REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES), INC.,

Petitioner,

-versus -   C.T.A. CASE NO. 4711

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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

7/5/94

D E C I S I O N

This is an appeal from the denial by the respondent Commissioner of Internal Revenue, of the protest filed by petitioner Caltex (Phils.), Inc. against a deficiency extraordinary gains tax assessment for taxable year 1987 in the total amount of P336,868,580.14.

On August 14, 1987, the Energy Regulatory Board (ERB) issued an order in ERB Case Nos. 87-01, 87-02 and 87-03, entitled "In the Matter of Application for Increase in the Prices of Petroleum Products,- Caltex (Phils.), Inc., Petrophil Corporation, Pilipinas Shell Petroleum Corporation, Applicants", authorizing the provisional increase as follows:

Wholesale posted prices - average	-	P0.487
Contribution to Oil Price Stabilization Fund - average	-	P0.311
Ad valorem Tax	-	P0.007
Company net back	-	(.005)

On the basis of this price increase in the petroleum products, respondent issued on August 15, 1990 a demand letter together with Assessment No. FAN-1-87-90-001769 for the payment of P336,868,580.14, alleged 1987 windfall profit tax. The same was received by the petitioner on August 20, 1990. The deficiency tax assessment was computed as follows:

Total Inventory Gains -	P259,218,292.41
Surtax due 65%	168,419,890.07
Add: 25% of surcharge	42,122,972.52
20% interest from 8-16-87 to 8-15-90	126,325,717.55

Respondent computed the inventory gains based solely on the inventory list of finished products of petitioner as of August 15, 1987 which was submitted by petitioner's counsel to Senator Neptali A. Gonzales, then Chairman, Committee on Finance, Senate of the Philippines, in a letter dated March 27, 1990, as follows:

Jet A	24,865,882.00
Premium	49,586,297.00
Regular	13,458,652.00
Kerosene	18,714,060.00
Diesel	126,367,077.00
Fuel Oil	82,004,511.00

LPG	–
Thinners	1,310,882.00
Asphalts	1,835,413.00
(Unlocated Difference)	1,374,056.00
In liters	319,518,191.00

Based on its reading of the inventory list, the BIR computed the inventory gains realized by petitioner as a result of the August 14, 1987 ERB price increase order by multiplying the said inventory list by the individual components of the August 14, 1987 price increase, as follows:

	Direct Co. Recovery	Ad Valorem Tax	OPSF	Total
Premium	P 991,725.94	P 917,346.49	P62,553,113.67	P 64,462,186.10
Regular	134,686.52	123,819.60	17,466,638.57	17,725,044.69
Jet (AF)	(1,939,538.80)	(1,790,343.50)	22,379,293.80	18,649,411.50
Kerosene	(2,432,827.80)	(769,147.87)	19,614,206.29	16,412,230.62
Diesel	10,109,366.16	3,197,087.05	97,770,207.47	111,076,660.68
Fuel Oil	5,494,302.24	-	31,571,736.74	26,077,434.50
L.P. Gas	-	-	-	-
Asphalts	(128,478.91)	40,562.63	2,366,030.90	2,196,989.86
Thinners	(157,305.84)	145,245.73	1,820,552.92	1,518,001.95
Unlocated	(6,877,08)	9,627.92	1,097,582.77	1,100,333.61
Total	P 1,076,347.95	1,502,581.33	256,639,363.13	259,218,292.41

On August 22, 1990, petitioner filed its protest with the Commissioner of Internal Revenue. In support of its protest, petitioner alleged that it did not realize any extraordinary gain or profit as a result of the 1987 price increase; that the assessment was arbitrary, and that in effect, under previous BIR regulations, the August 14, 1987 price increase order of the ERB would have resulted in an inventory loss. On January 17, 1992, petitioner received respondent's letter dated December 13, 1991, denying its protest with finality.

Hence, the instant Petition for Review.

The issues presented by the parties for resolution are as follows:

(1) Whether P.D. 1889 authorizes the imposition of surtax or extraordinary gains tax on price increases subsequent to its promulgation;

(2) Assuming, *arguendo*, that P.D. 1889 will apply to increases subsequent to the date of its promulgation, will the term "wholesale posted price" include the amounts required to be remitted to the Oil Price Stabilization Fund (OPSF) and the ad valorem tax; and

(3) Whether the petitioner may be held liable for surcharge and interest.

Petitioner alleged that P.D. 1889 may not be made to apply to oil price increases subsequent to the date of its promulgation on November 3, 1983 for to do so would create an irreconciliable inconsistency between Sections 1 and 3 of the same law. It will also run counter to the previous application of P.D.'s 1709 and 1867 which the BIR itself applied the windfall profit tax to price increases prior or contemporaneous to their promulgation in consonance with Section 3 of the said laws.

On the second issue, petitioner alleged that the term "wholesale posted price" means authorized price net of taxes and OPSF consistent with the previous interpretations and with the nature of P.D. 1889. Considering that the authorized price increase of eighty (80) centavos per the August 14, 1987 order of the ERB was allocated as follows:

(a)	Reduction in company net back	(.005)
(b)	Increase in payment to OPSF	.798
(c)	Increase in ad valorem tax	.007
	Total	P.800

No part of the price increase went to the petitioner and therefore there is no basis to impose the windfall profit tax.

Petitioner furthermore states that there can be no surcharge and interest that may be imposed in the absence of any legal provision which will determine the due date for payment of the surtax which was complicated more by the failure of the respondent to issue any implementing regulation applicable to the 14 August 1987 price increase.

On the other hand, respondent for his part, insisted that P.D. 1889 should apply on the computation of windfall profit realized by oil companies by reason of the August 14, 1987 price increase. Moreover, Section 2 of the said law clearly defines what constitutes extraordinary gain and considering that under Section 8 of P.D. 1956 extraordinary gain realized by oil companies is not the source nor one of the sources of price stabilization fund, there is no legal basis for the ERB to secure the fund from the extraordinary gain. An implementing regulation is necessary only if the law is ambiguous and susceptible to different interpretation and this is not so in this case. As it is the law clearly defines what constitutes extraordinary gain.

On the issue of surcharge and interest, respondent believes that Section 248(3) and Section

249 of the Tax Code apply in the imposition of these penalties. For failure of petitioner to pay the surtax within 30 days from the promulgation of the price increase the said penalties should be imposed automatically.

It is necessary for the resolution of the first issue to examine carefully the applicable laws involved.

As correctly cited by the respondent, the applicable law is Presidential Decree No. 1889 and its implementing regulation. However, for a better understanding of the said law, we find it advisable to look into the pertinent provisions of prior similar laws.

The first surtax law was Presidential Decree No. 1709 issued on August 13, 1980. This law imposed a 20% surtax on extraordinary gain realized by oil companies as result of price and specific taxes increase authorized for petroleum products. Extraordinary gain was measured by the difference between the approved wholesale posted prices of refined petroleum products immediately before the authorized price increase and the new posted prices multiplied by the number of units of petroleum products existing as of the day of effectivity of the price increases. The surtax was not an allowable deduction for income tax purposes. The surtax shall be paid within thirty (30) days from the promulgation of the decree and shall apply to extraordinary gains realized beginning August 1, 1979. The BIR issued Revenue Regulation No. 7-80 to implement the said decree. This regulation defines wholesale posted price as the wholesale prices, ex refinery, of all petroleum products as set by the Board of Energy exclusive of specific taxes, special fund levy and consumer cost equalization fund components. This law was applied to authorized price increases of August 1, 1979, February 9, 1980, June 1, 1980 and August 3, 1980.

On July 1, 1983, Presidential Decree No. 1867 was issued. This law likewise imposed a surtax on extraordinary gains on the same basis but the rate was increased to 65%. Computation of extraordinary gain and the provision on the time, manner and place of payment were similar to the first decree. The surtax was not also deductible for income tax purposes. However, the decree was made to take effect immediately and did not specify any particular price increase. Revenue Regulation No. 7-83 was issued in implementation of this decree to cover the authorized price increase of July 1, 1983. Extraordinary gain was computed based on the increase in industry net back. Industry net back means revenue from sale of petroleum products excluding specific taxes and special fund imposts. However, unbonded stocks (tax paid) is determined by the increase in the industry net back plus or minus the change on specific tax as the case may be.

Finally, on November 3, 1983, Presidential Decree No. 1889 was issued in the same manner as P.D. 1867, the surtax on extraordinary gain was (increased to) also 65% but unlike the two previous decrees the said "surtax shall be allowed as part of the cost of petroleum product sold on or after November 3, 1983. The computation of extraordinary gain is likewise based on the difference between the wholesale posted prices before and after the price increases multiplied by the number of units of petroleum products existing as of the day of the effectivity of the price increases. The same is likewise payable within 30 days following the promulgation of this decree. The law shall take effect immediately. In implementation of this decree, the BIR issued three Revenue Regulations namely: Revenue Regulation No. 12-84 to implement June 7, 1984 price increase; Revenue Regulation No. 13-84 to implement price increase of May 18, 1984 and Revenue Regulation No. 22-84 to implement October 20, 1984 price increase. The computation of extraordinary gain arising from the increase in industry net back shall be determined on the average by multiplying the inventory of petroleum products as of the date of the increase by the authorized price increase per liter while gains due to increase in ad valorem tax shall be determined by multiplying the inventory of unbonded (tax paid) stocks as of the date of the authorized price increase by the increase in ad valorem and/or specific tax increases. The surtax was made payable within 30 days after the date of the effectivity of the price increase.

With the foregoing laws and implementing regulations as our background, we are now ready to resolve the first issue – whether or not Presidential Decree No. 1889 authorizes the imposition of surtax or extraordinary gain tax on price increases subsequent to its promulgation.

We agree with the petitioner that with respect to P.D.'s 1709 and 1867 the same were designed to govern price increases prior to or contemporaneous to their promulgation. In the case of the first decree, the law itself states that the law shall apply to extraordinary gains realized beginning August 1, 1979. P.D. 1709 was promulgated on August 13, 1980. The provision of law itself made it retroactive one year before its promulgation. With respect to P.D. 1867 promulgated on July 19, 1983 it was made to apply to price increases authorized on July 1, 1983. Unlike the first decree, this law was prospective in effect but the intention must have been to apply it to the recent July 1983 price increases with the issuance of Revenue Regulation No. 7-83 which petitioner did not question but abide by its implementation.

However, this is not so in the case of P.D 1889. When the same was promulgated on November 3, 1983 there were no price increases prior to its promulgation nor was there a recent price increase. The law states that it shall take effect immediately or prospectively. Accordingly, it was made to apply to subsequent price increases the following year

1984 and as mentioned above three revenue regulations were issued in implementation of these price increases that year. The application of said decree to the 1984 price increases is correct by the rules on statutory construction that laws unless otherwise provided shall have prospective effect. This time we cannot agree with the petitioner that P.D. 1889 should have been applied only to prior or contemporaneous price increases similar to the first two decrees because at the time of its promulgation there was not even one prior or contemporaneous price increase. The last price increase being that on July 1, 1983 which was covered by P.D. 1867 as discussed above. To apply the interpretation of the petitioner that P.D. 1889 should apply only to prior or contemporaneous price increase is to render it useless or without effect. This is against the principle in statutory construction that "it shall be presumed that the legislature intended to enact a valid and permanent statute which would have the most beneficial effect that its language permits". This rule is in consonance also with the presumptions against useless, impractical or meaningless legislation which is impossible or incapable of execution or performance. (Handbook on Statutory Construction by Ruperto G. Martin, 1972 ed., pp. 126-127).

Moreover, as the fact will show P.D. 1889 was implemented the following year by the BIR. In other words, the said decree was applied already to price increase subsequent to its promulgation and petitioner did not question its implementation.

We now come to the next question of the petitioner whether the application of P.D. 1889 to oil price increase subsequent to the date of its promulgation on November 3, 1983 would create an irreconciliable inconsistency between Sections 1 and 3 of the said law. For ready reference, quoted hereunder are the provisions of the law involved:

> Section 1. Surtax on Extraordinary Gains; Rate of Surtax. - In addition to the income tax imposed under Title II of the National Internal Revenue Code, there is hereby imposed a surtax of sixty-five (65%) per cent on extra-ordinary gains realized by oil companies as a result of price increases authorized for petroleum products, which surtax shall be allowed as part of the cost of petroleum product sold on or after November 3, 1983. (Underscoring supplied.)

> Section 3. Time, Manner and Place of Payment. - The surtax herein imposed shall be paid within thirty (30) days following the promulgation of this Decree. The rules and regulations authorized under

> Section 5 hereof may provide for installment payments.
>
> A return shall be filed at the time of payment with the Commissioner of Internal Revenue.

The first provision provides the authorization for the imposition of 65% surtax on extraordinary gains realized by oil companies as a result of price increases. The only qualification is that the said "surtax shall be allowed as part of the costs of petroleum product sold on or after November 3, 1983". The said qualification to our mind has two significance insofar as the surtax imposition is concerned. One, the surtax is now deductible from the gross income or receipts of the oil companies considering that cost of production is a deductible item to arrive at the taxable income and second, this manner of treating a surtax shall be applied to sale of petroleum products on or after November 3, 1983. From this provision, we can infer the intention of the lawmaker to apply the law to all future price increases which will generate extraordinary gain. This is a logical interpretation for how could we allow the deduction of the surtax as part of cost production if in the first place we will not allow it to be imposed on subsequent price increases that generate extraordinary gains.

The second provision merely states the time, manner and place of payment.. What confuses the petitioner is the requirement that the said surtax shall be paid within thirty days following the promulgation of this decree. This made the petitioner concludes that as in the case of the previous laws this latter law shall apply only to extraordinary gains arising out of prior increases already authorized and cannot apply to extraordinary gains arising out of price increases that accrued subsequent to its promulgation. If we will construe Section 3 in the same way petitioner does it, this will render the law ineffective for as pointed above, there was no oil price increases that occurred prior to the promulgation of P.D. 1889 that had not been covered by the prior laws.. This will run counter to another established jurisprudence in statutory construction which states "where the language of the law is susceptible of two or more constructions, one which will render the statute ineffective or inefficient and another which will tend to give effect to the evident intent of the legislature, the latter construction must be made, there being a presumption against ineffectiveness of statutes" (US v. Toribio, 15 Phil 85). As already mentioned above, the law was applied in the 1984 price increases and petitioner did not question such application. The intention must have been to really give the law prospective application. This conclusion is further supported by the fact that P.D. 1889 under Section 7 provides that the law "shall take effect immediately" - a phrase generally construed as prospective application of a law. Note that respondent issued implementing regulations to cover the 1984 oil price increase. Under these regulations the surtax was made payable thirty (30) days after the date of the effectivity of the resolution of the Board of Energy authorizing the price increase. Had the same procedure been done in the 1987 price increase perhaps no such confusion as to its effectivity may have occurred.

This brings us to the question whether or not the failure of the respondent to issue an implementing regulation to cover the 1987 price increase invalidates the application of P.D. 1889 to the 1987 price increase.

We believe that it has never been a rule that the issuance of an implementing regulation is an indispensable requirement before any law could take effect. On the contrary the effectivity of a law is governed by the date of effectivity provision which is an essential and standard part of a statute. It determines the time when the law shall take effect. (Martin, *op cit.*, p. 27). On the other hand, the provision concerning the grant of authority to the concerned agency to issue rules and regulations is primarily designed to facilitate the smooth implementation of the law. It supplies the necessary details which may not be present in the law to carry out its objective or to clarify certain ambiguous provisions or provisions which are susceptible to different interpretation. It does not control the life of the statutes. Its non issuance does not invalidate the existence of the law unless the provision of the law itself states in a clear manner that the concerned agency has to issue first an implementing regulation before it could take effect or as a prerequisite to its implementation. This is not so in the case of P.D.

1889. Section 5 of the said decree merely requires the Minister of Finance upon recommendation of the Commissioner of Internal Revenue and in consultation with the Minister of Energy to promulgate rules and regulations.

Moreover, the facts of the case will show that respondent issued not only one implementing regulation but three revenue regulations to implement P.D. 1889. Except for a slight change the regulations are basically the same. Among other provisions it clarifies the ambiguity in the provision of Section 3 of the said decree by providing specifically that the surtax shall be paid within thirty (30) days after the effectivity of the price increase. This provision was uniformly adopted in the three price increases in 1984 and we see no legal obstacle to its application to the 1987 price increase. In fact, as in the case of other laws, one implementing regulation is sufficient to provide guidelines to both the government agency concerned and the private persons affected.

In view of all the foregoing, we believe P.D. 1889 is applicable and may serve as legal basis to authorize the imposition of surtax or extraordinary gains tax in the 1987 price increase.

We come now to the second issue, whether or not the term "wholesale posted price" includes the amounts required to be remitted to the Oil Price Stabilization Fund (OPSF) and the ad valorem tax.

For our purpose we quote hereunder the pertinent provisions of P.D. 1889.

> Section 2. Computation of Extraordinary Gains. – The extraordinary gains shall be measured by the difference between the approved wholesale posted prices of refined petroleum products immediately before the authorized price increases and the new posted prices multiplied by the number of units of petroleum products existing as of the day of effectivity of the price increases. Extraordinary gains shall also refer to the aggregate increases in the value of crude oil and base stocks.

By wholesale posted price "shall mean the wholesale prices, ex refinery, of all petroleum products as set by the Board of Energy exclusive of : (i) Specific taxes (ii) Special Fund Levies (iii) Consumer Cost Equalization Fund Components" pursuant to Section 3(c) Revenue Regulation No. 7-80 issued in implementation of P.D. 1709. In view of this definition, petitioner argues that in the computation of the extraordinary gain the increase in ad valorem tax and the portion corresponding to the Oil Price Stabilization Fund should be excluded and only the oil industry net back should be included.

The argument is not absolutely correct. The Oil Price Stabilization Fund or its predecessor the Consumer Price Equalization Fund is a special fund established by the Board of Energy to reimburse the oil companies for costs incurred in the purchase of crude oil at prices in excess of the reference price. Reference price of crude oil means the price of crude oil including the corresponding customs duties, insurance and Board of Energy fee as established by the Board of Energy (now Energy Regulatory Board) for purposes of computing the amount of reimbursement that may be claimed by an oil company from the Consumer Cost Equalization Fund now Oil Price Stabilization Fund. While it is true that the amount collected by the oil companies for the fund is remitted to the Office of Energy Affairs that manages the fund as a trust account in the general fund per Presidential Decree No. 1956 and Executive Order No. 137, nevertheless, the oil companies later on are reimbursed from this fund to allow them to recover their increased cost of acquiring crude oil. Petitioner concentrated to argue on the aspect that the OPSF collections are remitted to the government and never dwelt on the reimbursement aspect which redound to its benefit as in this particular case.

We quote hereunder the pertinent dispositive portion of the Order dated August 14, 1987 of the Energy Regulatory Board authorizing the subject price increase on August 15, 1987:

> WHEREFORE, the herein applicants are hereby directed to REDUCE their netback by POINT FIVE (P.005) CENTAVOS average per liter, and authorized to provisionally INCREASE the wholesale posted prices of their petroleum products by an average of FORTY-EIGHT POINT SEVEN (P0.487) CENTAVOS per liter, plus THIRTY-ONE POINT ONE (P0.311) CENTAVOS per liter which applicants are hereby directed to pay to the OPSF. To this total amount of SEVENTY-NINE POINT THREE (P0.793) CENTAVOS shall be added the resultant increase of P.007 per liter average on the Ad Valorem tax adverted to above.
>
> Of this total increase of EIGHTY (P0.80) CENTAVOS per liter which shall be reflected in the retail prices, 48.7 centavos have previously been allocated among the various petroleum products under BOE Resolutions Nos. 87-02 and 87-03 for purposes of reimbursement from the OPSF although not reflected in the retail prices. This Order, therefore, allocates only THIRTY-ONE POINT ONE (P.311) CENTAVOS per liter and POINT FIVE (P.005) CENTAVOS per liter netback reduction among all petroleum products marketed locally in the following manner:

	NETBACK	OIL PRICE STABILIZATION FUND
Premium Gasoline	.02	.4373
Regular Gasoline	.01	.8366
Avturbo	(.078)	-
Kerosene	(.13)	.5343
Diesel Oil	.08	.5499
Fuel Oil	(.067)	-
Feedstock	(.067)	-
LPG	.06	.6018
Asphalt	(.07)	.5296
Average	(.005)	.311

> The amount of P.007 representing the ad valorem tax effect "allocate itself" among the petroleum products upon the application of the ad valorem tax rates.
>
> The amount of increase as above allocated shall be correspondingly reflected as an upward adjustment in the retail price of each product sold anywhere in the country, without prejudice to the issuance by this Board of a resolution fixing/rationalizing the retail prices throughout the Philippines of all petroleum products covered by these applications.

Clearly pursuant to said order of the ERB it authorized the provisional increase of the wholesale posted price of the oil companies' petroleum products by an average of forty-eight point seven (P0.487) centavos per liter. The purpose of which is to allow the oil companies reimbursement from the OPSF. In other words, contrary to the representation made by the petitioner, this amount goes to the oil companies to enable them to recover increase in cost of production which they could not directly recover from the OPSF. As the fund was already depleted in 1987 (ERB Order, p. 21). Only the average amount of thirty-one point one (P.311) centavos per liter were directed to be paid to the OPSF. Petitioner's counsel may not have fully appreciated the facts by representing to this court that the entire amount of P.798 goes to the OPSF. This is giving the petitioner's counsel the benefit of the doubt that there has been no intention on their part to make any misrepresentation of fact.

Therefore, the increase in wholesale posted price is P0.487.

We now come to the issue of whether or not the average increase in ad valorem tax in the amount of P.007 per liter should be included in the computation of extraordinary gain.

While in general as defined under previous Revenue Regulation 7-80, the wholesale posted price excluded specific tax or for that matter, now ad valorem tax, this treatment has been changed by subsequent regulations particularly that implementing P.D. 1889. The three implementing regulations namely, Revenue Regulation Nos. 12-84, 13-84 and 22-84 computed the imposition of the sixty-five (65%) per cent surtax on the total extraordinary gains deemed realized as a result of price and internal revenue tax increases authorized for petroleum products (Sec. 5). Gains due to increase in specific tax and ad valorem tax are made to apply only to inventory of unbonded (tax paid) petroleum product as of the date of the authorized price increase (Section 4). The inclusion of increase in internal revenue tax as basis in computing for extraordinary gain of unbonded stocks is very logical in as much internal revenue taxes on this inventory of unbonded petroleum products have already been paid. Ad valorem or specific taxes on petroleum products are paid within 15 days from the date of removal thereof from the place of production. (Section 127(a) NIRC). When these products are withdrawn from the refinery, they are transferred and stored by the oil companies in their various unbonded installation and depots all over the country ready for deliveries to their respective dealers. Unbonded installations or depots means the oil company does not put up anymore a surety bond in favor of the BIR to guarantee payment of internal revenue tax because the said taxes due on the products stored therein are paid already. So that whenever there are price increases which include an increase in the taxes due, the oil companies are benefited by the increase in taxes insofar as these unbonded stocks are concerned because when the oil companies sell these unbonded stocks to their dealers the sale is based on the new price increase which includes the new tax rate. This new tax rate is not paid anymore to the BIR considering that excise taxes are paid only once and this is upon removal of the products from the place of production or within fifteen (15) days thereafter in the case of petroleum products.

However, with respect to bonded stocks and those which are still in their place of production, we believe the increase in the tax rate should not be included in the computation of extraordinary gain because the oil company is not benefited by said increase. The payment of excise tax on the products to be withdrawn shall be based already on the new tax rate to be remitted entirely to the BIR.

On the third issue whether or not petitioner may be held liable for surcharge and interest, this court could not agree with the petitioner that there is no legal provision which will determine the due date for payment of the surtax. As discussed above, the provision of P.D. 1889 and its implementing revenue regulations shall apply. It is to be noticed that since the enactment of the first surtax decree, namely, P.D. 1709, followed by P.D. 1867 and finally by P.D. 1889 as well as the issuance of the corresponding implementing regulations, the time for payment of the surtax has always been within 30 days after the effectivity of the new price increase on petroleum products. These are the same regulations being cited by the petitioner in its various pleadings to justify the non-imposition of surtax on contribution to OPSF and increase in ad valorem tax. Petitioner is however repudiating or ignoring the same regulation if the same will work against its interest. We do not see any reason why the same regulation and practice of paying surtax within 30 days after the effectivity of the new price increase would not apply in the instant case.

The same problem arose in the most recent case of Commissioner of Internal Revenue, Petitioner vs.

Mobil Philippines, Inc., et al., Respondents, G.R. No. 124920, April 28, 1994. In this case, Mobil Philippines argued that there was no prescribed time for payment of the additional ad valorem taxes which became due by reason of the increases in cost recovery of petroleum products. If there was no prescribed time for payment, it follows as a matter of strict logic that no liability for delay in payment of such 'additional ad valorem taxes could arise'. On this kind of argument, the Supreme Court states:

> The principal difficulty with the basic contention of Mobil is that it proves too much. If that contention were taken literally and seriously, the additional ad valorem taxes on the previously withdrawn petroleum products would be payable only when it would please Mobil to pay such taxes. We consider such a result to be absurd: it is certainly repugnant to public policy, for the additional ad valorem taxes were clearly due on the additional value undeniably accruing to Mobil's benefit in respect of previously withdrawn product but not yet disposed of by the time the increase in cost delivery of oil companies was authorized by the BOE resolutions.
>
> xxx xxx xxx
>
> Thus, if Section 110 were to be read as literally and strictly as the Court of Appeals and Mobil believe it would, then

> the BIR would have quite justified in computing the period of delay or default from the time of actual physical removal of the product involved, upon the theory that the liquidation of the amount of ad valorem taxes due retroacts to the time of physical removal of the product from the refinery. But the BIR did not do so: instead, it considered, as already seen, the product as having been constructively removed from the refinery only on the dates of promulgation of the two (2) BOE Resolutions and counted the statutory fifteen (15) day-grace period from such dates.
>
> Thus, the BIR considered the impracticability of computing the full or adjusted ad valorem taxes in this case as constituting a justification or excuse for deferring payment of such additional ad valorem taxes. That justification disappeared as soon as the BOE Resolutions were issued and the increased wholesale posted prices were determined. We are unable to characterize the position of the BIR as merely capricious or oppressive: to the contrary, such position appears to this Court as reasonable and moderate and as close to the intent of Sections 110 and 128, 1977 Tax Code, as it was possible to get under the situation. (Underscoring supplied.)

We find the same pronouncement by the Supreme Court as applicable in the instant case. The imposition by the BIR of surcharge and interest for failure on the part of the petitioner to pay the surtax within 30 days after the effectivity of the authorized price increase on August 15, 1987 is likewise justified under the circumstances.

In view of all the foregoing, the extraordinary gain due petitioner should be computed pursuant to P.D. 1889 and its implementing regulations as follows:

(1) Gains arising from the increase in oil industry net back or the wholesale posted price shall be determined on the average by multiplying the inventory of petroleum products as of August 15, 1987 by P.487;

(2) Gains due to increase in ad valorem tax shall be determined by multiplying the inventory of unbonded (tax paid) petroleum products as of August 15, 1987 by P.007;

(3) Twenty-five (25%) *per centum* surcharge pursuant to Section 248(1) & (3) and twenty (20%) *per centum* interest pursuant to Section 249 of the Tax Code should also be added to the surtax.

Accordingly, computation of surtax liability on the extraordinary gains realized by petitioner as defined under P.D. 1889 is shown, as follows:

Inventory gains:

a) Due to increase in oil industry net back or increase in wholesale posted price

Item	Inventory	
Jet A	24,865,882	
Premium	49,586,297	
Regular	13,458,652	
Kerosene	18,714,060	
Diesel	126,367,007	
Fuel oil	82,004,511	
LPG	-	
Thinners	1,310,882	
Asphalts	1,835,413	
Unlocated difference	1,374,056	
T o t a l	319,518,191	
Multiply by	P0.487	P155,605,359.02

b) Due to increase in ad valorem tax

Item	Unbonded Inventory	
Jet A	5,844,114	
Premium	14,083,137	
Regular	3,169,066	
Kerosene	15,301,295	
Diesel	80,283,490	
Fuel oil	54,760,921	
LPG	4,877,029	
Thinners	68,520	
Asphalts	76,800	
T o t a l	178,464,372	
Multiply by	P0.007	1,249,250.60

T O T A L	P156.854,609.62
Surtax due (156,854,609.62 x 65%)	P101,955,496.25
Add: 25% surcharge (101,955,496.25 x 25%)	25,488,874.06
Amount due and collectible	P127,444,370.31*

*Plus 20% interest from the date prescribed for payment which is within thirty (30) days after August 15, 1987 the effectivity date of the price increase until the amount is fully paid pursuant to Sec. 249 of the Tax Code, as amended.

WHEREFORE, the Court hereby orders the petitioner to pay the total amount of P127,444,370.31 plus 20% interest from September 15, 1987 until it is fully paid. The assessment issued by the respondent is accordingly modified.

SO ORDERED.

Quezon City, Metro Manila, July 5, 1994.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals