Library

July 22/66

PAPER INDUSTRIES CORPORATION
OF THE PHILIPPINES (FORMERLY
BISLIG INDUSTRIES, INC.),
Petitioner

versus

CTA CASE NO. 1680

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from an assessment of respondent imposing on the petitioner a surcharge of ₱225.61, representing 25% penalty for late payment of forest charges.

The facts of this case are not controverted. Petitioner is a domestic corporation engaged in the business of cutting and selling logs and forest products from its concession. For the month of July 1961, respondent's foresters submitted their monthly scale report showing the amount of ₱1,349.99 as forest charges due from petitioner, same to be paid on or before October 14, 1961. Petitioner paid this amount in full on September 5, 1961 or over a month before the expiration of the period granted it. About a year later, that is, on June 18, 1962, the Acting Regional Director of District No. 3, sent a preliminary 5-day letter to petitioner enclosing a B.I.R. agent's recommendation that petitioner pay a deficiency forest charges of ₱902.45 plus ₱225.61 as 25% surcharge. The error appears to have been due to a new classification of trees in Forestry Administrative Order No. 32 which took effect on July 5, 1961 and which was overlooked by the foresters. On July 12, 1962 petitioner informed the Regional Director aforesaid in a letter that it was willing to pay the deficiency but not the surcharge. On July 16, 1962 the Regional Director sent petitioner a re-assessment calling for payment of ₱902.45 as deficiency forest charges with no mention whatever of the surcharge of ₱225.61 for late payment. On July 23, 1962 petitioner paid the deficiency of ₱902.45. In the meantime, a demand letter dated July 10, 1962 called for payment of both the deficiency assessment for ₱902.45 plus ₱225.61 as 25% surcharge, which letter was received by petitioner on September 1, 1962.

The only question posed before this Court is the validity of the 25% surcharge imposed by respondent on petitioner. This question brings to mind Regulation No. 85 of the Department of Finance that, among other things, regulates the manner of paying forest charges, the pertinent provision of which being Section 28 thereof, which reads as follows:

> "(b) At the end of each month and without the necessity of waiting for the result of the revision to be made in the Bureau of Forestry, the forest officers stationed at the sawmill have been instructed by the Director of Forestry to forward the original of the Monthly Scale Report (B.F. Form No. 24.33) to the deputy provincial treasurer

> concerned for collection. Said forest officer shall deliver the triplicate of the Monthly Scale Report to the operator or manager of the sawmill who shall present it to the deputy provincial treasurer on or before the last date on which the amount due thereon and indicated in the scale report may be paid without surcharge, which date shall not be later than the 45th day[1] from the last day of the month in which the timber was scaled by the forest officer and pay the forest charges without awaiting any demand for the payment thereof. If upon the revision made in the Bureau of Forestry, there should be found any short charges or overcharges, the necessary adjustment shall be made on the Monthly Scale Report (B.F. Form No. 1-8) for the subsequent month."

It will be noted from the foregoing regulation that petitioner's forest charges are required to be paid after receipt of the monthly scale report of the forest officer or forester, on which the amount payable is based. Payments are even subject to correction for if upon revision made in the Bureau of Forestry, there should be found any short charges or overcharges, the necessary adjustments are made on the monthly scale report for the subsequent month which is the basis of the next payment. From this very manner of payment it would seem that surcharges are not contemplated in case of short charges because in that event the necessary correction is made in the next monthly scale report as the regulation itself provides. Of course

---

[1] Now 75 days, pursuant to Sec. 267, Nat. Int. Rev. Code, in relation to Sec. 28(b), Regs. No. 85 of the Dept. of Finance; B.I.R. Ruling No. 121, Feb. 20, 1959.

surcharges are due when the taxpayer fails to pay on time the forest charges collectible on the basis of the monthly scale report of the forest officers.

In the present case, it is not controverted that petitioner paid on time the forest charges for the month of July, 1961 collectible under the monthly scale report of the forest officers. If the correct tax was not paid it was because the scale report did not reflect the new re-classification, the forest officers having overlooked same. If petitioner did not pay the shortage earlier than the preliminary 5-day letter of June 18, 1962, it was obviously because the necessary adjustment was not made by the Bureau of Forestry in the monthly scale report of the succeeding month as provided by the regulation. Under these circumstances we cannot find justification for penalizing petitioner solely for the errors of the forestry officers acting as deputies of respondent. Petitioner had no part in the making of the scale reports and all it did was to pay the forest charges on the basis of the scale reports. Said this Court in the case of Philippine Power and Development Co., Inc. vs. Commissioner of Internal Revenue (C.T.A. Case No. 1152, Oct. 31, 1965):

> "On the third issue, petitioner contends that he is not liable for the sum of ₱28,293.88, representing the 25% surcharge, for the reason that the failure to pay the 5% franchise tax was due to

respondent's letters dated June 15, 1955 and July 13, 1955, respectively, which led him to believe that the correct rate of percentage tax due was only 2%, and in consequence of which it was granted a tax credit of ₱39,830.76, or the difference between the 5% prescribed in Sec. 259 of the Tax Code and the 2% provided in its franchise.

"This contention is well taken. Having acted in good faith and having been misled by the respondent, it would not be fair and equitable to impose upon the petitioner the 25% surcharge. In the case of Ilagan Electric & Ice Plant, Inc. vs. The Commissioner of Internal Revenue, C.T.A. Case No. 1178, May 18, 1964, this Court held:

'It is undisputed that petitioner paid the 2% franchise tax in accordance with the view of respondent's deputy that the former was liable only for the 2% franchise tax. It may, therefore, be said that the failure to pay the correct amount of tax is clearly and directly attributable to the mistaken view of respondent's deputy regarding the rate of tax applicable to petitioner's gross receipts. In paying 2% franchise tax, petitioner was acting in good faith. Having thus acted, it would not be just to penalize petitioner with 25% surcharge for falling into the error to which it has been led by respondent's deputy. (See Connell Bros. Co. [Phil.] vs. Collector of Internal Revenue, G. R. No. L-15470, Dec. 26, 1963.)'"

WHEREFORE, the Court finds petitioner not liable for the 25% surcharge, equivalent to ₱225.61 imposed by the Commissioner of Internal Revenue and hereby reverses the latter's decision.

SO ORDERED.

Quezon City, July 22, 1966.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge