REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIANGA BAY LOGGING
CO., INC.,
Petitioner,

- versus - C.T.A. CASE No. 1878

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

June 30/69

D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Internal Revenue demanding from petitioner the payment of ₱1,100.01 representing 25% surcharge for late payment of forest charges for the month of July, 1961.

Petitioner is a duly licensed logging concessionaire and operator of Class "C" sawmills. It appears from the monthly scale report of the Forest Officers assigned within its logging concession that the total amount of forest charges due on the timber cut and scaled therein for the month of July, 1961 was ₱6,348.65. Accordingly, in a letter dated September 18, 1961, a collection agent of the Bureau of Internal Revenue demanded from petitioner the payment of said sum of ₱6,348.65 as forest charges for said month with the admonition that "to avoid 25% penalty" the same should be paid "not later than October 14, 1961." Petitioner paid said sum before

October 14, 1961 under Official Receipts Nos. 556833, 557161 and 999429. However, in a letter dated August 15, 1962, Regional Director Vicente Tagle of Regional District No. 3, Manila, informed petitioner that, after investigation, it was ascertained that petitioner failed to pay the correct amount of forest charges due on the timber cut for the month of July, 1961 on the basis of the revised classification of trees and, therefore, there was still due from petitioner the amount of ₱5,500.06 as deficiency forest charges and 25% surcharge for late payment computed as follows:

Reg. forest charges due ...	₱10,748.70
Less: Amount paid	6,348.65
Def. reg. forest charges ..	₱ 4,400.05
25% surcharge	1,100.01
Amount still due and collectible	₱ 5,500.06

After receipt of this letter-assessment, petitioner, in a reply dated October 4, 1962, requested that the imposition of the 25% surcharge of ₱1,100.01 be cancelled and that it be allowed to pay only the amount of ₱4,400.05 corresponding to the deficiency forest charges since it had already paid in full, before the due date, the sum of ₱6,348.65 stated in the letter of demand dated September 18, 1961, of a Manila collection agent of the Bureau of Internal Revenue.

In a letter dated June 17, 1963, the Regional Director denied petitioner's request for cancellation of the 25% surcharge and reiterated his demand for payment of the total amount of ₱5,500.06.

On July 25, 1963, petitioner paid the amount of ₱4,400.05 as deficiency forest charges and, in a letter dated July 29, 1963, it reiterated its request for cancellation of the 25% surcharge, contending that its failure to pay on time the regular forest charges in the amount of ₱4,400.05 was not due to its fault but was due to the mistake of the officers of the Bureau of Forestry and the agents of the Bureau of Internal Revenue. This request of petitioner was again denied by the Regional Director in his reply of January 17, 1964; but still petitioner, in another letter dated March 2, 1964, insisted on the reconsideration of the 25% surcharge and at the same time requested that the records of the case be elevated (for appeal) to the Commissioner. This request was granted by the Regional Director and, in his letter dated April 14, 1964, he notified petitioner that the records of the case had been forwarded to the Commissioner of Internal Revenue for final decision.

On November 12, 1964, the Commissioner of Internal Revenue, in an indorsement to the Regional

Director, rendered a decision affirming the rulings of the latter on the legality of the imposition of the 25% surcharge. Whereupon, the Regional Director, in a letter dated January 29, 1965, quoting pertinent portions of said decision of the Commissioner, demanded from petitioner the payment, within ten (10) days from receipt thereof, of the 25% surcharge. After receiving this letter on February 5, 1965, petitioner requested another reconsideration in a letter dated February 11, 1965 which was sent by registered mail on February 12, 1965 and received by the respondent on February 15, 1965.

It appears that in April, 1966, the Office of the Regional Director in Manila prepared a warrant of distraint and levy for the collection of the 25% surcharge of ₱1,100.01 against the petitioner, giving instructions to the Chief of the Investigation Branch to enforce the same. The said warrant was never served however because petitioner had transferred its offices from Manila to a new site in Makati, Rizal, which falls within the jurisdiction of the BIR Regional Office in Quezon City.

On May 2, 1967, petitioner received from the Regional Director of Quezon City a letter dated April 24, 1967 seeking to collect the sum of ₱1,100.01 as

25% surcharge pursuant to the letter of January 29, 1965 of the Bureau of Internal Revenue. This letter served a warning that payment should be made within three (3) days from receipt thereof, otherwise "immediate court action" would be instituted against petitioner.

In a reply dated May 3, 1967, petitioner assailed said letter of the Regional Director of Quezon City as premature, contending that its request for reconsideration dated February 11, 1965 of the "letter-decision" had not yet been resolved.

Finally, on July 15, 1967, respondent filed an action to collect the 25% surcharge before the Municipal Court of Makati, Rizal, and on July 18, 1967, summons was served on petitioner. On August 3, 1967, petitioner instituted the instant appeal.

The issues posed for determination in this case are the following:

> (1) Whether the appeal of petitioner was filed within the thirty-day period prescribed in Section 11 of Republic Act No. 1125; and
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> (2) Whether petitioner is liable for the 25% surcharge for late payment of short forest charges.

As regards the first issue, respondent contends that the decision that is appealable to this Court is that expressed in his letter of January 29, 1965.

Respondent then contends that petitioner's request for reconsideration of February 11, 1965 was pro-forma and did not suspend the running of the period for appeal. Upon this premise, this petition was filed out of time.

Petitioner, for its part, admits that the final and appealable decision is respondent's letter of January 29, 1965 but it maintains that its request for reconsideration of February 11, 1965 was not pro-forma. Petitioner then urges that said request for reconsideration was denied only on July 18, 1967 when it received summons in an action for collection filed by the respondent in the Municipal Court of Makati, Rizal. Computing the thirty-day period from February 5, 1965, when the appealable decision was received, to February 12, 1965, when its request for reconsideration was filed, and from July 18, 1967, when it received summons, to August 3, 1967, when its appeal was filed in this Court, petitioner claims that it consumed less than thirty (30) days.

(The request for reconsideration dated February 11, 1965, is not pro-forma. The opinion of the Commissioner of Internal Revenue quoted by the Regional Director raises the issue of the character of a surcharge as a civil administrative sanction and not as a penalty which had not been raised before and in this connection respondent cites the case of Maria B. Castro vs. Collector of Internal Revenue (G.R. No. L-12174, April 20, 1962) which was never cited before by respondent or his agents. The decision, in effect, invited petitioner to point to respondent the inapplicability of the said case to the present, which petitioner did in his motion for reconsideration. It can not be said, therefore, that said motion was but a rehash of the issues and arguments raised previously.)

(After filing the aforesaid motion for reconsideration, the next time petitioner heard from respondent was when it received the demand for payment dated April 24, 1967 on May 2, 1967. It is obvious from the language of this demand that respondent did not pass upon or consider the motion for reconsideration dated February 11, 1965 for it mentions only the letter-decision of January 29, 1965 and petitioner's motion for reconsideration that prompted the said decision. There is absolutely no mention in said demand of petitioner's motion for reconsideration of February 11, 1965, and there is nothing therein that can reasonably indicate that it was meant to be a denial of said motion for reconsideration. If at all, it reveals that respondent overlooked the said motion for reconsideration otherwise he could have very simply mentioned said motion and denied same. It is thus not surprising that in a letter dated May 3, 1967, received by respondent on May 11, 1967, petitioner called respondent's attention to its motion for reconsideration of February 11, 1965 and considered the demand premature. Fairness to the taxpayer requires us not to give the demand of May 2, 1967 the effect of a denial of petitioner's motion for reconsideration of February 11, 1965, for a contrary ruling would make petitioner's right to a motion for reconsideration hollow. If petitioner believed that said motion for reconsideration was not acted upon, it was because of the very language of the demand of April 24, 1967, and this cannot be counted against petitioner. Thus the Court considers the receipt of the summons in Civil Case No. 2624 of the Municipal Court of Makati, Rizal, as the receipt of the denial of the motion for reconsideration of February 11, 1965. Hence, this appeal was filed on time.)

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:
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> > '(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-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 correcttion 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.

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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.

"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 decision appealed from is hereby reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, June 30, 1969.

RAMON L. AVANCEÑA
Associate Judge

I concur:

ROMAN M. UMALI
Presiding Judge