

CEBU PORTLAND CEMENT COMPANY, PETITIONER, VS. COLLECTOR (NOW COMMISSIONER) OF INTERNAL REVENUE, RESPONDENT.*G.R. No. L-20563. October 29, 1968*

Ponente: ANGELES, J.

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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,[1] the petitioner had been paying the sales tax (known also as percentage tax) of APO portland cement produced by it,[2] computed at 7% of the gross selling price inclusive of the cost of the bag containers of cement and the gypsum[3] 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[4] on the selling price of the product after deducting therefrom the corresponding cost of the containers thereof.

It appears, however, that since 1952, petitioner had been protesting the imposition of the sales tax on its APO portland cement, and on January 16, 1953, it also protested the payment of ad valorem taxes. A writ-ten claim for refund of sales and ad valorem taxes paid by petitioner was filed two years later (September 1955) which was reiterated on July 26, 1956.

Without awaiting respondent's ruling on said claims for refund, petitioner, on January 24, 1957, filed with the Court of Tax Appeals a petition for re-view "of the action of the Collector of Internal Revenue in refusing to entertain petitioner's claim for re-fund of the percentage tax on sales of its APO cement." It was alleged in the petition that the percentage taxes collected by respondent are refundable since under Republic Act 1299, producers of cement are exempt from the payment of said tax. The petition was amended on October 24, 1959, and again amended on June 23, 1961, to include a claim for refund of ad valorem taxes alleged to have been overpaid through double payments.

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; (2) that petitioner is not entitled to deduction from the gross selling price of the cost of raw materials, the value of the bag containers and gypsum in the absence of evidence that they had been previously subjected to the 7% tax imposed by sections 186 and 190 of the Tax Code; (3) that for so much of the sales taxes that were billed, charged to, and paid for by its customers, the petitioner is not the proper party to claim for refund; and (4) that the right to claim for refund of taxes alleged to have been erroneously paid thru wrong computation, double payment, or otherwise, is already barred by prescription.

Dissatisfied with the findings of the Tax Court, the petitioner elevated the case to the Supreme Court on a petition

for review of the decision, assigning as errors the conclusions as above enumerated.

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:

"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 products, or of bullion from each mine 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.K.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. 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."

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[5], and therefore exempt from the sales or percentage tax, pursuant to the provision of section 188(c) of the National Internal Revenue Code.[6]

We cannot subscribe to this view. It is a settled rule in statutory construction that a 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.[7] In every case of doubt, the doubt must be resolved against the retrospective effect.[8] 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. Quite recently, in *Central Azucarera de Don Pedro vs. Court of Tax Appeals*,[9] this Court sustained the holding of the respondent Court that section 51(d) of the Tax Code, as amended, which imposes the collection of interest on a deficiency income tax assessment, became effective only on the approval of the amendment, observing that the provision uses the phrase "shall be assessed at the same time."

Furthermore, careful perusal of the explanatory note to House Bill No. 3251, which was later approved as Republic Act No. 1299, and the portions of the record of the discussions in Congress relative thereto, reveals nothing that would suggest that the amendment was enacted to operate retrospectively. While the purpose of the amendment, as mentioned in the explanatory note to the bill, was not only to "accelerate the collection of mining royalties and ad valorem taxes but also clarify the doubt of the tax-paying public on the interpretative scope of the two terms", it, certainly, could not have been the intention of the lawmakers to unsettle previously consummated transactions between the taxpayers and the Government, no matter in what manner the meaning of the terms were construed in the past. No mention was made, in the deliberations, about the taxes previously collected or assessed on the sales of cement, although Congress must have been aware of these assessments due to an admitted

confusion as to the meaning of the terms defined in the amendment.

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.[10] 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 percent-age tax imposed by section 186 of said Code, and was, therefore, taxable as a manufactured product.[11]

However, We agree with the petitioner that the gypsum and bag containers used in the production and sale of cement, are deductible from the gross selling price in computing the 7% compensating tax levied on the sale of cement before Republic Act 1299. In the absence of any showing that the petitioner itself manufactured the bag containers, the inference is that these bags were bought from others from whom taxes had been levied for the original sale thereof. The same holds true with the gypsum used in the process of the manufacture of cement, considering that said component is imported,[12] and subject to compensating tax.[13]

Again, We agree with the petitioner in assigning as error of the respondent Court its conclusion that for so much of the sales taxes that were billed, Charged, and paid for by the petitioner's customers, the petitioner is not the proper party to claim refund. The first paragraph of section 186 of the Tax Code, pursuant to which the 7% sales taxes were collected from the petitioner, reads:

"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."

The tax provided under this section of the Code is imposed upon the manufacturer or producer and not on the purchaser. On this matter of who bears the burden of the sales tax, this Court, after an extensive research on the subject, said:[14]

"We begin with an analysis on the nature of the percentage (sales) tax imposed by section 186 of the Code. Is it a tax on the producer or on the purchaser? Statutes of the type under consideration, which impose a tax on sales, have been described as 'act (s) with schizophrenic symptoms', as they apparently have two faces - one that of a vendor tax, and the other, a vendee tax. Fortunately, for us, the provisions of the Code throw some light on the problem. The Code states that the sales tax 'shall be paid by the manufacturer or producer,' who must make a true and complete return of the amount of his, her or its gross monthly sales, receipts or earnings or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each month, pay the tax due thereon.'

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"It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount

received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. The effect is still the same, namely, that the purchaser does not pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else.

"But the tax burden may not even be shifted to the purchaser at all. A decision to absorb the burden of the tax is largely a matter of economics. Then it can no longer be contended that a sales tax is a tax on the purchaser."

It follows that it is petitioner, and not its customers, that may ask for a refund of whatever amounts it is entitled for the percentage or sales taxes it paid before the amendment of section 246 of the Tax Code.

Petitioner finally disputes the ruling of the respondent Court that the action for refund has prescribed. Its contention is that the defense of prescription was belated in that it was raised for the first time in the answer of respondent when the original petition was amended to incorporate more explicitly petitioner's claim for refund of ad valorem taxes paid on cement produced during the period from April 1, 1955 to September 30, 1956.

In analyzing this issue, We need to first have a complete perspective of the original and amended pleadings filed by the parties in the Court of Tax Appeals, thus - On January 24, 1957, the petitioner filed its petition for review, claiming refund of sales or percentage taxes amounting to P448,893.63. In its answer of February 27, 1957, respondent did not raise the defense of prescription. On September 3, 1959, respondent filed an amended answer but again said defense was not included. On October 24, 1959, the petitioner asked for leave to file an amended petition for review in which amendment it added the sum of P400,499.99 representing overpaid ad valorem taxes, in its claim for refund. On December 28, 1959, the amended petition was deemed admitted as of the date of its filing on October 24, 1959, and respondent was given time to file his answer. The respondent filed his answer on February 26, 1960, this time pleading prescription as a defense insofar as portion of the sales tax sought to be refunded was paid more than two years from the date the petition for review was filed with the Tax Court. On June 23, 1961, the petitioner re-amended its petition with said court praying, finally, that respondent be ordered to refund the amount of P458,241.45 paid as percentage taxes, and the amount of P427,552.95, re-presenting overpayments of ad valorem taxes; or alternatively, the amount of P590,649.92, or P854,619.89, depending on the correct basis for the computation of the ad valorem tax.

Section 306 of the Tax Code provides:

"RECOVERY OF TAX ERRONEOUSLY OR ILLEGALLY COLLECTED. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax here-after alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrong-fully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

Construing the above provision, this Court has ruled that the two requirements - (1) filing of a written claim for refund with the Commissioner of Internal Revenue; and, (2) institution of a suit or proceeding in court within two years from the date of payment - are mandatory and noncompliance therewith is fatal.[15]

As there appears to be no dispute on the written claims filed with the Commissioner of Internal Revenue, We shall proceed to analyze the effect of the prescriptive period in relation to the pleadings filed with the Court of Tax Appeals. For the refund of the 7% sales or percentage, taxes covering the period from November 1, 1954 to March, 1955, amounting to P446,898.63, as shown in Annex A of the Amended Petition, the suit is deemed to

have been instituted on January 24, 1957, when the original petition was filed. Counting two years back, that is to January 25, 1955, all taxes paid after this date may still be properly refunded, speaking from the prescription angle. As to the allegedly overpaid ad valorem taxes of 1-1/2% for the period from April, 1955 to September, 1956 amounting to P400,499.99, the suit should be deemed to have been instituted only with the filing of the amended petition on October 24, 1959, which added as a new cause of action the recovery of said overpaid ad valorem taxes. Again, counting two years back from October 24, 1959, when the amended complaint was filed, to October 25, 1957 - all taxes paid thereafter may still be recovered. It is not claimed, however, nor is there any showing, that among the alleged over payments of ad valorem taxes were remitted after October 25, 1957.

Petitioner's claim that the defense of prescription had been waived, for failure of the respondent Commissioner to raise it in his original answer, does not hold water. Respondent's answer to the amended petition for review, dated February 26, 1960, wherein it was pleaded the defense of prescription, superseded the answers filed February 27, 1957 and September 3, 1959, respectively, so that any defense or defenses raised in his latest answer would be considered as though contained in his original answer. For the rule is that "an amended complaint and the answer thereto, when filed, take the place of the originals. The latter are then regarded as abandoned and cease to perform any further functions as pleadings." [16]

Anent the contention that "with respect to the ad valorem taxes paid for the period from April 1, 1955 though not explicitly included in the original petition, was actually mentioned therein and should therefore be deemed filed on the date of the original petition, We note that the aforesaid ad valorem taxes were only mentioned in Annex 'A' to the petition as part of the tabulation of taxes paid by petitioner to the respondent, but in the body of the petition itself, the refund of said payments was not sought. All the allegations in said original petition pertain to and are in support of petitioner's claim for refund of the sales taxes in question.

In recapitulation, We hold:

1. That before the effectivity of Republic Act No. 1299, amending section 246 of the National Internal Revenue Code, cement was taxable as a manufactured product under section 186, in connection with section 194 (x) of said Code;
2. That in computing the gross selling price of the cement as basis for the 7% percentage tax levied in pursuance to section 186, the cost of the bag containers used in the sale, and the gypsum used in the manufacture, of cement should be deducted;
3. That the petitioner, and not its customers, is the proper party to seek refund of taxes erroneously paid under section 186 of the Tax Code;
4. That the action for refund has not prescribed in so far as concerns the sales or percentage taxes paid after January 25, 1955;
5. That action for refund has prescribed for sales or percentage taxes paid before January 25, 1955, and for all ad valorem taxes alleged in the amended petition, which were paid more than two years back from October 24, 1959, when said taxes were sought to be refunded for the first time.

PREMISES CONSIDERED, the decision appealed from is modified as hereby above-stated, and as thus modified, the decision is affirmed.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] An Act amending further section 246 of The Internal Revenue Code, as amended, by defining the words "minerals" and "mineral products".

[2] Pursuant to sec. 196 of the Tax Code.

[3] A constituent of cement, imported from abroad.

[4] See Sec. 243, Tax Code.

[5] But see Cebu Portland Cement Co. vs. Commissioner of Internal Revenue, G. R. No. L-18649, decision of Feb. 27, 1965 and resolution of Dec. 29, 1967; see also another case between the same parties, G. R. No. L-22603, Jan. 17, 1968. In both cases, 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.

[6] which provides: In computing the tax imposed in sections 184, 185 and 186, transactions in the following commodities shall be excluded: 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.

[7] Universal Corn Products, Inc. et al. vs. Rice & Corn Board, G. R. L-21013, Aug. 17, 1967, quoting Segovia vs. Noel, 47 Phil. 543, 546.

[8] Ibid, citing Montilla vs. Agustinian Corp., 24 Phil. 220; 222.

[9] G. R. Nos. L-23236 and 23254, May 31, 1967.

[10] Lorenzo v. Posadas, 64 Phil. 353; Commissioner of Internal Revenue v. Filipinas Compañia de Seguros, 58 O. G. 3, p. 460; Pacific Oxygen & Acetylene Co. v. Commissioner of Internal Revenue, G. R. No. L-17708, April 30, 1965.

[11] See Sec. 194(x), National Int. Rev. Code.

[12] As stated in Cebu Portland Cement Co. vs. Commissioner of Int. Rev., G. R. No. L-22603, supra.

[13] The compensating tax is the equivalent of the sales tax. Their difference is that the former is levied on products coming from abroad, while the latter is levied on products manufactured locally. Sec. 190 of the Tax Code requires that the compensating tax to be paid in pursuance thereof be "equivalent to the percentage taxes imposed under this Title on original transactions affected merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office."

[14] In Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue & Court of Tax Appeals, G. R. No. L-19707, August 17, 1967.

[15] Johnston Lumber Co., Inc. v. Court of Tax Appeals, G.R. No. L-9292, April 23, 1957; Guagua Electric Light Plant Co., Inc. v. Collector of Internal Revenue, et al., G. R. No. L-14421, April 29, 1961.

[16] Reynes v. La Compania General de Tabacos de Filipinas, et al., 21 Phil. 416.

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