

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MOBIL PHILIPPINES, INC. AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 104920. April 28, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

The Commissioner of Internal Revenue asks us to review and set aside the Decision of the Court of Appeals^[1] which, reversing the Court of Tax Appeals ("CTA"), held a twenty-five percent (25%) surcharge imposed on private respondent Mobil Philippines, Inc. ("Mobil") for late payment of additional ad valorem taxes as invalid.

Private respondent Mobil is a corporation engaged in marketing aviation turbo (jet) fuel, diesel and bunker fuel oil to international carriers. Mobil obtains its supply of these petroleum products from Caltex Philippines, Inc. ("Caltex") drawing product from the latter's refinery in Batangas or from Caltex's entitlement to processed product from the Bataan refinery of the Bataan Refining Corporation at Limay, Bataan.

By its Resolution No. 87-02, dated 11 February 1987, the Board of Energy ("BOE") (now the Energy Regulatory Board ["ERB"])^[2] increased by an average amount of 30.2 centavos per liter the "cost recovery" (or "company take" or "company netback") of oil companies on the various petroleum products refined and marketed by them locally. The effectivity of this Resolution was, by its terms, made retroactive to 1 January 1987.^[3]

Mobil received a copy of BOE Resolution No. 87-02 on 16 February 1987.

On 20 February 1987, the Bureau of Internal Revenue ("BIR") addressed a demand letter to Mobil requiring payment of the amount of P981,435.35 as additional ad valorem taxes. This letter read as follows:

"Mobil Philippines, Inc.

P.O. Box 246

Makati 3117, Metro Manila

Gentlemen:

Per Board of Energy (BOE) Resolution No. 87--02 dated February [11], 1987, increasing the company netback of the oil companies by an average amount of 30.2 centavos (P0.302) per liter retroactive to January 1, 1987, please be informed that there is still due from you the amount of NINE HUNDRED EIGHTY ONE THOUSAND FOUR HUNDRED THIRTY FIVE PESOS & 35/100 (P981,435.35) for the month of January, 1987 as the result [of] the corresponding change in the ad valorem tax of the different petroleum products computed as follows:

PRODUCTS

VOLUME

Increase in Tax

DEFICIENCY

Diesel

581,036 ltrs.

P.183

P106,329.59

Bunker Fuel Oil

677,595 ltrs.

.051

34,557.35

Avturbo

2,702,728 ltrs.

.311

840,548.41

Total

P981,435.35

In this connection, please be informed that payment of the above amount, may be made through any authorized bank by presenting the Authority to Issue Tax Receipt which can be obtained from the Oil & Miscellaneous Tax Division, Room 810, BIR Bldg., Diliman, Quezon City.

(Signed)

Bienvenido A. Tan, Jr.

Commissioner"[4]

The amount demanded was paid by Mobil on 12 March 1987.

By its Resolution No. 87-03, dated 16 March 1987, the BOE increased once again the cost recovery of oil companies by an average amount of 54.7 centavos per liter of product sold. The effectivity of BOE Resolution No. 87-03 was retroactively set at 1 March 1981.[5]

On 24 April 1987, another letter was sent by the BIR to Mobil demanding payment of the amount of P1,305,455.76 as additional ad valorem taxes on petroleum products withdrawn from the refinery during the period from 1 January 1987 to 31 March 1987 resulting from the operation of BOE Resolutions Nos. 87-02 and 87-03. In addition, the letter demanded payment of the amount of P326,363.94 as twenty-five percent (25%) surcharge for failure to pay the additional ad valorem taxes in a timely manner, i.e., within fifteen (15) days from the respective dates of the two (2) BOE Resolutions.[6]

On 15 May 1987, Mobil paid the amount of P1,305,455.76 comprising the additional ad valorem taxes, but protested the imposition of the twenty-five percent (25%) surcharge as "arbitrary and unfair." In respect of the surcharge, the contention of Mobil was set out in a letter dated 15 May 1987 addressed to the Commissioner of Internal Revenue by Mobil's A.L. Baldoza, Manager-Accounting, in the following terms:

"Reference is your OMTD Demand No. OP-008-87 dated April 24, 1987.

Please be advised that of the total demanded amount of P1,631,819.70 we are herewith paying by May 15, 1987 the additional ad valorem tax assessment of P1,305,455.76 in compliance with BOE Resolution Nos. 87-02 and 87-03 dated February 7, 1987 and March 16, 1987, respectively. We feel that the 25% surcharge that you are including in your demand is arbitrary and unfair.

We did not pay the additional ad valorem tax within 15 days of removal of the products made subject to the tax as required by Sec. 110, Tax Code, as amended, because the adjustment in the tax base resulting from the adjustment of the posted price under the BOE Resolutions dated Feb. 7, 1987 and March 16, 1987 were post facto or retroactive to January 1, 1987. At the time the excise tax or ad valorem tax on the products were due (which was 15 days after removal of the products), the additional tax base was not yet in existence, hence we could not pay the appropriate tax due per said BOE Resolution. Therefore, to require us to pay the 25% surcharge for payment beyond the 15-day period required in said Sec. 110, Tax Code, as amended, would be unfair and arbitrary.

We, therefore, request, by this letter, that you delete the 25% penalty charge in your OMTD Demand No. OP-008-87 dated April 24, 1987, which we received on May 4, 1987."[7]

The Commissioner, in a subsequent letter of 13 July 1987,[8] rejected the protest and reiterated the demand for the twenty-five percent (25%) surcharge. In this letter, the Commissioner stated that the dates of the two (2) BOE Resolutions were "by inference the date of removal of the products from the place of production mentioned in Section 110 [1977 Tax Code, as amended]." The Commissioner recalled that before the BOE issued any resolution increasing the cost recovery of oil companies, the BOE invariably held public hearings on the applications for price increases by the oil companies, and that at these hearings,

"[i]n arriving at a certain rate, it is the group of oil companies that provide the BOE, among others, with figures used as basis in analyzing the correctness of the [application], amount of oil company recovery to be added to the current oil company take in arriving at the posted price, increases in cost of material, cost of manufacturing, sales profits, and so forth.

Conceiving the above pictures of the process, it becomes unbelievable that you are not aware of the existence of the posted price of any particular oil product and the period to be covered by the increase of said particular products, as well as the date of issuance of the resolution of which you are presumably informed in the course of the hearings as one of the petitioners. x x x." (Underscoring supplied)

Mobil went to the Court of Tax Appeals on a Petition for Review assailing the assessment of the twenty-five percent (25%) surcharge by the BIR. On 31 May 1991, the CTA rendered judgment sustaining the position taken by the BIR that the date of the promulgation of the BOE Resolutions was to be deemed the date of the removal of the petroleum products involved, considering that "the liability for the additional ad valorem taxes arose as a consequence of the promulgation of aforesaid BOE Resolutions and was determinable only at that time." Mobil's Petition was accordingly dismissed.

Still dissatisfied, Mobil went before the Court of Appeals on Petition for Review. In due course of time, the Court of Appeals rendered a decision which reversed the CTA judgment. The Court of Appeals rejected the position of the BIR which had been sustained by the CTA that the date of payment of the adjusted or additional ad valorem taxes should be fifteen (15) days from the dates of the BOE Resolutions, such dates being deemed to be the dates of removal of the covered product from the petroleum refinery. The reasoning of the Court of Appeals is set out in the following paragraphs:

"A surcharge is an amount imposed by law as an addition to the main tax in case of delinquency. Section 282 of the 1987 Tax Code [should be 1977 Tax Code, as amended] provides that a penalty equivalent to 25% of the

amount due shall be imposed in case of failure to pay the tax within the time prescribed for its payment, among others. In other words, they are imposed in case of delay in the payment of the tax due.

In the case at bar, the petitioner is not guilty of delay in the payment of the adjusted excise tax for the reason that there was no period specified in the Resolutions for the payment of the said taxes. One cannot incur in delay when there is no period fixed for payment.

The petitioner also did not incur in delay since the excise taxes due on the withdrawals it made in the months of January, February, and March, previous to the effectivity of the Resolutions in question were duly paid. As regards the adjusted ad valorem tax, the petitioner likewise paid the same after demand was made by respondent.

The period provided for in the Tax Code cannot be made to apply in the case of the adjusted taxes which were made retroactive to January 1, and March 1, 1987 for the reason that such period refers to the 'actual' removal of the products. In this case, the fifteen day period from the actual removal of the petroleum products had already elapsed even prior to the issuance of the resolutions aforementioned. Respondent Commissioner claims the date of the Resolutions to be, by inference, the date of removal of the products (Attachment B, Petition). It is however the established rule in the interpretation of tax statutes not to extend their provisions by implication (*Marinduque Iron Mines v. Municipal Council of Hinabangan, et al.*, 11 SCRA 416), beyond the clear import of the language employed, or to enlarge their scope as to include matters which are not specifically pointed out.

x x x.

x x x x x x x x"[9]

(Underscoring partly in the original and partly supplied) (Brackets supplied)

The issue now raised by the BIR before this Court is the same issue presented by Mobil to the CTA and the Court of Appeals: whether or not Mobil was correctly held liable for the twenty-five percent (25%) surcharge for late payment of additional ad valorem taxes which became due by reason of the operation of the two (2) BOE Resolutions here involved.

We consider that the Court of Appeals fell into reversible error when it rejected the twenty-five percent (25%) surcharge assessed against private respondent Mobil.

The first point that should be made is that the problem presently before this Court is an exceptional problem and should not, in the normal course of events, arise at all. The normal course of events in respect of excise taxes of petroleum products may be summed up summarily in the following terms.

There are two (2) kinds of excise taxes imposed in respect of the manufacture or production of the particular kinds of petroleum products covered by BOE Resolutions Nos. 87-02 and 87-03.[10] The first type of excise tax, which is referred to as "specific tax" is "imposed and based on weight or volume capacity or any other physical unit of measurement;" the second type of excise tax imposed on the manufacture of petroleum products is "based on selling price or other specified value of the article" and is referred to as "ad valorem tax." [11] More specifically, the "specific tax" on petroleum products is computed on a per liter basis; the ad valorem tax, in contrast, was computed on the "wholesale posted price, net of specific and domestic ad valorem taxes on the oil products as approved by the Board of Energy [now ERB]."[12]

The time prescribed for payment of both kinds of excise taxes imposed upon petroleum products was specified in Section 110 of the 1977 Tax Code, as amended, in the following manner:

"Sec. 110. Payment of excise taxes on domestic products -- (a) Persons liable; time for payment -- Unless otherwise especially allowed, excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of productions; Provided, however, That excise tax on locally manufactured

petroleum products levied under Section 128 of this Title shall be paid within fifteen (15) days from the date of removal thereof from the place of production. Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

x x x x x x x x"[13]

(Underscoring supplied)

The above paragraph of Section 110 should be read in conjunction with the following provisions of Section 128 of the same Code:

"Sec. 128. Manufactured Oils and Other Fuels. -- There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the articles hereunder enumerated as soon as they are in existence as such: x x x"[14] (Underscoring supplied)

Reading Section 128 and Section 110 together, it will be seen that domestically refined and manufactured mineral oils and motor fuels become subject to excise taxes as soon as they come into existence as such. In respect of most other kinds of articles also subject to excise taxes, the excise taxes are payable by the manufacturer or producer even before removal from the place of production. In the case of locally manufactured petroleum products, however, the manufacturer is given what is in effect a fifteen (15)-day grace period: those excise taxes must be paid within fifteen (15) days from the date of removal of the petroleum product from the place of production. Specific taxes on petroleum products are simply computed on the basis of a given number of pesos or centavos per liter or other relevant unit of physical measurement. Upon the other hand, as already noted, the ad valorem tax on petroleum products was calculated on the basis of the wholesale posted price at the time of removal from the refinery. As we understand it, such wholesale posted price was a known or determinable quantity, it being fixed by the BOE upon consideration of a number of factors such as the landed cost of the raw material (i.e., crude oil), cost of manufacturing, etc.

The exceptional situation presently before this Court arose because the cost recovery of oil companies was allowed to increase, and the wholesale posted price correspondingly allowed to adjust upward, not only in respect of petroleum products removed from the refinery after the date of promulgation of the relevant BOE Resolution, but also in respect of product removed sometime before the actual promulgation of such Resolution. In other words, the giving of retroactive effect to the BOE Resolutions created a problem by permitting the increase of the wholesale posted price (the tax base on which ad valorem taxes were computed) in respect of product already previously physically removed from the refinery but not yet sold or otherwise disposed of by the oil companies at the time of the promulgation of the relevant BOE Resolutions.

The second point that may be stressed is that the giving of retroactive effect to BOE Resolutions Nos. 87-02 and 87-03 benefitted private respondent Mobil, Caltex and all the other oil companies. The recoverable value to Mobil of product previously physically removed from the refinery but not yet disposed of at the time of issuance of the BOE Resolutions obviously increased; Mobil could, thereafter, charge and recover a higher peso value than the wholesale posted price existing at the time of actual or physical removal of the product. The BIR thus correctly required the manufacturer to pay additional ad valorem taxes on the additional amount which the manufacturer would receive from the sale of the product previously or already removed from the place of production. Mobil did not dispute, as it could not have reasonably disputed, its liability for such additional ad valorem taxes.

We turn to the contention of Mobil in respect of its liability for the twenty-five percent (25%) surcharge for late payment of the additional ad valorem taxes. It is, of course, literally true that the adjusted tax base, or the wholesale posted price as increased by or as a result of the operation of the two (2) BOE Resolutions, did not exist

fifteen (15) days after physical removal of the product from the refinery provided such product had been physically removed more than fifteen (15) days before the actual dates of promulgation of the two (2) BOE Resolutions. The basic contention of Mobil may hence be seen to be that the liability to pay ad valorem taxes accrued fifteen (15) days after physical removal of product from the oil refinery. At the time such physical removal had been effected, the adjusted tax base, i.e., the wholesale posted price as increased by the effects of the two (2) BOE Resolutions, did not exist and was not determinable. There was, therefore, in Mobil's contention, no prescribed time for payment of the additional ad valorem taxes which became due by reason of the increases in cost recovery in respect of product withdrawn from the refinery during the period of the retroactive application of the two (2) BOE Resolutions. If there was no prescribed time for payment, it followed, as a matter of strict logic (in the mind of Mobil and the Court of Appeals), that no liability for delay in payment of such additional ad valorem taxes could arise.

The principal difficulty with the basic contention of Mobil is that it proves too much. If that contention were taken literally and seriously, the additional ad valorem taxes on the previously withdrawn petroleum products would be payable only when it would please Mobil to pay such taxes. We consider such a result to be absurd; it is certainly repugnant to public policy, for the additional ad valorem taxes were clearly due on the additional value undeniably accruing to Mobil's benefit in respect of previously withdrawn product but not yet disposed of by the time the increase in cost recovery of oil companies was authorized by the BOE Resolutions.

As noted earlier, petroleum products become subject to excise taxes the moment they come to existence. It may also be noted that Section 110 which prescribed the time for payment of excise taxes on locally manufactured petroleum product did not condition liability for such excise taxes upon the existence of any particular wholesale posted price. The legal liability to pay the excise taxes arose as soon as the relevant petroleum product came into chemical existence; that liability was, however, unliquidated until the product was withdrawn and the volume of withdrawal determined, and until the relevant whole-sale posted price was determined. Thus, if Section 110 were to be read as literally and strictly as the Court of Appeals and Mobil believe it should, then the BIR would have been quite justified in computing the period of delay or default from the time of actual physical removal of the product involved, upon the theory that the liquidation of the amount of ad valorem taxes due retroacts to the time of physical removal of the product from the refinery.^[15] But the BIR did not do so; instead, it considered, as already seen, the product as having been constructively removed from the refinery only on the dates of promulgation of the two (2) BOE Resolutions and counted the statutory fifteen (15) day-grace period from such dates.

Thus, the BIR considered the impracticability of computing the full or adjusted ad valorem taxes in this case as constituting a justification or excuse for deferring payment of such additional ad valorem taxes. That justification disappeared as soon as the BOE Resolutions were issued and the increased wholesale posted prices were determined. We are unable to characterize the position of the BIR as merely capricious or oppressive; to the contrary, such position appears to this Court as reasonable and moderate and as close to the intent of Sections 110 and 128, 1977 Tax Code, as it was possible to get under the situation.

It may well be that the BIR could have gone the full length or course apparently suggested by gentle reason on this matter, that is, the previously physically withdrawn product could have been regarded as constructively removed on the date that the oil companies received copies of the official texts of the two (2) BOE Resolutions. In this connection, we understand the letter (quoted above) dated 24 April 1987 of the then Commissioner of Internal Revenue Bienvenido A. Tan, Jr. to be saying that at all events, the oil companies had actual knowledge of the increase in wholesale posted prices resulting from the authorization of increased cost recovery for the oil companies. The Court notes, however, that whether the fifteen (15) day grace period for payment be computed

from the dates of promulgation of the two (2) BOE Resolutions, or from the date of actual receipt of a copy of those two (2) BOE Resolutions (which date may realistically have differed from oil company to oil company), private respondent Mobil paid the additional ad valorem taxes due after expiration of such fifteen (15) day period. Mobil was, in other words, late in any case in effecting payment of the additional ad valorem taxes. Mobil paid the additional ad valorem taxes arising as a result of BOE Resolution No. 87-02 on 12 March 1987, or thirty-one (31) days after receipt of a copy of that BOE Resolution. Mobil paid the additional ad valorem taxes arising as a result of BOE Resolution No. 87-03 on 15 May 1987, or fifty-nine (59) days after receipt of a copy of BOE Resolution No. 87-03.

WHEREFORE, for all the foregoing, the Petition for Review is GRANTED DUE COURSE, the Comment of private respondent Mobil CONSIDERED as its Answer to the Petition and the challenged Decision of the Court of Appeals is hereby REVERSED, and the Decision of the Court of Tax Appeals dated 31 May 1991 AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] C.A.-G.R. SP No. 25791, 31 March 1992, Camilon, J, ponente, and Imperial and Garcia, JJ., concurring.

[2] The BOE was reconstituted into the ERB by Executive Order No. 172, dated 8 May 1987 (83 O.G. 2904 [1987]).

[3] The text of Resolution No. 87-02 follows:

"WHEREAS, the FOB price of crude during the period November-December, 1986 stood at an average of \$13.64 per barrel, which, when compared with that prevailing during the period September-October 1986 of \$11.80 per barrel, results in a further increase in the oil companies' peso landed cost of crude by an average amount of 30.2 centavos (P0.302) per liter of product;

WHEREAS, the Oil Price Stabilization Fund (OPSF) was established to absorb fluctuations in petroleum product costs arising from changes in world market price of crude or in the exchange rate;

WHEREAS, it is necessary to allow the oil companies to recover from the OPSF the said additional cost of importation and thereby preserve and maintain the existing price levels of petroleum products.

WHEREFORE, considering the foregoing, and pursuant to Letter of Instructions No. 1441 dated November 20, 1984, this Board hereby issues the following directives:

1. The cost recovery of the oil companies on the various petroleum products refined and/or marketed by them locally is hereby increased by an average amount of 30.2 centavos (P0.302) per liter. With the said increase in company net-back, the oil companies' cost recovery on the different petroleum products shall now be as follows:

In Pesos Per Liter

Product Oil Company Recovery

Premium Gasoline 3.7248

Regular Gasoline 3.3768

Avturbo 3.4828

Kerosene 3.4438

Diesel 2.8708

Fuel Oil 2.2065

Feedstock 2.2065

LPG 2.2850

Asphalts 2.6658

Solvents 3.4058

2. The OPSF rates per liter on the different petroleum products are hereby adjusted in accordance with the following schedule:

In Pesos Per Liter

Product OPSF

Premium Gasoline (0.529)

Regular Gasoline (0.569)

Avturbo (0.327)

Kerosene (0.002)

Diesel 0.458

Fuel Oil (0.367)

Feedstock (0.367)

LPG 0.398

Asphalts 0.027

Solvents (0.269)

3. This Resolution shall not affect the present wholesale and pump/retail prices of petroleum products.

The company netback and OPSF rates prescribed in the foregoing already include the allocation of the 50.2 centavos (P0.502) per liter increase in company netback earlier authorized in BOE Resolution No. 86-07.

The effectivity of this Resolution shall retroact to January 1, 1987.

Let copies of this Resolution be furnished the oil companies, the Ministry of Finance, the Ministry of Trade and Industry, the National Economic Development Authority, the Office of Energy Affairs, the Bureau of Internal Revenue and other entitled concerned, for their information and guidance." (Annex "C" of Petition for Review filed by Mobil Phils., Inc., CTA Case No. 4183.)

[4] Annex "E", Petition for Review by Mobil, id.; Records, p. 18; underscoring supplied.

[5] Resolution No. 87-03 read as follows:

"WHEREAS, in view of the continuing rise in crude oil prices in the international market, the FOB cost of crude imports during the period January-February, 1987 had increased from the previous level of \$13.64 per barrel to

\$16.90 per barrel;

WHEREAS, such increases in FOB cost had inevitably raised the oil companies' peso landed cost of crude by P82.594 per barrel, or P0.547 per liter of product;

WHEREAS, in order to maintain the existing price levels of petroleum products, it is deemed necessary and appropriate that the oil companies be allowed to recover their additional cost of importation from the Oil Price Stabilization Fund (OPSF).

WHEREFORE, premises considered, and pursuant to Letter of Instructions No. 1441 dated November 20, 1984, this Board hereby issues the following directives and dispositions:

1. The existing cost recovery of the oil companies on the different petroleum products is hereby increased by an average amount of 54.7 centavos (P0.547) per liter of product sold, the same to allocated as follows:

In Pesos Per Liter

Product Oil Company Recovery

Premium Gasoline .144

Regular Gasoline .116

Avturbo .414

Kerosene .406

Diesel Oil .707

Fuel Oil .683

Feedstock .683

LPG .370

Asphalts .683

Solvents .406

2. The oil companies are authorized to reduce their payments to the OPSF by an average amount of 62.7 centavos (P0.627) per liter of product sold in accordance with the following schedule of allocation:

In Pesos Per Liter

Product Oil Company Recovery

Premium Gasoline .180

Regular Gasoline .145

Avturbo .517

Kerosene .463

Diesel Oil .862

Fuel Oil .731

Feedstock .731

LPG .403

Asphalts .779

Solvents .508

3. This Resolution shall not affect the existing wholesale and pump/retail prices of petroleum products.

The effectivity of this Resolution shall retroact to March 1, 1987.

Let copies hereof be furnished the oil companies, the Ministry of Finance, the Ministry of Trade and Industry, the National Economic Development Authority, the Office of Energy Affairs, the Bureau of Internal Revenue and other entities concerned, for their information and guidance." (Annex "D" of Petition for Review by Mobil, supra note 3.)

[6] The Commissioner wrote:

"Per BOE Resolution Nos. 87-02 and 87-03 dated February [11], 1987 and March 16, 1987, respectively, the posted price of your petroleum products subject to ad valorem tax and removed from January 1, 1987 to March 31, 1987 was increased which correspondingly increased your ad valorem tax liability. More than fifteen (15) days from the date of the aforesaid BOE Resolutions have already elapsed but our records do not show that you have paid the additional ad valorem tax as a consequence thereto.

In view thereof, demand is made upon you to pay the sum of ONE MILLION SIX HUNDRED THIRTY ONE THOUSAND EIGHT HUNDRED NINETEEN PESOS & 70/100 (P1,631,819.70) and computed as follows:

Product Period Volume Increase Tax

(Liters) in Tax Deficiency

Jet Fuel January

(add'l) 794,921 P0.311 P 247,220.43

February 2,637,621 0.311 820,300.13

March 1,271,872 0.103 131,002.81

Diesel January

(add'l) 584,330 0.183 106,932.39

P1,305,455.76

Plus: 25% surcharge for failure to

pay the deficiency tax due per

BOE Resolution Nos. 87-02 and

87-03 dated Feb. [11] and March

16, 1987, respectively..... 326,363.94

Total Amount Due P1,631,819.70"

In this connection, you are hereby requested to pay the abovementioned amount plus 20% interest per annum not

later than May 15, 1987, otherwise the interest will continue to run until date of payment." (Annex "F," Mobil's Petition for Review, id.)

[7] Annex "G," Mobil's Petition for Review, id.; underscoring supplied.

[8] Annex "A," Mobil's Petition for Review, id.

[9] Court of Appeals' Decision, pp. 3-4; Rollo, pp. 25-26.

[10] Certain other kinds of petroleum products are subject to only one (1) and not two (2) excise taxes, e.g., lubricating oils, processed gas, greases and waxes, etc.; see Section 128, 1977 Tax Code, as amended.

[11] Section 109, 1977 Tax Code, as amended by Executive Order No. 22, dated 25 June 1986 (82 O.G. 2965 [1986]). This Section now appears as Section 126, 1986 Tax Code as amended by Executive Order No. 273, dated 25 July 1987 (83 O.G. [Supp.] 3528 [1987]). Executive Order No. 273, by its terms, went into effect on 1 January 1988 (except Section 25 [c] thereof which went into effect upon issuance of Executive Order No. 273). Thus, during the period relevant for present purposes, the applicable statutory provisions are those found in the 1977 Tax Code, as amended, and we have preferred to refer to these provisions by their old section numbers in the text of this Decision.

[12] Section 128, 1977 Tax Code, as amended. This Section, renumbered as Section 148 of the 1986 Tax Code, as amended by Executive Order No. 273, now provides as follows:

"The ad valorem tax imposed in this paragraph shall be based on the company take or netback on the product as approved by the Energy Regulatory Board including the said ad valorem tax."

In other words, the tax base for computing ad valorem taxes on domestically manufactured petroleum products is now, simply, the "cost recovery" allowed by ERB to oil companies.

[13] Section 110 is now renumbered as Section 127 (a) of the 1986 Tax Code, as amended by Executive Order No. 273 dated 25 July 1987.

[14] Section 128 is now renumbered as Section 145 of the 1986 Tax Code, as amended by Executive Order No. 273 dated 25 July 1987.

[15] In the same way that the increase of "cost recovery" by oil companies was made retroactive by the BOE Resolutions. It may be noted once more that "cost recovery" or "company take" or "netback" has replaced "wholesale posted price" for purposes of computation of ad valorem taxes on locally produced petroleum products, under renumbered Section 145 of the 1986 Tax Code as amended by Executive Order No. 273, dated 25 July 1987.

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