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CANLUBANG SUGAR ESTATE,
Petitioner

versus CTA CASE NO. 1172

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - x April 5/66

D E C I S I O N

Respondent assessed against and demanded upon petitioner the payment of ₱96,959.18 as deficiency percentage tax and 25% surcharge, exclusive of the suggested compromise penalty of ₱5,000.00, computed as follows:

Gross value in money of manufactured sugar	₱59,732,820.86	
Add: Disallowed deductions	3,194,522.22	₱62,927,343.08
Gross sales of molasses per investigation. .		882,021.95
Amount subject to tax		₱63,809,365.03
2% tax due thereon . .		₱ 1,276,187.30
Less: Taxes already paid:		
1. On manufactured sugar	₱ 1,193,600.01	
2. On molasses . .	5,019.95	1,198,619.96
Deficiency percentage tax		77,567.34
Add: 25% surcharge		19,391.84
AMOUNT STILL DUE & COLLECTIBLE		₱ 96,959.18

The deficiency tax assessment covers the period from the 4th quarter of 1951 to July 1957. During the period in question, petitioner deducted from its gross sales of sugar, whether local or exported, the total amount of ₱3,194,522.22 itemized as follows:

1.	New York expenses	₱1,712,196.76
2.	Local expenses	956,934.54
3.	₱0.10 per picul fee under Republic Act No. 632	81,518.86
4.	₱0.02 per picul tax under Commonwealth Act No. 567	29,112.72
5.	Diff. between 102% and 100%	414,759.34
	TOTAL	₱3,194,522.22

Petitioner having paid the sum of ₱15,775.61 corresponding to the 2% deficiency percentage tax on the molasses removed and sold by petitioner, as admitted in respondent's memorandum (p. 17), the disputed tax assessment is reduced to ₱81,183.57 and this involves the deficiency percentage tax and surcharge on the sugar removed by petitioner from its mill warehouse and sold locally and abroad.

The pertinent controversial provisions of Section 189 of the National Internal Revenue Code at issue in this case read as follows:

> "SEC. 189. Percentage tax upon proprietors or operators of x x x sugar centrals x x x.—Proprietors or operators of x x x sugar centrals x x x shall pay a tax equivalent to two per centum of the gross value in money of all the x x x sugar, x x x manufactured or milled by them, including the by-products of the raw materials from which said articles are produced or manufactured, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: x x x" (Underscoring supplied.)

For a better understanding of the application and interpretation of the foregoing provisions of law, we will state briefly the facts of the case.

Petitioner, a corporation duly organized under the laws of the Philippines, is engaged in the production and manufacture of sugar, and operates a sugar central at Canlubang, Calamba, Laguna.

During the period from the 4th quarter of 1951 to July 1957, petitioner milled a total of 4,557,643.59 piculs of sugar, 670,809.76 piculs of which belonged to the Calamba Sugar Planter's Cooperative Marketing Association as its share. The share of petitioner was either removed from its mill warehouse at Canlubang, Calamba, Laguna, and sold in Manila, or shipped therefrom and sold in New York. The sugar was sold at these points at prices quoted in Manila, if sold locally, or in New York, if sold therein.

In the shipment of the sugar to New York, petitioner incurred expenses for freight, interest, weighing, mending, testing, sampling, stevedoring, customs entry and brokerage in the amount of ₱1,712,196.76 (Exh. 1-1, p. 46, BIR rec.), known as New York expenses, and it incurred expenses in sending the sugar from the mill warehouse at Canlubang, Calamba, Laguna, to Manila, such as lighterage, wharfage fees, freight and other handling expenses in the amount of ₱956,934.54 (Exhs. 1-1 and A-1, p. 49, BIR rec.; Exh. 14, p. 223, BIR rec.; Exh. 1, p. 2, BIR rec.).

Petitioner also paid ₱0.10 per picul of sugar amounting to ₱81,518.86 under Section 15 of Republic Act No. 632, as amended by Republic Act No. 3051, on its annual sugar production for the support and operation of the Philippine Sugar Institute, whose function it is to promote, develop and stabilize the sugar industry; and ₱0.02 per picul of marketable sugar amounting to ₱29,112.72 under Section 2 of Commonwealth Act No. 567, for the rehabilitation and stabilization of the sugar industry.

According to respondent, the gross value in money of petitioner's sugar from the 4th quarter of 1951 to July 1957 amounted to ₱62,927,343.08 while petitioner claimed that the amount should be ₱59,732,820.86 only because that is the gross value in money of the sugar at the mill warehouse of petitioner at Canlubang. In computing the 2% tax imposed upon proprietors or operators of sugar centrals, petitioner deducted from ₱62,921,343.08 the expenses mentioned above in the total sum of ₱3,194,522.22 including the amount intended to cover the 2% tax.

The assessment for the deficiency percentage tax of ₱96,959.18 was received by petitioner on May 8, 1958 (Exhs. G-1, G-1-a, G-2, G-21-a). On the following day, May 9, 1958, petitioner requested a reconsideration of the assessment (Exh. C). In reply thereto, respondent, on October 9, 1958 (Exhs. E and 7), requested the payment of the deficiency percentage tax and surcharge on the molasses. At the same time, petitioner was informed that its liability for deficiency percentage tax on the manufactured or milled sugar in the amount of ₱81,183.57 had been referred to the Provincial Revenue Officer of Laguna for further investigation. Finally, on January 12, 1962, respondent denied petitioner's request for reconsideration (Exh. G). Hence, this appeal.

On the basis of the facts stated above, the issues submitted for our resolution are the following:

(1) Whether or not the expenses incurred by petitioner in connection with its sales of sugar, both locally and abroad, are deductible in computing the 2% tax under Section 189 of the National Internal Revenue Code;

(2) Whether or not the tax of ₱0.10 per picul imposed by Republic Act No. 632, as amended, as well as the tax of ₱0.02 per picul imposed by Commonwealth Act No. 567 are deductible from the selling price of sugar for the purpose of computing the 2% tax;

(3) Whether or not the 2% tax imposed under said Section 189 of the National Internal Revenue Code should be based on the actual selling price of the sugar less the amount intended to cover the 2% tax;

(4) Whether or not petitioner is subject to the 25% surcharge for late payment of the percentage tax under Section 183(a) of the National Internal Revenue Code; and

(5) Whether or not the deficiency percentage tax assessment against petitioner covering the period from the 4th quarter of 1951 to May 7, 1953 has already prescribed, pursuant to Section 332(a) of the same Code.

On the first issue, petitioner contends that, while respondent correctly found the actual selling price or market value of sugar in New York and Manila, the 2% tax imposed by Section 189 of the National Internal Revenue Code should be based on the actual selling price or market value of sugar at the time it leaves the factory or mill warehouse at Canlubang, Calamba, Laguna. In other words, petitioner adopted the view that the expenses incurred outside the factory or mill warehouse such as freight, handling expenses, etc. are deductible from the actual selling price or market value of sugar in New York and Manila. On the other hand, respondent contends that, if the sugar were already sold, as in this case, before the same left the factory or mill warehouse, the expenses form part of the actual selling price or market value of the sugar sold.

Perhaps this Court would have agreed with the theory of respondent if Section 189 of the National Internal Revenue Code imposes a tax on the sales of sugar. A careful analysis and scrutiny of the said section of the Tax Code will show that it is not a tax on sales but a percentage tax on the manufacturing and milling of sugar cane into sugar by imposing a tax of 2% of the gross value in money of all the sugar manufactured or milled by the sugar centrals. The mere fact that the 2% tax is based on the actual selling price or market value of the sugar, at the time the same leaves the factory or mill warehouse, does not convert the manufacturer's or miller's percentage tax into a sales tax or tax on sales. If our lawmaking body intended Section 189 of the National Internal Revenue Code to be a sales tax, it would have said so in explicit language as in the cases of the sales tax provisions found in Sections 183(a) and (b), 184, 185, 185-A and 186 of the National Internal Revenue Code.]

It is a cardinal rule in taxation that "deduction" provisions in the tax statutes are acts of legislative grace. This rule is found and reflected in the deduction provisions of the National Internal Revenue Code dealing on income, estate and inheritance, sales and mining taxes (Sections 30, 89, 184, 185, 186 and 247 of the Tax Code). It is to be noted that under Sections 184, 185 and 186 of the Tax Code, dealing on sales taxes, a manufacturer is entitled to deduct from the gross selling price or gross value in money of the manufactured articles the total cost of raw materials subject to tax under said sections of the Tax Code which are used in the manufacture of the finished products. Be that as it may, the absence of any deduction provision in Section 189 of the National Internal Revenue Code does not preclude the petitioner from deducting the expenses for freight, handling charges, etc. from the actual gross selling price or market value of sugar sold either in New York or Manila because the percentage tax involved herein is not a sales tax but a manufacturer's or miller's tax. Moreover, the manufacturer's or miller's tax imposed by Section 189 of the Tax Code is based on the actual selling price or market value of sugar at the place of milling or manufacturing and not in any other place. In view thereof, it is purposeless to distinguish between a contract to sell and a contract of sale, as the parties have essayed to do. Consequently, respondent cannot use as a tax base the actual selling price or market value of sugar sold either in New York or Manila because the valuation of sugar thereat and the imposition of the 2% tax prescribed by law would depend on the terms and technicalities of the sales agreement instead of giving life and meaning to the intents and purposes of Section 189 of the Tax Code.

The 2% tax imposed upon proprietors or operators of sugar centrals accrues upon the removal of the manufactured or processed sugar from the factory or mill warehouse (BIR Gen. Cir. No. 424 dated July 1, 1939; BIR Gen. Cir. No. 470, October 7, 1940; Collector vs. Central Azucarera de Tarlac, G. R. No. L-11760, July 31, 1958; Asturias Sugar Central, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 983, February 14, 1963). In the absence, therefore, of satisfactory and convincing evidence on the market value of the sugar when it was removed from petitioner's factory or mill warehouse in Canlubang, Calamba, Laguna, the market value thereof is correctly represented by the actual selling price of petitioner's sugar in Manila minus the expenses, consisting of lighterage fees, freight and other handling charges, which were incurred in transporting the sugar from the place of manufacture to Manila. To sustain respondent's view that the said expenses should form part of the taxable value of sugar in computing the 2% tax imposed by Section 189 of the Tax Code would run counter to the intents and purposes of the law because the tax would be assessed on the market value of petitioner's sugar in Manila instead of in Canlubang, Calamba, Laguna (Asturias Sugar Central, Inc. vs. Commissioner of Internal Revenue, supra).

In the same manner, the taxable value of petitioner's sugar sold in New York for purposes of the 2% tax imposed by Section 189 of the Tax Code would be the market value thereof in Canlubang at the time the sugar left the factory or mill warehouse. In determining the market value, the so-called New York expenses, which were incurred in exporting the sugar from Canlubang to New York, should be deducted from the actual selling price of petitioner's sugar in New York. This interpretation is sound, practical, and in consonance with the clear mandate of the controversial legal provisions at issue.

On the second issue relative to the taxes of ₱0.10 and ₱0.02 per picul of sugar imposed under Republic Act No. 632 and Commonwealth Act No. 567, amounting to ₱81,518.86 and ₱29,112.72, respectively, petitioner contends that they should be deducted from the gross selling price of sugar as those imposts were paid after and not at the time the sugar left petitioner's mill warehouse and that their inclusion in the tax base is tantamount to levying a tax on a tax. We find no merit in petitioner's contention that said special taxes should be deducted from the market value of sugar at the time of its removal from the mill or mill warehouse because they are in the nature of expenses incurred after such removal. Such special taxes entered into the production costs which accrued upon the "production" or "manufacture" of the marketable sugar, or before the sugar was removed from petitioner's mill warehouse at Canlubang (See Section 15, Republic Act No. 632; Section 2, Commonwealth Act No. 567). At any rate, there is nothing in the law which authorizes such deduction.

Petitioner claims that the tax of 2% imposed by Section 189 of the Tax Code should be based on the market value of sugar less the amount corresponding to the tax, as in the case of the sales tax imposed by Sections 184-186. While the sales tax is authorized to be computed on the basis of the gross selling price less the amount intended to cover the tax (BIR Gen. Circulars Nos. 431 and 440), no similar privilege is granted to manufacturers taxable under Section 189 of the Tax Code. The amount of the tax cannot, therefore, be deducted from the market value of sugar even if the tax is billed to the customer, as a separate item in the invoice. The argument that not to allow the deduction would be to impose a tax on tax deserves little or no consideration for most taxes are of such nature. Even the income tax is imposed on the total net income which includes the amount intended to pay the tax.

The fourth issue refers to the 25% surcharge imposed upon petitioner for late payment of the miller's deficiency tax, pursuant to Section 183(a) of the Tax Code. Petitioner contends that it is not liable to the 25% surcharge because the facts and circumstances of their case are substantially the same as those obtaining in the case of "Connell Bros. Co. (Phil.) vs. Collector of Internal Revenue," G. R. No. L-15470, Dec. 26, 1963, where the Supreme Court eliminated the 25% surcharge. It is to be noted, however, that in the case at bar, there is no evidence whatsoever showing that petitioner's delayed payment of the percentage tax was brought about by respondent's ruling or opinion. The mere fact that a controversy existed between petitioner and respondent as to the correct interpretation and application of the disputed provisions of the Tax Code does not warrant the elimination of the 25% surcharge for late payment; otherwise, the payment of the 25% surcharge for delinquency in the payment of the percentage tax would be left at the mercy of taxpayers by the simple expediency of contesting the interpretation given by respondent on any provisions of the Tax Code imposing a tax. We think that the doctrine laid down in Lim Co Chui v. Posadas, 41 Phil. 460, has not been overruled by the decision in the case of Connell Bros. Co., supra. Accordingly, we find the petitioner subject to the 25% surcharge for late payment of the miller's deficiency tax of 2%. (47

The last issue refers to the prescription of respondent's deficiency tax assessment covering the period from the 4th quarter of 1951 to May 8, 1953. Petitioner contends that, since respondent's deficiency tax assessment was received by petitioner only on May 8, 1958, the right of respondent to assess the said deficiency tax within a period of five years under Section 331 of the Tax Code has already prescribed. As already stated elsewhere in the opinion, the so-called New York and local expenses should be excluded in the computation of the deficiency miller's tax due from petitioner. With respect to the tax of ₱0.10 and ₱0.02 per picul of sugar imposed by Republic Act No. 632 and Commonwealth Act No. 567 in the amounts of ₱81,518.86 and ₱29,112.72, respectively, the said amounts failed to include the taxes corresponding to the period from the 4th quarter of 1951 to May 8, 1953 as shown by the records of the case (Exhibits 1-f and 1-g of respondent, BIR rec. pp. 51 and 52). Consequently, the disposition of this issue has become moot and academic.

Finally, respondent does not have any power to impose a compromise penalty without the consent of petitioner (Collector vs. UST et al., G. R. Nos. L-11274 & 11280, Nov. 28, 1958; Collector vs. Bautista, et al., G. R. Nos. L-18850 & L-12258, May 27, 1959; Philippines International Fair, Inc. vs. Collector of Internal Revenue, G. R. Nos. L-12928 & L-12932, March 31, 1962). The imposition of the compromise penalty in this case is, therefore, illegal.

After resolving the issues submitted for our consideration, we find that, as proprietor or operator of a sugar central, petitioner is liable for deficiency percentage tax in the amount of ₱14,455.29, computed as follows:

Gross value in money of manufactured sugar		₱59,732,820.86
Add: Disallowances -		
(1) ₱0.10 per picul of sugar paid	₱ 81,518.86	
(2) ₱0.02 per picul of sugar paid	29,112.72	
(3) Diff. between 102% and 100%	414,759.34	525,390.92
Adjusted gross selling price.........		₱60,258,211.78
2% miller's tax due thereon		₱ 1,205,164.24
Less tax already paid by petitioner ..		1,193,600.01
Deficiency percentage tax		₱ 11,564.23
Add: 25% surcharge for late payment..		2,891.06
AMOUNT STILL DUE AND COLLECTIBLE		₱ 14,455.29

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified. Petitioner is hereby ordered to pay the respondent the sum of ₱14,455.29 as deficiency miller's percentage tax and surcharge within 30 days from the date this decision becomes final, without pronouncement as to costs.

SO ORDERED.

Quezon City, April 5, 1966.

ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

ROMAN M. UMALI
Acting Presiding Judge