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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

December 16, 1964

VICTORIAS MILLING CO., INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 499

MELECIO R. DOMINGO, as Commissioner of Internal Revenue,
Respondent.

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DECISION

This is an appeal from a decision of the Collector (now Commissioner) of Internal Revenue denying a claim for refund of the petitioner, Victorias Milling Co., Inc. of the amount of ₱6,350.40 paid under protest on October 3, 1956, as specific tax on twenty-four (24) drums which were allegedly found by Provincial Revenue Agent Gregorio Correa of Cebu City on May 11, 1953 to contain rectified or pure refined alcohol for beverage purposes instead of denatured alcohol for motive power as passed upon, certified to and labelled by the denaturing committee of the Bureau of Internal Revenue assigned to petitioner's distillery at Manapla, Negros Occidental. (Exh. J, also marked as Exh. 30, p. 244, BIR rec.)

It is not disputed that when the twenty-four (24) drums of alcohol in question left petitioner's distillery on May 9, 1953, specific tax corresponding to denatured alcohol, which is very much less than the specific tax on rectified alcohol, was fully paid thereon. However, the respondent's theory is to the effect that the merchandise in question, which was labelled and certified thus by his agents for which only a nominal amount of specific tax was paid, actually contained rectified or pure refined alcohol when the petitioner released the same from its distillery to its buyer, one Isidoro Morada. Hence, the assessment and collection of ₱6,350.40 as specific tax on the twenty-four (24) drums which allegedly contained four thousand eight hundred (4,800) gallons of rectified or pure refined alcohol. (Exh. 21-A, p. 157, BIR rec.) The mathematical computation made by the respondent in arriving at the exact figure of ₱6,350.40 assessed and collected by him and sought to be refunded by the petitioner is not questioned by the latter. (Exh. 7, p. 43 BIR rec.) It is the validity and fairness of the assessment and collection that is being impugned by the petitioner in this appeal.

For a better understanding and resolution of the issues raised in this appeal, which to our mind revolve mainly on the question of credibility of the witnesses, we shall state in brief the relevant facts of the case.

The petitioner herein, Victorias Milling Co., Inc. is a domestic corporation engaged primarily in the operation of a sugar central in Victorias, Negros Occidental. It also operates on the side a distillery plant at Manapla, same province, for the purpose of manufacturing alcohol for motive power for the use of its planters.

In the morning of May 9, 1953, the petitioner sold to one Isidoro Morada, a planter of Silay, Negros Occidental, twenty-four (24) drums of alcohol. (Exh. K, pp. 183-186, BIR rec.; See also p. 191 BIR rec.) The empty drums, which were supplied by the buyer, were filled in the premises of petitioner's distillery with alcohol from a large tank certified to by B.I.R. agents assigned to petitioner's distillery, as containing denatured alcohol for motive power. The key of the tank from which the supply was taken was kept exclusively by Baldomero Segovia, storekeeper-gauger of the Bureau of Internal Revenue, officially assigned to petitioner's distillery. The twenty-four (24) drums of alcohol which were loaded on a truck furnished by the buyer, left the premises of petitioner's distillery at about 10:30 A.M. that same morning. The merchandise was covered by petitioner's Sales Invoice No. 1354, dated May 9, 1953, with Isidoro Morada appearing as the buyer and full delivery of the cargo was made by the petitioner to the buyer that same morning under petitioner's Alcohol Delivery Order No. 787, dated May 7, 1953, (Exh. 6-I, p. 9, BIR rec.) properly receipted for by one Leopoldo Detoon, in representation of the buyer. The entire process was done in the presence and under the supervision of respondent's representatives officially assigned to the place — Distillery Agent Eleuterio S. Habe and Storekeeper-Gauger Baldomero Segovia — and on the part of petitioner, by factory superintendent Eduardo R. de Luzuriaga and distillery foreman Jose Kraft.

Before leaving the premises, the official labels evidencing payment of specific tax, which bore the inscription Assessment No. 0-1-39, Stickers Nos. 7134 to 7157, all dated May 9, 1953, were pasted by BIR Storekeeper Baldomero Segovia on the top surface of all the drums without touching the openings as pictured on Exhibits D and D-1 (p. 107, CTA rec.).

At about 7:00 o'clock in the morning of May 11, 1953, while Provincial Revenue Officer Gregorio Correa of Cebu City was making his rounds within the port area of said city following a tip that refined alcohol for beverage purposes was being shipped out from different distilleries of Negros Occidental to Manila and other ports of Mindanao and the Visayas, improperly labelled and anomalously taxed as denatured alcohol, he discovered twenty-four (24) fully loaded drums lying along the shipside. (Exh. 3, pp. 3-4, BIR rec.) Noticing that most of the drums were moist with alcohol leakage at the opening, he conducted on the spot the so called "smell test," and moments later the "water test" to find out if the contents of the drums was denatured alcohol as appearing on the labels. The natural smell of the alcohol exuding from the drums, according to Revenue Officer Correa, indicated clearly that it was refined alcohol because it did not hurt the nostrils a bit like denatured alcohol. The "water test" conducted by Revenue Officer Correa on the spot also proved the same thing -- that all the drums contained pure or refined alcohol. Denatured alcohol when mixed with water turns milky white while refined alcohol does not change color. Samples of the alcohol taken from the drums were also submitted by the Bureau of Internal Revenue to the Institute of Science and Technology for analysis, and according to the report the analyst, Flaviano M. Yenko, Exhibit 6-H (p. 175, BIR rec.) "no denaturant nor gasoline found in any of the three samples of alcohol submitted".

The bill of lading, Exhibit 3-A (p. 1 BIR rec.) of the twenty-four (24) drums shows that the cargo was shipped on the M.S. "Sorsogon" from Pulapandan, Negros Occidental to Cebu City on May 9, 1953 with one Jose Aquino appearing as the shipper and consignee.

Further investigation revealed, according to Revenue Officer Correa, that the twenty-four (24) drums which said officer ordered confiscated in the port of Cebu were the same containers that the buyer brought to petitioner's distillery when he took delivery of the alcohol purchased by him. The official labels with their corresponding assessment and sticker numbers which were pasted by BIR storekeeper Baldomero Segovia on the top surface of the drums before the cargo left its source were still there when Revenue Officer Correa ordered its confiscation in Cebu City.

From the evidence thus presented, we do not entertain the least doubt that the twenty-four (24) drums which were ordered confiscated in Cebu City on May 11, 1953 by Revenue Officer Correa were the same containers supplied by the purchaser Isidoro Morada when he took delivery of the alcohol purchased by him from petitioner's distillery at Manapla, Negros Occidental in the morning of May 9, 1953. Neither do we entertain the least doubt regarding the finding of Revenue Officer Correa to the effect that the drums contained pure or refined alcohol when he checked them in the port of Cebu in the morning of May 11, 1953. The finding of said official is supported by the analysis made by the Institute of Science and Technology.

As we see it, the only issue in this case is the determination of the kind of alcohol that was actually sold to and delivered by the petitioner to its buyer Isidoro Morada in the morning of May 9, 1953. Should we find that it was rectified or pure refined alcohol and not denatured alcohol as the twenty-four (24) drums were labelled, passed upon and certified to by the BIR denaturing committee assigned to petitioner's distillery, then the petitioner is liable for the payment of the corresponding specific tax thereon as rectified or pure refined alcohol irrespective of whether or not the attempt at tax evasion was brought about by the negligence or bad faith of petitioner's employees and/or the denaturing committee of the Bureau of Internal Revenue who witnessed the sale and delivery of the merchandise to petitioner's buyer. For rightly so, where it appears that the alcohol in question is in fact rectified, the circumstance that the same has been passed upon and certified to by a denaturing committee as duly denatured will not exempt the petitioner from paying the corresponding specific tax due thereon, it being a cardinal principle of law that the government is not estopped by the neglect or omission of its officers or agents. (Central Azucarera de Tarlac vs. Collector of Internal Revenue, C.T.A. Case No. 90, July 9, 1956, affirmed in G. R. No. L-11092, promulgated Sept. 30, 1958; 55 O.G. 5374.)

After examining carefully the mass of evidence presented, we are amply convinced and find ourselves with no other alternative, but to give credit to the testimony of the three witnesses for the petitioner that what was actually sold and delivered by the latter to

Isidoro Morada was denatured alcohol for motive power and not pure or refined alcohol as intimated by the respondent. And that if there has been any substitution at all of the alcohol contents of the twenty-four (24) drums, it was done by outsiders after the cargo had left the compound of petitioner's distillery plant during the intervening period of two days. We find it rather unfair and unconscionable to impute negligence or fraud to the two government officials and/or the two employees of the petitioner who witnessed the sale and delivery of the merchandise, when the evidence for the respondent is purely conjectural without any positive, direct and convincing evidence linking said persons to the anomaly.

On the contrary, the evidence for the petitioner shows that:

1. The Provincial Fiscal of Negros Occidental, after conducting a thorough investigation of the case for possible criminal action against the guilty party or parties, exonerated respondent's agents as well as the employees of petitioner for insufficiency of evidence (see Opinion No. 0347 of Asst. Prov. Fiscal Amunategui, marked as Exh. L, pp. 66-72, BIR rec.);

2. Distillery Agent Eleuterio S. Rabe and Storekeeper-Gauger Baldomero Segovia were investigated by Distillery Supervisor Roman Aguinaldo and Vicente Lasquety for possible complicity in the anomaly and no administrative charges were filed against them. On the contrary, Rabe was promoted to his present position of

BIR Examiner and Segovia, who was a Storekeeper-Gauger in the Bureau of Internal Revenue since 1925, was promoted to agent and later to his present position of Senior Revenue Seizure Agent;

3. Factory Superintendent Eduardo R. de Luzuriaga, to clear the good name of his company, also conducted with the assistance of their Security Department a secret investigation for possible complicity of their employees in the anomaly, particularly Jose Kraft, the Distillery Foreman who witnessed the sale and delivery of the twenty-four (24) drums of denatured alcohol to the buyer. Jose Kraft, who has served the company since 1937 as Distillery Foreman and who is now about to receive the benefits of retirement from the company, as well as the other employees of petitioner were cleared from all blame and suspicion;

4. According to Luzuriaga, a ranking official and old timer in petitioner's company, and whose testimony we have no reason to doubt, since November 5, 1952, his company has ceased to manufacture distilled alcohol for beverage purposes; that after they stopped manufacturing distilled alcohol for beverage purposes, they still kept stock of rectified alcohol but only of 187.8° proof, a low class of refined alcohol used for motive power or industrial purposes and <u>not</u> pure refined alcohol of 189° proof spirits for beverage purposes as the respondent claims (Exh. 7, p. 43 BIR rec.) was contained in the twenty-four (24) drums when his subordinate, Revenue

Officer Correa confiscated the same in the port of Cebu; and, that considering the stock on hand at the time of the sale as found by respondent's agents, it was utterly impossible for petitioner to sell 4,800 gauge liters of pure or refined alcohol of 189° proof on May 9, 1953; and,

5. Revenue Officer Gregorio Correa of Cebu City, a lawyer and commerce graduate, while testifying as sole witness for the respondent, declared that after conducting a thorough investigation of the matter, he submitted his report, Exhibit 6-G (pp. 17-21, BIR rec.) to the respondent dated May 16, 1953.

We note, that on cross-examination, Correa admitted that in said report he could not pinpoint the person or persons liable for paying the assessment because he was not able to find the real owner of the confiscated goods. (pp. 186-187 t.s.n.) Correa further testified on cross-examination that he was even offered a bribe of ₱2,000.00 by a person who claimed to be a representative of the shipper and consignee, Jose Aquino, in order to hush the case; that a representative of the shipping company as well as many others from Cebu also approached and threatened him with bodily harm for his rigidness in the enforcement of tax laws within his territory and presumably for his refusal to play ball with the guilty party or parties (pp. 188-191 t.s.n.). We note, however, that the alleged offer of bribe and threats were all made by persons from Cebu and not from petitioner's employees and respondent's agents in Negros

Occidental, where, according to respondent's own theory, the anomaly originated. To add one more circumstance in favor of petitioner's good faith is the candid admission of respondent's lone witness, Revenue Officer Gregorio Correa that "I have no suspicion that the alcohol could come from the Victorias Milling Company because in fairness to everybody, I have no idea or I have no news that the Victorias Milling Company has been involved in this kind of operation." (p. 196 t.s.n.)

In resume, we find and so hold after weighing carefully the evidence adduced by the parties, that what the petitioner sold and delivered to Isidoro Morada in the morning of May 9, 1953, as certified to by Distillery Agent Rabe and Storekeeper-Gauger Segovia, was denatured alcohol for motive power and not pure or refined alcohol for beverage purposes as conjectured by the respondent, and, if there has been any substitution at all of the contents of the twenty-four (24) drums during the interregnum of two days after the buyer acquired ownership and full possession of the merchandise, the substitution must have been perpetrated by outsiders without the knowledge and complicity of petitioner's employees or respondent's agents.

It is not a remote possibility, considering the testimony of respondent's witness, Gregorio Correa, that there are other distillery plants in Negros Occidental engaged in illicit transactions of this nature (p. 146 t.s.n.) that after the denatured alcohol now in question changed hands, some unscrupulous outsiders might have made use of the labelled drums to substitute their contents with distilled alcohol smuggled from other distilleries to save on specific taxes and avoid detection. Or, there also exists that possibility that the stickers pasted by Storekeeper-Gauger Segovia on the top flat surface of the twenty-four (24) drums before their release were removed by unscrupulous outsiders and placed on other similar drums containing distilled alcohol, considering the declaration of Factory Superintendent Luzuriaga, that the glue used on the official labels was made of Bria Vegetal from the anitong tree, a long drying paste, which makes it easy for anyone to remove the pasted labels without destroying them (pp. 82-83 t.s.n.).

Respondent has made capital of the fact, to bolster his suspicion of complicity on the part of his subordinates, their failure to paste the official labels on the openings of the drums (not on the top flat surface) to prevent or to detect tampering of its contents. However, much as the suggested procedure would have been the most practical, respondent was not able to cite any law or regulation to rebut the testimony of Baldomero Segovia, his Storekeeper-Gauger assigned to petitioner's distillery, that at the time he pasted the labels there was no standing rule or regulation in the Bureau of Internal Revenue requiring him to paste the official stamps or labels on the openings of the containers. (p. 54 t.s.n.)

Lastly, there is one good point raised by respondent which we believe is worthwhile considering, because it lends some semblance of support to his suspicion that petitioner's employees in charge of its distillery plant must have been in cahoots with the buyer and/or respondent's agents in this anomaly. According to Factory Superintendent Luzuriaga, since November 5, 1952 his company manufactured only denatured alcohol for the use of its sugar planters. The statement of denatured alcohol sales, Exhibit K, (pp. 183-186 BIR rec.) of the petitioner for the period comprising January 1 to June 30, 1953 shows that one Isidoro Morada of Silay, Negros Occidental, bought on May 9, 1953, 4,800 liters of denatured alcohol for ₱768.00 under Invoice No. 1354 and Delivery Order No. 787. While at first, Luzuriaga testified that the buyer of the alcohol in question was one Teodoro Morada (p. 98 t.s.n.) he finally admitted that it was Isidoro Morada, a planter of Silay City (p. 100 t.s.n.).

Teodoro Morada of Silay, Negros Occidental also appears as one of the buyers in the aforesaid statement of denatured alcohol sales (p. 186 t.s.n.). In his affidavit, Exhibit 6-F (p. 22 BIR rec.) Teodoro Morada states that he was never engaged in the buying and selling of alcohol and that he had nothing to do with the alcohol sold by the petitioner on May 9, 1953 to Isidoro Morada. According to the findings of Provincial Revenue Agent Araneta of Bacolod City (Exh. 4, p. 37 BIR rec.; Exh. 6-E p. 24 BIR rec.; Exh. 6-F p. 22 BIR rec.) as well as the Provincial Fiscal of Negros Occidental (Exh. L, pp. 66-72, BIR rec.) Isidoro Morada is unknown in Silay and is most likely a fictitious person.

If it were true that the buyer Isidoro Morada was a planter of Silay City as testified to by Luzuriaga, and that being an old timer in the company, he (Luzuriaga) is presumed to know all the planters with whom his company transacts business, why was Isidoro Morada not presented by the petitioner to corroborate the testimony of its three witnesses (Rabe, Segovia and Luzuriaga) regarding the sale? The unexplained suppression of Isidoro Morada's testimony by the petitioner, assuming that said person really exists and was the legitimate buyer as testified to by Luzuriaga (p. 100 t.s.n.) could lead one to the presumption that evidence willfully suppressed would be adverse if produced. (Sec. 69(e) Rule 123 Rules of Court.) However, in fairness to petitioner's employees and respondent's agents, we believe that this circumstance alone without any positive, direct and convincing evidence implicating them in the fraud, should not justify a finding that they were a party thereto. This becomes the more so considering that the persons involved in the sale were investigated and exonerated by three separate bodies.

Be that as it may, the petitioner is partly to blame for getting involved in this mess because of its failure to check the true identity of its buyer and, as pointed out by respondent's counsel, for its wanton failure to comply with the requirements of the law that in all sales in the amount of ₱50.00 or more, the residence certificate number, date and place of issue thereof of the buyer must be annotated on the invoice. (Sec. 15, Rev. Reg. No. V-1; 43 O.G. 4563.)

WHEREFORE, in view of the foregoing considerations, the respondent Commissioner of Internal Revenue is hereby ordered to refund the amount of ₱6,350.40, without interest, to petitioner Victorias Milling Co., Inc., which was erroneously collected from the latter as specific tax. No costs.

SO ORDERED.

Manila, December 16, 1961.

AUGUSTO M. LUCIANO
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge