REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

REPUBLIC CEMENT CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASES NOS. 947 & 1519

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D E C I S I O N

The above entitled cases were submitted for decision jointly as both involve the determination of the amount of *ad valorem* tax refundable to petitioner for the period from May, 1957 to February, 1965, pursuant to the final decision of the Supreme Court in G. R. No. L-20660 (C.T.A. Case No. 947) dated June 13, 1968.

Stripped of non-essentials, the facts are as follows:

On November 10, 1962, this Court rendered judgment in C.T.A. Case No. 947, holding petitioner liable for the sum of ₱248,689.02 as deficiency royalty and/or *ad valorem* tax, inclusive of 25% surcharge, for the period from May, 1957 to December, 1959, with costs. Not agreeable with the decision, petitioner appealed to the Supreme Court (G. R. No. L-20660), contending, among others, that the correct basis of the imposition of the *ad valorem* tax is the actual market value of the raw materials or mineral products used in the manufacture of cement upon their extraction from the mines, and not the market value or selling price of cement as a finished product, including the value of paper bag containers as held by respondent and sustained by this Court. Likewise, it was contended that it was not liable for the payment of the 25% surcharge for late payment, because all its payments were made in good faith.

Pending appeal and because of the insistent demands of respondent, petitioner paid under protest the <u>ad valorem</u> tax from June 15, 1962 to April 10, 1964, in the total amount of ₱723,273.04. Subsequently, and within the time prescribed by law, on June 15, 1964, petitioner filed its petition for review claiming refund of the said amount based on the same grounds alleged by it in C.T.A. Case No. 947.

On June 13, 1968, the Supreme Court promulgated its decision in G.R. No. L-20660 (C.T.A. Case No. 947) modifying the decision of this Court and holding, <u>inter-alia</u>, that the <u>ad valorem</u> tax should be based on the <u>actual market value</u> of the mineral products upon extraction thereof from the mines, and <u>not</u> on the cost of extraction. Accordingly, the cost of the paper bag containers is not includible in the computation of the <u>ad valorem</u> tax and/or royalty collectible by the Government. However, petitioner was held liable for the 25% surcharge for late payment. The Supreme Court said:

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> "In conclusion, petitioner is bound to pay the 1½% *ad valorem* tax on the actual market value of the minerals or mineral products extracted from its mines, with a 25% surcharge for failure to make said payment within the prescribed time. No evidence having been introduced, however, on said actual market value, the records are hereby remanded to the Court of Tax Appeals, for the reception of evidence and further proceedings not inconsistent with this decision. x x x"

Conformably with the foregoing decision, the record of the case was remanded to this Court for reception of evidence on the market value of the minerals or mineral products extracted from the mines to determine the tax base in computing the 1½% *ad valorem* tax and to enable this Court to arrive at the correct amount refundable to petitioner in C.T.A. Case No. 1519.

In order to abbreviate the proceedings, and at the instance of both parties, this Court granted them the opportunity to administratively settle and determine the market value to be used as the proper tax base of the *ad valorem* tax. In line with the aforesaid decision of the Supreme Court, the amount refundable to petitioner as determined by respondent is ₱1,016,451.92, from which the sum of ₱46,487.00, representing petitioner's income tax liability for 1969, was deducted, leaving a balance of ₱969,964.92. This determination is contained in the letter dated December 18, 1969 sent by respondent to petitioner, and the latter has agreed to said determination. The pertinent portions of the letter of respondent dated December 18, 1969 are reproduced below:

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"In connection with the claims of your client, REPUBLIC CEMENT CORPORATION, for refund of the sums of ₱723,273.04 and ₱376,236.51 representing erroneous payment of ad valorem taxes for the period from May, 1957 to February, 1965, under letters dated May 2, 1964 and October 29, 1966, I have the honor to inform you that under the circumstances obtaining in said cases, we have finally determined the market value of the quarried limestone for the taxable years in question for purposes of CTA Case Nos. 947 and 1519. Accordingly, after readjusting the ad valorem taxes paid by your client and following the decision of the Supreme Court in G. R. No. 20660 entitled 'Republic Cement Corporation vs. CIR', this Office believes that it is entitled to a creditable amount of ₱1,016,451.92.

"Regarding your letter dated December 17, 1969 requesting that one-half (½) of your income tax liability for 1969, in the amount of ₱46,487.00 be charged against your tax credit of ₱1,016,451.92, please be informed that inasmuch as said liability is a subsisting obligation, a tax credit certificate will be issued for said amount. The release of a tax credit certificate for the balance of ₱969,964.92 will however, be held in abeyance until such time as the Courts shall have finally decided your appeal from our assessment of 7% manufacturer's sales tax amounting to ₱10,969,166.45, C.T.A. Case No. 2020 dated July 24, 1969."

WHEREFORE, judgment is hereby rendered declaring petitioner entitled to the refund or tax

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credit in the sum of ₱969,964.92. Without pronouncement as to costs.

SO ORDERED.

Quezon City, September 30, 1970.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

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