

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PHILIPPINE PIPES AND MERCHANDISING CORPORATION AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-32898. August 21, 1987

Ponente: FERNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/56041c2b55f4/>

FERNAN, J.:

The issue posed for determination in this petition for review taken by the Commissioner of Internal Revenue from the amended decision of the Court of Tax Appeals in CTA Case No. 1858 entitled "Philippine Pipes and Merchandising Corp. vs. Commissioner of Internal Revenue" may be stated, thus:

For the purpose of computing the sales tax on concrete pipes and hollow blocks, is the cost of cement used as a raw material in the manufacture thereof deductible?

Succinctly, the antecedent facts are as follows:

Private respondent Philippine Pipes and Merchandising Corporation is a domestic corporation engaged in the business of manufacturing and selling concrete pipes and hollow blocks. In 1964, it was assessed by petitioner Commissioner of Internal Revenue for deficiency sales taxes and surcharges for the years 1958, 1959 and 1960, in the respective amounts of P5,507.45, P4,586.68 and P1,786.78, and compromise penalty in the sum of P2,360.00, or for a total amount of P14,240.91.

Private respondent protested the assessment, but was denied by petitioner. Two requests for reconsideration filed by private respondent met the same fate. Thus, private respondent filed before the Court of Tax Appeals (CTA) a petition for review of the decision of petitioner, docketed as CTA Case No. 1858. In its petition, private respondent alleged that it was a contractor and not a manufacturer; that granting *arguendo* that it was a manufacturer, as defined by Sec. 194 (x) of the Tax Code, the petitioner Commissioner erred in disallowing the deductions of the cost of the cement from the gross sales of the concrete pipes and hollow blocks for purposes of computing the sales tax; and that the assessment corresponding to the sales tax due for the year 1958 had prescribed.

In due course, the CTA rendered a decision sustaining petitioner Commissioner in his finding that private respondent is a manufacturer, but overturning his ruling on the non-deductibility of the cost of cement used as raw material in the manufacture of concrete pipes and hollow blocks. The CTA further ruled that the assessment for the sales tax due for the year 1958 had prescribed. Hence, the assessment was accordingly modified.

Petitioner moved for a reconsideration of the decision in so far as it allowed the deduction of the cost of cement from the gross sales of the concrete pipes and hollow blocks. Acting on the motion, the CTA issued an Amended Decision, which likewise upheld private respondent's theory of deductibility. Hence, the instant petition, petitioner assigning the following errors:

"[a] The Court of Tax Appeals erred in holding that the cost of cement used as raw materials in the

manufacture of concrete pipes and hollow blocks for the years 1959 and 1960 is deductible from the gross selling price of the latter products;

"[b] The Court of Tax Appeals erred in holding that cement in its manufactured form is now a mineral product;

"[c] The Court of Tax Appeals erred in applying Section 186 (A) of the National Internal Revenue Code and holding that cement is a tax-free product the value of which is deductible from the gross sales of cement pipes and hollow blocks." [1]

In support of its assigned errors, petitioner alleged that:

"[a] During the period involved in this case (1959 and 1960) the cement utilized in the manufacture of concrete pipes and hollow blocks was not subjected to the payment of sales tax under Section 186 of the Tax Code;

"[b] Under Section 186 of the Tax Code the cost of the raw materials which were used in the manufacture of an article for sale can be deducted from the gross selling price of the manufactured article if it is duly established that said raw material has been previously taxed under said Section 186 or under Section 189, also of the Tax Code;

"[c] During the years involved in this case, the cement used as raw materials in the manufacture of concrete pipes and hollow blocks which were sold was subjected to an ad valorem tax because the Bureau of Internal Revenue erroneously considered cement a mineral product and since it was not taxed under Section 186 of the Tax Code, the cost thereof is not deductible from the gross sales of cement and hollow blocks;

"[d] That as cement undergoes several processes, it should be considered a manufactured product;

"[e] Even granting for the sake of argument that cement is not subject to sales tax, the mineral component of cement is nonetheless still subject to the ad valorem tax and inferentially, the same is not the tax-free product contemplated under Section 186-A of the Tax Code." [2]

In the original decision of the CTA, the deductibility of the cost of cement used as raw material in the manufacture of concrete pipes and hollow blocks was anchored on the premise agreed upon by the parties that cement is a manufactured product, as purportedly held by this Court in the cases of *Cebu Portland Cement Corp. vs. Commissioner of Internal Revenue*, G.R. No. L-18649, 13 SCRA 333 and G.R. No. L-22605, 22 SCRA 56. From this assumption, the CTA held that since cement as a manufactured product is subject to the 7% percentage or sales tax under Section 186 of the Tax Code, its value is deductible when it is used as raw material of another manufactured product as the concrete pipes and hollow blocks of private respondent under the same Section 186 of the Tax Code which provides as follows:

"x x x Provided, That where the articles subject to tax under this section are manufactured out of materials likewise subject to tax under this section and section one hundred and eighty-nine, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles."

On the other hand, the basis for deductibility of the cost of cement in the Amended Decision is Section 186-A of the Tax Code, in connection with Section 188 [c] of the same Code. They respectively read:

"Section 186-A. Whenever a tax-free product is utilized in the manufacture or production of any article, in the determination of the value of such finished article, the value of such tax-free product shall be deducted. (Added by Section 5, Republic Act No. 2025)".

"Section 188. Transactions and persons not subject to percentage tax. - In computing the tax imposed in sections one hundred eighty-four, one hundred eighty-five and one hundred eighty-six, transactions in the following commodities shall be excluded:

x x x x x x x x

(c) Minerals and mineral products when sold, bartered, or exchanged by the lessee, concessionaire or owner of the mineral land from which removed."

The shift in the legal basis for deductibility was occasioned by this Court's Resolution in *Cebu Portland Cement Corp. vs. Commissioner of Internal Revenue*, G.R. No. L-18649, 21 SCRA 1425, wherein it was stated that the "Court did not, and could not, rule that cement is a manufactured product subject to sales tax; for the reason that such liability had never been litigated by the parties", as well as the subsequent ruling in *Cebu Portland Cement Co. vs. Collector (now Commissioner) of Internal Revenue*, G.R. No. L-20563, 25 SCRA 789, that "before the effectivity of Republic Act No. 1299 amending Section 246 of the National Internal Revenue Code, cement was taxable as manufactured product under Section 186, in connection with Section 194 (x) of said Code." [3]

Prescinding from these rulings and the provisions of Republic Act No. 1299, the CTA concluded that cement is a mineral product exempt from the payment of sales tax under Section 188 (c) of the Revenue Code, and therefore, a tax-free product within the contemplation of Section 186-A of the same Code.

The question whether or not cement is subject to sales tax has been laid to rest in the case of *Commissioner of Internal Revenue v. Republic Cement Corporation*, 124 SCRA 26 (1983), wherein this Court ruled that cement not being a "mineral product" within the meaning of Section 246 of the Tax Code but a "manufactured product", its sale is subject to sales tax imposed by Section 186, the same not being exempt under Section 188(c) of the Tax Code. Following the interpretation laid down in the 1965 case of *Cebu Portland Cement vs. Commissioner of Internal Revenue*, G.R. No. L-18649, 13 SCRA 333 (February 27, 1965), that cement is a "manufactured product", the Court clarified the ruling in the 1968 case of *Cebu Portland Cement vs. Commissioner of Internal Revenue*, G.R. No. L-20563, 25 SCRA 789 (October 29, 1968), to the effect that since cement was subject to sales tax immediately before the enactment of Republic Act No. 1299, it should remain to be so subject thereafter, considering that the law intended "no change of taxes whatsoever." This ruling was affirmed in the resolution of May 7, 1987 denying the three (3) motions for reconsideration of the 1983 decision filed by Republic Cement Corporation, APO Cement Corporation and Cebu Portland Cement.

Cement being subject to sales tax, its cost there-fore as raw material in the manufacture of concrete pipes and hollow blocks is deductible from the gross selling price of said articles.

The fact that during the period involved in this case, 1959 and 1960, cement was not subjected to the sales tax but to the ad valorem tax due to the erroneous classi-fication of the Bureau of Internal Revenue of cement as a mineral product cannot alter the result of the case. As correctly observed by the CTA in its original decision:

"There is nothing in the language of Section 186 of the Revenue Code that re-quires payment of the sales tax on the material as a prerequisite of (sic) the right to deduct the value of said material when used for manufacturing. The tax is of course presumed to be collected by the Bureau of Internal Revenue at the proper time and from the proper taxpayer - the cement manufacturer in this case." [4]

Indeed, it would be the height of injustice and oppression to burden private respondent with a higher tax base in order to rectify an error or mistake not of his own doing.

WHEREFORE, the instant petition for review is hereby DENIED. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] p. 7, Rollo

[2] pp. 7-8, Rollo.

[3] At page 800.

[4] p. 27, Rollo.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.