REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

NATIONAL POWER CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 702

JOSE ARAÑAS and MELECIO DOMINGO,
Respondents.

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D E C I S I O N

From May 30, 1953 to June 30, 1955, the petitioner, a Government corporation, purchased lumber from the Heald Lumber Company for the aggregate amount of ₱702,816.38. It appears that the sales tax due on said sales of lumber at the rate of 5% of the gross selling price, imposed by Section 186 of the National Internal Revenue Code, as amended, was not paid by the seller upon the representation of petitioner that its purchases were not taxable, and that should it be finally held that the tax was due it would assume liability for such tax.

Upon insistence of respondent on collecting the tax on said sales, petitioner secured an opinion of the Secretary of Justice (Op. No. 106, dated May 14, 1954) to the effect that purchases of petitioner were exempt from tax under its charter, Republic Act No. 358. This opinion was, however, revoked by the Cabinet on February 25, 1955. Convinced of its liability, petitioner paid the total sales tax in the sum of ₱35,140.82, but refused to pay the 25% surcharge for late payment as

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provided in Section 183(A) of the Revenue Code in the sum of ₱8,785.25. Petitioner contends that the surcharge should not be imposed in view of the fact that the failure to pay the tax on time was due to the opinion of the Secretary of Justice. Respondent decided to impose and collect the surcharge on the ground that he has no discretion on the matter, hence this appeal.

There is no question as regards the legality of the tax. The sole issue relates to the legality of the imposition of the surcharge of 25% of the tax for failure to pay the same on time as provided in Section 183(A) of the Revenue Code. The main argument of petitioner in refusing to pay the 25% surcharge in this case is that the failure to pay the tax on time was due to an opinion of the Secretary of Justice, relying upon an opinion contained in Lim Co Chui v. Posadas, 47 Phil. 460, which reads:

> "It may possibly be, as intimated by Judge Cooley in his standard treatise on Taxation, volume 2, page 901, that 'there might be excuses for non-payment which would justify the interference of the Courts'. The maxim is: <u>Impossibilium nulla obligatio est</u>. There is no obligation to do impossible things."

It is not true, however, that the failure to pay the tax in question within the period prescribed by law was due to the opinion of the Secretary of Justice. The records show that the taxable transactions were effected from May 30, 1953 to June 30, 1955. The opinion of the Secretary of Justice was rendered on May 14, 1954, and it was revoked on February 25, 1955. On

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transactions effected prior to the opinion of the Secretary of Justice, the tax was not paid on time, and on transactions effected after its revocation, the tax was not also paid on time. The entire amount of the tax was paid only on October 14, 1955, long after the surcharge had accrued. It is not correct to lay the blame on the opinion of the Secretary of Justice for failure to pay the tax in this case within the statutory period.

Finding the decision appealed from in order, the same is hereby affirmed. Accordingly, petitioner is ordered to pay the sum of ₱8,785.25 within thirty days from the date this decision becomes final. Without pronouncement as to costs.

SO ORDERED.

Manila, November 29, 1962.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge