WESTERN MINDANAO LUMBER
CO., INC.,
Petitioner,

- versus -

CTA CASE NO. 1040

1/18/68

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from an assessment of the respondent Commissioner of Internal Revenue in the sum of ₱1,309.96 representing surcharge for late payment of regular forest charges of ₱5,239.85 under Official Receipts Nos. B-0581216 and B-581217 on timber cut and removed from petitioner's forest concession during the month of March 1957.

Petitioner is a forest concessioner of Basilan and Zamboaga and an operator of bonded sawmills in the same places. On June 17, 1957 it received a letter of demand dated June 17, 1957 for the payment of ₱3,592.30 in forest charges for timber cut in March 1957, wherein it was stated that to avoid 25% penalty thereon, payment should be made not later than June 14, 1957. On June 20, 1957, it received from the City Treasurer of Manila another letter of demand dated June 13, 1957 for the payment of ₱1,647.55 in forest charges for timber cut in March 1957, wherein it was also stated that to avoid 25% penalty thereon, payment should be made not later than June 14, 1957. Both forest charges were paid by petitioner on June 22, 1957. Payment having been made later than June 14, 1957, the respondent Commissioner of Internal Revenue assessed petitioner for the sum of ₱1,309.96 as penalty which assessment is now contested by petitioner.

It is a legal truism that all presumptions are in favor of the correctness of tax assessments and the burden of proof is on the taxpayer to show the contrary (Inter-Provincial Bus Co., Inc. v. Coll. of Int. Rev., G.R. No. L-6741, Jan. 31, 1956; Perez v. Court of Tax Appeals, et al., G.R. No. L-10507, May 30, 1958; Coll. of Int. Rev. v. Bohol Land Transportation Co., G.R. No. L-13099, April 29, 1960). The evidence adduced by petitioner does not sufficiently show that it has overcome the presumption of correctness of the appealed assessment.

The evidence shows that petitioner has forest concessions in Zamboanga and Basilan and also operates a sawmill in both localities. Under Revenue Regulation No. 85 petitioner's sawmills fall under Class B sawmills if no forestry officer is stationed in said places or under Class C sawmills if a forest officer is stationed therein it appearing that the sawmills are bonded.

"Section 27. Class B. Sawmills. - (a) Class B sawmills are those operated by holders of forestry license, in or near the forest, without a forest officer being stationed therein, and for the operation of which a bond is filed with the Collector of Internal Revenue to guarantee the payment of all forest charges that may be due."

"Section 28. Class C. Sawmills. - (a) Class C sawmills are those operated in or near the forest by holders of forestry licenses, at which forest officers are permanently stationed for the purpose of scaling all logs felled, and for the operation of which a bond is filed with the Collector of Internal Revenue to guarantee the payment of the forest charges that may be due."

Under Section 27, paragraph (b) of Revenue Regulation No. 85 payment of forest charges by Class B sawmills is made in this wise:

"(b) The forest charges due are payable on the sixtieth day from the fifteenth (15th) day of the month following that to which the monthly scale report pertains, without awaiting any demand for the payment thereof, and if they are not paid on time, a surcharge of 25 per centum shall be imposed and collected. (See letter of the Collector of Internal Revenue to the City Treasurer, Davao City, dated May 15, 1954.)"

The same Revenue Regulation No. 85 provides under its Section 28, paragraph (b) for the following manner and period of payment for Class C sawmills:

"(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.I.R. Form #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 sixtieth day from the fifteenth (15th) day of the month following that to which the Monthly Scale Report pertains, 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 #1-S) for the subsequent month. (See Forestry Circular No. 283, dated February 27, 1962)"

Petitioner presented no evidence as to the precise classification of its sawmills nor the date of the scaling of the logs involved in the assessment in question and hence the Court cannot say that its payment on June 22, 1957 was on time. In other words, petitioner has not complied with its burden of proof.

It is, however, urged that petitioner had to wait for the demand to pay because the City Treasurer of Manila refused to accept payment on the bases of invoices and so it had to wait for a demand letter. Hence, it should not be held responsible for delay. In this respect Revenue Regulation No. 85 authorizes payment of forest charges on the bases of invoices only in cases of Class A sawmills and concessioners without saw-

sawmills (See Sections 11, 12 and 26 of Revenue Regulation No. 85 as amended). As adverted to further above Class B and Class C sawmills must pay on the basis of the scale report. The treasurer of the City of Manila was therefore right in refusing to accept payment by the mere presentation of the alleged invoices while on the other hand it was not difficult for petitioner to obtain the necessary scale report if it wanted to avoid surcharges. Its negligence on this point can hardly be a valid excuse for late payment.

It is also urged that Section 267 of the Revenue Code provides that the surcharge of 25% is payable only if payment is made after 60 days from the time the charges are due and since the demands gave petitioner up to June 14 within which to pay without surcharge, it is not liable for the surcharge because payment was made in June 22, which is within the 60-day period provided by the aforesaid provision. This contention has a serious flaw. Section 267 of the Revenue Code provides that if the "proper charge upon forest products are not paid within sixty days after the same is due and payable, such charges shall be increased by <u>twenty-five per-centum</u> . . ." The only provision in the Revenue Code regarding the time of payment of forest charges is Section 273 thereof which provides that forest charges shall be paid at the time of the removal of the forest products but that the Commissioner of Internal Revenue may authorize the shipment of forest products without prepayment of charges if the owner or concessioner first file a bond with the Bureau of Internal Revenue conditioned upon the payment of the forest charges at such time and place as the Commissioner may direct. Revenue Regulation No. 85 supplements these provisions. The procedure and time for payment with respect to concessioners with bonded sawmills classified as Class B and Class C sawmills are stated in Section 27, paragraph (b) and Section 28, paragraph (b) of said Revenue Regulation No. 85, which we have quoted further above and which are the bases of the appealed assessment. A perusal of these sections readily shows that the 60 days mentioned in Section 267 of the Revenue Code is taken into account in said provisions of Revenue Regulation No. 85. It is thus obvious that the demand letters in question already took into account the 60 days provided in Section 267 of the Revenue Code when it required a surcharge of 25% after the expiration of June 14, 1957.

WHEREFORE, the decision appealed from being in accordance with law is hereby affirmed, with costs

DECISION -
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against petitioner.

SO ORDERED.

QUEZON CITY, January 18, 1966.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge