CENTRAL AZUCARERA DE TARLAC,
Petitioner,

July 9, 1956

C.T.A.
CASE NO. 90

- versus -

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is a petition to review the decision of the respondent Collector of Internal Revenue, assessing against and demanding from the petitioner Central Azucarera de Tarlac the sum of ₱19,980.00 as specific tax on seventy-five (75) drums of rectified alcohol allegedly removed from the place of production of the latter without prior payment of the corresponding specific tax and the additional amount of ₱10,000.00 in extrajudicial settlement of its penal liability for violation of the revenue law.

It appears that on November 25 and 27, 1953, O'phir Drug & Cosmetic Manufacturing Co. of Northern Hills, Malabon, Rizal, under a previously secured authority from the respondent to buy alcohol of a formula which is given below, purchased from the petitioner 25,508.75 gauge liters and 9,183.15 gauge liters, respectively, of denatured alcohol.

> "To every 100 gauge liters of ethyl alcohol of not less than 180 degrees proof, there shall be added two (2) liters of methanol and thirty-five (35) cubic centimeter of uranin solution (0.25 grams of uranin to every 100 c.c. of water)."

Under the terms of the contract of sale (Exhibit "G"), O'phir Drug & Cosmetic Manufacturing Co. was to supply the denaturants and the drum-containers for the alcohol. Delivery was to be effected in the premises of the petitioner's distillery at San Miguel, Tarlac.

The denaturing committee was composed of distillery agent Bayani Quietson, as chairman, and storekeeper-gauger Genaro Lagman, deputy provincial treasurer Arsenio Torres and the petitioner's assistant chemist Pastor Gaceta, as members. On November 25, 1953, this committee, therefore, satisfied itself as to the quality of the methanol supplied by O'phir Drug & Cosmetic Manufacturing Co., which was contained in drums labelled "Methanol", by taking its grade, although with an instrument belonging to the petitioner. This denaturant was found to be 196° degrees. The uranin solution, which was contained in bottles, was not however chemically tested for its quality.

The denaturing process was done by drawing the methanol from the drum-containers into a 15-liter receiving bucket. Four (4) liters of methanol were measured from the 15-liter bucket and poured into each of the 125 drums prepared for November 25, 1953. Then seventy (70) cubic centimeters of uranin solution was poured into each and every one of the 125 drums. The running of 200 gauge liters of rectified alcohol into the 125 drums prepared for November 25, 1953 would have completed the order of O'phir Drug &

Cosmetic Manufacturing Co. for that day, but only 45 of the 125 drums were actually filled with said 200 gauge liters of rectified alcohol. The process of denaturing had to cease at 4:00 o'clock in the afternoon because the petitioner allegedly refused to pay the laborers for overtime work. After being covered, labelled and sealed, the 45 drums filled with rectified alcohol, methanol and uranin solution were therefore loaded on trucks furnished by the buyer O'phir Drug & Cosmetic Manufacturing Co. The denaturing committee executed a certificate (Exhibit "D") to the effect that on November 25, 1953 it witnessed the denaturing of 9,000 gauge liters of rectified alcohol by mixing the same with 180 gauge liters of methanol and 3.15 gauge liters of uranin solution as per formula authorized by the Collector of Internal Revenue.

The remaining 80 drums in which methanol and uranin solution were poured and which remained unfilled with rectified alcohol on November 25, 1953, were covered but not sealed. They were left in the premises of the petitioner from the afternoon of November 25, through the whole day of November 26, until the morning of November 27, with no precautionary measure having been previously taken against possible tampering of their contents.

Before resuming the denaturing process on November 27, 1953, the committee members went to every one of the 80 drums, shook them and smelled the contents thereof. On that same day, however, O'phir Drug & Cosmetic Manufacturing Co. placed an additional order for 45 drums of denatured alcohol. Apparently satisfied that the contents of the 80 drums were not tampered with, the committee therefore prepared 45 additional empty drums which were brought by the buyer for the receipt of denatured alcohol. Repeating the process done by them on November 25, 1953, methanol and uranin solution were poured into the 45 additional drums. Finally rectified alcohol was poured into the 80 drums and 45 drums, respectively. The 125 drums of what were supposed to contain denatured (methanol, uranin solution and rectified) alcohol were covered, labelled and sealed. They were loaded on trucks provided for by the buyer on that same day. The denaturing committee executed certificates (Exhibits "D-1" and "D-2"), certifying that it witnessed on November 27, 1953 the denaturing of rectified alcohol as per formula authorized by the Collector of Internal Revenue.

At about 10:00 o'clock in the evening of November 27, 1953, Patrolman Felimon Pacheco of the Malabon Police stopped at Malabon, Rizal, two trucks which were loaded with 87 drums of alcohol. The drivers informed the police officer that the said alcohol came from the petitioner. The drums of alcohol were impounded and later turned over to the agents of the Bureau of Internal Revenue.

Upon chemical analysis by a chemist of the National Bureau of Investigation of samples taken from each of the 87 drums of alcohol, it was found that seventy-five (75) drums contained rectified alcohol. On May 20, 1954, the respondent Collector of Internal Revenue therefore assessed against and demanded of the petitioner the payment of ₱19,980.00 as specific tax on the seventy-five (75) drums of alleged rectified alcohol and ₱10,000.00 in extrajudicial settlement of the penalty prescribed in Section 174 of the Tax Code. Hence, this petition for review.

The issues involved in this case may be stated as follows:

> 1. Whether or not the petitioner is liable for the payment of ₱19,980.00 as specific tax on the seventy-five (75) drums of rectified alcohol pursuant to Section 133 of the National Internal Revenue Code.
>
> 2. Whether or not the petitioner is liable for the penalty of ₱10,000.00 in extrajudicial settlement of its penal liability prescribed in Section 174 of the same Code.

The pertinent provisions of law relied upon by the respondent in support of his stand that the petitioner is liable for the payment of the specific tax and the penalty are found in Sections 124, 133 and 174 of the National Internal Revenue Code. To quote:

> "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."

x x x

"SEC. 133. <u>Specific tax on distilled spirits.</u> - On distilled spirits there shall be collected subject to the provisions of section one hundred and twenty-eight of this Act, except as hereinafter provided, specific taxes as follows:

"(a) If produced from sap of the nipa, coconut, casseva, camote, or buri palm, or from juice, syrup, or sugar of the cane, per proof liter, seventy centavos; x x x."

x x x

"SEC. 174. <u>Unlawful possession or removal of articles subject to specific tax without payment of tax.</u> - x x x Any manufacturer, owner, or person in charge of any article subject to a specific tax who removes or allows or procures the unlawful removal of such article from the place of manufacture or bonded warehouse, upon which article the specific tax has not been paid in the time and manner required x x x x shall for the first offense be punished by a fine of not less than five times the amount of the specific tax due on the article removed, but not less than five hundred pesos nor more than ten thousand pesos or by imprisonment of not less than six months and one day but not more than six years, or both."

Relative to the first issue, it is the contention of the respondent that the petitioner should have taken the necessary steps to determine whether the denaturants supplied by O'phir Drug & Cosmetic Manufacturing Co. fully met the requirements set forth in Section 26, Part 1, of the United States Denatured Alcohol Regulations; that it should have observed strict compliance with the requirements of law and regulations on the denaturation of alcohol; and that having failed in both cases, the petitioner should be liable for the consequent failure to denature the said alcohol. On the other hand, the petitioner argues that it should not be held liable for the specific tax for the reasons that the entire denaturing process was conducted under the direct control and supervision of a committee, the chairman and members of which were appointed by the Provincial Revenue Agent of Tarlac; and that the denaturants were supplied by the buyer and were passed upon by the committee.

The petitioner does not dispute the findings of the NBI chemist that the seventy-five (75) drums in question contained rectified alcohol. Likewise, there is no controversy that the said drums of rectified alcohol came from the distillery premises of petitioner. With these undisputed facts and the circumstances surrounding the denaturation process, we shall now determine whether or not the petitioner is liable for the specific taxes sought to be imposed by the respondent.

While Section 124 of the Tax Code does not categorically point out who among the persons enumerated by it are originally and primarily liable for the payment of the specific tax, we believe that the manufacturer or producer of the domestic product subject to the tax is the one originally and primarily liable therefor. However, where the manufacturer or producer cannot be ascertained or can not be reached, the law permits the tax to be assessed and collected from the possessor of the product. This interpretation flows from the intendment of the law imposing the duty to pay the specific tax immediately before the removal of the product from the place of manufacture or production.

Except as otherwise provided for by law, a specific tax automatically attaches to a thing manufactured in the Philippines for domestic sale or consumption. By and large, its payment is the concern and liability of the manufacturer or producer.

Moreover, the petitioner's profession of good faith cannot excuse it from the payment of the specific tax on the rectified alcohol in question. We cannot subscribe to the proposition that there was good faith on the part of the petitioner so much so that it should be exempt from the tax liability. It's flagrant and repeated failure to comply with Section 164 of the National Internal Revenue Code, Chapter V of Circular No. 16 and the written instruction of R. Aguinaldo, Supervisor of Distilleries, negates petitioner's profession of good faith.

It appears uncontradicted that the denaturation process was held in the premises of the petitioner and not in a denaturing warehouse. It was done in individual drums. The remaining 80 drums in which the denaturants were poured on November 25, 1953 were left for two days in the premises. All these constitute palpable violation of, if not negligence in the performance of petitioner's obligations under Section 164 of the Tax Code, the circular implementing said statutory provision, and, particularly the instruction of the Supervisor of Distilleries.

The fact that the alcohol in the instant case has been passed upon and certified to by the denaturing committee as duly denatured does not equally exempt the petitioner from paying the specific tax. It is a cardinal principle of law and well settled in jurisprudence that the Government is not estopped by the neglect or omission of its officers or agents. (See Bachrach Motor Co. v. Uson, 50 Phil. 981; Pineda v. Court of First Instance of Tayabas, 52 Phil. 803).

In connection with the participation of the denaturing committee in the denaturing of the alcohol in question, we feel constrained to give way to the urge to make some observations. The committee did not ascertain whether or not the uranin solution was of the required grade. It allowed the denaturation in individual drums, not in a denaturing tank. And it permitted the eighty (80) drums, which contained the denaturants, to be left in the premises of the distillery without taking precautions against the possibility of said denaturants being tampered with or substituted. All these clearly indicate that the procedure observed was very irregular and improper. They constitute a crass violation of Circular No. 16 and the instructions of the Supervisor of Distilleries. But, above all, the committee chairman and members are guilty of misrepresentation, to state it mildly, when it certified to the "Pumping from B-tank to (the) denaturing tank x x x x."

We believe and so hold that the petitioner Central Azucarera de Tarlac is liable for the payment of the ₱19,980.00 as specific tax on the seventy-five (75) drums of rectified alcohol in question

We now come to the second issue. The respondent likewise seeks to collect from the petitioner the sum of ₱10,000.00 in extra judicial settlement of the penalty prescribed in section 174 of the National Internal Revenue Code. We have previously passed upon and ruled on an issue of similar nature in the case of Soledad R. Briñas v. Collector of Internal Revenue, C.T.A. Case No. 16, September 14, 1955, which we reproduce in part:

> "x x x Criminal violations of the Revenue Code may be compromised by the Collector of Internal Revenue by virtue of the authority conferred upon him by Section 309 of the same Code. A compromise by its very nature implies mutual agreement by the parties in regard to the thing or subject matter which is to be compromised. An offer of compromise does not therefore assume the category of a compromise until it is voluntarily accepted by the other party, and no obligation arises or is created by a simple offer or suggestion coming from one of the parties without acceptance by the other.
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> "In this case, the respondent has suggested to petitioner the payment of ₱20.00 as compromise in order to extinguish her supposed civil liability under section 209 of the Revenue Code. Neither the respondent nor this Court can compel the petitioner to pay the said amount against her will. Upon her refusal, the respondent is of course at liberty to take appropriate action dictated by the Revenue Code."

By the same token, this Court cannot order the petitioner Central Azucarera de Tarlac to pay the sum of ₱10,000.00. The choice of paying or not paying it distinctly belongs to petitioner.

WHEREFORE, the decision appealed from is hereby modified in the sense that the petitioner Central Azucarera de Tarlac shall pay to the respondent Collector of Internal Revenue the sum of ₱19,980.00 as specific tax on the 75 drums of rectified alcohol in question. With respect to the sum of ₱10,000.00 demanded in extrajudicial settlement of the petitioner's liability under Section 174 of the Tax Code, the petitioner is at liberty to refuse to pay the same, and, in the event of refusal, the respondent may institute proceedings under said Section 174 as the facts and circumstances of the case may warrant.

SO ORDERED.

Manila, Philippines, July 9, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge