Library

HAWAIIAN-PHILIPPINE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 598

October 62

ACTING COLLECTOR OF INTERNAL REVENUE, OR HIS SUCCESSOR IN OFFICE,
Respondent.

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

DECISION

This is an appeal from an assessment of the respondent holding the petitioner liable for the payment of the fixed and percentage taxes prescribed in Sections 182 and 191 of the National Internal Revenue Code, and for the refund of ₱8,411.99, the equivalent amount of the taxes, surcharge and compromise penalty sought to be collected, which was deposited pending appeal, with the treasurer of Silay City.

The petitioner, a corporation duly organized in accordance with law, is operating a sugar central in the City of Silay, Occidental Negros. It produces centrifugal sugar from sugarcanes supplied by planters. The processed sugar is divided between the planters and the petitioner in the proportions stipulated in the milling contracts, and thereafter is deposited in the warehouses of the latter. (Pp. 4-5, t.s.n.) For the sugar deposited by the planters, the petitioner issues the corresponding warehouse receipts or "quedans".

It does not collect storage charges on the sugar deposited in its warehouse during the first 90 days period counted from the time it is extracted from the sugarcane. Upon the lapse of the first ninety days and up to the beginning of the next milling season, it collects a fee of ₱0.03 per picul a month. Thenceforth, if the sugar is not yet withdrawn, a penalty of ₱0.25 per picul or fraction thereof a month is imposed. (Exhibits "B-1", "C-1", "D-1", "B-2", "C-2", p. 10 t.s.n.)

The storage of sugar is carried in the books of the company under Account No. 5000, denominated "Manufacturing Cost Ledger Control"; the storage fees under Account No. 5216-20; the expense accounts of the factory under Account No. 5200; and the so-called "Sugar Bodega Operations" under Account No. 5216, under which is a Sub-Account No. 20, captioned, "Credits". (Pp. 16-17, t.s.n., Exhibit "F".) The collections from storage after the lapse of the first 90 days period are entered in the company's books as debit to CASH, and credit to Expense Account No. 5216-20. (p. 18, t.s.n.)

The credit for storage charges decreases the deductible expense resulting in the corresponding increase of the taxable income of the petitioner. This is reflected by the entries enclosed in parenthesis in Exhibit "G", under the heading "Storage Charges". (p. 18, t.s.n.) The alleged reason for this accounting operation is that, inasmuch as the "Sugar Bodega Operations" is considered as an expense account, entries under it are "debits". Similarly, since "Storage Charges" constitute "credits", the corresponding figures (see Exhibit "G") are enclosed in parenthesis as they decrease the expenses of maintaining the sugar warehouses.

Upon investigation conducted by the Bureau, it was found that during the years 1949 to 1957, the petitioner realized from collected storage fees a total gross receipts of ₱212,853.00, on the basis of which the respondent determined the petitioner's liability for fixed and percentage taxes, 25% surcharge, and administrative penalty in the aggregate amount of ₱8,411.99 (Exhibit "5", p. 11, BIR rec.).

On October 20, 1958, the petitioner deposited the amount of ₱8,411.99 with the Office of the City Treasurer of Silay. (Exhibits "I" and "I-1", pp. 59-60, CTA rec.) Later, it filed its petition for review before this Court (Exhibit "K", p. 25, CTA rec.).

The only issue to be resolved is whether or not the petitioner is a warehouseman liable for the payment of the fixed and percentage taxes prescribed in Sections 182 and 191 of the National Internal Revenue Code.

The pertinent provisions of Sections 182 and 191 of the Tax Code provide:

"Sec. 182. Fixed taxes - (A) On business (1) Persons subject to percentage tax.--Unless otherwise provided every person engaging in a business on which the percentage tax is imposed shall pay a fixed annual tax of twenty pesos. x x x".

"Sec. 191. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others. x x x x warehousemen; plumbers, smiths; house or sign painters; lithographers, publishers, except those engaged in the publication or printing and publication of any newspaper, magazine, review or bulletin which appear at regular intervals, with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements; printers and bookbinders, business agents and other independent contractors, shall pay a tax equivalent to three percentum of their gross receipts. x x x"

The petitioner contends that it is not a warehouseman taxable under the above quoted provisions of the National Internal Revenue Code for the reason that it is not engaged in the business of storing the planters' sugar for profit. Accordingly, the maintenance of its warehouses is merely incidental to its business of manufacturing sugar and in compliance with an obligation to its planters. The respondent, on the other hand, argues that, aside from manufacturing sugar, the petitioner is also engaged in the business of warehousing. It is equally argued that the element of profit is not determinative of whether or not one is engaged in a particular taxable business.

A warehouseman has been defined thus:

"A warehouseman is one who receives and stores as a business for compensation". (44 Words and Phrases, p. 635, citing Bucher v. Commonwealth, Pa., 2 Kulp, 476, 480.)

> "A 'warehouseman' is a person lawfully engaged in the business of storing goods for profit." (Id. citing State vs. Tiesberg, 220 N.W. 217, 219, 196 Wis. 419, Joy vs. Farmer's Nat. Bank of Chickasha (Okl.) 11 P. (2d) 1074, 1075.)

> "'Warehouseman' is one engaged in business of receiving and storing goods of others for compensation or profit; person who receives goods and merchandise to be stored in his warehouse for hire; one who, as a business and for hire, keeps and stores goods of others." (Id. citing State ex rel and for Use and Benefit of Cawrse v. American Surety Co. of New York, 35 P. 2d 487, 491, 148 Or. 1.)

From the foregoing definitions, it can be gathered that a warehouseman must be engaged in the business of storing the goods of others for hire, compensation, and profit. The element of profit making is essential in the business of warehousing. So that if the storage of the goods is not for making profit, the definition does not apply.

In the case at bar, the petitioner receives sugar cane to be milled or manufactured into centrifugal sugar. Its main business is to produce sugar. After the production of sugar, the petitioner has to receive and store it, in view of the impossibility of immediately transferring to the possession of the planters their share in the produce. Considering that sugar is produced in large quantity, and that conveyances for transporting the produce are insufficient, it becomes difficult, if not impossible, for the planters to take possession of their shares immediately or shortly after the production. Consequently, it becomes a necessity for sugar centrals to receive and store their planters' shares in the sugar.

Hence, the petitioner provides for a free storage in its warehouses for the first ninety days following the production of the sugar. The storage in and the maintenance of the warehouses are obviously an incident of the business of manufacturing sugar, maintained solely for the purpose of accommodating petitioner's planters.

The fact that the petitioner imposes a fee of ₱0.03 per picul a month after the lapse of the first ninety days but before the beginning of the next milling season does not yield the conclusion that the element of profit making is present in the storing of sugar, for the reason that, as alleged by the petitioner and uncontradicted by the respondent, the imposition is for the purpose of discouraging storage. In fact, the contract specifically provides that the petitioner is not required to store the sugar for a longer period than the beginning of the following milling season (Exhibits "B-1", "C-1" & "D-1"). Furthermore, on a storage beyond the beginning of the following milling season, a penalty of ₱0.25 per picul or a fraction thereof is imposed.

In the case of Bacolod-Murcia Milling Co., Inc. vs. Hon. Saturnino R. Mendinueto, CA-G.R. No. 5317-R, promulgated May 19, 1953, the facts of which are very similar to those of the case at bar, the Court of Appeals, in holding that the plaintiff-company was not engaged in the business of receiving sugar for storage, and therefore, was outside the purview of the provisions of the General Bonded Warehouse Act as amended, said, and we quote:

"Defendant does not claim that plaintiff is engaged in the business of receiving sugarcane for storage. In fact, the record shows, and it is not disputed, that plaintiff receives sugarcane for milling purposes, in consideration of a certain share in the sugar thus produced by plaintiff's sugar central. Plaintiff is not even engaged in the business of receiving sugarcane for milling purposes. Its business is to produce sugar. For this purpose, plaintiff has to obtain, and, therefore, receive sugarcane and do whatever else is necessary for the production of sugar, including the establishment and maintenance of, among other things, a pier, a railway, a water system, and a telephone system, without thereby becoming engaged in business as carrier or public utility operator. It has to receive sugarcane, in the same manner as a retailer, for instance, has to purchase, and, therefore, receive goods which he intends to sell to the public, a substantial portion of which he usually keeps in his storehouse, until the propitious time, from the business view point, without thereby becoming a warehouseman engaged in the business of receiving said goods for storage." (Underlining supplied.)

x x x

Again, the business of storing sugar connotes the practice or occupation of keeping sugar in storage for profit, the latter being the essence of business, x x x. The warehouse in which plaintiff stores the planters' share of the sugar is not operated for the purpose of profit, for plaintiff derives no profit therefrom. The storage of the planter's share of sugar in said warehouse is free of charge for ninety (90) days. Although, upon the expiration of this period, a monthly fee of five centavos (₱0.05) per picul is charged, plaintiff alleges, and this is not denied by the defendant, apart from being apparent from the record, that the purpose of this fee is not to make profit, but principally to discourage the keeping of sugar in said warehouse beyond the period stated. Indeed, the milling contract specifically provides that the plaintiff shall not, under any condition, be bound to store the planter's share of the sugar for such a long time as to reach the beginning of the next milling season. If the storage of sugar in the warehouse in question were a matter of business or profit for the plaintiff, the latter would encourage, instead of discouraging and even prohibiting, the keeping of said sugar in the warehouse beyond the periods stated."

Moreover, from the accounting procedure and the books of accounts of the petitioner, it may be observed that the petitioner treats the operation of storing the sugar not as a separate and independent activity, but as an incident of its business of manufacturing sugar.

FOR ALL THE FOREGOING CONSIDERATIONS, the assessment made by the respondent in the sum of ₱8,411.99 representing fixed and percentage taxes, surcharge and compromise penalty (Exhibit "H"), is hereby reversed, and the amount deposited by the petitioner with the Office of the City Treasurer of Silay, pursuant to said assessment under Official Receipts Nos. 1291195 and 1291194 (Exhibits "I" and "I-1"), be refunded, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, October 22, 1959.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI dissents in a separate opinion.

HAWAIIAN-PHILIPPINE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 598

ACTING COLLECTOR OF INTERNAL REVENUE, OR HIS SUCCESSOR IN OFFICE,
Respondent.

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

DISSENTING OPINION

I dissent. I believe that, under the facts, petitioner is a warehouseman within the meaning of Section 191 of the Revenue Code and is subject to the tax prescribed therein.

Petitioner is the owner of a sugar central. It also owns and operates warehouses for the storage of its own sugar and the sugar of planters adhered to it. From 1949 to 1957, it derived gross receipts from the storage of sugar belonging to the planters the sum of ₱212,853.00 on which respondent assessed the tax of 3% imposed by Section 191 of the Revenue Code, plus 25% surcharge for late payment under Section 183(A) of the same Code. Petitioner refused to pay the tax upon the advice of its counsel, the latter basing their opinion on the decision of the Court of Appeals in Bacolod-Murcia Milling Co., Inc. v. Mendinueto, C.A.-G.R. No. 5317-R, May 19, 1953, wherein it was held that sugar centrals not engaged in business as warehousemen are not governed by Act No. 3893, otherwise known as "The General Bonded Warehouse Act."

I do not believe that the decision of the Court of Appeals in the case cited above is decisive on the question whether or not sugar centrals are warehousemen within the meaning of Section 191 of the Revenue Code. In People v. Versola, G. R. No. L-5707, March 27, 1958, the Supreme Court held that a person who operates a rice mill and receives palay for milling, charging from ₱.50 to ₱.80 per cavan for milling, without charging any fee for storage, is required to comply with the provisions of the General Bonded Warehouse Act. While the defendant in that case was considered a warehouseman within the meaning of the General Bonded Warehouse Act, it cannot be said that he is a warehouseman under Section 191 of the Revenue Code because he did not charge any fee or collected any compensation for receiving palay for storage. It follows that whether or not a person is a warehouseman under the General Bonded Warehouse Act is not controlling as to his liability for the payment of the tax imposed upon warehousemen by Section 191. His liability or non-liability for the said tax must be considered solely on the basis of Section 191.

Is petitioner a "warehouseman" within the meaning of Section 191?

A "warehouseman" is a person engaged in the business of receiving and storing goods of others for compensation or profit. Petitioner owns warehouses and stores therein not only its own sugar but also the sugar of planters adhered to it. For the storage of the sugar of planters, it issues warehouse receipts or "quedans" and charges fees for storage. During the period from 1949 to 1957 it derived gross receipts from its warehousing operations the sum of ₱212,853.00, or a yearly average gross receipts of about ₱23,650.00. It does not appear that the amounts collected by petitioner were just sufficient to cover the expenses of its warehousing operations for the sugar planters. Obviously, petitioner derives substantial income over and above operational expenses of warehousing the sugar of its sugar planters, hence it is engaged in warehousing for profit.

> "The appellant contends that the cinematograph established by him is not of the nature of a business, the only purpose thereof being to provide the laborers of the corporation, of which he is the manager, with amusement and relaxation and to prevent their having to go to other places in search of amusement. It appears, however, that the entrance fee charged is such that it enables him not only to defray the regular operating expenses but also to cover the value of the machine and the building in which the cinematograph is established. This being so, the enterprise has the character of a business, inasmuch as it is for the purpose of gain. For purposes of the tax, the proceeds obtained after deducting all the expenses necessary for the operation of the business, constitute gain. In this sense, after all the expenses of operating the cinematograph are paid and the value of the machine and the building recovered, these machine and building, in so far as they represent value, would constitute a gain in the operation of the cinematograph." (People v. Greenfield, 63 Phil. 368.)

The fact that petitioner does not charge any fee for the storage of planters' sugar during the first 90 days of storage is allegedly a strong indication of lack of intention to engage in the operation of warehouses for profit. But the fact remains that petitioner charges fees for storage after the 90-day period. While petitioner may not be considered, for tax purposes, as a warehouseman if it does not charge any fee for storage, it is such warehouseman when it charges fees for profit. Also, the fact that it imposes additional charges as penalty for overstorage is no indication that it is not engaged in business. To my mind, the sole reason for discouraging overstorage is to make room for the incoming sugar to be produced during the next milling season.

It may be safely concluded, therefore, that petitioner is engaged in business as a warehouseman, although probably not under the General Bonded Warehouse Act, but undoubtedly so under Section 191 of the Revenue Code. In fact, it is admitted that petitioner had been paying the tax imposed by Section 191, but it stopped paying said tax because of the decision of the Court of Appeals in Bacolod-Murcia Milling Co., Inc. v. Mendinueto, supra. (See Exh. J, p. 61, C.T.A. records.)

The contention that the warehouses of petitioner are operated solely as a necessary incident of its main business as a sugar central does not justify its exemption from taxation as a warehouseman. "The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and one line of business or occupation does not become exempt by being conducted with some other business or occupation for which such tax has been paid." (Sec. 178, Revenue Code.)

The case of Standard Vacuum Oil Co. v. Antigua, G. R. No. L-6931, April 30, 1955, has been cited in support of the view that operations incidental to the main business of a person are not taxable. The doctrine laid down in that case is entirely irrelevant to the case at bar. In that case, the plaintiff established a shop for the manufacture of tin cans for its own use and not for sale. That is not the case here. In this case, petitioner is engaged in the storage of sugar of other persons for compensation or profit. It is not, of course, a warehouseman within the meaning of the taxing statute for storing its own sugar.

Finally, petitioner contends that to hold it liable for the tax as warehouseman would be violative of the rule against double taxation. Assuming the correctness of the assertion that the imposition upon petitioner of the tax as warehousemen and another tax as a sugar central constitutes double taxation, to which we do not agree, the Supreme Court has expressly held that there is no prohibition against double or multiple taxation in this jurisdiction. (See Manufacturers Life Ins. Co. v. Meer, G. R. No. L-2910, June 29, 1951; City of Manila v. The Interisland Gas Service, G. R. No. L-8799, August 31, 1956.)

FOR THE FOREGOING CONSIDERATIONS, I am of the opinion that petitioner is liable to the fixed and percentage taxes imposed by Sections 182 and 191 of the Revenue Code. I agree, however, that petitioner is not liable to the alleged "compromise" penalty in the sum of ₱300.00, which has been included in the assessment, there being no evidence of a compromise agreement having been entered into between petitioner and respondent in regard to the settlement of petitioner's violation of certain provisions of the National Internal Revenue Code. (See University of Sto. Tomas v. Collector of Internal Revenue, C.T.A. No. 10, September 10, 1956, affd. in G. R. Nos. L-11274 and L-11280, Nov. 28, 1958.)

ROMAN M. UMALI
Associate Judge