

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. COURT OF APPEALS AND ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 86785. November 21, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

With commendable zeal, petitioner, through the Solicitor General, assails the decision in CA-G.R. No. 15429 of the Court of Appeals,[1] promulgated on January 20, 1989, affirming the decision of the Court of Tax Appeals in C.T.A. Case No. 2778 which granted a tax credit of P170,476.64 representing ad valorem taxes paid by private respondent for the period from the first quarter of 1974 to the third quarter of 1975.

The findings of fact of the Court of Tax Appeals, which were adopted by the Court of Appeals, are not disputed by petitioner and are hereunder reproduced:

“1. Petitioner is a mining corporation duly organized and existing under and by virtue of the laws of the Philippines, having its offices at A. Soriano Bldg., Ayala Avenue, Makati, Rizal. It is engaged primarily in the mining of copper ore from its mines property and concessions in a barrio called Don Andres Soriano, Toledo, Province of Cebu, and reputedly the biggest copper mine in Asia. (t.s.n., pp. 6, 18-19, hearing 10/1/82.)

“2. Petitioner used the open pit method digging away the copper ore deposits. This consists of removing all surface and top materials of limestone, soil and rocks to reach into the copper ore deposits found below. (t.s.n., pp. 19-21, 10/1/82; pp. 16-17, 2/17/83.)

“3. Petitioner is the owner of the land or surface rights of the Biga Lime Quarry located in Toledo City containing limestone. (Exhs. G-1, H, H-1 to H-17, K; t.s.n., pp. 18, 22, 24, 31-32, 10/1/82) And as such owner, petitioner is not required, during the years covered in this case (1973-1975), to secure a government permit to dig out the limestone. (Sec. 67, P.D. 463; Sec. 63, Consolidated Mines Administrative Order; t.s.n., pp. 21-24, 10/1/82.)

“4. Beneath the surface of the Biga Lime Quarry are deposits of copper ore, and to mine these copper deposits, petitioner had to remove and dig out the surface materials of limestone, soil and rocks. Apparently, most of the limestone was left in the mine site as waste, although a small portion thereof was utilized by petitioner as a flotation agent in the conversion of the copper rocks into concentrates. On the basis of the evidence, the limestone was first processed by petitioner into lime; and the lime became a cleansing reagent, by chemical reaction with water, in the conversion of the copper ore into copper concentrate. The effect of the lime mixed with water was to cause the copper mineral powder to float and caused the unwanted waste like lime and other materials to sink. This waste at the bottom of the conveyor was thrown away as tailings while the floating copper powder was accumulated and dried, known as copper concentrate. This was the mineral ore that was exported to Japan for processing into copper cathodes and rods. Evidently, the lime does not become part of the concentrate. (Exhs. I; J; t.s.n., p.16, 5/4/81; pp. 16-17, 20-27, 10/1/82.)

“5. As shown from the records, the lime-stone processed into lime and used as flotation agent was never

removed from the mines concession of petitioner. Even the tailings, topsoil waste and rocks, were left in the mines site as waste. (t.s.n., p. 21--27, 10/1/82; p. 6, 5/14/81.)

"6. The processing by petitioner of the limestone was done completely inside the concession. (t.s.n., p. 8, 10/29/83; pp. 28, 31, 10/1/82; pp. 21-22, 10/1/83.) And nobody purchased the limestone or the lime manufactured from it. (t.s.n., p. 29, 10/1/83.) Seemingly, neither the limestone nor the processed 'lime' possessed market value. (t.s.n., pp. 5-7, 9/29/83; pp. 7-8, 13-14, 5/14/81; Exhs. D, D-11.)

"7. The evidence presented shows that for cost accounting and internal management control, petitioner assigned 'cost estimates' to each and every identifiable activity or process involved in the mining of copper from blasting and digging and hauling to loading for export. Invariably, cost was assigned to the process of digging out the copper rocks, crushing and pulverizing them, and converting the mineral into exportable copper concentrate to exporting the concentrate. It was from this assignment of cost estimate to the process of producing lime from the limestone, that petitioner established that the 'production cost' of lime, during the period involved in this case, was P72,096.25. (Exhs. A-d, D-1, F-1 to F-3; t.s.n., pp. 7-14, 5/14/81; pp. 3-4, 8-9, 13-17, 2/17/83; pp. 5--8, 9/29/83.)

"8. It was this production cost of 'lime' that petitioner used in computing the ad valorem tax of P181,925.25 representing tax on the lime, x x x." [2]

On December 22, 1975, petitioner filed with the Commissioner of Internal Revenue its claim for tax credit of the aforesaid sum of P181,925.25 which it paid as ad valorem tax. On February 18, 1976, since no action was seasonably taken by the Commissioner of Internal Revenue on the claim, petitioner filed a petition for review with the Court of Tax Appeals.

On February 16, 1988, the Court of Tax Appeals rendered judgment in favor of private respondent ordering therein respondent Commissioner of Internal Revenue "to grant a tax credit to petitioner Atlas Consolidated Mining & Development Corporation in the amount of P170,476.64 representing erroneously paid ad valorem tax for the period from the 1st quarter of 1974 to the 3rd quarter of 1975." [3]

Not satisfied therewith, petitioner filed with this Court a petition for review on certiorari, which petition was referred to the Court of Appeals and re-docketed therein as CA-G.R. SP No. 15429. On January 20, 1989, respondent Court of Appeals affirmed the decision of the Court of Tax Appeals and dismissed the petition for lack of merit. [4]

Before us, petitioner raises the sole issue of whether limestone dug out and processed into lime used in the production of copper concentrates is subject to ad valorem tax imposed by Section 243 of the then applicable National Internal Revenue Code (Section 255 of the Internal Revenue Code of 1977, as amended). It is petitioner's submission that the aforementioned ad valorem tax is a severance tax and is due and payable upon removal of the mineral from its bed or mine.

The petition cannot prosper.

The ad valorem tax under Section 243 of the old Tax Code is a tax not on the minerals but upon the taxpayer's privilege of severing or extracting minerals or mineral products from the earth, the Government's right to exact said impost springing from the Regalian theory of State ownership of its natural resources. [5]

The pertinent provisions of the old Tax Code read as follows:

"Sec. 243. Ad valorem taxes on output of mineral lands not covered by leases. - There is hereby imposed 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 in the amount of two per centum of the value of the output, except gold which shall pay one and one-half per centum.

"Before the minerals or mineral products are removed from the mines, the Commissioner of Internal Revenue or his representatives shall first be notified of such removal on a form prescribed for the purpose. (As amended by Sec. 21, Republic Act No. 909, and Sec. 48, Republic Act No. 6110)."

"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 the removal of the mineral products from the locality where mined. x x x."

Under the aforementioned provisions, although all minerals and mineral products extracted from the mineral lands are subject to ad valorem tax, however, the said tax becomes due and payable only upon removal of the same from the locality where mined. In the case at bar, the limestones were admittedly never removed from the mine site nor did they become component parts of the copper concentrates. Moreover, it should be noted that said tax is imposed only on the actual market value of mineral products extracted or produced.[6] This is confirmed by the second paragraph of said Section 243 which requires prior notification to the Commissioner of Internal Revenue or his representative before the minerals or mineral products are removed from the mines. Such requirement is obviously intended to enable him to assess and collect the proper ad valorem taxes, which necessarily presupposes that such minerals or mineral products have an actual market value.

As found by both lower courts, in the case of private respondent the evidence shows that the limestone removed from its mineral lands, together with other surface materials, had no actual market value. The Court of Tax Appeals ramified that the utilization of waste limestone by herein private respondent, which is engaged in mining copper ore, by converting such waste into lime as a cleansing reagent in the conversion of copper into copper concentrate, was merely incidental to its mining copper ore operation for which it is adequately taxed.[7] It is not engaged in the distinct business of extracting limestone in order to serve other persons or commercial entities therewith.

Thus, respondent Court of Appeals oppositely declares:

"It is clear from the above provision that the ad valorem tax charged therein is assessed and collected on 'actual market value' of the annual gross output of the minerals extracted or the mineral products produced from the mineral lands of the taxpayer. But 'to extract' as pointed out by respondent Atlas, means 'to separate an ore or mineral from a deposit' (p. 80, Rollo), so that the word 'extract' used in the above Sec. 243, when applied to the case of Atlas, means that its taxable operation is its business or activity of extracting copper minerals or ore from the deposit in its mining lands. The presence of limestone together with other surface materials as soil and rocks on its mineral lands is, however, only an accident; in the words of respondent Atlas, 'in fact, as obstruction blocking the separation of the copper sought' by it from said lands (id). Hence, the removal of these obstructions, like the removal of other surface materials like soil and rocks, from the mineral lands where the copper ore is buried, cannot be the 'extraction' contemplated by Sec. 243.

"The process by which respondent Atlas extracts copper mineral or ore from its mineral lands in the course of which it digs away and removes all the surface top materials thereon including limestone, is very well described in the decision of the respondent CTA as follows:

1. Petitioner (Atlas Consoli-dated) had to dig away and remove all the surface top materials consisting of limestone, top soil and rocks to reach into the copper ore deposits found below. As a matter of fact, as stated above, petitioner as owner of the surface right was not even required to secure a government permit to dig out the limestone.
2. Most of the limestone was left in the mine site as waste, although a small portion thereof was utilized by petitioner as a flotation agent in the conversion of the copper rocks into concentrates. The limestone was first processed by petitioner into lime, and by chemical reaction with water, the lime became a cleansing reagent in the

conversion of the copper ore into copper concentrate. It appears that the effect of the lime, mixed with water, was to cause the copper mineral powder to float and caused the unwanted waste like lime and other materials to sink which were thrown away as tailings. The floating copper powder was accumulated and dried, known as copper concentrate which was the mineral exported to Japan for processing into copper cathodes and rods. The lime did not become part of the concentrate.

3. The limestone processed into lime and used as flotation agent was never removed from the mine concession of petitioner. And the record reveals that neither the limestone nor the processed lime possessed market value."[8]

On the premise, therefore, that the extraction or removal by private respondent of limestone from its mineral lands is a mere incident in its copper ore mining operations for which it is already taxed, both courts held that to impose another set of tax on said limestone which has no commercial value would be tantamount to double taxation. Such an imposition, avers respondent court, has been repeatedly proscribed in our decisional pronouncements to the effect that where a taxpayer is engaged in a distinct business and, as a feature thereof, in an activity merely incidental which serves no other person or business, the incidental activity should not be separately or additionally taxed.[9] Petitioner takes vigorous exception thereto, stigmatizing the reliance on said cases as erroneous and misplaced since what is involved in the case at bar is a mining tax while the cited cases deal with privilege taxes.

We agree, for purposes of the issue involved in the present case, with the ratiocination of respondent court in holding that, under the factual situation obtaining herein, there is no substantial difference between privilege taxes and mining taxes, specifically the ad valorem tax imposed in Section 243 of the old Tax Code, insofar as the prohibition against double taxation is concerned. It calls our attention to petitioner's own admission that said ad valorem tax is really a tax on the privilege of extracting or producing minerals or mineral products from the earth, a principle taken from the Republic Cement Corporation case, *supra*. Respondent court plausibly concludes therefrom that the ad valorem tax in question is really in the nature of a privilege tax, hence, the aforesaid rulings in the cited cases, involving privilege taxes and the forbiddance against the imposition of another tax on an activity incidental to the principal business, should apply to the instant case.

Generally, statutes levying taxes or duties are to be construed strongly against the Government and in favor of the subject or citizens, because burdens are not to be imposed or presumed to be imposed beyond what statutes expressly and clearly declare.[10] No person or property is subject to taxation unless they fall within the terms or plain import of a taxing statute.[11]

Moreover, it has been the long standing policy and practice of this Court to respect the conclusions of quasi-judicial agencies, such as the Court of Tax Appeals which, by the nature of its functions, is dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of its authority.[12] Therefore, finding no such abuse or improvident exercise of authority or discretion, the decision of respondent court, affirming that of the Court of Tax Appeals, must consequently be upheld.

ON THE FOREGOING CONSIDERATIONS, the petition at bar is DENIED and the judgment of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), and Paras, JJ., concur.
Padilla, J., no part.

- [1] Justice Alicia V. Sempio-Dy, ponente, with Justices Josue N. Bellosillo and Alfredo Marigomen, concurring.
- [2] Rollo, 45-47.
- [3] Ibid., 42.
- [4] Ibid., 44-53.
- [5] Portland Cement Co. vs. Commissioner of Internal Revenue, 13 SCRA 333 (1965).
- [6] Republic Cement Corporation vs. Commissioner of Internal Revenue, 23 SCRA 967 (1968).
- [7] Rollo, 40.
- [8] Ibid., 48-49.
- [9] Standard-Vacuum Oil Co. vs. Antigua, etc., et al., 96 Phil. 909 (1955); City of Manila vs. Fortune Enterprises, Inc., 108 Phil. 1058 (1960); Opon vs. Caltex Phil., Inc., 22 SCRA 755 (1968).
- [10] Commissioner of Internal Revenue vs. Fireman's Fund Insurance Company, et al., 148 SCRA 315 (1987).
- [11] 72 Am. Jur. 2d, State and Local Taxation, 46.
- [12] Reyes, et al. vs. Commissioner of Internal Revenue, et al., 24 SCRA 198 (1969); Ker & Co., Ltd. vs. Lingad, etc., 38 SCRA 524 (1971); Coca-Cola Export Corporation vs. Commissioner of Internal Revenue, et al., 56 SCRA 5 (1974); Nasiad, et al. vs. Court of Tax Appeals, 61 SCRA 238 (1974).

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