Jub.

LA GRANJA, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 220

SILVERIO BLAQUERA, in his capacity as Collector of Internal Revenue,
Respondent.

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

July 16, 1958

D E C I S I O N

This is an appeal filed by petitioner La Granja, Inc. from the decision of respondent Collector of Internal Revenue, assessing and demanding from petitioner the sum of ₱20,055.40 as specific tax prescribed by Section 133 of the National Internal Revenue Code, plus the sum of ₱5,000.00 as compromise penalty.

Petitioner is a corporation duly organized and existing under the laws of the Philippines with business address at Aparri, Cagayan. It operates a compounding establishment which manufactures liquor products, using as raw materials distilled spirits consisting of alcohol and nipa wine supplied by duly licensed distilleries. It has a selling department which conducts the sale of its own liquor products, and also the liquor products; mostly nipa wine, purchased from outside sources for resale.

Sometime in 1953, an investigation and examination of the books of accounts and other records of petitioner was conducted covering the period from June, 1949 to November, 1952, and as a result of the examination, respondent, on May 28, 1954, issued against petitioner the specific tax assessment under review which is based on the following grounds: (Exhibits "A" and "2")

(1) That petitioner used in the compounding of liquors, the following quantities of nipa wine but failed to debit the same under "Spirits Received" of its official register book:

Containers					Specific	
Demi-johns	Bottles	Gauge Liters	Grade	Proof Liters	Tax Per Proof Liter	Specific Tax Due
46		540	66°	356	₱0.60	₱ 213.60
31		465	62.66°	291	.60	174.60
50		525	71°	373	.60	223.80
	2,073	600	77.5°	465	.70	325.50
	2,640	780	86°	572	.70	400.40

TOTAL SPECIFIC TAX DUE --------- ₱1,337.90

(2) That a comparison of the figures which appear in petitioner's official register book and those which appear in its registered invoices disclosed that the sales of petitioner during the period in question exceeded its production, the excess in proof liters being as follows:

Containers					Specific	
Demi johns	Bottles	Gauge Liters	Grade	Proof Liters	Tax Per Proof Liter	Specific Tax Due
12		180	51°	92	₱0.60	₱ 55.20
	30,585	10,704.75	65°	6,958	.70	4,870.60
82		1,230	62°	763	.60	457.80
288		4,320	52°	2,678	.70	1,874.60
	1,703	596.65	62°	370	.60	222.00
	41,628	14,569.80	62°	9,033	.70	6,323.10
13		195	70°	137	.70	95.90
90		1,350	52°	702	.60	421.20
295		4,425	52°	2,301	.70	1,610.70

TOTAL SPECIFIC TAX DUE -------- ₱15,931.10 326

(3) That petitioner, using unregistered "missing" invoices with serial numbers from 1 to 450, sold 540 demijohns of liquors, detailed as follows:

Demi-johns	Kind	Grade	Gauge Liters	Proof Liters	Specific Tax Per Proof Liter	Specific Tax Due
288	Darisay	62°	4,320	2,678	₱0.60	₱1,606.80
252	Old Tata	52°	3,780	1,966	.60	1,179.60
		TOTAL SPECIFIC TAX DUE			---------	₱2,786.40

R E S U M E

(1)	Total Specific Tax Due -----	₱ 1,337.90
(2)	Total Specific Tax Due -----	15,931.10
(3)	Total Specific Tax Due -----	2,786.40
	TOTAL SPECIFIC TAX DUE AND COLLECTIBLE -------	₱20,055.40

The following are the issues in the case at bar, the first three of which are factual and the last legal in nature:

(1) Whether or not petitioner in fact received and used in the compounding of liquors the quantities of nipa wine mentioned in No. (1) above, without recording them in its official register book under "Spirits Received";

(2) Whether or not petitioner in fact produced the liquor products mentioned in No. (2) above, without accounting for them in its official register book; and

(3) Whether or not the petitioner in fact sold the 540 demijohns of liquors mentioned in No. (3) above, and used unregistered "missing" invoices, with serial

numbers from 1 to 450.

(4) Whether or not petitioner is liable for the compromise penalty of ₱5,000.00.

Let us now proceed to consider the three factual questions separately.

(1) Re: Assessment for ₱1,337.90

This assessment was made on the basis of the report to respondent, made by BIR Supervisor of Distilleries Ramon Aguinaldo, that petitioner used in the compounding of liquors certain quantities of nipa wine but did not record the same in its official register book under the column "Spirits Received." Petitioner admits that the quantities and the grades of nipa wine in question were used by it in the production of liquor products, and that the same were duly entered in its official register book under the column "Spirits Used." However, it denies the claim of respondent that the same quantities of nipa wine were not thusly recorded. On the contrary, petitioner maintains that the quantities of nipa wine in controversy were duly recorded.

We are inclined to believe petitioner. As shown and explained to our satisfaction, petitioner herein uses two wooden storage tanks in its compounding establishment, one of which is used for storing rectified alcohol and the other is used for storing crude spirits or nipa wine as it is popularly known. Crude Spirits or nipa wine are classified according to their quality and grades and the uses for which they are intended. Those of the same quality or flavor are usually stored together in the same tank, without taking into account the fact that the said crude spirits are of different grades. The result is that the crude spirits of different grades, which were previously received and later stored together, lose their original identity or grades and a mixture with a common grade is stored in the tank. It is natural for crude spirits of different grades to lose their original grades when stored or mixed together. When crude spirits are to be removed from the storage tank for use in the manufacture of liquors, the grade to be stated under the column "Spirits Used" in the official register book is the grade obtained at the time of removal, and not the different original grades of the various crude spirits making up the mixture which were previously recorded under the column "Spirits Received."

The procedure outlined above which petitioner followed accounts for the fact that there were certain grades of nipa wine which were recorded under the column "Spirits Used" but do not appear in the column "Spirits Received" of petitioner's official register book. Consequently, all the spirits which appear under the column "Spirits Used" were in fact previously recorded under "Spirits Received" of the official register book, and for this reason the specific tax assessment in the amount of ₱1,337.90 has no factual basis and should be withdrawn.

Furthermore, during the period under review, the official register book indicates that petitioner received and recorded more proof liters of spirits than it used.

This is an unmistakable sign that petitioner did not use distilled spirits in the compounding of liquor which were not previously duly recorded. In this connection, we observe that petitioner could not have recorded under the columnar space "Spirits Used" the spirits which were not previously reported as received. If petitioner did otherwise, it would incite the suspicion of respondent that it was evading the payment of taxes with intent to defraud the government.

(2) <u>Re: Assessment for ₱15,931.10</u>

The basis of this assessment is the fact that a comparison of the figures which appear in petitioner's official register book and those which appear in its registered invoices disclosed that the sales of petitioner during the period in question exceeded its production. Petitioner admits that it sold more liquor products than what were produced in its compounding establishment. However, petitioner contends that this fact is no proof that it understated the actual production of its compounding establishment. The excess of sales over production, petitioner explains, is due to the fact that it sold not only liquor products produced in its compounding establishment but also liquor products, mostly nipa wine, purchased from duly licensed suppliers for resale. On the other hand, respondent claims that the said excess represents compounded liquors manufactured in the compounding establishment of petitioner, and that as the nipa wine used in manufacturing the said excess was not recorded in the official register book, respondent concludes that the specific tax thereon has not been paid. Hence, the present assessment in the amount of ₱15,931.10.

The evidence presented by both parties supports the contention of petitioner. It must be noted that petitioner herein is not a producer of nipa wine. It merely purchases its raw materials in the manufacture of liquor products from duly licensed distilleries who are themselves the proper persons liable for the specific taxes on the same, or in the absence of proof to the contrary, it is reasonable to presume and conclude that the specific tax on these raw materials have already been paid before they were removed from the producing distillâeries (Sec. 69, (ee), Rule 123, Rules of Court). With regard to the excess of the sales over the production of petitioner during the period in question, the preponderance of evidence is to the effect that the said excess was not produced by petitioner but purchased from suppliers and sold to its customers. Moreover, there is no direct and positive proof to show that petitioner herein actually understated its production. Therefore, the demand of respondent for the payment of ₱15,931.10 as specific tax on the said excess should be withdrawn.

(3) Re: Assessment for ₱2,786.40

This assessment was based on the following portion of the report of Ramon Aguinaldo, Supervisor of Distilleries, who conducted the investigation regarding the specific tax liability of petitioner: (Exhibit "1", p. 5, BIR rec.)

> "Among the stubs of sales invoices issued and verified, thirteen (13) bearing serial numbers 451-1,100 were found apparently to have not been registered with the Provincial Revenue Agent, showing sales of 401 demijohns of Darisay 62° proof, and 385 demijohns of Old Tata 52° proof, or a total of 786 demijohns. If it is assumed that those unregistered sales invoices started from serial number '1', and basing the proportion on the quantity that might have been sold thereon on those covered by invoices Nos. 451 to 1,100, the company may be assessed to have sold under those missing invoices the total of 540 demijohns. On the basis of known sales, 288 demijohns of the assessed sales of 540 demijohns may be classed as Darisay 62° and 252 demijohns, as Old Tata 52°."

Relative to the alleged "missing" invoices mentioned in Mr. Aguinaldo's report (Exhibits "8" to "8-L"), we find that no direct proof was presented to show that any of these alleged "missing" invoices really existed, or if they existed, that they were actually used by petitioner herein in the sale of liquors. Petitioner denies that these invoices belong to it or were issued by it and respondent has not shown that there is reasonable basis to assume that these invoices (serial numbers 450 to 1,100 as well as the alleged missing invoices with serial numbers 1 to 450) were used by petitioner. In fact there is evidence to show that these were being used by sellers of petitioner's products, but their issuance were either not known to or authorized by petitioner. And even more there is no reasonable basis to conclude, as respondent assumes, that on these alleged "missing" invoices, petitioner sold 540 demijohns of liquor on which determination was based solely on the quantity covered by the invoices with serial numbers 450 to 1,100. Assuming arguendo that these invoices were in fact belonging to petitioner, it does not necessarily follow that the quantity sold within a series of invoices would remain the same. Rather the quantity sold must be determined on some facts or evidence from which a reasonable inference can be drawn to determine more or less fairly such quantity sold. Assessment should not be based on mere presumptions without factual basis, no matter how reasonable or logical said presumptions may be. (Alberto D. Benipayo vs. Collector of Internal Revenue, C.T.A. Case No. 251, January 23, 1958.)

Having found petitioner not liable for the specific tax herein sought to be collected by respondent, we find it unnecessary to discuss and dispose of the last issue. Be that as it may be, we have repeatedly held that this Court has no power to compel a taxpayer to pay a compromise penalty, the collection of which being fundamentally based upon a voluntary agreement of both parties to the same (see Catalino Ignacio vs. Collector, C.T.A. Case No. 170, March 24, 1958).

IN VIEW OF THE FOREGOING CONSIDERATION, the decision of respondent Collector of Internal Revenue, dated May 28, 1954, assessing and demanding from petitioner La Granja, Inc., the total sum of ₱20,055.40 as specific tax and penalty should be, as it is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, July 16, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Not appealed.