ATLAS CONSOLIDATED MINING &
DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2842

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

1/23/81

D E C I S I O N

Suit brought by petitioner Atlas Consolidated Mining & Development Corporation for recovery of the amount of ₱2,288,865.23 as alleged erroneously overpaid ad valorem tax on the market value of copper minerals extracted from its mine site in Toledo City, Cebu, during the period November 1, 1974 to December 31, 1975, after no seasonable action was taken by respondent Commissioner of Internal Revenue on its claim for tax credit before the expiration of the two-year period of limitation.

There is no dispute as to the facts of the case.

After petitioner has presented its evidence, both oral and documentary, including the depositions, together with the exhibits offered in connection therewith, taken by the Consuls of the Philippines in Tokyo, Japan; New York, United States of America; London, United Kingdom; and Berne, Switzerland, upon the basis of letters commission issued by this Court, and rested its case, counsel for respondent, without controverting or disputing the evidence of petitioner and without offering proof as to the truth of his own allegations in his answer, submitted this case for decision on the basis of the pleadings and the records of the case.

Under the well-settled rule that one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such as his own as are admitted (Bauerman vs. Casas, 10 Phil. 386;Evangelista vs. De la Rosa, et al., 76 Phil. 115), the factual background of the case as stated in the petition for review may be considered beyond controversy, to wit:

1. That petitioner is a coporation created under and existing by virtue of the laws of the Republic of the Philippines, with principal offices at the 3rd floor, A. Soriano Building.

2. That during the period November 1, 1974 to December 31, 1975, petitioner, engaged in the business of copper mining, extracted, mined and concentrated copper ore in its mine site in Toledo City, Cebu; that it shipped and sold copper concentrate

to Japan and other foreign countries for processing, that is, smelting and refining, into wire bars.

3. That during the said period, petitioner shipped and sold from Cebu an aggregate of 393,723,629 dry metric tons of copper concentrate containing 254,932,574.75 pounds of copper on which it paid a total amount of ₱17,912,314.04 as ad valorem tax computed as follows:

LME (London Metal Exchange) Price of wire bars manufactured from 393,723,629 DMT of copper concentrate		₱931,027,002.18
LESS:		
Freight	₱32,733,226.17	
Insurance	2,681,073.95	35,414,300.12
Taxable base		₱895,622,702.06
Ad Valorem Tax rate		.02
Tax Actually paid		₱ 17,912,314.04

4. That the above computation of the ad valorem tax actually paid does not include the deduction of smelting charges of ₱114,440,261.99 paid by petitioner to Japanese and other foreign smelters on the process of smelting the copper concentrates into wire bars.

5. That if the smelting charges of ₱114,440,201.99 were deducted the computation of the ad valorem tax would be as follows:

LME price of wire bars manufactured from 393,723,629 DMT of copper concentrate shipped abroad		₱931,027,002.18
LESS:		
Freight	₱ 32,733,226.17	
Insurance	2,681,073.95	
Smelting charges	114,440,261.09	149,854,561.21
Taxable base		₱781,172,440.97
Tax rate		.02
Ad Valorem Tax due		₱ 15,623,448.81

6. That there would be an erroneously overpaid ad valorem tax by petitioner of ₱2,288,865.23 during the above-mentioned period.

7. That on November 18, 1976, petitioner filed with respondent Commissioner of Internal Revenue a claim for tax credit in the amount of ₱2,288,865.23.

At this juncture, it maybe stated that in his "Memorandum for the Respondent" dated August 19, 1980 filed with the Court, respondent, having submitted his case based on the pleadings and records of the case, in effect adopted the above-narrated facts as basis of his statement of facts. (pp. 119-123, CTA records.)

After carefully examining all the evidence of petitioner, which were not disputed by respondent, as well as the records of this case, we are more than ever convinced that despite the seemingly conflicting positions taken by the parties, there is no real dispute between them on the fundamental principles by which the basis or measure of the ad valorem tax payable by petitioner on the actual market value of the copper minerals exported to Japan or other countries is to be computed. A lot of ground can at once be covered, and it will greatly simplify matters, if the uncontroverted evidence of petitioner, both oral and documentary, including the depositions taken in Tokyo, Japan; New York, United States; London, United Kingdom; and Berne, Switzerland, and all the exhibits presented in connection therewith, are reduced to basic factual propositions or situations that are beyond dispute, to wit:

1. The mineral mined or extracted by petitioner from its mine site in Toledo City, Cebu, is copper. (p. 20, BIR records; see also petition for review, p. 1, CTA records & respondent's memorandum, p. 119, CTA records.) In its raw, unmarketable form, it is a rock called copper ore. (Exh. "D"; p. 20, BIR records.) The mineral rocks or ores are crushed, ground and reduced to powder form known as copper concentrate. While the ores contain about ½% copper, the copper concentrate contains about 28-31% copper. (t.s.n., p. 31, hearing on November 15, 1977; p. 8,

deposition, Japan; p. 8, deposition, London; Exhibit "A" - London.) It is the copper concentrate - the powdered rocks with copper contents - that is exported to foreign buyers in Japan, like the Mitsubishi Metal Corporation. (p. 20, BIR records.)

2. Petitioner has been selling its copper concentrate to Mitsubishi Metal Corporation (formerly Mitsubishi Metal Mining Co., Ltd.) in Japan pursuant to a Loan and Sales Contract dated April 17, 1970. (Exh. "A", pp. 1-21, Folder I of Exhibits.) This was supplemented from time to time, the latest of which, for purposes of this case, is the Fourth Supplementary Agreement executed by petitioner and Mitsubishi Metal Corporation on January 25, 1974. (Exh. "B", pp. 22-27, Folder 1 of Exhibits.)

3. Petitioner and Mitsubishi Metal Corporation determined the selling price of copper concentrate by reference to the price quotation of electrolytic copper wire bar in the London Metal Exchange. (Exh. "A-1", p. 10, Folder 1 of Exhibits; t.s.n., pp. 4 & 68, hearing on November 15, 1977.) It appears that the parties had to refer to the price quotation of wire bar because there is no price quotation for copper concentrate in the London Metal Exchange or in any of the other commodity exchanges in the world for

failure of copper concentrate to satisfy the standards required of a commodity to be traded in commodity exchanges. (t.s.n., pp. 37-38, hearing on November 15, 1977; t.s.n., pp. 10-11, hearing on April 3, 1978; pp. 6-11, deposition, Japan; pp. 11 & 18, deposition, New York; pp. 2, 5 & 7, deposition, London.) There is no other market quotation locally obtainable in the Philippines. (p. 19, BIR records.)

4. As for the reason why copper concentrate is not traded in the commodity exchanges in the world, the records of the case show that the product fails to meet the criteria before a commodity could be traded in a commodity market; such as, (a) the commodity must be homogeneous for easy standardization, classification and interchangeability (pp. 5 & 6, deposition, London); (b) there must be a large number of buyers and sellers, without the existence of any buyer or seller, or their aggrupation, having a dominant influence on the price (p. 6, deposition, London; p. 12, deposition, New York); (c) the market should be free from government control or control by big blocks of producers or consumers to insure that the price quotation is not influenced or dictated by non-market factors; (d) the commodity must be durable and non-perishable to allow storage and

stockpiling; (e) there must be free entry to and free exit from the market (p. 6, deposition, London); (f) there must be full information on the production of the commodity traded, on the stocks, price and distribution, and such information must be accessible and open to all (pp. 6-7, deposition, London); and (g) decisions and operation in the market must be taken impersonally without regard for personal considerations, like friendship, power, influence, etc. (p. 6, deposition, London).

5. With the London Metal Exchange price quotation of electrolytic copper wire bar as starting point, which as discussed above is used by petitioner and Mitsubishi Metal Corporation as reference point, the actual market value of copper mineral or concentrate is determined by the parties by allowing for the deduction from the London Metal Exchange price quotation of copper wire bar all costs of manufacturing or processing into copper wire bar. In other words, the actual market value of copper concentrate is ascertained by deducting the freight, insurance, smelting, refining and fabrication charges from the London Metal Exchange price quotation of copper wire bar. (p. 20, BIR records.) The remainder, after all these deductions, represents to a reasonable degree the actual market

value in the mine site of the copper mineral extracted from the earth, which in its marketable form, is copper concentrate. (pp. 12-13, deposition, New York; pp. 4-5, deposition, London.)

Petitioner and Mitsubishi Metal Corporation have provided for in their Loan and Sales Contract (Exh. "A") and Fourth Supplementary Agreement (Exh. "B") the different charges payable from the time the copper concentrate is loaded in the Port of Toldeo City, Cebu, to the time it is unloaded in Japan of freight and insurance. Provisions are also made for the costs of smelting, refining and fabricating copper concentrate into copper metal in the form of wire bar. Of course, there are also certain provisions for allowances for unit deductions, moisture content, grade tolerances, mechanics for arbitration in case of disagreements, etc., which are considered to be reasonable in order to approximate as accurately as possible the copper content in a particular shipment of copper concentrate. (t.s.n., pp. 4, 6 & 7, hearing on November 15, 1977; t.s.n., pp. 8 et seq,, hearing on April 3, 1978; Exhs. "A-1", "A-2"; p. 4, deposition, Japan; pp. 4-5, deposition, London; pp. 12-13, deposition, New York.)

6. The physical processes involved in the

production of copper concentrate are the following: (p. 19, BIR records; Exh. "H", p. 43, Folder I of Exhibits.)

A. Mining Process -

(1) Blasting - The ore body is broken up by blasting.

(2) Loading - The ore averaging about ½ per cent copper is loaded into ore trucks by electric shovels.

(3) Hauling - The trucks of ore are hauled to the mill.

B. Milling Process -

(1) Crushing - The ore is crushed to pieces the size of peanuts.

(2) Grinding - The crushed ore is ground to powder form.

(3) Concentrating - The mineral bearing particles in the powdered ore are concentrated.

The ores or rocks, transported by conveyors, are crushed repeatedly by steel balls into size of peanuts, when they are gound and pulverized. The powder is led into concentrators where it is mixed with water and other reagents. This is known in the industry as the flotation phase. The copper-bearing materials float while the non-copper materials in the rock sink. The material that floats is scooped and dried and piled. This is known as copper concentrate. The material at the bottom is waste, and is known in the industry as tailings. In Toledo City, tailings are disposed of through metal pipes from the flotation mills to the open sea. Copper concentrate of petitioner contains 28-31% copper. The concentrate is loaded in ocean vessels and shipped to Mitsubishi Metal Corporation mills in Japan, where the smelting, refining and fabricating process are done. (Memorandum of petitioner, p. 71, CTA records.)

8. The chemical or manufacturing process in the production of wire bar is as follows: (Exh. "H", p. 43, Folder I of Exhibits.)

A. Smelting -

(1) Drying - The copper concentrates (averaging about 30 per cent copper) are dried.

(2) Flash Furnace - The dried concentrate is smelted autogenously and a matte containing 65 per cent is produced.

(3) Converter - The matte is converted into blister copper with a purity of about 99 per cent.

B. Refining -

(1) Casting Wheel - Blister copper is treated in an anode furnace where copper requiring further treatment is sent to the casting wheel to produce anode copper.

(2) Electrolytic Refining - Anode copper is further refined by electrolytic refining to produce cathode copper.

C. Fabricating -

(1) Rolling - Fire refined or electrolytic copper and/or brass (a mixture of copper and zinc) is made into tubes, sheets, rods and wire.

(2) Extruding - Sheet, tubes, rods and wire are further fabricated into the copper articles in everyday use.

The records show that cathodes, with a purity of 99.985%, are cast or fabricated into various shapes, depending on their industrial destination. Cathodes are metal sheets of copper 1 meter x 1 meter x 16-18 millimeter thick and 160 kilograms in weight, although this thickness is not uniform for all the sheets. Cathodes sheets are not suitable for direct fabrication, hence, are further fabricated into the desired shape, like wire bars, billets and cakes. (p. 1, deposition, London.) Wire bars are rectangular pieces, 100 millimeter x 100 millimeter x 1.37 meters long and weigh some 125 kilos. They are suited for copper wires and copper rods. Billets are fabricated into tubes and heavy electric sections. Cakes are in the form of thick sheets and strips. (pp. 13, 18-21, deposition, Japan; Exhs. "C" & "G", Japan; pp. 1-2, deposition, London; See pp. 70-72, CTA records.)

9. In paying the ad valorem tax pursuant to Section 243 of the then in force National Internal Revenue Code, petitioner deducted from the London Metal Exchange price quotation of wire bar all the costs of fabrication, refining, treatment (smelting) process, freight and insurance. In other words, there being no market price quotation of copper concentrate in the commodity exchanges or markets of the world, which petitioner claims is the mineral or mineral product extracted or produced from its mineral lands in Toledo City, Cebu, it started from a known quantity to determine the actual market value (in Toledo) of copper concentrate. That known quantity is the London Metal Exchange price quotation of wire bar. From this known quantity, petitioner worked backwards by deducting all charges and costs incurred

after the raw copper concentrate has been shipped from Toledo City to the time such copper concentrate has been converted into saleable copper metal called wire bar. These are the costs of fabrication, refining, smelting, freight and insurance. The remainder, after all these items have been deducted from the London Metal Exchange selling price of copper wire bar represents to a reasonable degree, according to petitioner, the actual market value in the mine site of the copper concentrate, the copper mineral extracted from the earth in its marketable form. Petitioner having failed to deduct the cost of smelting, it filed with respondent Commissioner of Internal Revenue a claim for tax credit of the amount of ₱2,288,865.23 as alleged erroneously paid 2% ad valorem tax on the copper concentrate shipped to Mitsubishi Metal Corporation in Japan for the period from November, 1974 to December, 1975. (pp. 72 & 76, CTA records.) Respondent having failed to seasonably act on its claim for tax credit, petitioner initiated this proceeding in this Court before the expiration of the two-year period of limitation under Section 306 of the then in force National Internal Revenue Code.

10. The parties are not in controversy on the

computation of the ad valorem tax payable by, or the amount refundable to, petitioner as the case may be.

Petitioner in this case now poses a single issue before us:

> WHETHER OR NOT IN DETERMINING THE BASIS OR MEASURE OF THE AD VALOREM TAX ON COPPER MINERAL EXPORTED BY PETITIONER TO JAPAN IN THE FORM OF CONCENTRATE, THE COST OF SMELTING SHOULD BE DEDUCTED FROM THE LONDON METAL EXCHANGE PRICE QUOTATION OF WIRE BAR.

In asking for the dismissal of this case and denial of petitioner's claim for tax credit, respondent states that the issue to be resolved is:

> WHETHER OR NOT THE COSTS OF (A) REFINING CHARGES AND (B) SMELTING CHARGES IN THE AMOUNTS OF ₱96,632,057.70 AND ₱114,440,261.09, RESPECTIVELY, SHOULD BE DEDUCTED IN ARRIVING AT THE FINAL GROSS VALUE OF THE COPPER CONCENTRATE.

And in brushing aside the stand of petitioner, respondent argues that "the actual market value of the mineral products is that what petitioner realized from the sale of the copper concentrate 'without any deductions from mining, milling refining, transporting, handling, marketing, or any other expenses.'" The phrase "or any other expenses" includes smelting and refining charges now being claimed by petitioner. (p. 126, CTA records.)

Obviously, respondent admits that the mineral or mineral product extracted or produced by petitioner from its mineral land or mine site in Toledo City, Cebu, which is subject to the ad valorem tax under Section 243 of the then in force National Internal Revenue Code, is copper concentrate. Respondent likewise expressed his agreement with petitioner that the ad valorem tax is based on the actual market value or price of the copper concentrate at the time of its extraction or severance from the mineral land in Toledo City without any deduction for expenses, except for actual cost of ocean freight and insurance. Oddly, however, respondent seemed to miss the point when he asserts that "smelting and refining charges now being claimed by petitioner" should be deducted from the actual market value of the mineral product, which is copper concentrate, but which he apparently refers to the London Metal Exchange price quotation of copper wire bar. And averring that "In this particular case, the copper concentrates sold and shipped by petitioner under C.I.F. terms, have a total market value of ₱1,027,659,059.88" which is the

London Metal Exchange price quotation of <u>wire bars</u> manufactured from 393,723,629 dry metric tons of copper concentrate, involved in this case, respondent deducted therefrom expenses for ocean freight and insurance in the amount of ₱35,163,040.07 and obtained a balance of ₱992,496,019.81 subject to the 2% ad valorem tax, or ₱19,849,920.39 as ad valorem tax. (p. 126, CTA records.) Undoubtedly, "the actual market value of the copper concentrate" which is the basis of the ad valorem tax computed by respondent is not the actual market value of the copper concentrate in its condition at the time of its severance or removal from the mine site at Toledo City, but the London Metal Exchange price quotation of copper wire bar.

The controlling statute is found in Sections 243, 245 and 246 of the 1939 National Internal Revenue Code, and under the provisions thereof:

1. The ad valorem tax of 2% is 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. (Sec. 243, now Sec. 255, National Internal Revenue Code.)

2. The ad valorem tax is due and payable upon the removal of the mineral products from the locality

where mined. However, the output of the mine may be removed from such locality without prepayment of the ad valorem tax if the lessee, owner or operator of the mine shall file a bond conditioned upon payment of such tax, in which case, the lessee, owner or operator is required to make a true and complete return in duplicate under oath setting forth the quantity and the actual market value of the output of his mine removed during each calendar quarter and to pay the ad valorem tax due thereon within twenty (20) days after the close of the said quarter. (Sec. 245, now Sec. 256, National Internal Revenue Code.)

3. The term "gross output" means the actual market value of minerals or mineral products, or of bullion from each mine or mineral lands operated as a separate entity without any deduction for mining, milling, refining, transporting, handling, marketing, or any other expenses. If the minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted. The output of any group of contiguous mining claims shall be subdivided. (Sec. 246, now Sec. 257, National Internal Revenue Code.)

4. The word "minerals" means all inorganic substances found in nature whether in solid, liquid,

gaseous, or any intermediate state. The term "mineral products" means things produced by the lessee, concessionaire or owner of mineral lands, at least eighty per cent (80%) of which things must be minerals extracted by such lessee, concessionaire, or owner of mineral lands. (Sec. 246, now Sec. 257, National Internal Revenue Code.)

And as ruled by the Supreme Court:

5. The ad valorem tax on mining is a tax not on the minerals, but upon the privilege of severing or extracting the same from the earth, the Government's right to exact the said impost springing from the Regalian theory of State ownership of its natural resources. (Cebu Portland Cement Co. vs. Commissioner of Internal Revenue, L-18649, February 27, 1965, 13 SCRA 333.)

The inclusion of the term "mineral products" is intended to comprehend cases where the mined or quarried elements may not be usable in its original state without application of simple treatments, such as washing, or cutting them into sizes, which process does not necessarily involve the change or transformation of the raw materials into a composite distinct product. (Cebu Portland Cement Co. vs. Commissioner of Internal Revenue, L-18649, February 27, 1965, 13 SCRA 333.)

6. Since the ad valorem tax is a severance tax, i.e., a charge upon the privilege of severing or extracting minerals from the earth, and is due and payable upon removal of the mineral product from its bed or mine, the tax is to be computed on the basis of the market value of the mineral in its condition at the time of such removal and before its being substantially changed by chemical or manufacturing (as distinguished from purely physical) processing. (Cebu Portland Cement Co. vs. Commissioner of Internal Revenue, L-18649, Resolution dated December 29, 1967 of the Motion for Reconsideration, 21 SCRA 1425.)

The question therefore is: What is the mineral or mineral product of petitioner the privilege of severing or extracting the same from the earth on which the Government's right to exact the ad valorem tax is founded?

Petitioner and respondent do not dispute, as discussed above, that the mineral or mineral product extracted or produced from the mine site of petitioner in Toledo City, Cebu, the actual market value of which the ad valorem tax is imposed, is copper ore which in marketable form is copper concentrate. And the law is clear and specific. It says: "The word 'minerals' shall mean all inorganic substances found in nature whether in solid, liquid, gaseous, or any intermediate state." The accent is on the words - "found in nature". Since copper ore is the "inorganic substance found in nature" which petitioner removes and extracts from its mine site in Toledo City, Cebu, such copper ore, which in marketable form is copper concentrate, is the mineral or mineral product of petitioner the privilege of severing or extracting the same from the earth of which the right of the Government to impose the ad valorem tax is planted. Copper wire bar is not found in nature and is not being severed or extracted by petitioner from the earth in Toledo City, Cebu. Neither is it produced by petitioner in its mine site in Toledo City by simple treatments of washing or cutting into sizes, 80% of which are minerals extracted by petitioner. As explained in detail above, copper wire bar is produced in Japan by manufacturing and chemical process after smelting, electrolytic refining and fabricating the copper concentrate. (Exh. "H") Only thereafter does copper wire bar exist, in Japan, and not in the mine site of petitioner in Toledo City.

If copper concentrate is the mineral or mineral product of petitioner the severance from the soil of which the ad valorem tax is directed, the next problem thrust upon us is: What is the market value of the copper concentrate in its condition at the time of removal or extraction from its bed or mine at Toledo City on the basis of which the ad valorem tax is to be computed?

Petitioner explained, as shown earlier, that in order to arrive at the market vale of the copper concentrate, there being no market price quotation of copper concentrate in the commodity exchanges or markets of the world, or even obtainable locally, one should start from a known quantity. In the instant case, that known quantity is the London Metal Exchange price quotation of wire bar. From this known quantity, one works backward by deducting all charges and costs incurred after the raw copper concentrate has been shipped from Toledo City to the time the same has been coverted into marketable copper wire bar. These are the costs and charges of smelting, refining and fabricating of the copper wire bar, as well as the cost of freight and insurance. All these items should be deducted from the London Metal Exchange price quotation of the copper wire bar. The remainder represents to a reasonable degree the actual market value of the copper mineral extracted or severed from the earth in the mine site at Toledo City, which, in its marketable form is copper concentrate. (pp.75-76, CTA records.)

While respondent does not question the propriety, suitability and reasonability of the procedure adopted by petitioner in arriving at the actual market value of the copper concentrate at the mine site in Toledo City, he argues that the actual market value of the mineral product is that what petitioner realized from the sales of the copper concentrate "without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses." And the phrase "or any other expenses includes smelting and refining charges now being claimed by petitioner. (pp. 125-126, CTA records.)

Undoubtedly, as has already been explained above, respondent does not quarrel with petitioner that the actual market value of the <u>copper concentrate</u> in its condition at the time of removal from the earth at the mine site in Toledo City is the basis of the ad valorem tax of 2%. This is self-evident from respondent's argument that the actual market value of the mineral product is that what petitioner realized from the sales of the <u>copper concentrate</u> without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses. The collision, or confusion, occurs at the proposition of respondent that the refining and smelting charges of copper wire bars in the amounts of ₱96,632,057.70 and ₱114,440,261.09, respectively, are not deductible in arriving at the final gross value of the copper concentrate. Strangely enough, respondent seems to entertain the view, as can be gleaned from his assertion that the copper concentrates sold and shipped by petitioner under C.I.F. terms have a total market value of ₱1,027,659,059.88, which however is the London Metal Exchange price quotation of wire bars manufactured from 393,723,629 dry metric tons of copper concentrate, subject matter of this proceeding, that the actual market value of the mineral or mineral product of petitioner from which the expenses of refining and smelting should not be deducted is the London Metal Exchange price quotation of the copper wire bars manufactured by Japanese buyers in Japan. Obviously, in using the London Metal Exchange price quotation of wire bar as basis of the ad valorem tax payable by petitioner, it seems that respondent is of the impression that the mineral or mineral product of petitioner the actual market value of which is the measure of the tax is copper wire bar, not copper concentrate as already conceded by him.

Under the terms of the applicable law, it is quite apparent that the words "actual market value of minerals or mineral products, x x x x without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses" provided for under Section 246, <u>supra</u>, refers to "the actual market value of the annual gross output of the minerals or mineral products extracted or produced from all mineral lands x x x x" on which the 2% ad valorem tax is computed under Section 243 of the Revenue Code. Section 246 defines the words "gross output" as used in Section 243. Construed together, therefore, these provisions yield no other conclusion but that the "gross output" which is the actual market value of minerals or mineral products without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses means the gross output of the minerals or mineral products extracted or produced from the earth by petitioner in its mine site at Toledo City. The controlling law is clear and specific; it should therefore be applied as worded. Since the mineral or mineral product removed from its bed or mine at Toledo City by petitioner is <u>copper concentrate</u>, as admitted by respondent himself, <u>not copper wire bar,</u> the actual market value of such copper concentrate in its condition at the time of such removal without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses should be the basis of the 2% ad valorem tax. Any other interpretation would lead to confusion.

The conclusion reached is rendered clearer when it is taken into consideration that the ad valorem tax is a severance tax, i.e., a charge upon the privilege of severing or extracting minerals from the earth, and is due and payable upon removal of the mineral product from its bed or mine, the tax being computed on the basis of the market value of the mineral in its condition at the time of such removal and before its being substantially changed by chemical or manufacturing (as distinguished from purely physical) processing. (Cebu Portland Cement Co. vs. Commissioner of Internal Revenue, <u>supra</u>.) Copper wire bars, as discussed above, have already undergone chemical or manufacturing processing in Japan; they are not extracted or produced from the earth by petitioner in its mine site at Toledo City. Since the ad valorem tax is computed on the basis of the actual market value of the mineral in its condition at the time of its removal from the earth, which in this case is copper concentrate, there is no basis therefore for an assertion that such tax should be measured on the basis of the London Metal Exchange price quotation of the manufactured wire bars without any deduction of smelting and refining charges.

In resume:

1. The mineral or mineral product of petitioner the extraction or severance from the soil of which the ad valorem tax is directed is copper concentrate.

2. The ad valorem tax is computed on the basis of the actual market value of the copper concentrate in its condition at the time of removal from the earth and before it is substantially changed by chemical or manufacturing process without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses. However, since the copper concentrate is sold abroad by petitioner under C.I.F. terms, the actual cost of ocean freight and insurance is deductible.

3. There being no market price quotation of copper concentrate locally or in the commodity exchanges or markets of the world, the London Metal Exchange price quotation of copper wire bar, which is used by petitioner and Mitsubishi Metal Corporation as reference to determine the selling price of copper

concentrate, may likewise be employed in this case as reference point in ascertaining the actual market value of copper concentrate for ad valorem tax purposes. By deducting from the London Metal Exchange price quotation of copper wire bar all charges and costs incurred after the copper concentrate has been shipped from Toledo City to the time the same has been manufactured into wire bar, namely, smelting, electrolytic refining and fabricating, as well as cost of ocean freight and insurance, the remainder represents to a reasonable degree the actual market value of the copper concentrate in its condition at the time of extraction or removal from its bed in Toledo City for purposes of the ad valorem tax.

Premises considered, petitioner is entitled to a tax credit of ₱2,288,865.23 as erroneously paid ad valorem tax on copper concentrate sold abroad for the period November 1, 1974 to December 31, 1975, computed as follows:

Gross C.I.F. value of total shipments		₱1,027,659,059.88
Less:		
Smelting charges	₱114,440,261.09	
Refining charges	96,632,057.70	
Freight	32,733,226.17	
Insurance	2,681,073.95	246,486,618.91
Amount subject to ad valorem tax		₱ 781,172,440.97
Tax rate		.02
Ad Valorem Tax due		₱ 15,623,448.81
Amount of tax paid		17,912,314.04
Refundable ad valorem tax		₱ 2,288,865.23

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit in favor of petitioner Atlas Consolidated Mining & Development Corporation the amount of ₱2,288,865.23. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, January 23, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge