CENTRAL AZUCARERA DE TARLAC,
Petitioner,

- versus -

C.T.A.
CASE NO. 206

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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~~Aff'd in G.R. No. L-11092, Sept 30, 1958~~

October 15, 1956

Aff'd in G.R. No. L-11760, July 31/58

DECISION

In a letter dated May 27, 1956, respondent Collector of Internal Revenue sought to collect from petitioner the sum of ₱42,237.55 as deficiency percentage tax plus surcharge on the gross value of molasses and sugar allegedly withdrawn from its central from 1947 to 1954, pursuant to Section 189 of the National Internal Revenue Code in relation to Section 183 of the same Code, itemized as follows:

Value of 49,832.29 kilos of sugar milled and used in the manufacture of alcohol in 1947 ------------	₱ 66,328.92
Assessed value of molasses as per books from 1947 to 1954 ------------------	1,623,173.76
TOTAL ------------------	₱1,689,502.68
2% tax due on ₱1,689,502.68 --	₱ 33,790.05
25% surcharge thereon --------	8,447.50
TOTAL AMOUNT DUE ---------	₱ 42,237.55

An additional amount of ₱2,000.00 was also sought to be collected as "compromise penalty" for the alleged violation by petitioner of Section 209 of the Revenue Code.

Petitioner contested the legality of the assessment solely on the ground that the said molasses and sugar were not sold but were used by it in the production of alcohol in its own distillery located in the central. Consequently, it asked that the assessment be withdrawn. The request to have the assessment withdrawn was denied in the letter of respondent dated September 21, 1955. Petitioner filed the instant petition for review on November 7, 1955.

The parties submitted a stipulation of facts, which is reproduced hereunder, viz:

> 1. That the petitioner is a corporation duly organized, existing and doing business under and by virtue of the laws of the Philippines, with principal place of business at San Miguel Tarlac; and that Respondent is the Collector of Internal Revenue, with offices at the Department of Finance Building, Manila;
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> 2. That during the period covered by the assessment hereinafter mentioned, the petitioner was engaged in business as owner and operator of a duly registered distillery at San Miguel, Tarlac;
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> 3. That by Memorandum dated April 20, 1955, Examiner Ernesto Caluya of the Bureau of Internal Revenue, then stationed at Tarlac, Tarlac, reported to the Provincial Revenue Agent of Tarlac that during the year 1947 the petitioner milled in its sugar central at San Miguel, Tarlac, 149,832.29 kilos of sugar, valued at ₱66,328.92, which petitioner used as raw materials in the manufacture of alcohol in said year, and produced molasses valued at ₱1,632,173.76 during the years 1947 to 1954, inclusive, which were used in the manufacture by petitioner of alcohol during said period — upon which aggregate market value of ₱1,689,-502.68, petitioner had not paid 2% miller's tax imposed under section 189 of the National Internal Revenue Code;
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> 4. That, by letter dated May 27, 1955, the respondent assessed against petitioner, as operator of a sugar central, the amount of ₱33,790.05 as 2% miller's tax and ₱8,447.50 as 25% surcharge thereon, or a total sum of ₱42,-237.55, upon the amount of ₱1,689,502.68 mentioned in the next preceding paragraph hereof,

and demanded payment of the further amount of ₱2,000.00 as compromise penalty for alleged violations of sections 183 and 189 of the National Internal Revenue Code;

5. That petitioner protested said assessment on the allegation that, under the law as well as rulings of the respondent, petitioner was not subject to the 2% miller's tax imposed under section 189 of the Tax Code upon the value of sugar or molasses produced and owned by petitioner and used by it as raw materials in the production of alcohol in its own distillery;

6. That by letter dated September 21, 1955 and received by petitioner on October 10, 1955, the respondent denied petitioner's said protest;

7. That upon subsequent verification conducted by the respondent, it was ascertained by respondent that the market value of the sugar and molasses referred to in paragraph 3 hereof was ₱1,223,742.44 instead of ₱1,689,-502.68;

8. That, in view of the facts stated in the next preceding paragraph hereof, the total amount of 2% miller's tax and surcharge thereon now in dispute should be ₱30,593.56, instead of ₱42,237.55;

9. That in petitioner's "Balance-Inventarios" mentioned in paragraph 12 hereof, the "sugar" referred to in paragraph 3 hereof, was valued at ₱66,328.92 (which amount appears in paragraph 3 hereof);

10. That the "sugar" and molasses the value of which constitutes the basis of the assessment in question were produced in petitioner's sugar central at San Miguel, Tarlac, and were owned by petitioner and were never sold by petitioner as such but were used by petitioner as raw materials in the manufacture by petitioner of alcohol in petitioner's own distillery;

11. That the market value of that portion of the above-mentioned molasses, which petitioner produced and used in the manufacture of alcohol during the period from 1947 to March 31, 1950 was ₱298,237.92;

12. That the values of all the "sugar" and molasses produced by petitioner in its sugar central at San Miguel, Tarlac, during the period

covered by the subject assessment were correspondingly entered in the "Balance-Inventaries" of petitioner, upon which Examiner Caluya based his report;

13. That the petitioner admits the correctness of the figures stated in this stipulation of facts;

14. That the parties hereby reserve the right to present further evidence on other points not covered by this stipulation of facts and manifest willingness to prove such other facts as this Honorable Court may require for the complete resolution of the issues raised in this case.

In the aforesaid stipulation of facts, the parties agreed that the total value of the molasses and sugar involved in this case is ₱1,223,742.44, instead of ₱1,689,502.68. Since the value of the sugar is ₱66,328.92, the value of the molasses is ₱1,157,413.52. As agreed upon, the percentage tax and surcharge in dispute is ₱30,593.56, computed as follows:

Value of molasses ----------	₱1,157,413.52
Value of sugar ------------	66,328.92
Total -----------------	₱1,223,742.44
2% of ₱1,223,742.44 --------	₱ 24,474.85
25% surcharge -------------	6,118.71
Total tax & surcharge ----	₱ 30,593.56

In support of its appeal, petitioner alleges:

1. That the sugar, with an admitted value of ₱66,328.92, was not in fact sugar but "cane syrup", which is not taxable under Section 189 of the Revenue Code;

2. That the said molasses and sugar (or cane syrup) were used by it in the production of alcohol in its own distillery within the premises of the central, and were not therefore removed therefrom;

3. That the said molasses and sugar (or cane syrup) were not used in business, and, therefore, they are not taxable under Section 189 which comes under the chapter "Tax on Business"; and

> 4. That assuming that the said articles are taxable under Section 189, the right of the Government to assess and collect the tax has already prescribed.

During the hearing of this case petitioner sought to prove that the sugar valued at ₱66,328.92 which was milled by it and used in the manufacture of alcohol in 1947 was not sugar but "cane syrup". It is alleged that the amount of ₱66,328.92 appearing in its books is merely "the theoretical value of estimated sugar that could have been produced from the 'cane syrup' which (it) used as raw material in the production of alcohol in its distillery in 1947." And since "cane syrup" is not taxable under Section 189 of the Revenue Code, the assessment in regard to said "cane syrup" is improper.

Petitioner admits that its books and records show that the sum of ₱66,328.92 represents the value of sugar milled by it and used in its distillery for the production of alcohol. At no time during the investigation of the case by the Bureau of Internal Revenue did petitioner ever raise the question as to the correctness of the entries in its books and records. When petitioner, through counsel, requested respondent to reconsider his assessment, no mention was made of cane syrup; in fact, the word "sugar" was repeatedly used. Here are some portions of the letter of counsel for petitioner dated August 1, 1955:

> "Contrary to the alleged withdrawal of molasses and sugar from the central the truth is that the molasses and sugar, the value of which constitutes the basis of the tax demanded were never withdrawn from the central.

> In other words, said molasses and sugar as such never left the central. The material fact is that said molasses and sugar, which belonged to the Central, were used by it in the production of alcohol in its own distillery located in the central. x x x.
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> "Thus, since the molasses and sugar in question, belonging to taxpayer, were not withdrawn from the central but were used by it in the production of alcohol in its own distillery, the same are not subject to the tax imposed under section 189 of the Revenue Code."

The petition for review consistently used the word "sugar", as shown below:

> "That the sugar converted by the petitioner into alcohol in 1947 x x x belonged to petitioner and were produced by the petitioner in its sugar central situated in San Miguel, Tarlac." (Par. 3.)
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> "That the said sugar and molasses were converted into alcohol x x x." (Par. 4.)
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> "That said sugar were stored in a sugar room situated within Petitioner's sugar mill x x x." (Par. 5.)
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> "That the quantity and/or value of the sugar and molasses used as basis of Respondent's assessment was excessive and incorrect x x x." (Par. 8.)
>
> "That, said sugar and molasses belonging to Petitioner x x x." (Par. 9.)
>
> "That, at any event, insofar at least as the sugar and molasses allegedly withdrawn by Petitioner during the period from 1947 up to May 26, 1950 are concerned x x x." (Par. 13.)

We have no reason to doubt, in view of the entries appearing in petitioner's books and records, entries made in the regular course of business transactions, and from the very admissions of petitioner itself and its counsel, that the "sugar" in question was in fact sugar

sugar and not merely "cane syrup". The fact that in the stipulation of facts the word "sugar" is inclosed in quotation marks does not alter the situation. The attempt to qualify the entries in its books in regard to the sugar in question by means of the testimony of certain officials of petitioner is to us a belated attempt to extricate itself from a tight situation.

Having arrived at the conclusion that the sum of ₱66,328.92 represents the value of sugar produced by petitioner and used by it in 1947 in the manufacture of alcohol, we will now proceed to consider the issue whether or not the molasses and sugar with an aggregate value of ₱1,223,742.44, already referred to above, are subject to the percentage tax prescribed in Section 189 of the Revenue Code, which provides:

> "Section 189. Percentage tax upon proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories.— Proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills and desiccated coconut factories shall pay a tax equivalent to two per centum of the gross value in money of all the rope, sugar, rice, coconut oil, ground or milled corn, and desiccated coconut manufactured or milled by them, including the by-products of the raw materials from which said articles are produced or manufactured, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: Provided, however, That this tax shall not apply to coconut oil, and the by-products of copra from which it is produced or manufactured, and desiccated coconuts if such oil, copra by-products and desiccated coconuts shall be removed for exportation and are actually exported without returning to the Philippines, whether so exported in their original state, or as an ingredient or part of any manufactured article or product."

Section 189 of the Revenue Code requires proprietors or operators of sugar centrals to pay a tax of 2% of the gross value in money of all the sugar, including the by-products of the raw materials from which it is produced or manufactured, such tax to be based on the actual selling price or market value of such articles at the time they leave the factory or mill warehouse. The tax payable by proprietors or operators of sugar centrals on sugar and molasses, the latter being a by-product of sugar cane from which sugar is produced, accrues from the time they leave the factory or mill warehouse, although payment of the tax may be made not later than the 20th day of the month following the end of each calendar quarter, pursuant to Section 183.

Petitioner claims that said molasses and sugar were never removed from its central but were used in its own distillery within the premises of the central and, therefore, its liability for the tax has not accrued. Petitioner has apparently overlooked the fact that the law does not contemplate removal from the central for the tax to accrue. The law merely requires, in order that liability for the tax may attach, that sugar and molasses be removed from the factory or, if said articles have been deposited in a mill warehouse, from such mill warehouse. In this case, it has been clearly established that the sugar and molasses left, or were removed from, the factory where they were produced or manufactured, and were transferred to the distillery where they were subsequently manufactured into alcohol. It can not be denied that the sugar factory is distinct and separate from the distillery where alcohol is manufactured. There was, therefore, a removal of said sugar and molasses from the sugar factory within the meaning of Section 189 of the Revenue Code.

It is also contended that since Section 189 comes under the chapter entitled "Tax on Business", sugar and molasses can not be held taxable under that section unless at the time of their removal from the factory they are to be used in business. Plaintiff admits that it owns a distillery for the manufacture of alcohol. And there is no claim or pretense that the alcohol manufactured by it is not for sale. We are, therefore, of the opinion that said sugar and molasses were used in business by petitioner.

Furthermore, it is not true as contended by petitioner that for an article to be taxable under Chapter I of Title V of the Revenue Code, entitled "Tax on Business", it is essential that such article be the "subject or object of a business". Section 190, which comes under the same chapter, imposes the compensating tax on articles imported from abroad for use by the importer himself and not for sale. It is not a tax on business and yet the validity of said tax has been sustained by the Supreme Court in International Business Machines Corporation v. Collector of Internal Revenue, G.R. No. L-6732, March 6, 1956. The taxability or nontaxability of an article or a transaction under Chapter I of Title V of the Revenue Code is determined not by the title of the chapter but by the particular provision of law involved.

Finally, petitioner claims that the assessment covering the molasses and sugar removed from the factory and transferred to its distillery from 1947 to the first quarter of 1950 has prescribed, the said assessment having been made only in respondent's letter dated May 27, 1955, or after 5 years from the dates the returns were filed, pursuant to Section 331 of the Revenue Code. On the other hand, respondent claims that since the returns filed by petitioner did not include the value of the sugar and molasses in question, the right of the Government to assess the tax is governed by Section 332.

It is admitted that petitioner filed quarterly returns covering the value of the output of its sugar factory during the entire period in question, but that the value of the sugar and molasses involved in this appeal is not included in said returns, petitioner being of the opinion that said articles are not taxable.

Section 331 of the Revenue Code provides that, except as provided in Section 332, 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. Section 332 provides that in 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. It is clear that Section 331 applies to cases where the returns filed are false or incorrect but without the intention of the taxpayers filing the returns to evade payment of the tax, while Section 332 applies to cases where the returns filed are false or fraudulent with intent to evade tax or to cases where no return at all was filed.

Under Section 183 of the Revenue Code, proprietors or operators of sugar centrals are required to file quarterly returns of their gross output. Only one return is required to be filed for each quarter. If, through oversight or negligence, some items of its gross output are not included in its return, the proprietor or operator of a sugar central need file only an amended return to correct the previous return. It is not required to file a separate and independent return. We can not accept the proposition advanced by respondent to the effect that with respect to the items omitted from its return a proprietor or operator of a sugar central is deemed to have failed to file a return within the meaning of Section 332 which authorizes the assessment of internal revenue taxes, in case no return is filed, within ten years from the date of discovery of the omission. To so hold would be to require the filing of more than one return for each quarter which is not sanctioned by Section 183.

Since petitioner filed its quarterly returns which, while false or incorrect, were not filed with intent to evade the tax as admitted by respondent himself, the 50% fraud penalty not having been added to the tax in accordance with Section 183, the case falls squarely under Section 331. More than five years having elapsed from the dates the quarterly returns covering the period from 1947 to the first quarter of 1950 were filed (the return for the first quarter of 1950 having been filed on or before April 20, 1950) to the date the assessment was made on May 27, 1955, it is obvious that the right to assess the deficiency tax for said period has prescribed.

From the stipulation of facts it appears that the total value of sugar and molasses removed from the factory of petitioner from 1947 to the first quarter of 1950 is ₱364,566.84, while the value of molasses removed from the factory from the second quarter of 1950 to 1954 is ₱859,175.60. Therefore, only the assessment of the deficiency tax with respect to the said sum of ₱859,175.60 has been made by respondent within the statutory period of limitation prescribed in Section 331.

In resumé, we are of the opinion that (1) the evidence of record fully supports the finding of respondent that the sum of ₱66,328.92 represents the value of sugar actually removed from the sugar factory of petitioner in 1947 and used in its distillery for the manufacture of alcohol; (2) the tax prescribed in Section 189 of the Revenue Code on the molasses and sugar which left, or were removed from, the sugar factory and transferred to petitioner's distillery accrued from the time of such removal; (3) the molasses and sugar transferred from the sugar factory to petitioner's distillery were used in business and are, therefore, taxable; and even if such articles were not actually used in business, the mere fact that they were removed from the factory is enough to render petitioner liable to the tax thereon; and (4) the assessment of the deficiency tax with respect to molasses and sugar removed from the sugar factory of petitioner from 1947 to the first quarter of 1950 has prescribed, in accordance with Section 331 of the Revenue Code.

With respect to the sum of ₱2,000.00 which respondent is seeking to collect from petitioner as "compromise penalty", we are of the opinion that the former has no right to compel the latter to pay the same. (See Soledad R. Briñas v. Collector of Int. Rev., C.T.A. No. 16, Sept. 14, 1955; U.S.T. v. Collector of Int. Rev., C.T.A. No. 10, Sept. 10, 1956.)

WHEREFORE, the decision appealed from is hereby modified, in line with the foregoing opinion, and petitioner is hereby required to pay to respondent the sum of ₱21,479.39, computed as follows:

2% of ₱859,175.60, value of molasses removed from the factory of petitioner from the 2nd quarter of 1950 to 1954 ----------------------	₱17,183.51
25% surcharge ---------------	4,295.88
Total deficiency tax and surcharge ------------	₱21,479.39

With costs against petitioner.

SO ORDERED.

Manila, October 15, 1956.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge