

**CEBU PORTLAND CEMENT COMPANY, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.***G.R. No. L-22605. January 17, 1968*

Ponente: BENGZON, J.P., J.

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Petitioner Cebu Portland Cement Co., is a government owned and controlled corporation engaged in the making of APO portland cement. Admittedly, cement is at least 80% composed of limestone, silica and shale - raw materials which petitioner quarries from its own mineral lands.

For the period from July 1, 1959 to December 31, 1960, petitioner realized from its gross sales P13,924,415.80. The Commissioner of Internal Revenue then levied and collected from petitioner P190,115.24 as ad valorem tax under Sec. 243 of the Tax Code using as basis therefor the amount of the gross sales minus the cost of cement bags, which is P1,188,248.56.

Petitioner paid the P190,115.24 assessment under protest and on May 8, 1961, sought refund for P174,032.85 on the theory that the ad valorem tax should be based on the cost of the raw materials, which is P1,072,159.28. On June 29, 1961, without awaiting the resolution of its claim for refund, petitioner sought its redress in the Court of Tax Appeals which, on February 8, 1964, denied the refund.

Hence, the present recourse.

The issue tendered concerns the correct basis of the 1-1/2% ad valorem tax under Sec. 243, in connection with Sec. 246, of the Tax Code when made to apply on cement.[1] 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.[2]

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.[3] Hence, the correct basis of the 1-1/2% ad valorem tax is the market value of the quarried raw materials.

This was petitioner's stand before the Tax Court. But as the Solicitor General points out,[4] and the records bear him out, petitioner abandoned that stand here. At the most, petitioner in its alternative prayer here, asks that the ad valorem tax be based on the "bin cost"[5] of cement, in which case it would be entitled to a refund in the sum of P42,810.11.

The equities of the case weigh more heavily on petitioner's side than on the State's. Its claim for refund, based at

least on the "bin cost" of cement, should be granted.

WHEREFORE, the appealed decision is, as it is hereby, reversed and set aside. Respondent Commissioner of Internal Revenue must refund the sum of P42,810.11 to petitioner Cebu Portland Cement Co. as prayed for in the petition. No costs.

SO ORDERED.

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

[1] 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."

[2] Cebu Portland Cement v. Commissioner, L-18649, Dec. 29, 1967.

[3] Gypsum, though also a constituent of cement, cannot be included since it is imported from abroad.

[4] See Rollo, pp. 6-8; Petitioner's Brief, pp. 16-20.

[5] Cost of production minus cost of cement bags.

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