REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CANTILAN LUMBER COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2153

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

9/30/81

D E C I S I O N

Disputed by petitioner Cantilan Lumber Company is the right of respondent Commissioner of Internal Revenue to impose the fifty per cent (50%) surcharge in the total amount of ₱11,805.22 on forest charges paid by it during the period from July to December, 1965, as well as the deficiency sales and privilege taxes as exporter and manufacturer of logs during the years 1965-1966.

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines, with principal office at 1000 Marques de Comillas Street, Ermita, Manila. It has a concession area, and is engaged in the cutting and removal of forest products from public forests or forest reserves in the Municipality of, among others, Carrascal, Province of Surigao del Sur.

The Poblacion of Carrascal, Sitio Gango, Gango Point, Barrio Adlay of the Municipality of Carrascal, and the shoreline along Carrascal Bay are all within the Surigao Mineral Reservation.

Petitioner's log pond is located at Sitio Gango, Gango Point, Barrio Adlay of the Municipality of Carrascal which is about 20 to 25 kilometers from its forest cutting area. The forest products were transported to petitioner's log pond thru its logging road connected to the Paniguian feeder road which in turn connects the national highway that leads to the said log pond. It appears that all logs cut and hauled by petitioner from its cutting area at Carrascal, Surigao del Sur, to its log pond were properly scaled by the personnel of the district forester.

The records show that petitioner has taken and maintained a forestry bond in the amount of ₱15,525.00 (MICO Bond No. 14024 issued by the Malayan Insurance Co., Inc. as surety) dated September 26, 1957, effective from that date, during the years 1965 and 1966, conditioned upon petitioner's faithful compliance with all the provisions of the Forestry Laws, the National Internal Revenue Code, and the regulations issued pursuant thereto.

Sometime in the early part of 1966, respondent caused the investigation of the business tax liability of petitioner for the period from July to December, 1965 and its sales and percentage tax liabilities as exporter and manufacturer during the years 1965 and 1966. As a result thereof, respondent, through the chief, business tax division, addressed a letter to petitioner dated March 21, 1969, proposing to assess petitioner, as a log producer and exporter, the amounts of ₱11,716.54, ₱80.00 and ₱8.70, representing 50% forest surcharge for transporting timber without auxiliary invoice and discharging the same without permit, fixed tax and deficiency sales tax and surcharge for the years 1965 and 1966; and inviting petitioner to an informal conference to present its side of the case, bringing all the necessary documents and other pertinent papers in support thereof.

By its letter of April 29, 1969, petitioner, through its external auditors, disputed and protested the proposed assessment. However, in response thereto, respondent wrote a letter dated May 6, 1969, assessing and demanding from petitioner the payment of the total amount of ₱11,805.22 as surcharge on forest charges, fixed and deficiency sales taxes and surcharge during the years 1965 and 1966, computed as follows:

1.	Forest charges paid during the period (July-December 31, 1965)		₱23,433.06	
	25% surcharge transporting w/o invoice			₱5,858.26
	25% surcharge for discharging w/o permit			5,858.26
2.	C-14 PTR for 1965 & 1966			
	As producer		40.00	
	As exporter		40.00	80.00
3.	Deficiency sales tax -			
	Sales	₱1,521.89		
	7% tax thereon	106.53		
	Amount paid	99.57		
	Deficiency sales tax	6.96		
	25% surcharge for late payment .	1.74		8.70
	TOTAL AMOUNT DUE			₱11,805.22

By its letter of June 19, 1969, petitioner disputed the 50% surcharge on forest charges paid by it during the period from July to December, 1965 but did not protest the assessment of the deficiency sales and privilege taxes. In his letter dated April 23, 1970, respondent however reiterated his assessment of ₱11,805.22 and requested petitioner to pay said tax liability, otherwise, the collection thereof would be enforced by means of the summary remedies provided for by law. Hence, this appeal.

The issue proposed to be taken up on appeal is whether petitioner violated Section 11 of Finance Regulations No. 85 (Revised Internal Revenue Forest Products Regulations No. 85 dated December 28, 1934) and, hence, is liable under Section 267 of the then in force National Internal Revenue Code for 25% surcharge for removing and transporting forest products from its cutting area to its log pond without auxiliary invoice and another 25% for discharging said forest products without securing discharge permit from the Commissioner of Internal Revenue.

In assailing respondent's right to impose the 50% surcharge on forest charges paid by it during the period from July to December, 1965, petitioner alleges that no auxiliary invoice was necessary since the transportation of logs from its cutting area to its log pond located in the same municipality does not constitute a removal for purposes of Section 11 of Finance Regulations No. 85. The requirement of listing forest products on blank forms of auxiliary invoices under Section 11 is intended, according to petitioner, to prevent the cutting of logs from the area outside of the licensed area. Considering that the log pond of petitioner is situated within the municipality where its concession area is located and that there is only one logging road as an outlet of all logs hauled to its log pond, petitioner argues that there was no removal of the logs within the contemplation of Section 11. Hence, there was no necessity to comply with the requirement of auxiliary invoices for purposes of transporting the logs from the cutting area to the log pond, as well as the permit for discharging the same.

As basis further for claiming that no auxiliary invoice was necessary, petitioner would invoke the certification dated July 21, 1966 issued by Mr. Donato R. Areñas, officer-in-charge of the Carrascal Forest Station, authorizing removal of logs from its forest concession without the auxiliary invoice and discharge permit, as well as the certification dated July 26, 1966 issued by the District Forester to the effect that there is no necessity of preparing auxiliary invoice covering the logs cut at petitioner's cutting area before said logs are brought down to its log pond.

In its textual completeness, Section 267 of the then in force Tax Code provides as follows:

> Section 267. Surcharges for illegal cutting and removal of forest products or for delinquency. — Where forest products are unlawfully cut or gathered in any public forest without license or, if under license, in violation of the terms thereof, the charges on such products shall be increased by three hundred per centum. If forest products shall be removed without invoice, or upon removal, shall be discharged without permit from boat, car, cart, or other means of transportation, the charges shall be increased by twenty-five per centum, and if, in any case, the proper charges upon forest products are not paid within sixty days after the same shall be due and payable, such charges shall be increased by twenty-five per centum: Provided, however, That the Commissioner of Internal Revenue may, in meritorious cases, waive the surcharge of twenty-five per centum for discharging without permit or grant an extension of time not exceeding thirty days for the payment of the forest charges without surcharge.

Section 11 of the Revised Internal Forestry Regulations No. 85 specifically points out in detail the procedure to be followed by licensees of timber from the time of cutting timber, during the transportation of the same to its destination, and the discharge thereof at the said destination. As reduced by the Supreme Court into simple terms in Collector of Internal Revenue vs. Pio Barretto Sons, Inc., L-11805, May 31, 1960, 108 Phil. 542, the regulations provide that upon cutting timber the licensee must submit to the nearest Internal

Revenue officer, or the deputy provincial treasurer of the province where the timber is cut, an auxiliary invoice in quintuplicate of the timber cut, containing the serial number of the logs, their species, their lenghts, radius, if round, thickness and width if squared, and their volume in cubic meters. These auxiliary invoices are then sworn to before the deputy provincial treasurer (now collection agent), who shall prepare an official invoice together with its stub and coupons and collect from the licensee or his agent the amount of charges due on the product so invoiced. The official invoice or receipt of payment is then detached and together with two copies of the auxiliary invoice is delivered to the licensee, to be carried along with the logs to the point of destination. Upon arrival at the point of destination, the licensee or his agent shall present the official invoice and the auxiliary invoice to the deputy provincial treasurer (now collection agent) thereat and apply for a discharge permit. Note that at this time the deputy provincial treasurer (now collection agent) is supposed to check if the timber described in the auxiliary invoice tallies with the timber actually discharged. The deputy provincial treasurer (now collection agent) then grants a permit to discharge the timber and returns the official invoice to the consignee, together with the auxiliary invoice.

We find no merit in petitioner's cause.

Petitioner's submission that there was no removal of the logs within the contemplation of Section 11 of the Revised Internal Revenue Forestry Regulations No. 85 and, hence, there was no necessity to comply with the requirement of auxiliary invoices for purposes of transporting the logs from the cutting area to the log pond since the log pond is situated within the same municipality where the concession is located and there is only one logging road as an outlet of all logs hauled to the log pond is positively without merit.

1. Referring to the terms of the law, it is quite clear that the right of the Government to impose surcharges for removal and transportation without invoice of forest products and for discharge of the same without permit is not planted upon the condition that the cutting area and the log pond of the licensee should be situated in the different municipalities where the licensee's concession area is located. The law speaks of

"If forest products shall be removed without invoice, or upon removal, shall be discharged without permit from boat, car, cart, or other means of transportation, the charges shall be increased by twenty-five per centum," - without more. Nothing in the law is said of removal of the forest products from the cutting area and transportation of the same to a log pond situated in a different municipality where the concession area is located. Where the law does not exact the separate location in different municipalities of the cutting area and the log pond where the concession is situated, or there is only one logging road as outlet of the logs, as a condition for the issuance of auxiliary invoices and discharge permits, that condition should not be read into the law. The law is clear and free from ambiguity. It should therefore be enforced as written, devoid of judicial addition and subtraction. We are not to indulge in statutory construction.

2. Forest charges, like mining taxes, are regarded as excise taxes. They are directed against the production, or severance from the soil, of forest products, and are measured according to quantity and value of the forest products pro-

due or severed. (51 Am. Jur. 1072) Since forest charges are severance taxes, i.e., charges upon the privilege of severing or producing from the soil of forest products, and are due and payable <u>upon removal</u> of the forest products from the forest, proper documentation or invoicing must be made in the cutting, gathering, production or severance area, and not after they have been transported to another place. It is only by invoicing logs or other forest products at the cutting, gathering, production or severance area that the Government can find out whether logs or timber have been illegally cut or forest products have been gathered without permit, and the collection of all forestry charges insured.

3. To protect our forests against denudement, waste and spoliation by licensees, trespassers and kaingineros, public policy requires that proper documentation of logs and other forest products must be made (1) upon severance or production from the soil and before removal from the cutting area; (2) during transportation; and, (3) at the time of discharge. Thus, Section 267, <u>supra</u>, explicitly provides for the imposition of surcharges if forest products shall be removed

without invoice, and upon removal, discharged without permit from their transportation. The peremptory requirements of public policy would seem to stress therefore the necessity for full and unconditional compliance with the language of the statute and the regulations. It is only by such practical application of the law and the regulations, and by the strict implementation of such a public policy, that the national patrimony can be properly conserved and wisely exploited. The unregulated and uncontrolled production and severance of timber and other forest products from the soil have already meant spoliation and ruin of our forest resources, resulting in recurrent floods, erosion of the soil and increasing expenditures for reforestation.

4. And on the point that no auxiliary invoice was necessary on the ground that petitioner was authorized by local forestry employees to transport logs from the cutting area to the log pond without need of accompanying invoices, as well as to discharge the same without permit, no law or regulation has been pointed out to us which authorizes forestry employees to dispense with such requirements. While petitioner attempts to

draw support from Section 262 of the then in force National Internal Revenue Code which simply states, insofar as pertinent hereto, that "Employees of the Bureau of Forestry may be deputized by the Commissioner of Internal Revenue for the performance of duties incident to the measuring and invoicing of forest products x x x", nothing there may be considered as empowering forestry employees to dispense with the requirements of auxiliary invoices or discharge permits upon the removal or transportation of logs. Performance of duties incident to the measuring and invoicing of forest products cannot by any stretch of the imagination include the authority to grant dispensation from the requirements of auxiliary invoices and discharge permits. There is patently an absence of analogy or similarity between invoicing and dispensing with the invoice. And the absurdity is at once brought into bold relief when it is considered that under Section 262, as clearly and explicitly specified therein, it is only upon authority of the Commissioner of Internal Revenue that employees of the Bureau of Forestry may be deputized for the performance of duties incident to invoicing of forest products. It is therefore self-evident that the local forestry employees acted without any authority when they issued a certification authorizing the removal of logs from petitioner's forest concession without auxiliary invoices and discharge permits, as well as a certification that there is no necessity of preparing auxiliary invoices covering logs cut at the cutting area before said logs are brought down to the log pond.

The fixed taxes as producer and exporter for 1965 and 1966 in the amount of ₱ 80.00 and deficiency sales tax and surcharge in the sum of ₱8.70 sought also to be collected by respondent in his demand-letter dated May 6, 1969 and reiterated in his decision-letter dated April 23, 1970 have not been controverted by petitioner. Hence, may be considered as admitted to be due and collectible.

We, accordingly, sustain the decision under review. Petitioner Cantilan Lumber Company is therefore ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱11,805.22 representing 50% surcharge on forest charges paid by it during the period from July to December, 1965 and the deficiency sales and privilege taxes as exporter and manufacturer of logs during the years 1965-1966 plus the increments incident to late payment.

WHEREFORE, the judgment appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, September 30, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge - Dissent in a separate opinion.

ALEX Z. REYES
Associate Judge

REPUBLIC OF THE PHILIPPINES
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CANTILLAN LUMBER COMPANY,
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- versus - C.T.A. CASE NO. 2153

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

DISSENTING OPINION

It is my considered opinion that with the exception of the ₱80.00 fixed taxes and ₱8.70 deficiency sales tax and surcharge for 1965 and 1966, petitioner Cantillan Lumber Company is not liable for the sum of ₱11,716.54, representing 25% forest surcharges for transporting its cut logs without auxiliary invoices and 25% surcharges for unloading the logs without discharge permits contrary to what was reached by my majority colleagues. And inasmuch as I believe the factual account of this case by the majority decision is not complete, it is my singular purpose to give an account of the facts as complete as possible and to the extent that it may be material to the issue or issues in this case.

Petitioner is a forest concessionaire and is engaged under the Forestry Law and the National Internal Revenue Code in cutting and extracting forest products from the public forests and forest reserves, among others, in the Municipality of Carrascal, Surigao del Sur. The poblacion, Sitio Gango, Gango Point, Barrio Adlay of the Municipality of Carrascal, and the shoreline of Carrascal Bay, where it extracted its logs are all within the Surigao Mineral Reservation. (Exh. A, p. 54 CTA rec.)

The logs cut, extracted and removed or hauled by petitioner from its concession area, that is from the cutting area to its log pond, were scaled by the personnel of the Bureau of Forestry. Trip tickets were issued for the logs loaded from the cutting area and hauled by petitioner's trucks and surrendered to the person in charge of the log pond upon delivery of the logs. The auxiliary invoices covering all the logs scaled at the cutting area and delivered at petitioner's log pond were prepared by the Bureau of Forestry station at the said Municipality of Carrascal and submitted at the end of each month to the Collection Agent, Bureau of Internal Revenue, also stationed at Carrascal. (t.s.n., pp. 9-10; 27-31; Exh. B, p. 55, CTA rec.)

Petitioner was authorized on July 21, 1966 by Donato R. Arañas, Officer-in-charge of the Carrascal Forest Station, at Carrascal, Surigao del Sur, to remove logs from its Forest concession "xxx <u>Without Auxiliary Invoices and Discharge Permit</u> xxx" provided petitioner maintains an Internal Revenue Forestry Bond. From September 26, 1957, petitioner maintained a bond (Malayan Insurance Co. Bond No. 14024) in the amount of ₱15,525.00, which subsisted through the years 1965 and 1966 which guaranteed the faithful compliance of the Forestry Laws, the National Internal Revenue Code, and regulations. (Exhs. D, D-1 to D-2, pp. 57-60, CTA rec.)

In a certification issued by District Forester Justiniano Cabiles of the Bureau of Forestry dated July 26, 1966, he stated thus:

July 26, 1966

D-47, Licences
Supervision

TO WHOM IT MAY CONCERN:

This is to certify that all logs cut and hauled by the Cantilan Lumber Company located at Carrascal, Surigao del Sur, from their cutting area to their logpond are properly scaled by the personnel of this Office. That logs loaded and hauled by the Company trucks are issued the corresponding trip tickets which are handed to the logpond incharge upon delivery thereat.

I further certify that the above mentioned Company has its logpond situated within the Municipality where the concession area is located and that there is only one logging road as an outlet of all logs hauled to their logpond, hence, there is no necessity of preparing auxillary invoices covering the logs cut at their cutting area before said logs are bfought down to their logpond. The auxillary invoices covering all logs scaled at their cutting area and at their logpond are prepared by the Bureau of Forestry station at Carrascal, Surigao del Sur and submitted always at the end of each month to the Collection Agent, Bureau of Internal Revenue, Carrascal, Surigao del Sur.

This certificate is issued upon the request of Cantilan Lumber Company in connection with their operation.

(SGD) JUSTINIANO CABILES
District Forester

Note:

This certificate is issued having knowledge and being the District Forester of Surigao del Sur until I was transferred to the Office of the Director of Forestry, Manila.

(SGD) JUSTINIANO CABILES
District Forester

Copy Furnished:
Director of Forestry, Manila

Petitioner had paid forest charges and taxes in the amount of ₱23,433.06 from July to December, 1965 and the sum of ₱99.56 as sales tax on its sales of logs of ₱1,521.89. (t.s.n., p. 19.)

On March 31, 1969, respondent, through Moises A. Pilar, Chief, Tax Division of the Bureau of Internal Revenue, addressed a letter to petitioner proposing to assess the latter the sum of ₱11,716.54, ₱80.00 and ₱8.70, representing 25% surcharge for transporting without auxiliary invoices and 25% surcharge for discharging logs without permit, fixed tax (C-14 PTRs) for 1965 and 1966, and deficiency sales tax and surcharge for the same years 1965 and 1966 (Exh. E, p. 61, CTA rec.), respectively, pursuant to Sections 267, 178 and 182, and 183 and 186 of the Tax Code.

On April 29, 1969, petitioner disputed and protested the proposed assessment claiming that the transporting of its logs from the cutting area to its log pond without auxiliary invoices and discharge permits is not in violation of Regulation No. 85; that under Section 11 of said Regulation, the requirement as to the accomplishment of auxiliary invoices pertains to the transporting of logs from the public forest or forest reserves. (Exh. F, pp. 62-63, CTA rec.)

Respondent, in a letter dated May 6, 1969 (Exh. G, pp. 64-65, CTA rec.) stated that the letter of Donato R. Arañas of the Carrascal Forest Station, dated July 21, 1966, and the certification of Justiniano Cabiles, District Forester, dated July 26, 1966, stating and confirming that petitioner was authorized to remove the logs out from the cutting area to the log pond is illegal on the ground that the Bureau of Forestry was not given the power to authorize the removal of the logs cut without auxiliary invoices and found petitioner liable to pay the amount of ₱11,805.22 as forest charges, fixed and deficiency sales taxes and surcharge for the years 1965 and 1966 computed as follows:

1.	Forest charges paid during the period (July-December 31, 1965)	₱23,433.06	
	25% sur. for transporting w/o invoice		₱5,858.26
	25% sur. for discharging w/o permit		5,858.26
2.	C-14 PTR for 1965 & 1966		
	As producer . . .	40.00	
	As exporter . . .	40.00	80.00
3.	Deficiency sales tax - Sales	₱1,521.89	
	7% tax thereon	106.53	

Amount paid	99.52		
Deficiency sales tax	6.96		
25% sur. for late payment	1.74	. . . ₱	8.70
TOTAL AMOUNT DUE.			₱11,805.22

exclusive of ₱310 as compromise penalties.

Petitioner in a letter dated June 19, 1969, formally protested the assessment of May 6, 1969, which was denied on April 23, 1969 (Exh. I, pp. 69-71 CTA rec.), hence petitioner appealed.

Petitioner did not apparently question the assessment of fixed and deficiency sales taxes and surcharges in the amounts of ₱80.00 and ₱8.70, respectively. The issues, therefore, that remain are -

> (1) Whether or not petitioner violated Section 11 of the Revised Internal Revenue Forest Products Regulations No. 85 when petitioner transported logs from the cutting area to the log pond without auxiliary invoices and discharge permits; and

> (2) Whether or not it is liable for 25% for transporting logs without auxiliary invoices and 25% for unloading said logs without discharge permits.

Section 11 of the Revised Internal Revenue Forest Products Regulations No. 85 of the Department of Finance and Section 267 of the National Internal Revenue Code, the laws involved in this case, respectively, provide as follows:

> "Section 11. Payment of charges on products cut under ordinary license. Before transporting from the public forests or forest reserves or using within the cutting area forest products cut or gathered under an ordinary license issued by the Director of Forestry the licensee shall list such forest products on blank forms of auxiliary invoices (B.I.R. Form No. 14.04

in the case of timber or B.I.R. Form No. 14.05 in the case of firewood or other minor forest products) which may be secured from the deputy provincial treasurer of the municipality where the said forest products have been cut or gathered. Said auxiliary invoices, when completed shall be sworn to before the deputy provincial treasurer concerned by the licensee or his agent duly authorized in writing. These auxiliary invoices shall, in the case of timber, be made in quintuplicate and in the case of firewood and minor forest products, in quadruplicate. After they are duly sworn to, the deputy provincial treasurer shall compare the barrios or sitios shown thereon with those described in the copy of the license furnished by the Bureau of Forestry, and shall prepare an official invoice together with its stub and coupons and collect from the licensee or his agent the amount of charges due on the products so invoiced. He shall then affix to the official invoice in the space provided for that purpose internal revenue stamps in an amount equal to the charges collected, and cancel them. He shall also enter the assessment and serial numbers of the official invoice on each copy of the auxiliary invoice. The official invoice shall then be detached and together with two copies of the auxiliary invoice in the case of timber, or one copy in the case of firewood or minor forest products; shall be delivered to the licensee, to be sent along with the products until they arrive at their destination. If the barrios or sitios shown on the auxiliary invoice differ from those shown on the copy of the license, such discrepancy shall be considered *prima facie* evidence that the products were not cut on the licensed area and the additional charges of one hundred per centum shall be collected unless the licensee presents satisfactory proof that the products were cut in the licensed area. The coupon and two copies of the auxiliary invoice shall be forwarded to the Collector of Internal Revenue with the report of stamps sold. The Collector of Internal Revenue will transmit one copy of the auxiliary invoice to the Director of Forestry. The remaining one copy of the auxiliary invoice shall be sent by the deputy provincial treasurer to the nearest forest station. Upon arrival of the products at the point of destination, the licensee or his agent shall present the official invoice and auxiliary invoices to the deputy provincial treasurer of the municipality or to the Collector of Internal Revenue in the City of Manila, and apply for a discharge permit. The deputy provincial treasurer or the Collector of Internal Revenue will then follow the procedure outlined in Section 17(a) hereof.

"If the licensee or his authorized agent prefers to pay the forest charges and secure the official invoice in a municipality other than that where the forest products have been cut or gathered, before the removal of the products from the cutting area, a written permission of the Collector of Internal Revenue to that effect should be previously secured.

"Persons required by the regulations to execute and present schedule "I", paragraphs 1 to 4 auxiliary invoices (B.I.R. Form No. 14.04) must prepare this form in a manner as to put together all timber or lumber of the same form, the same species and the same group." (Underlining supplied)

Sec. 267. Surcharges for illegal cutting and removal of forest products or for delinquency.- When forest products are unlawfully cut or gathered in any public forest without license or, if under license, in violation of the terms thereof, the charges on such products shall be increased by three hundred per centum. If forest products shall be removed without invoice, or upon removal shall be discharged without permit from boat, car, cart, or other means of transportation, the charges shall be increased by twenty-five per centum, and if, in any case, the proper charges upon forest products are not paid within sixty days after the same shall be due and payable, such charges shall be increased by twenty-five per centum: Provided, however, that the Commissioner of Internal Revenue may, in meritorious cases, waive the surcharge of twenty-five per centum for discharge without permit or grant an extension of time not exceeding thirty days for the payment of the forest charges without surcharge.

As I see it and as can reasonably be inferred from its own evidence, petitioner had admitted that it did not secure, prepare or accomplish invoices before removing its cut logs, and did not apply for the required discharge permits. However, it contended that it did not violate the aforesaid provisions of law and regulation in that the procedure, with respect to the transportation of the logs from the cutting area to the log pond, was substantially complied with. It asserted that auxiliary invoices were only needed in order to find out whether the timber products were actually cut in the licensed area (at Sitio Gango in the Municipality of Carrascal), and that its log pond being located in the licensed area, the practice of concessionaires in cutting logs in areas not reserved could not have been committed; that at any rate, the scaling of the logs were made by the Bureau of Forestry personnel in the cutting area or in the woods; that the Bureau of Forestry was duly deputized by the Commissioner of Internal Revenue, under Section 262 of the Tax Code, a prevailing administrative practice, to perform the duties incident to the measuring and invoicing of forest products; that the accomplishment of auxiliary invoices is one of the duties which the Bureau of Forestry was deputized to perform; that the Bureau of Forestry is in a position to determine whether a certain concessionaire would be required to accomplish auxiliary invoices with respect to the transportation of logs; and that based upon that authority, petitioner was authorized by the Officer-In-Charge, Mr. Donato R. Aranas, of Carrascal Forest Station, on July 21, 1966, to remove the logs from its forest concession without auxiliary invoices and discharge permits, provided it executes a forestry bond; and that the logs cut were properly scaled by the Bureau of Forestry personnel, and the auxiliary invoices were prepared by the Bureau of Forestry station at Carrascal, and submitted at the end of each month to its Collection Agent, Bureau of Internal Revenue at Carrascal, as certified to by District Forester Justiniano Cabiles. Finally, it contended that it has paid all forest charges.

On the other hand, respondent contended and insisted that petitioner had violated said Section 11 of Revised Regulation No. 85 and is liable under Section 267 of the Tax Code for 25% for removing forest products without auxiliary invoices and 25% for unloading forest products without discharge permits.

Respondent, strongly, argued that the requirements of an auxiliaty invoice and discharge permit are mandatory and admits of no exception.

I agree with the contention of respondent, Commissioner of Internal Revenue that under the law and regulations, the requirements of preparing auxiliary invoices and the procurement of discharge permits from the Forestry or BIR authorities are mandatorily required before the logs cut are removed and transported. When the Forestry officers, particularly the officer-in-charge, Donato R. Aranas of the Carrascal Forest station and the District Forester Justiniano Cabiles certified that the logs cut may be removed or transported without the necessary auxiliary invoices and discharge permits, they were acting in open violation of Section 11 of Regulation No. 85, as they, in effect, had withdrawn the obligation of the licensee, the petitioner herein, and not the obligation or duty of the Bureau of Forestry personnel as asserted by petitioner, from preparing auxiliary invoices in BIR Form No. 14.04 as required under Section 11 of Regulation No. 85. Said Forestry Officers had, therefore, placed themselves higher than the authority of the law and regulation. The illegal act of the forestry officers in not requiring from petitioner the compliance of Section 11 of Regulation 85 with respect to auxiliary invoices and discharge permits placed a stamp of approval on what was, in the first instance, a patent illegality. But considering the circumstances that the forestry officers had given the legal impression to petitioner, through the certifications issued by them that the cutting and removal by petitioner of its logs from its concession area were legal and valid even without the auxiliary invoices and discharge permits and, petitioner, having acted mistakenly or erroneously on that basis, I find no legal justification to impose 25% surcharge for failure to execute auxiliary invoices and 25% surcharge for not securing discharge permits under Section 267 of the Tax Code. The non-imposition of the aforesaid surcharges, which, as one can already see, was due to good faith of petitioner, is strengthened by the fact that a bond was executed by it to guarantee the non-payment of any forest charges to be due thereon conformably to the authority granted by Donato R. Aranas, Officer-in-charge of the Carrascal Forest Station. There was, therefore, no scintilla of evidence which would clearly show any criminal intent to violate or infringe upon the law and regulation which would justify the imposition of the 25% surcharges or penalties. This holding is completely in accord with the principle laid down in two (2) previous cases decided by this Court to the effect that good faith and honest mistake are defenses against the imposition of 25% surcharges or penalties. [Lianga Bay Logging Co. Inc. v. Comm. of Int. Rev., CTA Case No. 1878, June 30, 1969, <u>citing</u> Paper Industries Corporation of the Philippines v. Commissioner of Internal

Revenue (CTA Case No. 1680, July 22, 1966), which cited in turn Connel Bros. Co. /Phil./ v. Collector of Internal Revenue, G.R. No. L-15470, December 26, 1963; see Amado A. Colon, Court of Tax Appeals, Digest of Internal Revenue Tax Cases, Vol. I (Quezon City; Central Lawbook Publishing Co. Inc.), pp. 503-504./ Said this Court:

> With respect to petitioner's liability to the surcharge, it appears, as adverted to further above, that petitioner paid on time the charges stated in the scale report of the forest officers and it also paid the deficiency forest charges after a recomputation on the basis of the revised reclassification of trees which was overlooked by the Forest Officer. Petitioner only questions the imposition of the 25% surcharge against it. The facts and issues of this case are the same as the case of Paper Industries Corporation of the Philippines (formerly Bislig Industries, Inc.) vs. Commissioner of Internal Revenue (CTA Case No. 1680, July 22, 1966) which this Court decided adversely against the Commissioner of Internal Revenue, and hereunder we reiterate what we said there:
>
> > "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 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-S) 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 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 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

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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.

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.
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> '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 Comm. of Internal Revenue, C.T.A. Case No. 1178, May 18, 1964, this Court held:
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> > "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.)"

Based upon the above, petitioner, to my mind, is not liable for 25% surcharge or penalty for not executing auxiliary invoices, and 25% surcharge and penalty for not securing from the BIR authorities discharge permits for the removal of its logs. I vote, therefore, against the imposition of said surcharges.

But petitioner not having questioned the legality of the amount of ₱60.00 as fixed tax and 18.70 as deficiency sales tax and surcharge, I vote to hold it liable therefor.

Quezon City, February 24, 1982.

CONSTANTE C. ROAQUIN
Associate Judge