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REPUBLIC CEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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C.T.A. CASE No. 947

Nov. 10, 1962

DECISION

This is an appeal of petitioner Republic Cement Corporation from the decision of the respondent Commissioner of Internal Revenue assessing against and holding it liable for the sum of ₱498,653.04 as deficiency royalty and/or ad valorem tax, inclusive of 25% surcharge, for the period from May 1, 1957 to December 31, 1959.

Petitioner, a domestic corporation organized in accordance with the laws of the Philippines, is engaged in the production and sale of cement. It holds mineral lands either under lease contracts with, or under temporary permit issued by the Government, from which lands it quarries limestone, shale and silica and other minerals for use in the production of cement.

During the period from May 1, 1957 to December 31, 1959, petitioner paid the aggregate amount of ₱21,730.08 as royalty and/or ad valorem tax on the extracted limestone, shale and silica.

Upon realizing that petitioner had been paying ad valorem tax on the basis of the cost of unprocessed limestone, shale and silica and believing that the said tax should be computed on the selling price of the manufactured cement, respondent, on May 18, 1960, determined against petitioner a deficiency *ad valorem* tax in the sum of ₱63,901.38, plus 25% surcharge, on the gross sales of packed cement sold during the period from September 1959 to December 31, 1959. The petitioner requested that said deficiency assessment be reconsidered, which request was denied by the respondent. In the denial, respondent also assessed against petitioner deficiency royalty from May 1957 to December 1959 in the amount of ₱398,922.43, plus a surcharge of ₱99,730.61 and ₱10,000.00 as compromise penalty. Hence, the instant appeal.

After due hearing, respondent, in the memorandum he submitted in support of his stand, stated that "petitioner has paid the amount of ₱249,326.52 under Official Receipt No. 4637 dated June 15, 1962, which amount represents one-half (1/2) of the taxes involved in this case". Consequently, he now asks that petitioner be ordered to pay the sum of ₱249,326.52 representing alleged unpaid balance of its tax liability.

The issues raised by the parties in the instant appeal are purely questions of law, to wit:

> 1. Whether or not petitioner is liable for the payment of 1½% royalty and/or *ad valorem tax* based on the gross selling price of the packed cement which it manufactured; and
>
> 2. Whether or not petitioner is liable for 25% surcharge.

Petitioner maintains that the 1½% royalty and/or *ad valorem* tax should be computed on the cost of the unprocessed raw limestone, shale and silica sand quarried and extracted from its mineholdings. Upon the other hand, respondent, invoking our decision in Cebu Portland Cement Co. vs. Commissioner of Internal Revenue, C.T.A. Case No. 706, promulgated on June 21, 1961, contends that the gross selling price of the packed cement should be the basis of the royalty and/or *ad valorem* tax. In other words, it is urged upon us that cement is the taxable mineral product, not the minerals composing it.

We agree to respondent's contention that the taxable mineral product is the finished cement. Petitioner admits "that eighty per cent (80%) of the cement produced by it during the period from May, 1957 to December, 1959 consist of limestone, silica sand and shale extracted from mineral lands held by it under lease and/or mines temporary permit x x x". Section 246 of the Tax Code defines mineral products 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". Undoubtedly, the cement in question is a mineral product within the contemplation of this codal provision. Hence, the royalty and/or *ad valorem* tax should be assessed and collected on the actual market value of the cement. As we held in Cebu Portland Cement Company vs. Commissioner of Internal Revenue, *supra*, a case akin to the one at bar:

"It is true that the said sections provide for the assessment of the ad valorem tax on the actual market value of the minerals or mineral products and that the same is collectible prior to removal thereof from the locality where mined, however, said sections do not confine the term "actual market value" to the value of the minerals or mineral products at the time and place of removal.

"This conclusion is rendered more obvious when one takes into consideration Section 246 which provides in part, that:

'The term 'gross output' shall be interpreted as the actual market value of minerals or mineral products, x x x without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses. x x x.'

"From the above-quoted provision, it is patent that the expenses for mining, milling, refining, transporting, handling, marketing, etc., form part of the market value of the minerals or mineral products subject to ad valorem tax. Since Section 243 is definite in stating that the ad valorem tax should ' be assessed and collected on the actual market value of the annual gross output of the minerals or mineral products extracted or produced', hence, the selling price of the cement should be the basis of the tax.

'Actual market value' has been defined as:

'x x x the price which the owner or purchaser of the goods is willing to receive for them, if they are sold in the ordinary course of trade; the price which a purchaser must pay to get them. This is common sense and reason. It is the popular meaning of the term, and it is also the legal meaning. Three Thousand One Hundred Nine Cases of Champagne, 23 Fed. Cas. 1168, 1172. Six Cases of Silk Ribbon, 22 Fed. Cas. 247 (See Words and Phrases, Vol. 2, p. 276).

'x x x In Cliquot's Champagne, 70 U.S. (3 Wall) 114, 18 L Ed. 116, the court defines the 'actual market value' as the price at which the owner or manufacturer of goods holds them for sale; the price at which he freely offers them in the market, such price as he is willing to receive for them if they are sold in the ordinary course of trade. Twelve Hundred and Nine Quarter Casks, etc. of Wine, 24 Fed. Cas. 398, 405 (See Words and Phrases, supra).'

"As could readily be seen from the definitions above, the actual market value of a good is the price for which it is bought and sold in the open market.

"Applying said definition to the product in question, we arrive at the inevitable conclusion that the actual market value of the same is the selling price thereof. This conclusion is strengthened by the fact that cement falls under the classification of 'mineral products' as defined in Section 246 of the Tax Code, which partly states:

> 'x x x 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.' (Underscoring supplied.)

"Much reliance has been placed by petitioner on the provision of Section 245 of the Tax Code and, in so doing, failed to appreciate an important canon of statutory construction that provisions of law should be construed together so as to give meaning and effect to each and every provision. Lawmakers did not intend to give meaning to one section and nullify the other. Seemingly contradictory provisions must be harmonized and only by reading the entire context of the law can this be attained.

"It is not disputed by the parties that the cement produced by petitioner company is 'almost completely derived from limestone rock.' Construing, therefore, Section 246 (particularly on the meaning of 'mineral products') in relation to Sections 243 and 245, one can safely conclude that the cement in question is composed of eighty per cent of minerals and consequently falls under the classification of mineral products. Therefore, petitioner's contention that the ad valorem tax should have been based on the cost of production (quarrying and crushing) or rather on the cost of minerals (raw materials) before removal from the mine is without basis."

And since the same Section 246 of the Tax Code ordains that "gross output" (of the extracted or produced mineral products) shall be interpreted as the actual market value of the minerals or mineral products without any deduction from, among others, marketing, it follows that the actual market value or selling price of the finished cement, including the paper bag wherein the same is contained, should be the basis in computing the royalty and/or _ad valorem_ tax. For it can not be denied that cement is ordinarily sold in bags made of paper or otherwise.

But petitioner argues that the computation of the royalty and/or _ad valorem_ tax on the gross selling price of the cement would, in effect, be slapping a tax on the sales of cement in contravention of Section 188 (c) of the Tax Code. It is to be noted that this particular codal provision disauthorizes the imposition of sales tax upon minerals and mineral products sold by the lessee or concessionaire of the mineral land from which removed. But what is being collected in the case at bar is royalty and/or _ad valorem_ tax which is computed on the actual market value or gross selling price of the cement.

Furthermore, petitioner suggests that respondent's basis of computing the royalty and/or _ad valorem_ tax, which we find to be in accordance with law, is productive of absurd and/or discriminatory results, for mineral products which undergo successive transformations in form would become susceptible to taxation _ad_ infinitum. Similarly, this suggestion is without merit. What the law subjects to royalty and/or *ad valorem* tax is the mineral product finally produced from the mineral land. Thus where, as in the case at bar, cement is the mineral product finally produced from raw materials extracted from a mineral land, a royalty and/or *ad valorem* tax cannot be collected on the raw materials. It can be imposed only on the resulting mineral product called cement. And logically, the royalty and/or *ad valorem* tax will have to vary in accordance with the actual market value of the mineral product finally produced. We see no absurdity or discriminatory result in imposing the royalty and/or *ad valorem* tax in accordance therewith.

Petitioner's objection that respondent's basis of computing the royalty and/or *ad valorem* tax would effect substantial changes in its mining lease contracts, thereby impairing the obligations of said contracts, is also without merit. The lease contracts provide that petitioner shall pay "a royalty of one and one-half (1½) *per centum* of the actual market value of the gross output of limestone x x x and all other minerals extracted from, or mineral products of, mineral lands x x x". As we have already ruled, cement is a mineral product. Moreover, a provision regarding the payment of rentals and royalties at the rates established by the Tax Code are deemed to be a part of every contract of lease covering mineral lands and mineral products (Sec. 242 of the Tax Code). In view of this, petitioner cannot now complain of impairment of contracts.

Anent the issue of whether or not petitioner is liable for 25% surcharge, the Supreme Court has held that the 25% surcharge imposed for failure of taxpayers to pay their taxes on time as prescribed by law is mandatory (Canlubang Sugar Estate vs. Collector of Int. Rev., C.T.A. Case No. 604, September 28, 1961, citing Lim Co Chui vs. Posadas, 47 Phil. 460; Koppel (Phil) Inc., vs. Collector of Int. Rev., 87 Phil. 348; Republic vs. Luzon Industrial Corp., G.R. No. L-7992, Oct. 20, 1957, 54 OG 4037).

Petitioner having actually paid the respective sums of ₱21,130.28 during the period in question, and ₱249,-326.52 on June 15, 1962, which should be deducted from the total amount due as royalty and/or *ad valorem* tax, there still remains, therefore, a balance of ₱248,689.02 as deficiency royalty and/or *ad valorem* tax and surcharge for the period from May, 1957 to December, 1959.

WHEREFORE, petitioner Republic Cement Corporation is hereby ordered to pay the sum of ₱248,689.02 to the Commissioner of Internal Revenue within thirty (30) days from the date this decision becomes final, with costs against petitioner.

SO ORDERED.

Manila, November 10, 1962.

MARIANO NABLE
Presiding Judge

WE CONCUR:

[AUGUSTO M.] LUCIANO
Associate Judge

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ROMAN M. UMALI
Associate Judge

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