

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
REPUBLIC CEMENT CORPORATION, FILIPINAS CEMENT
CORPORATION, APO CEMENT CORPORATION, BACNOTAN
CONSOLIDATED INDUSTRIES, INC., RIZA...**

G.R. Nos. L-35668-72. August 10, 1983

Ponente: PLANA, J.

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PLANA, J.:

The sales tax assessments involved in these cases run to a magnitude of about P38.5 million.*

Briefly put, the crucial issue is whether cement is a "mineral product" the sale of which is exempt from sales tax, or a "manufactured product" which is subject to sales tax.

Petitioner Commissioner of Internal Revenue had ruled that cement is a "manufactured product" and therefore subject to sales tax.

On appeal, this ruling was overruled by the Court of Tax Appeals (CTA) which adjudged cement to be a "mineral product" within the meaning of Section 246 of the Tax Code and consequently exempt from sales tax under Section 188 (c) of the same Code, as said laws stood at the time of the questioned assessments.

The undisputed facts are narrated in the Petitioner's brief in G.R. Nos. 35668-72 and 35683:

"Respondents are domestic corporations engaged in the manufacture of cement...

"On separate dates, petitioner Commissioner of Internal Revenue issued assessments against the respondents for deficiency sales tax and surcharge due as manufacturers of cement, to wit:

Respondent

Date Issued

Years Covered

Amount Assessed

Rep. Cement Corp.

11-20-68

1963-1967

P10,969,166.45

Filipinas Cement Corp.

5-15-69

1964-1967

6,275,134.95

Apo Cement Corp.

2-20-68

10-30-63 to

6-30-65

1,341,814.78

Bacnotan Consolidated Industries, Inc.

4-23-69

1963-1967

7,066,651.56

Rizal Cement Company, Inc.

3-12-68

1964-1967

1,156,518.49**

Phil. Portland Cement Co., Inc.

2-10-69

1963-1967

893,341.92

based on the ruling of this Honorable Court in the case between the same parties, entitled 'Republic Cement Corporation vs. The Commissioner of Internal Revenue, et al.' (G.R. No. L-20660 dated June 13, 1968, and the other cases of 'Cebu Portland Cement Company vs. Commissioner of Internal Revenue', (G.R. No. L-18649) decision promulgated on February 27, 1965, and resolution in the same case dated December 29, 1967; G.R. No. L-22605 dated January 17, 1968 and in G.R. No. L-20563 dated October 29, 1968. The aforementioned cases involved claims for refund of overpaid ad valorem taxes. In the aforesaid cases, this Honorable Court ruled that cement is a manufactured product.

"The foregoing assessments were protested by the respective cement companies...

x x x x

"In a letter to counsel for the cement companies dated July 9, 1969..., petitioner herein denied the joint protest of the respondent cement companies, and from the aforesaid decision of the petitioner, respondents interposed separate appeals with the respondent Court of Tax Appeals by filing amended petitions for review on July 24, 1969.

"After the filing of the responsive pleadings by the petitioner, respondent cement companies in a motion dated November 7, 1970, moved for a summary judgment, which motion was, however, opposed by the petitioner, but was acceded to by the respondent Court in a resolution dated March 12, 1971.

"On June 28, 1972, the Tax Court rendered a joint decision in these cases reversing the ruling of the petitioner Commissioner of Internal Revenue."

We are called upon to construe Section 246 of the Tax Code, particularly after it was amended by Republic Act 1299, in relation to Section 188 (c) of the same Code.

Petitioner recounts the history of the said Section 246:

"The original text of Section 246 of the Tax Code heretofore stated provides as follows:

'Sec. 246. Definition of the term 'gross output'. - 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, that if the minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted. The output of any group of contiguous mining claims shall not be subdivided. All the royalties or ad valorem taxes herein provided shall accrue to the National Treasury.'

"The foregoing provisions of Section 246 of Commonwealth Act No. 466 were subsequently amended by the following amendatory acts:

1. Republic Act No. 834, sections 1 and 2, approved on March 6, 1953;
2. Republic Act No. 1299, sections 1 and 2, approved on June 16, 1955;
3. Republic Act No. 1510, sections 1 and 2, approved on June 16, 1956.

"It will be noted that the provisions of Section 246 of Commonwealth Act No. 466, as amended by Republic Act No. 834, approved on March 6, 1953, defines only the term 'gross output' but does not define the words 'minerals' and 'mineral products', thus, resulting in confusion among the taxpayers and the tax-collecting agencies in the fixing of the proper ad valorem tax due from the miners and/or owner of mineral lands. (Congressional Record, House of Representatives, Vol. II, No. 50, p. 1573, April 12, 1955)

"In order to remedy the apparent vacuum in the provisions of Section 246 of the Tax Code, Congress enacted Republic Act No. 1299 (House Bill No. 3251) on June 16, 1955, for the sole purpose of clarifying the collection of royalties and ad valorem taxes.

"This is borne out by the explanatory note to House Bill No. 3251, reproduced as follows:

"EXPLANATORY NOTE

'Sec. 246 of the National Internal Revenue Code, as amended by Republic Act No. 834, fails to define the words 'minerals' and 'mineral products' used therein, although the phrase 'gross output' is clearly delimited. This omission has caused considerable difficulty in the collection of mining royalties and ad valorem taxes and confusion among tax-payers.

"The attached bill seeks to remedy the situation by giving clear-cut definitions of 'minerals' and 'mineral products'. Citing the American case of *McCombs vs. Stephenson*, 44 So. 867, and the English case of *Hext vs. Gill* L.R. 7 Ch. App. 699 and *Johnstone vs. Crompton*, L.R. 2 Ch. 197. Soto and Morrison define mineral as 'any form of earth, rock or metal of greater value while in place than the enclosing country or the superficial soil', Soto and Morrison, *Mining Rights*, 16th Edition, p. 250. But since the word 'minerals' has been defined by prior legislation, the definition in Section 7 of Commonwealth Act No. 137 is herein substantially adopted to preserve consistency in the concept of the nomenclature in our statutes. In defining the phrase 'mineral products', due

weight has been given to its construction in the case of *Spiller vs. McGehee*, 68 S.W. 2d 1093, and the usual acceptance of its significance among local miners and mining businessmen.

'It is believed that the approval of this bill will not only accelerate the collection of mining royalties and ad valorem taxes but also clarify the doubt of the taxpaying public on the interpretative scope of the two terms.'

((Sgd.) ISIDRO C. KINTANAR

Congressman, 4th District

Cebu

"As it stood after the amendment by Republic Act No. 1299, Section 246 reads as follows:

'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, that if the minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted. The output of any group of contiguous mining claims shall not be subdivided. 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. Five per centum of the royalties and ad valorem taxes herein provided shall accrue to the municipality where the mines are situated, and ninety-five per centum to the National Treasury.'

The question whether cement is a mineral product within the purview of Section 246 of the Tax Code, as amended by Republic Act No. 1299 as of June 16, 1955, has already been answered in the negative in several decisions of this Court beginning with *Cebu Portland Cement Co. vs. Commissioner of Internal Revenue*, L-18649, February 27, 1965, 13 SCRA 333.

The Court held that cement is not a mineral product (rather it is a manufactured product); but the quarried minerals used in the production of cement are mineral products. The latter therefore are subject to ad valorem tax which should be computed on the basis of the value of the quarried minerals, and not the selling price or value of the cement. On this basis, the Court declared that there was an overpayment of ad valorem tax which should be refunded because it was assessed on the basis of the selling price of the cement, instead of the quarried limestone, shale, etc. which were used in the production of cement. Said the Court:

"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 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 aforesaid, this tax is imposed on the privilege of extracting or severing the minerals from the mines. To our mind, 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.' (13 SCRA 333 at 336-338.)

The above ruling clearly indicates that cement as such is a manufactured product (although unaccompanied by a pronouncement that it is subject to sales tax, because this was not in issue), and is not a mineral product within the meaning of the law imposing the ad valorem tax.

That cement is a product of a manufacturing process, finds support in the definition of "manufacturer" in Section 194 (x) of the Tax Code:

"Manufacturer" includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished product of such process of manufacture can be put to a special use or uses to which such raw material manufactured or partially manufactured product in their original condition could not have been put, and who in addition alters such raw materials or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption."

In the subsequent case of *CEPOC vs. Commissioner of Internal Revenue*, L-22605, Jan. 17, 1968 (22 SCRA 56), this Court had occasion to reiterate its previous ruling:

"The issue tendered concerns the correct basis of the 1-½ ad valorem tax under Sec. 243, in connection with Sec. 246, of the Tax Code when made to apply on cement. (Sec. 243 levies '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 Collector of Internal Revenue, in the amount of one and one-half per centum of the value of said output while Sec. 246 defines the term 'mineral product' 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.')

The State says it is the gross selling price of cement qua cement. Petitioner insists that it cannot be the gross selling price.

"The parties here have assumed that cement is a mineral product within the purview of Sec. 243 of the Tax Code. Our view is otherwise. As we expressed it in *Cebu Portland Cement Co. vs. Commissioner*, L-18649, February 27, 1965, cement qua cement is no longer a mineral product in the condition envisaged by the Tax law. Very recently We reiterated and reaffirmed this stand thru Justice J.B.L. Reyes when We denied a plea to reconsider the original decision rendered therein. (*Cebu Portland Cement v. Commissioner*, L-18649, Dec. 29, 1967)

"It results that Sec. 243 of the Tax Code cannot be applied directly to cement. What is taxable thereunder are the minerals constituting cement, i.e., limestone, silica and shale. (Gypsum, though also a constituent of cement, cannot be included since it is imported from abroad.) Hence, the correct basis of the 1-½ ad valorem

tax is the market value of the quarried raw materials." (22 SCRA 56 at 57. Emphasis supplied.)

Still later, in *Republic Cement Corp. vs. Commissioner of Internal Revenue* (June 13, 1968), 23 SCRA 967, the issue once again was whether the ad valorem tax should be based on the value of the finished product (cement) or upon the value of the raw materials or minerals used in the manufacture of said finished product. Speaking for the Court, the then Chief Justice Concepcion said:

"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*, (L-18649, Feb. 27, 1965) 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 minerals 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. (*CEPOC v. Comm. of Int. Rev.* L-22605, Jan. 17, 1968,)" (23 SCRA 967 at 969-970.)

From all the foregoing cases, it is clear that cement qua cement was never considered as a mineral product within the meaning of Section 246 of the Tax Code, notwithstanding that at least 80% of its components are minerals, for the simple reason that cement is the product of a manufacturing process and is no longer the "mineral product" contemplate in the Tax Code (i.e., minerals subjected to simple treatments) for the purpose of imposing the ad valorem tax.

What has apparently encouraged the herein respondents to maintain their present posture is the case of Cebu Portland Cement Co. vs. Collector of Internal Revenue, L-20563, Oct. 29, 1968 (28 SCRA 789) penned by Justice Eugenio Angeles. For some portions of that decision give the impression that Republic Act 1299, which amended Section 246, re-classified cement as a mineral product that was not subject to sales tax:

"This case involves petitioner's claim for refund of P458,241.45 sales tax paid from November 1, 1954 to March, 1955, and P427,552.95 ad valorem tax paid from April 1955 to September 30, 1956 from the sale of APO Portland cement produced by the petitioner.

"Prior to the effectivity of Republic Act No. 1299 on June 16, 1955, (An Act amending further section 246 of the Internal Revenue Code, as amended, by defining the words 'minerals' and 'mineral products'), the petitioner had been paying the sales tax (known also as percentage tax) of APO Portland Cement produced by it (pursuant to sec. 196 of the Tax Code), computed at 7% of the gross selling price inclusive of the cost of the bag containers of cement and the gypsum (a constituent of cement, imported from abroad) used in the manufacture of said product. After the approval of the amendment of the law petitioner stopped paying sales tax on its gross sales and instead paid the ad valorem tax (see Sec. 243, Tax Code) on the selling price of the product after de-ducting therefrom the corresponding cost of the containers thereof.

x x x x

"It was alleged in the petition that the percentage taxes collected by respondent are re-refundable since under Republic Act 1299, producers of cement are exempt from the payment of said tax. x x x

"After hearing and consideration of the evidence submitted in connection therewith, the Court of Tax Appeals rendered judgment dismissing the petition for review, holding: (1) that petitioner was not exempt from payment of the sales taxes on its APO Portland Cement prior to the effectivity of Republic Act No. 1299, it being then considered a manufactured product.

x x x x

"The first assigned error calls for a ruling on the prospective or retrospective application of Republic Act No. 1299, which became effective upon its approval on June 16, 1955, amending section 246 of the National Internal Revenue Code, as follows:

x x x x

"x x x The only change brought about by said amendment is the incorporation of the definition of the word 'minerals' and the term 'mineral products'.

"It is urged by petitioner that since the purpose of the amendment was merely to clarify the meaning of said terms, the section should be construed as if it had been originally passed in its amended form, so that cement should be considered as 'mineral product' even before the enactment of Republic Act 1299, and therefore exempt from the sales or percent-age tax, pursuant to the provision of section 188 (c) of the National Internal Revenue Code.

"We cannot subscribe to this view. It is a settled rule in statutory construction that statute operates prospectively only and never retroactively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication. In every case of doubt, the doubt must be resolved against the retrospective effect. There is nothing in the context of the provision in question that would manifest the Legislature's intention to have the provision apply to taxes due in the past. On the other hand, the use of the word 'shall' gives the unmistakable impression that the lawmakers intended this enactment to be effective only in futuro.

x x x x

"Indeed, like other statutes, tax laws operate prospectively, whether they enact, amend or repeal, unless, as aforesaid, the purpose of the Legislature to give retrospective effect is expressly declared or may clearly be implied from the language used. It thus results that before the enactment of the amendment to section 246 of the Tax Code, when cement was not yet placed under the category of either 'minerals' or 'mineral products' it was not exempt from the percentage tax imposed by section 186 of said Code, and was, therefore, taxable as a manufactured product." (pp. 791-795)

After a careful study of the foregoing, we conclude that reliance on the decision penned by Justice Angeles is mis-placed. The said decision is no authority for the proposition that after the enactment of Republic Act No. 1299 in 1955 (defining mineral product as things with at least 80% mineral content), cement became a "mineral product," as distinguished from a "manufactured product", and therefore ceased to be subject to sales tax. It was not necessary for the Court to so rule. It was enough for the Court to say in effect that even assuming Republic Act 1299 had re-classified cement as a mineral product,* the reclassification could not be given retrospective application (so as to justify the refund of sales taxes paid before Republic Act 1299 was adopted) because laws operate prospectively only, unless the legislative intent to the contrary is manifest, which was not so in the case of Republic Act 1266. [The situation would have been different if the Court instead had ruled in favor of refund, in which case it would have been absolutely necessary (1) to make an unconditional ruling that Republic Act 1299 re-classified cement as a mineral product (not subject to sales tax), and (2) to declare the law retroactive, as a basis for granting refund of sales taxes paid before Republic Act 1299.]

In any event, we overrule the CEPOC decision of October 29, 1968 (G.R. No. L-20563) insofar as its pronouncements or any implication therefrom conflict with the instant decision.

In the above CEPOC decision, Justice Angeles refers to the Congressional discussions on the bill which subsequently became Republic Act No. 1299. The said discussions lend additional support for the view that cement qua cement remained subject to sales tax as a manufactured product despite the adoption of Republic Act 1299.

As the sponsor of the bill, Representative Isidro C. Kintanar explained that no tax change was envisioned by the bill, that its purpose was merely to define "minerals" and "mineral products" in order to clarify the position of our tax-collecting agencies. Thus -

"Mr. Villareal: What is the purpose of the bill?

"Mr. Kintanar: The gentleman from Capiz will notice that the provision of Section 246 of Commonwealth Act No. 466, as amended by Republic Act No. 834, defines only the term 'gross output' but does not define the words 'minerals' and 'mineral products.' There is now a confusion in the fixing of the ad valorem taxes.

x x x x

"Mr. Villareal: So, is it a question of the tax that the amendment has been offered?

"Mr. Kintanar: No.

"Mr. Villareal: What is the purpose?

"Mr. Kintanar: The purpose is only to define the words 'minerals' and 'mineral products' in order to clarify the position of our tax-collecting agencies.'

"Mr. Villareal: My distinguished friend cannot tell us whether it will diminish or increase the taxes; so, in the face of this uncertainty, I am asking the gentleman if he will be agreeable to suspending the consideration of this bill.

"Mr. Kintanar: We beg to inform that there will be no change of taxes whatsoever. We only want to define these words because there is a lack of a clear definition in the Code itself regarding this matter. Therefore, in view of the absence of any change in taxes, I was just wondering how the taxes that would be coming to the government could be affected." (Congressional Record, House of Representatives, Vol. II, No. 50, pp. 1573, 1594, April 12, 1955. Emphases supplied.)

Since cement as such 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."

The foregoing discussion disposes of G.R. Nos. 35668-72 and 35683, just as it also resolves the identical issue raised in G.R. No. 35677.

Some qualifications are, however, in order:

(1) The disputed assessments carry a 25% surcharge pursuant to Section 183 (a) of the Tax Code [now Sec. 193 (a) (3)] which prescribes the said surcharge for late tax payment.

In *Connell Bros. Co. (Phil.) Collector of Internal Revenue* (10 SCRA 469 at 470-471), the then Justice Makalintal, speaking for the Court, rejected therein the imposition of 25% surcharge for late payment:

"We do not think Section 183 (a) of the National Internal Revenue Code is applicable. The same imposes the penalty of 25% When the percentage tax is not paid on time, and contemplates a case where the liability for the tax is undisputed or indisputable. In the present case the taxes were paid, the delay being with reference to the deficiency, owing to a controversy as to the proper interpretation of Circulars Nos. 431 and 440 of the office of respondent-appellee. The controversy was generated in good faith, since that office itself appears to have formerly taken the view that the inclusion of the words "tax included" on invoices issued by the taxpayer was sufficient compliance with the requirements of said circulars. (See BIR Ruling 105.2, Aug. 3, 1953; BIR Quarterly Bulletin Vol. 7, Sept. 30 and Dec. 31, 1953; in re *Fred Wilson Tax Appeal* No. 63.)

"The cases cited in the motion for reconsideration are likewise inapplicable. In every one of those cases the liability for the tax was not disputed, the only question being whether or not the delay in the payment thereof was justified under the particular circumstances relied upon by the taxpayer. Here the question is whether or not the deficiency sales tax in question was due at all. This question does not involve the power of respondent-appellee to condone the penalty, but rather the justifiability of its imposition in the first place. And where respondent-appellee apparently had himself originally adopted an incorrect interpretation of its own circulars, it would not be just to penalize appellant for falling into the same error..." (To the same effect, see *Escudero Electric Service Co. vs. Tobias*, 33 SCRA 547; *Tuason, Jr. vs. Lingad*, 58 SCRA 170.)

In the case at bar, the assessments are not undisputed or indisputable. The dispute as to the tax liability of private respondents for sales tax on the sale of cement arose not simply because of ordinary divergence of views in good faith vis-a-vis the interpretation of the law;* the position of private respondents was founded upon the original stand of the Bureau of Internal Revenue itself that cement is a mineral product rather than a manufactured product and is therefore subject to ad valorem tax, not sales tax. As pointed out above, this stand was apparently given implied support in *CEPOC vs. Collector*, G.R. No. L-20563 (1968), 25 SCRA 789, penned by Justice Angeles. That the posture of private respondents is plausible - despite the subsequent BIR position that cement is a manufactured product subject to sales tax - is supported by the fact that the Court of Tax Appeals, the specialized body handling tax cases, sustained the private respondents in the decisions under review.

Under the circumstances, the 25% surcharge imposed in the disputed assessment must be deleted.

(a) The assessments in question seem to have computed the sales tax liability of private respondents on the basis of the total selling price of cement sold. If this was so, a re-computation is in order so as to deduct from the tax

base the costs of raw materials used in the production of cement, such as gypsum, conformably with the provisions of Section 186 [now Sec. 199 (a)] of the Tax Code as it stood during the tax period here involved:

"SEC. 186. Percentage tax on sales of other articles. - There shall be levied, assessed and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: 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."

Before closing, it may be noted in passing that in order to obviate any further controversy, cement qua cement has been expressly made subject to sales tax at the reduced rate of 5% on the implicit assumption that it is a manufactured product and therefore outside the purview of "mineral product" under Section 246 of the Tax Code. (See Presidential Decree No. 1358.)

WHEREFORE, the joint decision of the Court of Tax Appeals in G.R. Nos. L-35668-72 and L-35683 and its separate decision in G.R. No. 35677 are hereby reversed and set aside; and it is hereby ordered that private respondents pay the 7% sales tax on cement, the same to be computed on the basis of the gross selling price, less appropriate deductions corresponding to the costs of raw materials used in the manufacture of cement, conformably with the aforequoted Section 186 of the Tax Code, and without the imposition of 25% surcharge. No costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.
De Castro, J., on sick leave.

* Including the tax assessment of P1,114,414.64 in G.R. No. L-35677.

** A revised assessment was issued by the petitioner against the same company in a letter dated February 6, 1970, demanding payment in the amount of P10,862,426.76 as sales tax, inclusive of surcharge and fixed taxes for the period from 1963 to 1967, docketed as C.T.A. Case No. 2349.

* Indeed, the decision itself was careful to note that in CEPOC vs. Commissioner, G.R. L-18649, 13 SCRA 333, and its succeeding resolution (21 SCRA 1427) as well as CEPOC vs. Commissioner, G.R.L-22605 (22 SCRA 56), "it was held that for purposes of Sec. 243 of the Tax Code, what is taxable are the quarried minerals used in producing cement, in which case cement is not considered as mineral product." (25 SCRA 289, at 793, Footnote 5.)

* Compare Republic Cement Corp. vs. Commissioner, 23 SCRA 967, with Connell Bros. Co. (Phil.) vs. Collector, Escudero Electric Service Co. vs. Tobias, and Tuason, Jr. vs. Lingad, supra.

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