REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE PIPES &
MERCHANDISING CORPORATIONS,
Petitioner,

versus

July 28/70

CTA CASE NO. 1858

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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AMENDED DECISION

Respondent seeks reconsideration of our decision dated March 30, 1970, on the following grounds:

> 1. That the deduction of the cost of cement from the gross selling price of the concrete pipes and hollow blocks in computing the sales tax is not in accordance with law; and
>
> 2. That no fixed taxes for the years 1959 and 1960 were imposed on the petitioner as manufacturer of concrete pipes and hollow blocks in violation of Section 194(x) in relation to Section 182(A)(1) of the Tax Code.

During the hearing of respondent's motion, petitioner's counsel opposed the same on the ground that no new issues have been raised therein.

In our decision we declared that "In the light of the Supreme Court decision in Cebu Portland Cement Co. v. Commissioner of Internal Revenue, G.R. Nos. L-18649, Feb. 27, 1965 and L-22605, January 17, 1968, both petitioner and respondent are agreed that cement is a manufactured product, hence subject to the 7% sales tax." On this premise, we held that the cost of cement used as raw material in the manufacture of concrete products should be deducted from the gross selling price of the latter before imposing the 7% sales tax pursuant to section 186 of the Revenue Code. After a thorough study of said decisions, we find that the aforesaid common interpretation made by petitioner and respondent which we followed without benefit of argument is not correct because the Supreme Court did not in effect rule therein that cement having undergone a manufacturing process is a manufactured product with all its legal implications. Said the Supreme Court in its resolution of the motion for reconsideration in G.R. No. L-18649, December 29, 1967:

> The Court did not, and could not, rule that cement is a manufactured product subject to sales tax,

that cement is a manufactured product

for the reason that such liability had never been litigated by the parties. What it did declare is that, while cement is a mineral product, it is no longer in the state or condition contemplated by the law; hence the market value of the cement could not be the basis for computing the *ad valorem* tax, since the *ad valorem* tax is a severance tax, i.e., a charge upon the privilege of severing or extracting minerals from the earth, (Dec. p. 4) and is due and payable *upon removal* of the mineral product from its bed or mine (Tax Code s. 245). So that the tax is to be computed on the basis of the market value of the mineral in its condition at the time of such removal and before its being substantially changed by chemical or manufacturing (as distinguished from purely physical) processing. Whatever mention was made in the decision of such process undergone by the component minerals of cement, was made solely and exclusively to emphasize the change in the condition of the minerals, from the primitive state contemplated by the taxing statute. This is clear from the text of the decision (pp. 4-5) where we stated:

> "This (respondent's) line of argument suffers from two infirmities. First, *while cement is composed of 80% minerals*, it is not merely an admixture or blending of raw materials, as lime, silica, shale and others. It is the result of a definite process -- the crushing of minerals, grinding, mixing, calcining, cooling, adding of retarder or raw gypsum. In short, before cement reaches its salable form, the minerals had already undergone a chemical

> change through manufacturing process. <u>This could not have been the state of mineral products that the law contemplates for purposes of the ad valorem tax.</u>"

G. R. No. L-22605 merely reiterates and reaffirms the doctrine laid down in G. R. No. L-18649.

In a nutshell, what the Supreme Court wants to convey in said two cases is that the <u>basis</u> of the <u>ad valorem</u> tax prescribed in section 243 of the Revenue Code is on the quarried minerals or minerals in their primitive or original state as extracted from the earth's crust, and not on the cement which has already undergone some transformation. (See also Republic Cement Corp. v. Comm. of Int. Rev., G. R. No. L-20660, June 13, 1968.)

In a later case, Cebu Portland Cement Co. v. Commissioner of Internal Revenue, G. R. No. L-20563, October 29, 1968, which involves refund of sales taxes and overpayments of <u>ad valorem</u> taxes paid on cement from November 1, 1954 to March, 1955 and April, 1955 to September 30, 1956, respectively, the Supreme Court said:

> 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. 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 percentage tax imposed by section 186 of said Code, and was, therefore, taxable as a manufactured product.

Thus, cement is now a mineral product under section 246 of the Internal Revenue Code by virtue of Republic Act No. 1299 which took effect on June 16, 1955, amending said section 246. Being now a mineral product it is exempt from sales taxes under section 188(c) of the Revenue Code. In effect in said G. R. No. L-20563 the Court declared refundable the sales taxes the right to which had not prescribed yet.

The reason for the exemption of mineral products from sales taxes is expressed in Philam Mining, Inc. v. Hon. Melecio R. Domingo, Commissioner of Internal Revenue, CTA Case No. 939, June 29, 1964 in this language:

> "The minerals and mineral products which are exempt from the sales tax under Section 188(c) of the Revenue Code are those which are obtained from mineral lands and are subject to the mining tax provided in Title VII of the Revenue Code. The reason for the exemption is that the mining taxes 'appear to be adequate as a means of taxing the mining industry.'

> "'Under this section, it is proposed further to exempt from the sales tax, sales and consignments of minerals and mineral products by the lessee, concessionaire, or owner of the mineral lands from which removed, because the rate proposed under special mining taxation appear to be adequate as a means of taxing the mining industry. Minerals and mineral products extracted from mineral lands covered by lease are subject under another section to a royalty of 1½% of the actual market value of the gross output thereof, and those extracted from mineral lands not covered by lease are subject to an ad valorem tax of 1½% of the actual market value of the annual gross output of the minerals or mineral products extracted or produced from the mineral lands . . . In addition to the royalty above stated, the lessee of the mineral lands pays a rental of ₱1 per hectare or fraction of a hectare of the mineral lands leased. It seems fair and just, therefore, that sales and consignments of minerals and mineral products by the lessee, concessionaire, or owner of mineral lands should be exempt from the sales tax. (Vol. II, Report of the Tax Commission of the Phil. on National Internal Revenue Taxes, Feb. 1939, pp. 202-203.)'"

The fact however that cement is now a "mineral product" because of the passage of Republic Act No. 1299 on June 16, 1955, amending section 246 of the Revenue Code, and hence not subject to sales tax does not necessarily mean that its value is not deductible from the gross sales of the manufactured concrete products.

Section 186(A) of the National Internal Revenue Code provides:

> Whenever a tax-free product is utilized in the manufacture or production of any article, in the determination of the value of such finished article, the value of such tax-free product shall be deducted. (Added by sec. 5, Republic Act No. 2025.)

In Republic Flour Mills, Inc. v. The Commissioner of Internal Revenue and the Court of Tax Appeals, G.R. No. L-25602, Feb. 18, 1970, the Supreme Court held that the phrase "tax-free product" refers ordinarily and commonly to a material or article exempted from payment of tax. The phrase is "all encompassing" and is not limited to products of tax-exempt industry. Thus it said that the value of wheat grains imported exempt from advance sales tax in 1958 and used for the manufacture of flour in 1959 was deductible from the gross sales of the manufactured flour in 1959. Under this doctrine the value of tax-free cement used in the manufacture of cement pipes is necessarily deductible from the gross sales of cement pipes.

Needless to say, whether cement qua cement is subject to sales tax or not, its value is apparently deductible from the gross sales of manufactured products using same as raw material.

Anent the second ground, respondent alleges that we failed to impose upon petitioner the manufacturer's fixed tax for the years 1959 and 1960 in the amount of ₱20.00 a year, or a total of ₱40.00. True enough this Court through oversight failed to pass upon this question in its decision and we are now going to consider it.

We have already ruled in our decision that petitioner is a manufacturer of concrete products. As a manufacturer, it is subject to the fixed annual tax pursuant to section 194(x) in relation to section 182(A)(1) of the Revenue Code. Petitioner is however liable for fixed tax only for the year 1959 in the sum of ₱20.00 because the record shows that it had already secured the fixed tax both as manufacturer (C-14) and contractor (C-4) for 1960. (See pp. 24-25, BIR rec.) This could be the reason why in his assessment for 1960 respondent deducted the sum of ₱20.00 as contractor's fixed tax from petitioner's total tax liability because he considered petitioner as a manufacturer and not a contractor.

WHEREFORE, this Court reiterates the dispositive portion of its decision and furthermore orders petitioner to pay respondent ₱20.00 as manufacturer's fix tax for the year 1959.

SO ORDERED.

Quezon City, July 28, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge