific tax on distilled spirits.- On distilled spirits there shall be collected, except as hereinafter provided, specific taxes as follows:

'(a) If produced from sap of the nipa, coconut, cassava, camote, or buri palm, or from the juice, syrup, or sugar of the cane, per proof liter, forty-five centavos.

'(b) If produced from any other material, per proof liter, one peso and seventy centavos.

'This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits.

"'Distilled spirits', as here used, includes all substances known as ethyl alcohol hydrated oxide of ethyl, or spirits of wine, which are commonly produced by the fermentation and subsequent distillation of grain, starch, molasses, or sugar, or some syrup or sap, including all dilutions or mixtures; and the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately or at any subsequent time transformed into any other substance either in process of original production or by any subsequent process."

Pursuant to the above provision of law, therefore, "the tax shall attach to this substance as soon as it is in existence as such" etc. However, on January 1, 1951, Republic Act No. 592 took effect, amending section 133 and the clause underlined above has been eliminated. The evident intention of the law maker in deleting the all embracing underlined clause, was to subject to specific tax not all kinds of alcoholic substances, but only distilled spirits as finished products, actually removed from the factory or bonded warehouse. The said amendment could not mean anything else; it is in harmony with section 129, of the same Tax Code which provides:-

"SEC. 129. Removal of spirits or cigar under bond.- Spirits requiring rectification may be removed from the place of their manufacture to some other establishment for the purpose of rectification without the pre-payment of the specific tax, provided the distiller removing such spirits and the

> rectifier receiving them shall file with the Collector of Internal Revenue their joint bond conditioned upon the future payment by the rectifier of the specific tax that may be due on any finished products. x x x".

And if one would consider that the Tax Code does not prohibit further rectification or distillation and defines in section 194 thereof, a rectifier as a person who rectifies, purifies or refines distilled spirits, the conclusion is logical that when alcohol, even if already distilled (as in the present case) or rectified, is again rectified, purified or refined, the specific tax should be based on the finished product, and not on the evaporated alcohol. The intention not to subject to specific tax all kinds of alcoholic substances but only distilled spirits as finished products, is reflected in former Senator Garcia's observations on the floor of the Senate, during the discussion of House Bill No. 1443 (now Rep. Act No. 592), when he proposed the elimination of the phrase "and the tax shall attach to this substance as soon as it is in existence as such, etc." He said-

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> "That is why, Mr. President, in Section 1 of this Bill now under consideration, I have some serious objections to the provisions where all kinds of alcoholic substance which falls under the definition of proof spirits in the last paragraph of the same Section 1 of the proposed measure are taxable because this is one of these that I consider of deterrent effect to the industrialization of this country. x x x (Senate Diario No. 6, Jan. 15, 1951, Original, 4th Special Session, Italics supplied.)"

And on August 23, 1956, upon the recommendation of the Bureau of Internal Revenue itself, Rep. Act No. 1608 was passed, amending section 133 of the Tax Code, as amended by R.A. No. 592, restoring the very same clause which was eliminated (Sec. 7, R.A. No. 1608). The inference, therefore, is clear that from January 1, 1951, when Rep. Act No. 592 took effect, until

August 23, 1956, when R.A. No. 1608 became a law, the tax on alcohol did not attach as soon as it was in existence as such, but on the finished product. And this must be so, otherwise a great injustice would be caused upon a duly licensed rectifier, who, like the respondent herein, will be made to pay the specific tax on the alcohol lost thru evaporation, from which no one has been benefited, based on the provision of laws then extant, of doubtful application. In every case of doubt, tax statutes are construed most strongly against the government and in favor of the citizens, because burdens are not to be imposed beyond what the statutes expressly and clearly import (MRR Co. vs. Coll. of Customs, 52 Phil. 950; Luzon Stev. Co. v. Trinidad, 43 Phil. 803, 809.) It should be pointed out also that said section 129 was amended by adding the following-

"And provided, further, That in cases where alcohol has already been rectified either by original and continuous distillation or by redistillation is further rectified, no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the specific tax due on such losses." (Sec. 5, Rep. Act No. 1608).

which obviously reveals that the purpose of the amendment is to tax, only now, alcohol lost, in further distillation or rectification. This law certainly should not be given a retroactive effect, so as to cover the period in question (January 1, 1951 to February 27, 1954). It is only only after August 23, 1956 that the government woke up from its lethargy and hastened to fill the hiatus."

It is, therefore, clear that during the period covered by the assessment at bar (May 21, 1951 to February 26, 1954), the status of the law was, as defined and construed in the above decision.

But the respondent Tax Court and Collector contend that (1) in the present case, the crude alcohol was list in transit thru leakage, unlike the case of Collector vs. La Tondeña, where the loss was thru evaporation, in the process of rectification; and (2) the petitioner as buyer, agreed that "all alcohol shortages occurring in transit as well as any specific tax that may be due on same shall be for the buyer's account", which amounts to an acquiescence by the petitioner to pay such losses.

According to the Tax Code, "specific taxes on domestic products shall be paid by the manufacturer, producer or person having possession of the same; and, <u>except as otherwise specifically allowed</u>, such taxes shall be paid immediately, before removal from the place of producti n". (Section 124). The exception mentioned in said section 124, is section 129 of the same Tax Code, (supra) which fixes a different time of pa ment for specific taxes on "alcohol requiring rectification". As must be observed, in the case heretofore cited, the alcohol lost due to evaporation was crude alcohol, like the one involved in the present, which are undoubtedly "spirits requiring rectification". Until the spirits requiring rectification have been converted into a finished product, no specific tax shall be due from the rectifier receiving them. The lawmakers, as heretofore shown, in the case cited, had intended to exclude from the computation of the said specific tax all losses that may be incurred or sustained from the time the spirits requiring rectification are removed from the place of their production for the purposes of rectification, until they are rectified and converted into a finished product. The law did not limit that the losses should be caused by natural evaporation, in order to enjoy the exemption rovided by law. As long as the alcohol requires rectification, all unintentional, casual, unavoidable and/or natural losses prior to the conversion into some finished product, should not be subject to specific tax. <u>That was the intention of the lawmakers when they introduced the amendment, eliminating a portion of section 133</u>. <u>This intention was further reflected in the amendment to section 129 of the Tax Code, which states that "loss for rectification and</u>

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> handling" shall no longer be allowed beginning August 23, 1956 (See. Sec. 5, Act No. 1608.) In other words, before the amendment, "loss for rectification and handling" were allowed, which may reasonably be inferred to include unintentional leakage or spillage, occurring while the alcohol is in transit or in the course of transportation or as a consequence of the rectification." (Underscoring supplied.)

From the above decision of the Supreme Court, we can readily see that before the amendment of Section 129 of the Tax Code by Section 5 of Republic Act No. 1608, the payment of specific tax on crude alcohol or distilled spirits removed under bond was based on such crude alcohol or distilled spirits as a finished product, and losses of alcohol incurred in the occasion of rectification were, therefore, allowed. However, the clear legislative intent in amending this provision is to impose the specific tax not only on the crude alcohol or distilled spirits as finished product, but also upon those crude alcohol or distilled spirits which were lost incident to further re-rectification or unintentional, casual, unavoidable and/or natural causes prior to their conversion into some finished product. That was the intention of the lawmakers when they introduced the amendment in Section 7 of R.A. No. 1608 eliminating a portion of Section 133. This intention was further reflected in the amendment to Section 129 of the Tax Code by Section

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5 of R.A. No. 1608.

In other words, the law now, in letter and spirit, imposes the specific tax on the finished product, including losses, as long as the crude alcohol or distilled spirits used as raw materials were subjected to further re-rectification or were lost through any unintentional, casual, unavoidable and/or natural losses prior to conversion into some finished product. The only remaining privilege of the rectifier granted by section 129 is the post-ponement of the payment of the specific tax to a future date, or when the product is finally manufactured. Consequently, when crude alcohol or distilled spirits are lost due to fire such as in this instant case, petitioner is therefore liable for the payment of specific tax on such losses.

WHEREFORE, the decision of the Commissioner of Internal Revenue appealed from is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, March 7, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler In the result
AMANTE FILLER
Acting Presiding Judge