

[With Resolution, Dec. 29, 1967]

G. R. No. L-18649. February 26, 1965

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition filed by the Cebu Portland Cement Company (CEPOC) for review of the decision of the Court of Tax Appeals (in CTA Case No. 708) denying its claim against the Commissioner of Internal Revenue for refund of the sum of P476,208.50, representing alleged overpayments of ad valorem taxes for the period of from January 1, 1957 to June 30, 1959, on the ground that said court erred in upholding the assessment and collection thereof based on the selling price of the cement petitioner produced and not on the value of the limestone and shale it quarried and used in the production of the cement.

There is no controversy as to the fact that for the period of from April 16, 1957 to July 20, 1959, for the cement it produced and sold, petitioner was assessed and paid ad valorem taxes in the total sum of P502,975.28; that its demand for refund of alleged overpayment having been denied, petitioner filed on October 15, 1959, a corresponding petition in the Court of Tax Appeals against the respondent Commissioner of Internal Revenue; and that after due hearing, the Court of Tax Appeals rendered a decision on June 21, 1961, declaring the collection of the ad valorem tax based on the selling price of cement to have been made in accordance with Section 243 in relation to Section 246 of the National Internal Revenue Code.

The National Internal Revenue Code, as amended,[[1]] provides:

"SEC. 243. 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 mineral or mineral products extracted or produced from all mineral lands, not covered by lease, an ad valorem tax payable to the Collector of Internal Revenue, in the amount of one and one-half per centum of the value of said output.

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

"SEC. 245. Time and manner of payment of royalties or ad valorem taxes.-The royalties or ad valorem taxes, as the case may be, shall be due and payable upon removal of the mineral products from the locality where mined. However, the output of the mine may be removed from such locality without the prepayment of such royalties or ad valorem taxes if the lessee, owner or operator shall file a bond in the form and amount and with such sureties the payment of such royalties or ad valorem taxes, * * *

SEC. 246. Definitions of the terms 'gross output', 'minerals' and 'mineral products'-Disposition of royalties and ad valorem taxes.- The term 'gross output' shall be interpreted as the actual market value of minerals or mineral products, or of bullion from each mine or mineral lands operated as a separate entity without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses: Provided, however, * * *. The word 'minerals' shall mean all inorganic substances found in nature whether in solid, liquid, gaseous, or any intermediate state. The term 'mineral products' shall mean things produced by the lessee, concessionaire or owner of mineral lands, at least eighty per cent of which things must be minerals

extracted by such lessee, concessionaire, or owner of mineral lands. Ten per centum of the royalties and ad valorem taxes herein provided shall accrue to the municipality and ten per centum to the province where the mines are situated, and eighty per centum to the National Treasury."

Herein petitioner contends that the collectible ad valorem tax should be based on the actual market value of the quarried minerals that were used in the production of cement; whereas, respondent Commissioner of Internal Revenue maintains that, as the cement produced by petitioner consists of 80% minerals, the same is a mineral product pursuant to the definition given in Section 246 of the Tax Code, and the ad valorem tax should be based on its selling price.

It is noteworthy that under Section 242 of the same Code, with respect to leased mineral lands, the lessee shall pay to the government, not only rentals for the use of the land, but also royalty, on the minerals extracted therefrom. These imposts are levied "for the privilege of exploring, developing mining, extracting and disposing of the minerals" from said land. With respect to mineral lands not under lease. Section 243 governs, and imposes ad valorem tax on the actual market value of the gross output of the minerals or mineral products extracted therefrom. Both sections 242 and 243 are under Title VI of the Tax Code which refers to Mining Taxes. As under Section 242, the rentals and royalties collectible from the lessees and concessionaires of the leased lands are for the privilege of mining and extracting minerals therefrom, so it may be said that the ad valorem tax imposed by Section 243 upon those extracting minerals and mineral products from lands not under lease, is also for the same purpose, i.e., the privilege of mining and extracting minerals from said lands. In other words, 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.

There can be no question that quarried minerals have their own market value. The dispute here arose, however, from the construction given to the term mineral products, which was defined in Section 246 of the Tax Code, as "things produced by the lessee, concessionaire, or owner of mineral lands, at least eighty per cent of which things must be minerals extracted by such lessee, concessionaire or owner of mineral lands." Respondent argues that since the portland cement produced by petitioner^{[[2]]} consists of 80% minerals quarried from its mines, such cement falls within the definition of a mineral product and the imposable ad valorem tax should be based on its selling Price which is its actual market value.

This line of argument suffers from two infirmities: First, 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. It must be remembered that, as aforestated, 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, such as washing, or cutting them into sizes, which process does not necessarily involve the change or transformation of the raw materials into a composite, distinct product. Secondly, respondent cannot use the selling price of the product in this case as gauge of its actual market value. The cement here is manufactured by petitioner itself out of materials quarried from its mines. 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.

Anent respondent's contention, however, that the taxes collected and paid two years before the filing of the action

in the Court of Tax Appeals are barred by prescription, the same must be sustained. By specific provision of Section 308 of the Internal Revenue Code, action for recovery of tax payments erroneously or illegally collected must be filed within 2 years from such payments. As the action in this case was instituted only on October 16 1959, over payments made prior to October 15, 1957 are no longer refundable.

WHEREFORE, the decision of the Court of Tax Appeals under review is hereby modified, by holding petitioner entitled to the refund of the corresponding overpayments of ad valorem taxes made after October 15, 1957. No costs.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Reyes, J.B.L., Paredes, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

[1] As amended by Republic Acts 909, 834, 1299, 1510.

[2] Which is a government-controlled corporation.

RESOLUTION

December 29, 1967

REYES, J. B. L., J.:

Petitioner-appellant Commissioner of Internal Revenue has sought reconsideration of our main decision in the above entitled case, claiming that this Court has misconstrued the issues involved in this case, and that instead of resolving what is the market value upon which should be based the ad valorem tax imposed by section 246 of the Internal Revenue Code, as said section was amended by Republic Act 1299, in force since June 16, 1955, this Court decided the case "on an issue that was not raised by them" by ruling "that cement is not a mineral product but a manufactured product, and as such it is not subject to the ad valorem tax" (Motion for Reconsideration, p. 6). The appellant Commissioner therefore prays that this Court declare:

(1) That cement is a mineral product subject to 1-1/2 % ad valorem tax based on its selling price; or

(2) In the alternative, that the sales of cement by appellee Cebu Portland Cement Company are subject to sales tax of 7%.

The reconsideration must be denied. The appellant Commissioner of Internal Revenue has plainly misconstrued the language and import of our main decision. We there stated the issue to be as follows:

"Herein petitioner[[1]] contends that the collectible ad valorem tax should be based on the actual market value of the quarried minerals that were used in the production of cement; whereas, respondent Commissioner of Internal Revenue maintains that, as the cement produced by petitioner consists of minerals, the same is a mineral product pursuant to the definition given in Section 246 of the tax Code and the ad valorem tax should be based on its selling price."

And we sustained the position of the cement company, i.e., that the ad valorem tax in question should be based on the actual market value of the quarried minerals used in producing cement, reasoning that cement (as distinguished from the original minerals used to produce it) is the result of a process, and that the same "could not have been the state of mineral products contemplated by the law" for the purpose of imposing the ad valorem tax.

The necessary corollary of this pronouncement is that 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. For it can not be overlooked that 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. Both parties concede that cement is made up of 80% or more of minerals thus extracted.

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 (Tax Code s. 245). So that the tax is to be computed on the basis of the market value of the mineral in its condition at the time of such removal and before its being substantially changed by chemical or manufacturing (as distinguished from purely physical) processing. Whatever mention was made in the decision of such process undergone by the component minerals of cement, was made solely and exclusively to emphasize the changed in the condition of the minerals, from the primitive state contemplated by the taxing statute. This is clear from the text of the decision (pp. 1-5) where we stated:

"This (respondent's) line of argument suffers from two infirmities. First, 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 salable 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 the ad valorem tax." (Italic supplied.)

WHEREFORE, all motions for reconsideration are denied.

SO ORDERED.

Concepcion, C. J., Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

[1] Evidently referring to the original petitioner Cebu Portland Cement Co.

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