REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

INTERNATIONAL PHARMACEUTICALS, INC.,
Petitioner,

- versus -

COMMISSIONER LILIAN HEFTI in her capacity as COMMISSIONER OF INTERNAL REVENUE and ELVIRA R. VERA, Head, Revenue Executive Assistant LTS-Excise Large Taxpayers,
Respondent.

C.T.A. CASE NO. 7736

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

DEC 11 2009; 11:00 am

x - x

DECISION

BAUTISTA, *J.*:

The *Petition for Review* seeks the setting aside and nullification of the Assessment for excise tax in the amount of P176,848,083.46 for taxable years 2000 to 2002, and a judgment declaring Casino Rubbing Alcohol exempt from excise tax under the National Internal Revenue Code of 1997.

International Pharmaceuticals, Inc. (Petitioner) is a corporation organized and existing under Philippine laws, with principal office at Mandaue City, Cebu. Petitioner manufactures and sells Casino Rubbing Alcohol, which is used as an antiseptic, as evidenced by its Certificate of Product Registration issued by the Bureau of Food and Drugs.[1]

---

[1] Annex "A", Petition for Review

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith. She holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

In a letter dated February 10, 2002, the BIR served on petitioner a notice of excise tax discrepancy for taxable years 2000 to 2002 in the amount of P128,918,613.24, which petitioner opposed.[2]

The BIR issued a *Preliminary Assessment Notice* dated October 7, 2003 against petitioner for alleged excise tax deficiency for taxable years 2000 to 2002 attributable to its product, Casino Rubbing Alcohol.[3] In a letter dated November 25, 2003, petitioner opposed the *Preliminary Assessment Notice* on the ground that under the National Internal Revenue Code (NIRC) of 1997, Casino Rubbing Alcohol is exempt from excise tax.[4]

Petitioner received a *Formal Letter of Demand* and deficiency excise tax assessment dated March 28, 2005, signed by Deputy Commissioner Kim Henares, Officer-in-Charge (OIC) of the BIR Large Taxpayers Service, requesting payment of the deficiency excise tax, which now reached the amount of P168,780,746.87.[5]

On May 18, 2005, petitioner filed a *Protest/Motion for Reconsideration (with prayer to refer the case to BIR's Appellate Division)* requesting reconsideration of the *Formal Letter of Demand* and praying that the matter be referred to the BIR Appellate Division, considering that the issue involved was legal.[6]

---

[2] Par. 2, Summary of Admitted Facts, Summary of Admitted facts and Joint Stipulation of Facts (JSF), docket, p. 288; Annex "D", Petition for Review
[3] Annex "E", Petition for Review
[4] Annex "F", Petition for Review
[5] Par. 5, Summary of Admitted Facts, JSF, docket, p. 289; Annex "H", Petition for Review
[6] Annex "I", Petition for Review

On August 16, 2005, Deputy Commissioner Henares, in her capacity as Deputy Commissioner of Special Concerns and OIC-Large Taxpayers Service, issued a *Final Decision on Disputed Assessment*.[7]

Petitioner filed a *Motion for Reconsideration* of the decision of Deputy Commissioner Henares, now addressed to then BIR Commissioner Jose Buñag, with a motion to elevate the assessment to the BIR's Appellate Division inasmuch as the issue involved was principally legal.[8]

In spite of the pendency of the appeal before the BIR Appellate Division, Ms. Elvira R. Vera, Head Revenue Executive Assistant/LTS-Excise Tax Large Taxpayers, issued a *Warrant of Distraint and/or Levy* to collect petitioner's alleged excise tax liabilities in the amount of P176,848,083.46.[9]

On March 11, 2008, petitioner filed a *Petition for Review with Motion to Suspend Collection of Disputed Tax Liability* before this Court.

On March 24, 2008, petitioner filed an *Urgent Motion to Set for Hearing the Motion to Suspend Collection of Disputed Tax Liability*[10], which this Court granted in a *Resolution*[11] dated May 7, 2008, subject to the filing of a surety bond.

In her *Answer*[12] filed on May 13, 2008, respondent interposed the following arguments:

> "***The Denatured Alcohol used by Petitioner in the manufacture of Casino Rubbing Alcohol for taxable years 2000, 2001 and 2002 is taxable***
>
> 11. Petitioner vigorously insisted that under Article 134 in relation to Article 141 of the National Internal Revenue Code (NIRC), Casino Rubbing Alcohol is exempt from excise specific tax on the ground that it uses tax exempt domestic denatured alcohol as its chief ingredient.

---

[7] Par. 7, Summary of Admitted Facts, JSF, docket, p. 289; Annex "J", Petition for Review
[8] Annex "K", Petition for Review
[9] Par. 9, Summary of Admitted Facts, JSF, docket, p. 290, Annex "M", Petition for Review
[10] Docket, pp. 146-147
[11] Docket, pp. 197-200
[12] Docket, pp. 201-211

12. Respondents hold otherwise. Per verification made by the Task Force crested pursuant to RSO No. 416-2002 dated 22 April 2002 relative to petitioner's purchases of denatured alcohol that were used in the manufacture of Casino Rubbing Alcohol, the same is taxable pursuant to Section 141 (c) of the NIRC. The assessment arose from the classification of petitioner's product, Casino Rubbing Alcohol, as 'medicinal preparations' which is subject to excise tax pursuant to the above-mentioned provisions of the NIRC.

> 'SEC. 141. **Distilled Spirits.** – On distilled spirits there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:
>
> xxx xxx xxx
>
> (c) **Medicinal preparations**, 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 chief ingredient.'
>
> xxx xxx xxx

13. Petitioner is a duly registered Alcohol Plant. It is engaged in the production and sale of denatured alcohol. It is also a manufacturer of **Casino Rubbing Alcohol** containing 70% ethyl alcohol by volume classified as medicinal preparation for external use. In the preparation of the said product, denatured alcohol (ethyl alcohol mixed with Methyl Salicylate and Menthol as denaturants) was used as a raw material/chief ingredient and as such, the same is taxable as enunciated by this Honorable Court in CTA Case No. 182 entitled 'BIR vs. La Tondeña Distillers, Inc.' As defined under the NIRC, *chief ingredient* means that more than 50% of the preparation, excluding water, is alcohol or distilled spirit.

14. Rubbing alcohol was cited as an example of medicinal preparation under Section 2 (7) of Revenue Regulations (RR) No. 2-97 dated December 13, 1996, Revenue Regulations Governing Excise Taxation on Distilled Spirits, Wines and Fermented Liquor prescribing guidelines and procedures to implement provisions of the Tax Code. This RR specifically provides that 'medicinal preparations of which distilled spirits form the chief ingredient, shall be subject to the same tax as such chief ingredient, an example of which is rubbing alcohol.'

15. The label attached to the product shows that Casino Rubbing Alcohol is an 'antiseptic disinfectant' which constitutes 70% ethyl alcohol. This descriptive representation fits the term 'medicinal preparations' because Casino Rubbing Alcohol is prepared or compounded for purposes, among others, as an antiseptic and inhibits the growth of bacteria, pursuant to Section 141 (c) of the NIRC.

Hence, the denatured alcohol used by petitioner in the manufacture of Casino Rubbing Alcohol containing 70% ethyl alcohol by volume is classified as medicinal preparations and therefore taxable.

The BIR Assessment is based on existing jurisprudence

16. The BIR's assessment relying on the case of La Tondeña vs. Collector of Internal Revenue and Court of Appeals G.R. No. L-14336, April 30, 1964 still stands contrary to the opinion of the petitioner that it is an abandoned ruling. This was extensively discussed in the letter issued by Kim S. Jacinto-Henares, Deputy Commissioner for Special Concerns, OIC-Large Taxpayers Service to petitioner's letter-reply dated January 21, 2004.

> 'The Old Tax Code which was effective during the aforementioned La Tondeña case, provided, among others Section 127 stating that medicinal preparations of which distilled spirits form the chief ingredient shall be subject to specific tax under Section 133 of the same code. Please take note that Section 127 is a separate and distinct provision from that of Section 128 citing exemption in favor of domestic denatured alcohol for specific purposes.
>
> With the enactment of PD 69 and issuance of RMC 4-73, the above-stated Section 127 was deleted while Section 128 was amended specifying that domestic denatured alcohol is exempt from the specific tax irrespective of the purpose thereof with the only qualification that it is rendered unfit for oral intake.
>
> Pursuant to the present Tax Code of 1997, the old provision of Section 127 was revived under Section 141 (c) and implemented in accordance with RR 2-97. The legislators in enacting Section 134 (previously Section 128) and Section 141 (c) of the new Code could not have intended to impose a tax on one section only to exempt in another section. It is as cardinal rule of interpretation that provisions of law should be interpreted in such as manner as to harmonize the same with other provisions. Moreover, exemptions from taxation are highly disfavored in law and must be strictly construed.
>
> On the other hand, in the imposition of the specific tax on alcohol as medicinal preparation, the circumstance of whether it is capable of oral intake or internal consumption is not taken into account. It is sufficient that alcohol has been manufactured and produced, and the specific tax thereon immediately attaches.

In view of the foregoing, the intention of the lawmakers for Section 141 (c) is of equivalent footing with the then Section 127 and 133 of the Old Tax Code; hence, the application of La Tondeña case still stands. Moreover, the taxable years in question (2000 to 2002) are under the germane of the new tax code subjecting medicinal preparations to specific tax as provided for under Section 141 (c) of the 1997 NIRC.'

The Deficiency Excise Tax Assessments for taxable years 2000-2002 have not prescribed

17. Petitioner's claim that the Excise Tax Assessments for the taxable years 2000-2002 have prescribed deserve no credence. Section 203 and Section 222 of the NIRC clearly state:

xxx xxx xxx

18. Section 203 of the NIRC states that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, or if the return is filed beyond the period prescribed by law, from the actual day return is filed.

19. However, the exception to the three-year statute of limitations under the above Section 222 of the NIRC authorizes the BIR to make an assessment within ten (10) years from the discovery of a false or fraudulent return with intent to evade payment of the tax or of failure to file a return. Since petitioner failed to file excise tax returns for the years 2000-2002 on petitioner's purchases of denatured alcohol that were used in the manufacture of Casino Rubbing Alcohol, the exception provided by the aforementioned section clearly finds application in this case.

20. Finally, since no excise tax returns were filed and no payments were made by petitioner on the aforesaid transactions, the imposition of the civil penalties is proper in this case pursuant to Section 248 of the NIRC which provides that:

xxx xxx xxx

The foregoing can only lead to one conclusion. That is, the claim of petitioner that the Excise Tax Assessments for taxable years 2000-2002 have prescribed, is merely wishful thinking.

21. Finally, it is well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

All presumptions are in favor of the correctness of tax assessments."

On June 25, 2008, the Court set aside the *Resolution* dated May 7, 2008, granting petitioner's *Motion to Suspend Collection of Disputed Tax Liability* after petitioner failed to comply with the conditions set forth therein.[13]

Petitioner however filed a *Motion to Admit Surety Bond*[14] on July 2, 2008, and a *Motion for Reconsideration*[15] on July 8, 2008.

On July 14, 2008, the parties filed their *Summary of Admitted Facts and Joint Stipulation of Facts*[16].

In a *Resolution*[17] dated August 8, 2008, the Court denied petitioner's *Motion to Admit Surety Bond* and *Motion for Reconsideration* for lack of merit; but approved the parties' *Summary of Admitted Facts and Joint Stipulation of Facts.*

On September 1, 2008, the parties filed a *Supplemental Joint Stipulation of Facts*[18], which states in part as follows:

> "**Supplemental Stipulation of Fact No. 1**
>
> The parties stipulate that all the denaturings of alcohol to render it unfit for human consumption at petitioner's premises at IPI distillery, Central Manapla, Negros Occidental were done under written authority and supervision of the officially designated personnel of the Excise Tax Division of Bureau of Internal Revenue;
>
> **Supplemental Stipulation of Fact No. 2**
>
> 'The parties admit the existence of Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU which are certified true copies of various memoranda authorizing denaturing and certifications of supervision of said denaturing of alcohol done at petitioner's premises."

---

[13] Docket, pp. 242-243
[14] Docket, pp. 250-252
[15] Docket, pp. 284-286
[16] Docket, pp. 288-291
[17] Docket, pp. 298-300
[18] Docket, pp. 304-305

On September 1, 2008, petitioner filed a *Motion for Reconsideration*[19] of the Court's *Resolution* dated August 8, 2008, which the Court denied in a *Resolution*[20] dated October 16, 2008.

Petitioner filed its *Memorandum*[21] on September 19, 2008; while respondent filed her *Memorandum*[22] on November 3, 2008. Hence, on November 10, 2008, the case was submitted for decision.[23]

Petitioner however filed an *Urgent Motion for Suspension of Collection Proceedings with Ex Parte Prayer for Temporary Restraining Order and Motion for Early Decision*[24] on March 2, 2009, and a *Very Urgent Motion to Set the Hearing of Motion for Suspension Proceedings to March 4 2009 at 9:00 A.M.*[25] on March 3, 2009. In a *Resolution*[26] dated March 6, 2009, the Court granted the same. Consequently, the Court issued a *Temporary Restraining Order*[27] on March 5, 2009; and in a *Resolution*[28] dated April 8, 2009, petitioner's motion for suspension of collection proceedings was granted subject to the filing of a bond.

Petitioner filed its *Compliance*[29] on April 28, 2009, and another *Compliance*[30] on July 3, 2009, which were both approved in a *Resolution*[31] dated July 29, 2009.

In a *Resolution*[32] dated August 17, 2009, the case was submitted for Decision.

The issues[33] as stipulated by the parties are as follows:

---

[19] Docket, pp. 306-308
[20] Docket, pp. 393-394
[21] Docket, pp. 322-344
[22] Docket, pp. 396-406
[23] Docket, p. 408
[24] Docket, pp. 411-414
[25] Docket, pp. 415-417
[26] Docket, pp. 420-422
[27] Docket, pp. 424-425
[28] Docket, pp. 430-432
[29] Docket, pp. 433-435
[30] Docket, pp. 450-452
[31] Docket, pp. 460-461
[32] Docket, p. 462
[33] Issues to be Resolved, JSF, docket, p. 291

"I

Whether or not under Section 134 and 141 of the National Internal Revenue Code of 1997, Casino Rubbing Alcohol is subject to excise tax

II

Whether or not the collection of the disputed excise taxes allegedly due in 2000, 2001, 2002 is already barred by prescription."

Respondent argues that in the preparation of petitioner's Casino Rubbing Alcohol, denatured alcohol (ethyl alcohol mixed with Methyl Salicylate and Menthol as denaturants) was used as a raw material/chief ingredient; hence, the classification of Casino Rubbing Alcohol, as "medicinal preparation", is subject to excise tax, pursuant to Section 141(c) of the NIRC of 1997, as amended. Section 141 is hereunder quoted for ready reference, to wit:

> "**SEC. 141. Distilled Spirits.** – On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:
>
> xxx xxx xxx
>
> (c) Medicinal preparations, 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 chief ingredient.
>
> This tax shall be proportionately increased for any strength of the spirits taxed over proof spirits, 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 transformed into any other substance either in the process of original production or by any subsequent process.
>
> *'Spirits or distilled spirits'* is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications 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.
>
> xxx xxx xxx"

On the other hand, petitioner contends that Section 134 of the NIRC of 1997, as amended, provides that domestic alcohol when suitably denatured and rendered unfit for human consumption is exempt from excise tax imposed by Section 141 of the same Code. Section 134 states as follows:

> "**SEC. 134. Domestic Denatured Alcohol.** – Domestic alcohol of not less than one hundred eighty degrees (180^{0}) proof (ninety percent [90%] absolute alcohol) shall, **when suitably denatured and rendered unfit for oral intake, be exempt from the excise tax prescribed in Section 141:** *Provided, however,* That such denatured alcohol shall be subject to tax under Section 106(A) of this Code: *Provided, further,* That if such alcohol is to be used for motive power, it shall be taxed under Section 148(d) of this Code: *Provided, finally,* That any alcohol, previously rendered unfit for oral intake after denaturing but subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any other similar process shall be taxed under Section 141 of this Code and such tax shall be paid by the person in possession of such reprocessed spirits." (*Emphasis supplied*)

Based on the records of the case, the denaturing of alcohol to render it unfit for human consumption at petitioner's premises at IPI Distillery, Central Manapla, Negros Occidental was done under written authority and supervision of the officially designated personnel of the Excise Tax Division of the Bureau of Internal Revenue. The parties even admitted the existence of petitioner's evidence authorizing denaturing and certification of supervision of said denaturing of alcohol done at petitioner's premises.

Pursuant to Section 134 of the NIRC of 1997, as amended, denatured alcohol, when suitably denatured and rendered unfit for oral intake, is exempt from the excise tax prescribed in Section 141 of the same Code. The only condition is that when the same, which was previously rendered unfit for oral intake after denaturing, but subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any other similar process, shall be taxed under Section 141 of the NIRC of 1997 and such tax shall be paid by the person in possession of such re-processed spirits. In other words, denatured alcohol can become subject to excise tax when the same is re-processed to make it potable.

The fact that Casino Rubbing Alcohol uses seventy percent (70%) domestic denatured alcohol rendered unfit for human intake as its principal ingredient and is a disinfectant had been duly stipulated by the parties.[34] It has been processed, but still not fit for human consumption. It was not even intentionally re-processed to render the same fit for oral intake.

Respondent posits that denatured alcohol is the product of Ethyl Alcohol mixed with Methyl Salicylate and Menthol as denaturants, which under Section 141(c) of the NIRC of 1997 would be subject to excise tax.

This Court is not convinced.

Classification of denatured alcohol is distinct from ethyl alcohol, whether diluted, purified and mixed thereof, from whatever source, and by whatever process produced. The exemption stays as long as the domestic denatured alcohol remains unfit for human intake.

In the case of **Commissioner of Internal Revenue vs. Fortune Tobacco Corporation**[35], the Supreme Court emphasized:

> "(T)he rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. A tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. In answering the question of who is subject to tax statutes, it is basic that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import. As burdens, taxes should not be unduly exacted nor assumed beyond the plain meaning of the tax laws."

From the foregoing, the Court cannot sustain respondent's position that Casino Rubbing Alcohol is subject to excise tax.

[34] Docket, p. 290
[35] G.R. Nos. 167274-75, July 21, 2008

The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed.[36] Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer. This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import.[37]

With the foregoing disquisitions, the Court finds it unnecessary to discuss the issue on prescription.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, petitioner's Casino Rubbing Alcohol is hereby declared exempt from excise tax under the National Internal Revenue Code of 1997 and the Assessment for deficiency excise tax in the amount of P176,848,083.46 is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

---

[36] Commissioner of Internal Revenue vs. Court of Appeals, 338 Phil. 322 (1997)
[37] Lincoln Philippine Life Insurance Co., Inc. vs. CA, 354 Phil. 896 (1998)

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division