REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CENTRAL AZUCARERA DE TARLAC,
Petitioner,

- versus - C.T.A. CASE NO. 954

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from an assessment of the respondent in the amount of ₱17,270.40 representing specific tax on losses of rectified alcohol incurred by petitioner.

Following an investigation of the distillery of petitioner by Mr. Constante Soller, then Chief of the Investigation Unit of the Alcohol Tax Division, respondent assessed and demanded from petitioner the payment of the amount of ₱17,270.40 representing specific tax on 24,672 proof liters of rectified alcohol, the loss of which is alleged to have been over and above ordinary losses due to natural causes.

In determining what an ordinary or normal loss is, the investigator made a comparative analysis of the losses in the three tanks. In order to get the normal loss for tank B-11, he compared the losses incurred in this tank during two given periods, i.e., the period from July 26 to November 5, 1956, and the period from January 2 to August 28, 1957. During the

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first period, he found a loss of 2,836 gauge liters from the 152,000 gauge liters handled, and during the second period, a loss of 1,972 gauge liters from the 366,617 gauge liters handled. Considering that the first period was shorter with less stock handled, and yet the losses were more than those in the second period, he concluded that the loss during the first period was abnormal, while the losses during the second period were normal.

Using the losses incurred in tank B-11 during the second period as the standard measure for what he calls a normal loss, he then proceeded to tank B-10, and concluded that its losses of 11,210 gauge liters, incurred during the period from January to June 1957, were not normal (pp. 114-115, t.s.n.).

By the same procedure, he determined an excess loss of 3,889 gauge liters of alcohol in tank B-9.

As a result of this so-called comparative analysis of losses, he finally concluded that the losses of 2,530 gauge liters in tank B-11, the losses of 6,640 gauge liters in tank B-10, and the losses of 3,889 gauge liters in tank B-9, were all in excess of what he called normal losses (pp. 122-123, t.s.n.). However, these losses are admittedly less than the 1% loss allowable under Section 22 of Revenue Regulations No. 3, as amended by Section 3, of Revenue Regulations No. 24 (pp. 123-124, t.s.n.).

The only issue raised in this appeal is whether or not the assessment of ₱17,270.40 on the 24,672 proof liters of alcohol is valid.

The petitioner contends that - the assessment is illegal: (a) because the tax in question is sought to be imposed on losses well within the 1% over-all losses allowable under Section 22 of Regulations No. 3, as amended by Section 3 of Regulations No. 24, of the Bureau of Internal Revenue; and (b) because the method adopted by the respondent in ascertaining the losses in dispute is not only unsound, but is also unwarranted in law.

Contrarywise, respondent seeks to justify the assessment, alleging that the 1% maximum loss allowance is granted only when the said loss is unavoidable, and inasmuch as there is no proof indicating that the losses were caused by unavoidable causes, said loss is subject to tax. Furthermore, he contends, that pursuant to the provisions of Section 133 of the Tax Code, the specific tax had already accrued and attached to the alcohol before a portion of the same was lost thru evaporation, and cites the cases of La Tondeña, Inc. vs. Collector, CTA Case No. 99, December 7, 1955, affirmed in G.R. No. 10431, July 31, 1962, and CTA Case No. 393, September 30, 1958, in support of his contention.

Section 22 of Regulations No. 3, as amended by Section 3 of Regulations No. 24, of the Bureau of Internal Revenue, which governs losses and overages of distilled spirits, provides:

> "Section 22. Losses and overages.- No tax will be refunded on distilled spirits lost or destroyed by accident after their removal from the distillery wherein produced, nor will the collection of the tax be waived on bonded spirits similarly lost or destroyed.
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> "The internal revenue tax attaches to distilled spirits as soon as they come into existence as such, and any loss which occurs before removal of same must be accounted for in the official register book of the distillery. Losses in rectification of crude spirits and losses in compounding liquor will be ascertained by the gauger, verified by the internal revenue agent, and credited on the auxiliary register books as they occur. A loss not exceeding 7 per cent in rectification and 2 per cent in compounding may be allowed by the Collector of Internal Revenue when such a loss is not caused by fraud, negligence or carelessness of the distillers or owners of the rectifying establishments. Other losses exceeding 1 per cent of the total stock handled since the last stock taking will also be subject to disallowance." (Italics supplied)

The afore-quoted reglementary provisions allow loss of alcohol up to 1% of the total stock handled since the last stock taking. In other words, such loss is not subject to specific tax. And inasmuch as the loss in question is admittedly less than 1% of petitioner's total stock handled since the last stock taking, the same is undoubtedly not subject to specific tax in pursuance of Sec. 22 of Regulations No. 3, as amended, of the Bureau of Internal Revenue.

Respondent contends that the 1% loss suffered by petitioner is not allowable because the same was avoidable. But there is no showing that the loss in question could have been avoided. The loss of alcohol suffered by petitioner is due to evaporation during the storage. Evaporation is an inescapable consequence of alcohol's volatile nature. Hence, the loss under consideration is unavoidable.

The La Tondeña cases, supra, cited by respondent, are not authoritative in the case at bar for the reason that the former cases involve losses of alcohol thru evaporation during the process of re-distillation and losses of alcohol while in transit under a bond provided for in Section 129 of the Tax Code, respectively. Whereas, in the instant case, the losses thru evaporation occurred during the storage of the alcohol.

WHEREFORE, the assessment appealed from is hereby reversed, without any pronouncement as to costs.

SO ORDERED.

Manila, January 7, 1963.

MARIANO NABLE
Presiding Judge

WE CONCUR:

~~AUGUSTO M. LUCIANO~~
Associate Judge

ROMAN M. UMALI
Associate Judge

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