

SURIGAO CONSOLIDATED MINING CO., INC., PETITIONER VS. COLLECTOR OF INTERNAL REVENUE AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-14878. December 26, 1963

Ponente: REGALA, J.

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REGALA, J.:

This is a petition to review the decision of the Court of Tax Appeals in Manila Civil Case. No. 4770 dismissing for lack of merit the action, of the Surigao Consolidated Mining Company for the refund of the total amount of P17,051.14 allegedly representing overpayment of ad valorem tax for the fourth quarter of 1941.

The record shows that before the outbreak of World War II, the Surigao Consolidated Mining Company (called SURIGAO CONSOLIDATED, for short), a domestic corporation which then had its principal office in the city of Iloilo, was operating its mining concessions in Mainit, Surigao. Pursuant to section 246 of the Internal Revenue Code, which prescribes the time and manner of payment of royalties or ad valorem taxes, it filed a bond and had been regularly filing its returns for minerals removed from its mines during each calendar quarter and paying ad valorem tax thereon within 20 days after the close of every quarter. In each case, computation of the ad valorem tax was based on the market value of the minerals set forth in the returns, subject to adjustment upon the receipt of the smelter returns showing the actual market value of the minerals shipped to the United States.

Due to the interruption of communications at the outbreak of the war, the principal office of Surigao Consolidated lost contact with its mines and never received the production reports for the fourth quarter of 1941. In order to avoid incurring any tax penalty, said company, on January 19, 1942 deposited a check in the amount of P27,000.00 payable to and "indorsed in favor of the City Treasurer (of Iloilo) in payment of the ad valorem taxes (approximate adjustment to be made when circumstances allow it) for the fourth quarter of 1941."

After the termination of the war, Commonwealth Act, No. 722 was enacted, which provided for the filing of returns for minerals removed during the last quarter of 1941 up to December 31, 1945 and the payment of ad valorem tax on said minerals to February 28, 1946.

Availing of the provisions of the aforementioned Act, the Surigao Consolidated, on December 28, 1945, filed its ad valorem tax returns for the fourth quarter of 1941, declaring as its tax liability the amount of P43,486.54. Applying the amount of P27,000.00 previously deposited with the City Treasurer of Iloilo, the returns indicated an unpaid balance of P16,486.54 as the "tax subject to revision."

However, on February 26, 1946, the Surigao Consolidated filed an amended ad valorem tax returns, under which amendment it declared a reduced ad valorem tax in the amount of P37,189.00. And crediting itself with the amount of P27,000.00 previously deposited with the City Treasurer of Iloilo, it paid the remaining balance of P10,189.00.

On September 24, 1946, the Surigao Consolidated again filed a statement of adjustment allegedly containing

figures and data of the complete smelter returns for minerals shipped to the United States. In the accompanying letter, a request was made, this time not only for the reduction of tax, but for the refund of the amount of P18,107.87. On October 19, 1946, another statement of adjustment was filed reducing the claim for refund to P17,158.01. Finally, on March 15, 1947, a third statement of adjustment was submitted further reducing the claim for refund to the amount of P17,051.14.

As the Collector of Internal Revenue denied the request for the refund of the said P17,051.14 on the ground that the money already paid as ad valorem tax was legally due to the Government, the Surigao Consolidated instituted with the Court of First Instance of Manila a civil action for its recovery. However, upon the enactment of Republic Act No. 1125 creating the Court of Tax Appeals, the case was remanded to the latter court for proper disposition.

After hearing the Court of Tax Appeals, on July 16, 1958 finding that the amount sought to be refunded had been lawfully collected, rendered its decision denying the claim for refund. The Surigao Consolidated in due time filed a motion for new trial on the ground that the decision was "not justified by the overwhelming weight of evidence" and that it was contrary to law. The tax court, however, denied the motion. Hence, this petition for review.

The question to be resolved is whether or not Surigao Consolidated, petitioner herein, is entitled to the refund of ad valorem tax in the total amount of P17,051.14, itemized as follows: The first item in petitioner's claim for refund in the amount of P1,191.46 represents the amount of ad valorem tax paid on minerals removed, from the mines but alleged to have been lost in transit on account of the war. The refund is sought under section 1 (d) of Republic Act No. 81, which provides as follows:

1.

Ad valorem tax on minerals removed from the
mines but allegedly lost in transit on account
of war

P1,191.46

2.

Ad valorem tax on minerals extracted from the
mines but allegedly looted during the Japanese
occupation

15609.73

3.

Allege overpayment of ad valorem tax on
minerals shipped to the United States

249.95

P17,051.14

The first item in petitioner's claim for refund in the amount of P1,191.46 represents the amount of ad valorem tax paid on minerals removed, from the mines but alleged to have been lost in transit on account of the war. The refund is sought under section 1 (d) of Republic Act No. 81, which provides as follows:

"Section 1. Any provision of existing law to the contrary notwithstanding:

* * * * *

"(d) All unpaid royalties, ad valorem or specific taxes on all minerals mined from mining claims or concessions existing and in force on January first, nineteen hundred and forty-two, and which minerals were lost by reason of the war or circumstances arising therefrom, are hereby condoned. Provided, That if said minerals had been or shall be recovered by the miner or producer, such royalties, ad valorem, or specific taxes on the same shall "be immediately become due and demandable."

Petitioner argues that since the law condones the taxes due from taxpayers who failed to pay their taxes, it would be unfair to deny this benefit to those taxpayers who had been prompt in paying theirs. The argument merits careful consideration. At first it would seem to be sound and logical. But the aforequoted section clearly refers to the condonation of unpaid taxes only. The condonation of a tax liability is equivalent and is in the nature of a tax exemption. Being so, it should be sustained only when expressed in explicit terms, and it cannot be extended beyond the plain meaning of those terms. It is the universal rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be mistaken. (Statutory Construction by Francisco, citing Government of P. I. vs. Monte de Piedad, 25 Phil. 42).

"The application of a statute creating an exemption from taxation to taxes already assessed depends upon whether it is retrospective in its operation. Such a statute has no retrospective operation, unless by the terms thereof it clearly appears to be the intention of the legislature that the exemption, shall relate back to taxes which have already become fixed, as a statute which releases a person or corporation from a burden common to the whole community should be strictly construed (Louisville Water Co. vs. Hamilton, 81 Ky. 517, * * * cited in 6 American and English Ann. Cases, p. 438).

Petitioner having failed to point to Us any portion of the law that explicitly provides for a refund of those taxpayers who had paid their taxes on the items and under circumstances mentioned in the abovequoted provision, We are constrained to hold that the benefits of said provision does not extend to it.

Even assuming arguendo that the provisions of Republic Act. No. 81 authorizes the refund of taxes already paid by petitioner, the latter would not still be entitled to the refund sought for under the first item. It is to be noted that petitioner's evidence of the alleged loss in transit as observed by the Court of Tax Appeals, merely consisted of testimony of witnesses who did not have personal knowledge of the circumstances which gave rise to the loss. Such evidence cannot, of course, be considered sufficient to establish that the minerals were in fact lost. Indeed, to hold otherwise, as remarked by Judge Luciano of the Court of Tax Appeals during the trial, would be to create a dangerous precedent.

Under the second item, petitioner seeks to recover the amount of P15,609.73 representing the ad valorem tax paid on minerals extracted from its mines but alleged to have been looted during the enemy occupation. In connection with the alleged looting of the minerals, the Tax Court has this to say:

"We are again confronted with the case where plaintiff has, to our mind, failed to present adequate evidence to prove such loss. The evidence if at all, is merely limited to the general and uncorroborated statements of plaintiff's officers that the same were lost in the mines. These testimonies cannot be taken on their full face

values, especially because they had no direct supervision over the handling of such minerals at the time of the alleged loss. Much less had these officers have personal knowledge of the loss. Under the circumstances, we can not make the finding that the minerals were in fact lost."

Going over the record, We find no reason to disturb the above findings of the Court of Tax Appeals, there being no showing that they are not substantiated by the evidence. With this observation, it would be useless ceremony to delve into the issue of whether ad valorem should be or should not be paid on minerals extracted from the mines but not removed therefrom.

One more item in petitioner's claim is the alleged overpayment of ad valorem tax in the amount of P249.95 on the minerals shipped to the United States. It is alleged that an ad valorem tax in the amount of P20,387.81 was originally paid on the minerals shipped to the United States with a gross value of P410,299.49, that the smelter returns from the United States show that the actual market value of the minerals shipped to the United States was P416,895.28; and that after deducting all allowable deductions amounting in all to P1,828.34, the true and correct amount of ad valorem, tax on said minerals was P20,137.86. Petitioner, therefore claims that the difference between the amount of P20,387.81 and P20,137.86 is an overpayment.

It is not disputed that, as indicated above, the amount of ad valorem tax on the minerals shipped to the United States is subject to adjustment upon the receipt of the smelter returns showing their actual market value. Petitioner contends that the statements of adjustment alleged to contain the figures and data set forth in the smelter returns are adequate evidence of the actual market value of the minerals shipped to the United States.

The best evidence of the actual market value of the minerals shipped to the United States are the smelter returns themselves. These returns are admittedly in petitioner's possession, but for unknown reasons, petitioner failed to produce them during the trial. As there is no credible and satisfactory explanation for the non-production of said returns, there arises the presumption that if produced they would be adverse to petitioner. Under the circumstances, the Court of Tax Appeals cannot be said to have committed error, much less abused its discretion, in refusing to give any probative value to the statements of adjustment.

It is a settled doctrine that in a suit for the recovery of the payment of taxes or any portion thereof as having been illegally or erroneously collected, the burden is upon the taxpayer to establish the facts which show the illegality of the tax or that the determination thereof is erroneous. In this case, petitioner failed to show that the amount of taxes sought to be refunded have been erroneously collected.

Conformably to the above, We are of the opinion that the Court of Tax Appeals did not commit any error in denying petitioner's claim.

WHEREFORE, the decision appealed from is hereby affirmed. Costs against petitioner.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon and Makalintal, JJ., concur.

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