REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SMITH BELL AND CO. (PHILS.) INC.,
Petitioner,

- versus - C.T.A. CASE No. 2001

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - - - - - -x

D E C I S I O N

Petitioner appealed from the decision of respondent, dated March 10, 1969, imposing a deficiency specific tax of ₱22,175.20 on 220 cartons of "Babycham" wine imported by petitioner in 1965 and 1967, plus a compromise penalty of ₱1,000.00.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with office at Km. 13, South Super Highway, Parañaque, Rizal. In 1965 and 1967, petitioner imported from England 220 cartons containing 96 bottles, each of 105 cc., per carton, or an aggregate of 2,217.6 gauge liters of "Babycham" wine. Petitioner paid specific tax on the aforementioned importation amounting to ₱4,436.00 at the rate of ₱2.00 per gauge liter, provided in Section 134(c) of the Revenue Code.

Petitioner was investigated by a revenue agent in connection with the aforesaid importation. He reported and recommended to respondent that petitioner be taxed

64

at the rate of ₱12.00 per gauge liter, instead of ₱2.00, because the imported wine comes under the classification of "sparkling wine." Thereafter, respondent assessed petitioner the amount of ₱22,175.20 as deficiency specific tax, plus the sum of ₱1,000.00 as compromise penalty, or a total amount of ₱23,175.20. Petitioner, however, requested respondent to hold in abeyance the collection of the said assessment pending final resolution by the Supreme Court of a similar case entitled "Smith Bell & Co. (Phils), Inc. v. Commissioner of Internal Revenue," G. R. No. L-28271. The said request was denied by respondent in his letter to petitioner dated October 22, 1968, wherein he reiterated the demand for the payment of the deficiency specific tax. Subsequently, petitioner requested respondent to reconsider his assessment because the imported "Babycham" wine is not a sparkling wine. In support of its request, petitioner submitted to respondent a literature and/or brochure showing how the aforesaid "Babycham" wine is manufactured.

In view of petitioner's request for reconsideration, the Chief, Specific Tax Enforcement Division, Bureau of Internal Revenue, referred the said literature and/or brochure to the Laboratory Center, Bureau of Internal Revenue, to determine whether or not the

fc

imported beverage is a sparkling wine under the existing internal revenue laws and regulations.

On February 11, 1969, the Acting Chief, Laboratory Center, Bureau of Internal Revenue, submitted to the Revenue Operations Head, Specific Tax Division of the same Bureau, his report and/or analysis of the wine imported by petitioner which we will discuss hereafter.

The only question here at issue is whether or not the "Babycham" wine imported by petitioner is a "sparkling wine" taxable under Section 134(a) of the National Internal Revenue Code.

Section 134(a) of the said Code imposes a specific tax on "sparkling wine," regardless of proof, at ₱12.00 per liter of volume capacity. The said legal provision was the basis of respondent's deficiency specific tax assessment of ₱23,175.20, inclusive of compromise penalty. The other provisions involved herein are Sections 134(c) and 135 of the same Code. It is to be noted that Section 134(c) of the Revenue Code provides that "still wine containing more than fourteen <u>per centum</u> of alcohol" is subject to specific tax at the rateof ₱2.00 per gauge liter. The said legal provision was relied upon by the Collector of Customs of Manila in assessing and collecting from petitioner the sum of ₱4,436.00 when the imported wine in question arrived in Manila. On the other hand, Section 135 of the Revenue Code taxes "other fermented liquors" at ₱0.25 per gauge liter. Petitioner, therefore, contends that its importation of wine should be classified as "other fermented liquor" and not "sparkling wine" or "still wine" as embodied in Sections 134(a) and 134(c) of the Revenue Code.

In sustaining its position, petitioner finds solace and comfort in the absence of any specific legal provision defining the term "sparkling wine" in our Revenue Code. In the absence of any statutory definition as to the meaning of the term "sparkling wine", petitioner vigorously contends that resort should be made to extrinsic aids in determining the meaning and scope of the term "sparkling wine." One of these extrinsic aids, which petitioner considers reliable and valid, is the application of the doctrine involving statutes in pari materia.

Respondent considered the stand of petitioner as erroneous and without merit because the provisions of Section 134(a) of the Tax Code, which imposes a specific tax on "sparkling wine", are clear and explicit and, therefore, require no further interpretation. Respondent, however, failed to quote or even

87

cite any provision of the Revenue Code which would throw light on the correct meaning and interpretation of the term "sparkling wine." After simply quoting paragraph (a) of Section 134, which merely provides that "sparkling wine, regardless of proof, is taxed at twelve pesos per liter of volume capacity," respondent cited the definition of "wines" in Revenue Regulations No. 3 of the Department of Finance, which seems irrelevant and inapplicable to the case at bar because there is no dispute that "Babycham" is wine. As an act of self-contradiction, respondent relied upon and resorted to the definition of "sparkling wine" found in Webster's New International Dictionary in interpreting what he claims to be clear and explicit language of Section 134(a) of the Revenue Code. Inferentially, respondent admits and concedes that our Revenue Code does not contain any definition of "sparkling wine" and there is no provision therein which would give any indication of the legislative intent as to the meaning of the said term.

Under the fundamental rule of statutory construction that all statutes relating to the same subject matter are to be construed with reference to each other so that effect may be given to all the provisions thereof, tax statutes should be inter-

88

preted in connection with other tax legislation. (51 Am. Jur. 363; Madrigal v. Rafferty, 38 Phil. 414.) The rule, therefore, which allows the court to resort to statutes in _pari materia_ finds justification in the assumption that statutes relating to the same subject matter were enacted in accord with the same legislative policy; together they constitute a harmonious or uniform system of law; and to maintain this harmony, every statute dealing on the same subject matter should be analyzed and considered. As a result, statutes in _pari materia_ should not only be considered but also construed to be in harmony with each other in order that each may be fully effective. They are to be construed together as if they constitute one act. (Crawford, Statutory Construction, pp. 431-434.)

Following the doctrine of statutes in _pari materia_, petitioner invited the attention of this Court to Republic Act No. 1937, otherwise known as the "Tariff and Customs Code of the Philippines," to show the correct meaning and interpretation of the term "sparkling wine." With Heading No. 22.05, Chapter 22, Schedule IV, of the said Code as a basis, petitioner concluded that "sparkling wine" refers only to wine of fresh grapes or grape must, that is, "sparkling wine" is wine made from the fermented juice of grapes. In short, petitioner claims that the "Babycham" wine im-

89

ported by it is not "sparkling wine" because it is not fermented from fresh grapes or grape must; and "Babycham" wine was produced from fermented juice of perry pears. Petitioner, therefore, submits that "Babycham" wine should be classified and taxed as "other fermented liquors" under Section 135 of the Revenue Code.

Admitting the validity of the premises of petitioner's argument, we still disagree with the conclusion reached by petitioner in view of the wording and intent of Heading No. 22.05 of the Tariff and Customs Code. Contrary to petitioner's interpretation, Heading No. 22.05 does not state that "sparkling wine" refers only to wine of fresh grapes or grape must; much less does it define "sparkling wine" as wine made from the fermented juice of grapes. The said Heading No. 22.05 merely classifies, for purposes of customs duties, "wine of fresh grapes, including grape must with added spirit," into:

"A. Sparkling wines .... ad val. 200%

"B. Other:
1. Containing by volume fourteen per cent or less of alcohol:
(a) In receptacles containing each more than two liters ...l. ₱0.10 or ad val. 100%

(b) In other receptacles .... l. ₱0.20
or ad val. 100%

(2) Containing by volume over fourteen per cent of alcohol:
(a) In receptacles containing each more than two liters .. l. ₱0.40
or ad val. 100%
(b) In other receptacles .... l. ₱0.70
or ad val. 100%."

To paraphrase the above-quoted provision only makes it clear that, for purposes of customs duties, wines of fresh grapes, including grape must with added spirit (must of fresh grapes to which sufficient spirit has been added to arrest fermentation), varies in character according to the quality and type of grapes from which they are prepared and the process of their manufacture. If the resultant product is "sparkling wine," then it is subject to an ad valorem duty of 200%; otherwise, the collectible customs duty would depend upon the alcohol content by the volume and the receptacles used. Other varieties and types of wines, also made of grape must or fresh grapes, depending upon their flavors and method of preparation, are treated under Heading Nos. 22.04 and 22.06. And wines obtained by fermentation of fruit or vegetable juices other than fresh grapes, fall under Heading No. 22.07. (See Vol. I, Commentaries of the

Tariff Code of the Philippines by Montano A. Tejam, p. 117.)

Construed together in the light of the other headings mentioned above covering the various kinds and types of wines and other fermented beverages, Heading No. 22.05 yields the conclusion that sparkling wine is subject to the ad valorem duty of 200%. Nowhere and in nowise can we extract the view, as petitioner would want us to do, that "sparkling wine" refers only to wines of fresh grapes or grape must, or wine which is made only from fermented juice of grapes. The stand of this Court is justified if we take into consideration that Heading No. 22.05 falls under Section 104 of the Tariff and Customs Code which enumerates the articles subject to customs duties and provides the rates which shall be levied, collected and paid upon the importation thereof. These dutiable articles are classified according to their nature under 21 schedules and 99 chapters.

Wines of different kinds and varieties are treated under Chapter 22 - "Beverages, Spirits and Vinegar" - depending upon whether they are:

(a) obtained from grape must, in fermentation or with fermentation arrested otherwise than by addition of alcohol;

(b) wine of fresh grapes, including grape must with added spirit;

(c) vermouths and other wines flavored with aromatic extracts;

(d) rice wine or sake; or

(e) other fermented beverages (e.g., cider, perry and mead).

On the other hand, the ordinary dictionary meaning of "sparkling wine" reads as follows:

> "Sparkling - Effervescing or effervescent; Sparkling beverages containing the gas carbon dioxide under pressure." (Webster's New International Dictionary, 2nd Edition.)

Chemists describe "sparkling wine" as:

> "Sparkling wines - are bottled before the fermentation has ceased so that they contain carbon dioxide gas in solution at greater than atmospheric pressure. When they are served, the carbon dioxide is liberated with effervescence. This gas and alcoholic contents vary according to the market for which they are intended. They may be dry or sweet, light or strong. Champagne, sparkling Burgundy, and Asti-Spumante are examples of sparkling wine." (Chemistry and Technology of Wine and Liquors by Herstein and Jacobs, 2nd Edition, p. 185.)

The Explanatory Notes to the 1950 text of the Brussels Nomenclature upon which the present Tariff and Customs Code of the Philippines was based read as follows:

> "Sparkling wines. These wines (generally white) are charged with carbon dioxide either by conducting the final fermentation in a closed vessel (spark-

43

> ling wines proper) or by adding the gas artificially after bottling (aerated wines)." (Vol. I, Commentaries of the Tariff Code of the Philippines by Montano A. Tejam, p. 117.)

From the foregoing discussion we are constrained to conclude that "sparkling wine" is obtained by the fementation of fruit juice including fresh grapes. If the resulting alcoholic beverage from the juice of any fruit are produced by fermentation (not distillation) and they are charged with carbon dioxide, either by conducting the final fermentation thereof in a closed vessel or by adding the gas artificially after bottling the same so that the carbon dioxide is liberated with effervescence when it is served, the the resulting beverage, whether they are obtained from fermented fruit or even vegetable juices, are classified as sparkling wine.

In the case at bar, our attention is focused on paragraph 13, including its Annexes O and P, of the Stipulation of Facts submitted by the parties. The memorandum report dated February 11, 1969 (p. 90, BIR rec.) of the Acting Chief, Laboratory Center of the Bureau of Internal Revenue, gives the following data, namely:

> "1. That 'Babycham' Perry is an <u>alcoholic beverage</u> found to contain <u>7.6% alcohol by volume</u>. (Identifica-

tion Laboratory No. 13321, copy hereto attached.);

"2. That the alcohol is produced by natural fermentation of the expressed juice of pears (a fruit);

"3. That carbonation is by natural process where excess and residual carbon dioxide is dissolved and retained under pressure throughout the processing and into the bottle;

4. That effervescence is due to the presence of carbon dioxide under a pressure in excess of normal atmospheric pressure;

"5. That 'Babycham' Perry is made in the manner of wine."

The said memorandum-report also reveals that:

"FINDINGS:

I. Description of sample:
   (a) Baby Cham, 'Champagne Perry'
   (b) Alcohol content - 14.7° proof spirit
   (c) Auxiliary label No. 1311223

II. Color:- Straw color

III. Characteristic:- Effervesces on opening and positive to carbon dioxide test.

IV. Alcohol Content:- 7.6% or 15.2 proof

REMARKS:- The sample is Chamgagne."

From the foregoing facts and figures, we hold that the "Babycham" wine imported by petitioner falls under the category of "sparkling wine." They are, therefore, subject to specific tax at the rate of ₱12.00 per gauge liter under Section 134(a) of the Revenue Code because the provisions thereof are broad

95

and comprehensive so as to include within its scope all kinds of sparkling wine, whether obtained by fermentation of fresh grapes, grape must, fruit juice, or even vegetable juice.

The collection of the compromise penalty of ₱1,000.00 is not justified because a compromise implies mutual agreement between the parties involved. One party cannot exact from or impose upon another a compromise. If the Commissioner of Internal Revenue believes that petitioner has incurred a penal liability for violation of the Revenue Code, he is free to institute criminal proceedings. For respondent to impose a penalty without the conformity of petitioner is illegal and unauthorized. (Coll. of Int. Rev. v. University of Santo Tomas, et al., G. R. Nos. L-11274 & L-11280, November 28, 1958; Coll. of Int. Rev. v. Bautista, et al., G. R. Nos. L-12250 and L-12259, May 27, 1959; Phil. International Fair, Inc., v. Coll. of Int. Rev., G. R. Nos. L-12928 & L-12932, Mar. 31, 1962.)

WHEREFORE, the decision of the respondent Commissioner of Internal Revenue appealed from is affirmed. Petitioner Smith, Bell & Co. (Phils.) Inc. is hereby ordered to pay respondent Commissioner of Internal Revenue or his duly authorized collection agent the amount of ₱22,175.20 as deficiency specific tax on the 220 cartons of "Babycham" wine imported by it in 1965 and 1967. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 27, 1971.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R. M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

97