file

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING
AND DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2778

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

2/16/88

D E C I S I O N

Suit brought by petitioner Atlas Consolidated Mining and Development Corporation for recovery of the amount of P181,925.25 representing ad valorem tax alleged to have been paid illegally or erroneously on limestone, after no action was seasonably taken by respondent Commissioner of Internal Revenue on petitioner's administrative claim for refund.

The facts of the case are not disputed, the parties having submitted this case for decision on the basis of the pleadings and the records after petitioner has presented its evidence, and on a question of law as to whether or not limestone dug out and processed into lime used in the production of copper concentrates is subject to ad valorem tax as a mineral or mineral product.

It appears that:

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 of 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 to 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 limestone 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., pp. 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 away the surface soil and waste; 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, details of which are as follows:

PAYMENT OF AD VALOREM TAXES FROM OCTOBER, 1973
TO SEPTEMBER, 1975

Date	Quarter Covered	Amount Paid	Date Paid	O.R. Number
1973				
October	4th	P 4,144.27	1-18-74	F1135765
November	"	3,198.40		
December	"	4,105.94		
		P 11,448.61		
1974				
January	1st	P 3,124.71	3-26-74	2317449 F
February	"	4,165.36		
March	"	9,586.45		
		P 16,876.52		
April	2nd	P 8,860.82	7-19-74	F1424168
May	"	9,825.90		
June	"	8,786.42		
		P 27,473.14		
July	3rd	P 9,631.59	9-19-74	1362258
August	"	8,691.09		
September	"	7,737.69		
		P 26,060.37		
October	4th	P 7,062.41	12-74	2383403 F
November	"	6,351.28		
December	"	8,452.13		
		P 21,865.82		
1975				
January	1st	P 9,422.69	4-21-75	4091833 F
February	"	7,555.50		
March	"	7,660.34		
		P 24,638.53		

April	2nd	P 7,100.15	7-21-75	4092041 F
May	"	7,258.09		
June	"	7,825.81		
		P 22,184.05		
July	3rd	P 9,973.33	10-2-75	4092172 F
August	"	9,874.29		
September	"	11,530.59		
		P 31,378.21		
Grand Total		P181,925.25		

9. On December 22, 1975, petitioner filed its claim for tax credit of the aforesaid sum of P181,925.25 that it paid as ad valorem tax. Since no action was taken seasonably by respondent on the claim, petitioner filed its petition for review with this Court on February 18, 1976.

Petitioner poses the following issues:

ISSUES

WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR TAX CREDIT.

WHETHER OR NOT THE UTILIZATION OF WASTE LIMESTONE BY THE OPERATOR OF A COPPER MINE CONVERTS SAID WASTE INTO TAXABLE MINERAL SUBJECT TO THE AD VALOREM TAX.

WHETHER OR NOT THE MINING LAW AND REGULATIONS REQUIRE THE OWNER OF THE SURFACE RIGHTS OF LAND CONTAINING LIMESTONE TO SECURE A PERMIT TO DIG AWAY SAID LIMESTONE THOUGH AS AN INCIDENT OF ITS COPPER MINING OPERATION TO REACH THE COPPER DEPOSITS BELOW.

WHETHER OR NOT, IN THE ALTERNATIVE, THE AD VALOREM TAX ON LIMESTONE IS BASED ON ITS IMPUTED AND HYPOTHETICAL PRODUCTION COST, THERE BEING NO MARKET VALUE.

and states its position as follows:

a. Digging away the limestone is an incident of copper mining, the taxable activity it was licensed to conduct;

b. The limestone was not removed from the concession site, hence there was no taxable severance of mineral product;

c. Like the rocks and other topsoil necessarily scraped and dug away in order to reach into the minablè copper deposits below the surface, the limestone became waste material, a natural incident of the process of copper mining;

d. The utilization of this waste limestone did not convert that waste into a taxable mineral subject to the ad valorem tax;

e. In paying the ad valorem tax on copper mineral, the value of the limestone and the cost of extraction was necessarily included as part of the taxable value of the copper mineral. Thus, imposing another tax on limestone would in effect be collecting ad valorem tax twice on the limestone component;

f. In the alternative, petitioner paid excess ad valorem tax in the amount of P109,829.00 because while the tax is measured by the gross value of the raw mineral which is limestone, the petitioner paid on the basis of the cost "lime" which is the processed product. All the expenses of processing must therefore be eliminated; and,

g. There is no legal basis for using "production cost" as the basis of the ad valorem tax. Since parties are agreed on the fact that limestone (and 'lime for that matter) had no market value at the mines site or elsewhere, no ad valorem tax becomes due. Hence, petitioner is entitled to the full credit of its payment of P181,925.25.

Respondent contends that while the provisions of Section 67 of Presidential Decree No. 463 does not require the owner of a privately owned land from securing a permit to extract or remove quarry resources on his land for personal use, the said privilege does not include exemption from payment of the 2% royalty or ad valorem tax pursuant to

Section 243 of the then applicable National Internal Revenue Code, which provides as follows:

> Sec. 243. Ad valorem taxes on output of mineral lands not covered by lease. - 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. 2, Republic Act No. 909; and Sec. 48, Republic Act No. 6110.)

Reading the provisions of the law, the ad valorem tax on output of mineral lands not covered by lease is assessed and collected on the actual market value of the annual gross output of the minerals or mineral products extracted or produced from mineral lands. However in this case, we cannot say that, during the period covered, petitioner was engaged in the extraction or production of limestone from its mining property and concessions as a distinct activity or business. As the evidence stands and which is not controverted by respondent, petitioner is engaged in the mining of copper ore from its mines property and in the process thereof:

1. Petitioner 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.

This case has been submitted for decision on purely questions of law, and in the light of the factual setting stated above, it seems clear beyond doubt that the utilization of waste limestone by petitioner, which is engaged in mining copper ore, by converting such waste into lime as a cleansing reagent in the conversion of copper ore into copper concentrate, was merely incidental to its mining copper ore operation for which it is adequately taxed.

The rule has been already stated: "Where a person or corporation 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 and restricted activity is not to be considered as intended to be separately or additionally taxed." (Standard-Vacuum Oil, Co. vs. Antigua, 96 Phil. 909, citing Craig vs. Ballard & Ballard Co., 196 Sc. 238.) Accordingly, we hold that since petitioner Atlas Consolidated Mining & Development Corporation has already been taxed on its copper mining operation, it may not be further taxed for doing something or engaging in an activity or work of digging out limestone and processing it into lime which is merely a part of and incidental to the production of copper concentrates. Petitioner is therefore entitled to the refund or tax credit of the amount of P181,925.25 representing ad valorem tax erroneously paid on limestone during the period covering from the 4th quarter of 1973 to the 3rd quarter of 1975.

With this conclusion, the other issues posed by petitioner become moot and academic.

We note however, as pointed to by respondent, that the amount of P11,448.61 paid on January 18, 1974 under Official Receipt No. F-1135765 is barred in accordance with the provisions of Section 306 of the then applicable National Internal Revenue Code, as amended by Presidential Decree No. 69. From the date of payment to the filing of the petition for review with this Court on February 18, 1976, the two year prescriptive period had already expired. Court action for recovery of an internal revenue tax erroneously or illegally paid must be instituted within two years after payment. (Koppel vs. Collector of Internal Revenue, L-10550, Sept. 16, 1961, 3 SCRA 17; Commissioner of Internal Revenue vs. Victorias Milling, L-24108, Jan. 3, 1968, 22 SCRA 12.)

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered 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. No costs.

SO ORDERED.

Quezon City, Metro Manila, February 16, 1988.

Amante Filler
AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals