

REPUBLIC CEMENT CORPORATION, PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-20660. June 13, 1968

Ponente: CONCEPCION, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/5bac86b4908f/>

CONCEPCION, C.J.:

Appeal from a decision of the Court of Tax Appeals.

Petitioner Republic Cement Corporation is a domestic corporation engaged, inter alia, in the mining, from mineral lands held by it under lease and/or "mines temporary permit" from the Government, of limestone, silica and other minerals used in the production of cement.

For the period from May 1957 to December 1959, petitioner had paid royalties and/or ad valorem taxes based upon the value of the raw materials or minerals it had extracted and later used in the manufacture of cement, as determined by the "cost of production" or extraction of said materials or minerals.

Upon the theory that said royalties and/or ad valorem taxes are assessed on the market value of the cement produced and sold by petitioner as finished product, the Commissioner of Internal Revenue - hereinafter referred to as respondent - demanded from petitioner the payment of P79,876.72, as deficiency ad valorem tax and surcharge, based upon the amount it had realized from the sale of cement from September to December 1959.

Petitioner moved for a reconsideration, but, instead of granting the same, respondent increased the assessment of P498,653.04, covering the period from May 1957 to August 1959, on the basis of petitioner's gross receipts from the sale of cement.[1] On appeal taken by petitioner, this in-creased assessment was upheld by the Court of Tax Appeals. Hence, this petition for review of herein petitioner.

The questions for determination are:

- (1) Whether the ad valorem tax in question should be based on the value of the finished product, as held by respondent and the Court of Tax Appeals, or upon the value of the raw materials or minerals used in the manufacture of said finished product, upon extraction of said raw materials or minerals, as contended by the petitioner;
- (2) Whether said value shall be determined by the cost of extraction of the raw materials or minerals from the land or mines, or by the market value of said raw materials or minerals;
- (3) Whether the aforementioned value shall include that of the paper bag container in which the cement, as a finished product, is placed for distribution and/or sale;
- (4) Whether the disputed assessment violates the terms of petitioner's lease contract with the government, pursuant to which the 1-1/2% royalty therein stipulated shall be paid for the privilege of exploring, mining, extracting and disposing of said raw materials or minerals, based on the "actual market value" of the gross output

of limestone, which royalty shall be due and payable upon the removal of a mineral products from the locality where mined; and

(5) Whether petitioner is liable for the payment of surcharge.

The first question is far from being one of first impression. It has already been settled adversely to respondent herein. In *CEPOC v. Commissioner of Int. Revenue*,^[2] this Court, speaking through Mr. Justice Barrera, held:

"Ad valorem tax is a tax not on the minerals, but upon the privilege of severing or extracting the same from the earth, the government's right to exact the said impost springing from the Regalian theory of State ownership of its natural resources." xxx

"xxx While cement is composed of 80% minerals, it is not merely an admixture or blending of raw materials, as lime, silica, shale and others. It is the result of a definite process - the crushing of minerals, grinding, mixing, calcining, cooling, adding of retarder or raw gypsum. In short, before cement reaches its saleable form, the minerals had already undergone a chemical change through manufacturing process. This could not have been the state of "mineral products" that the law contemplates for purposes of imposing the ad valorem tax. xxx this tax is imposed on the privilege of extracting or severing the minerals from the mines. To our minds, therefore, the inclusion of the term mineral products is intended to comprehend cases where the mined or quarried elements may not be usable in its original state without application of simple treatments xxx which process does not necessarily involve the change or transformation of the raw materials into a composite distinct product. xxx While the selling price of cement may reflect the actual market value of cement, said selling price cannot be taken as the market value also of the minerals composing the cement. And it was not the cement that was mined, only the minerals composing the finished product."

We ratified this view in denying the motion for reconsideration of our decision in the same case. In the language of Mr. Justice Reyes (J.B.L.):

"xxx the ad valorem tax in question should be based on the actual market value of the quarried minerals used in producing cement, xxx the law intended to impose the ad valorem tax upon the market value of the component mineral products in their original state before processing into cement. xxx The law does not impose a tax on cement qua cement, but on mineral products, at least 80% of which must be minerals extracted by the lessee, concessionaire or owner of mineral lands.

"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. What it did declare is that, while cement is a mineral product, it is no longer in the state or condition contemplated by the law; hence the market value of the cement could not be the basis for computing the ad valorem tax, since the ad valorem tax is a severance tax, i.e., a charge upon the privilege of severing or extracting minerals from the earth, (Dec. p. 4) and is due and payable upon removal of the mineral product from its bed or mine.

Soon later, we had occasion to reiterate that view.^[3]

On the second question, petitioner's practice of computing the ad valorem tax on the basis of the "cost of production" of the raw materials or minerals extracted from its mines, contravenes Section 243 of the Tax Code, reading:

"Ad valorem taxes on output of mineral lands not covered by lease. There shall be assessed and collected on the actual market value of the annual gross output of the minerals or mineral products extracted or produced from all mineral lands, not covered by lease an ad valorem tax, payable to the Commissioner of Internal Revenue, in the amount of one and one-half per centum of the value of said output.

"Before the minerals or mineral products are removed from the mines, the Commissioner of Internal Revenue or his representatives shall first be notified of such removal on a form prescribed for the purpose."

Pursuant to this provision, the ad valorem tax is computed on the "actual market value of the minerals or mineral products extracted or produced from all mineral lands". In other words, the assessment shall be based, not upon the cost of production or extraction of said minerals or mineral products, but on the price which the same - before or without undergoing a process of manufacture - would command in the ordinary course of business, that is to say, when offered for sale by one willing to sell, but not under compulsion to sell, and purchased by another who is willing to buy, but under no obligation to purchase.

As a consequence, the third question must be settled in favor of petitioner herein. In other words, the cost of the paper bag container, in which the finished product or cement is placed, for sale to the public, should not be included in the computation of the ad valorem tax and/or royalty collectible by the Government.

We need not discuss the alleged impairment of the obligations under petitioner's lease contract with the Government[4] - involved in the fourth question - inasmuch as said contract is in conformity with our interpretation of section 243 of the Tax Code, although not in accord with that of respondent herein. It should be understood, however, that the assessment shall be based on the actual market value of the mineral products upon extraction thereof from the mines, not on the cost of such extraction.

As regards the surcharge of 25% included in the disputed assessment, petitioner maintains that it is not liable therefor, because it had acted in good faith. More specifically, petitioner would have us believe that it merely did what it had done "in the early part of 1957," namely, paying the ad valorem tax "on the value of the minerals extracted from its mines", to which - petitioner intimates - respondent had seemingly acquiesced. Predicated upon this premise, petitioner claims to have acted in good faith, because of which - it concludes - it should not be required to pay the statutory surcharge of 25%, or, the same should, at least, be reduced.

Insofar as the difference between the value of cement, as finished product, and that of the minerals or raw materials extracted from its mines is concerned, there can be no surcharge, for, as above stated, the assessment of the 1-1/2% ad valorem tax must be based on the value of said raw materials, upon extraction thereof from the land, not on the value of the said finished product.

As regards, however, the difference between the cost of extraction of said raw materials, upon which petitioner's returns were based, and the actual market value of said raw materials, on which the tax is due, petitioner can not claim good faith. Indeed, the language of said section 243 of the Tax Code is plain, clear and simple. It explicitly declares that the tax shall be assessed and collected on the "actual market value x x x of the minerals and mineral products extracted or produced from all mineral lands." Petitioner has not even tried to show it earnestly believed that "actual market value" and "cost of production" or "cost of extraction" have identical connotations. Moreover, there is every reason to believe that it knew the difference between the one and the other. Its own brief reveals that it had a correct notion of the aforementioned provision of its lease contract with the Government, which is substantially identical to the import of said section 243 of Tax Code.

At any rate, pursuant to the second paragraph of section 245 of the same Code:

"In case the royalties or ad valorem taxes are not paid within the period prescribed above, there shall be added thereto a surcharge of twenty-five per centum. Where a false or fraudulent return is made, there shall be added to the royalties or ad valorem taxes a surcharge of fifty per centum of their amount. The surcharge so added shall be collected in the same manner and as part of the royalties or ad valorem taxes, as the case may be."

The 25% surcharge thus prescribed for the late payment of the royalties and the ad valorem tax, when contrasted with the 50% surcharge imposed "where a false or fraudulent return is made," strongly suggests that bad faith is not essential for the imposition of the 25% surcharge.

This becomes more apparent when we consider that the surcharge is increased to 50%, where the return is "false," a condition which may exist without bad faith. In fact, if it existed, the return would be, not merely "false," but, also fraudulent.

Then again, said section 245 does not merely vest in respondent the authority or discretion to impose the 25% surcharge. The same is imposed by law itself. In this respect, it is analogous to the 25% surcharge prescribed for failure to pay the "percentage tax on any business" within the time fixed by law,[5] the collection of which has been held to be mandatory and on which respondent has no discretion.[6]

In conclusion, petitioner is bound to pay the 1-1-1/2% ad valorem tax on the actual market value of the minerals or mineral products extracted from its mines, with a 25% surcharge for failure to make said payment within the prescribed time. No evidence having been introduced, however, on said actual market value, the records are hereby re-manded to the Court of Tax Appeals, for the reception of evidence and further proceedings not inconsistent with this decision. The cost of this instance shall be borne by the petitioner, Republic Cement Corporation.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.
Fernando, J., took no part.

[1] In the aggregate sum of P23,389,478.03.

[2] L-18649, Feb. 27, 1965.

[3] CEPOC v. Comm. of Int. Rev., L-22605, Jan. 17, 1968.

[4] "The LESSEE shall pay for the privilege of exploring, developing, mining, extracting and disposing of the limestone (or silica or shale, as the case may be) and other minerals belonging to the same group in the lands covered by this lease, to the provincial, city or deputy provincial treasurer of the province or city where the mining claims are situated x x x and to the Government of the Philippines, thru the Collector of Internal Revenue or his duly authorized representative, a royalty of one and one-half per centum (1-1/2%) of the actual market value of the gross output of limestone (or silica or shale, as the case may be) and of all other minerals extracted from, or mineral products of, mine-ral lands of the fifth group as provided for in the Mining Act, as amended, and covered by this lease. Before the minerals or mineral products are removed from the mines, the Collector of Internal Revenue or his representative shall first be notified of such removal by the Lessee or his duly authorized representative on the form prescribed for the pur-pose. The royalties shall be due and payable upon the re-moval of the mineral products from the locality where mined."

[5] If the percentage tax on any business is not paid within the time specified above, the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax." (Second paragraph of Section 183 of the Tax Code).

[6] Lim Co Chu v. Posadas, 47 Phil. 460; Kopel (Phil.) Inc. v. Collector of Int. Rev., 87 Phil. 348; Republic v. Luzon Industrial Corp., 102 Phil. 189,193.

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.