REPUBLIC OF THE PHILIPPINES
BOARD OF TAX APPEALS
MANILA

RIZAL CEMENT COMPANY, INC.,
Petitioner,

- versus - B.T.A. CASE NO. 164

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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# D E C I S I O N

The petitioner, Rizal Cement Co., Inc., is the registered owner of mineral lands located in Binagonan, Rizal, from which limestone is quarried. The limestone rocks that are extracted from petitioner's mineral lands are transported to its factory six kilometers away from the quarry by means of cable conveyors. In the factory, the limestone rocks are ground and mixed with clay, burned to incipient fusion and the resulting clinker is pulverized to an inpalpable powder, called portland cement. This finished product is put in bags and sold under the trade brand "Rizal Cement."

On August 25, 1952, the respondent, Collector of Internal Revenue demanded the petitioner the payment of ₱80,937.07 as <u>ad valorem</u> tax and surcharge on the market value of limestone and argillaceous materials removed from its mines and used by it in the manufacture of cement from 1949 to 1951, pursuant to Section 243 of the National Internal Revenue Code. On September 27, 1952, the petitioner, in answer to respondent's demand, countered that, admitting its liability for the payment of <u>ad valorem</u> tax of 1-1/2%

of the value of the cement produced by it, the petitioner is exempt from the payment of the sales tax under Section 188 (c) of the Tax Code for the reason that cement is a mineral product. Petitioner, therefore, counterclaimed the refund of ₱585,894.00, which it paid as sales tax, after deducting the sum of ₱178,191.90 as *ad valorem* tax due.

On October 22, 1952, the respondent denied the petitioner's request for refund and insisted in the collection of ₱80,937.07 as ad valorem tax and surcharge on the limestone used as raw material in the manufacture of cement. From this decision, the petitioner appealed to this Board and its petition for review was docketed as B.T.A. Case No. 110. Upon petition of the petitioner, the case was dismissed without prejudice in order to enable it to submit the case before the Conference Staff of the respondent. After due hearing, the members of the Conference Staff had divergent opinions, which were referred to the respondent's Chief Counsel for study and recommendation. The respondent finally decided to reaffirm his decision dated October 22, 1952, and the corresponding demand for the payment of the ad valorem tax on limestone and argillaceous materials used by the petitioner in the manufacture of cement was reiterated. From the final decision of the respondent, the petitioner appealed to this Board. On the same question of the alleged illegality of the collection of the sales tax on Rizal cement and the claim for refund of the taxes paid, the petitioner filed with the Court of First Instance of Manila, against the Collector of Internal Revenue, a civil suit on January 17, 1953, and docketed as Civil Case No. 15598; another complaint was filed on

July 20, 1953, and docketed as Civil Case No. 20141 and another complaint filed on October 19, 1953 and docketed as Civil Case No. 20944. All said cases are at present pending trial in the Court of First Instance.

Petitioner contends that Rizal cement is not liable for the payment of sales tax of 7% under Section 186 of the Tax Code but only for the ad valorem tax of 1-1/2% provided for in Section 243 in relation with 246 of the Tax Code. Petitioner further contends that the sales tax collected by the respondent for the sale of Rizal cement is erroneous and illegal for the reason that Rizal cement is a mineral or mineral product and under the provisions of Section 188 of the Tax Code the petitioner is not subject to percentage tax. The pertinent provisions of the law is quoted:

> "Sec. 188. Transactions and persons not subject to percentage tax:- In computing the tax imposed in sections one hundred eighty-four, one hundred eighty-five and one hundred eighty-six, transactions in the following commodities shall be excluded:
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> x x x x x x x
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> (c) Minerals and mineral products when sold, bartered or exchanged in this country by the lessee, concessionaire, or owner of the mineral land from which removed".

The same question was raised in the civil cases above-mentioned filed in the Court of First Instance of Manila, between the same parties and for the same cause of action. There is no showing that said cases were dismissed and therefore same are were filed in the Court of First Instance ahead of this present case. In order to avoid conflicting decisions, this Board therefore abstains from considering the same issue raised in the three cases aforementioned.

There are still two issues not covered in the petitioner's pleadings filed in the Court of First Instance, which are raised in this present appeal before us, namely: (1) In case the petitioner is legally liable to pay the sales tax, it should not be liable for the payment of the ad valorem tax because this will constitute double taxation; (2) In case the petitioner is liable for the payment of both the sales tax and the ad valorem tax, the latter tax should be assessed on the raw limestone rock quarried from the mines and not on the powdered limestone burned, ground, and milled in the petitioner's factory.

The petitioner does not dispute the assessment of the ad valorem tax not only on the raw materials such as limestone rock quarried from the mines but it went even as far as to admit the assessment on the finished product known as portland cement under the trade name "Rizal Cement" provided the sales tax is not imposed. To assess further the sales tax on the same finished product will constitute double taxation, the petitioner argues. However, the petitioner submits that, assuming that Rizal cement is subject to both sales tax and ad valorem tax, the latter tax should be assessed on the raw materials such as the limestone rock extracted from the mines and not on the pulverized limestone processed in its factory.

We do not agree that the assessment of the ad valorem tax the petitioner's plea that ad valorem tax should be assessed on the raw materials extracted from the mines and not on the pulverized limestone tenable. The pertinent provisions of law are quoted hereunder:

> "Sec. 243: Ad valorem taxes on output of mineral lands not covered by lease. There shall be assessed and collected 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, an ad valorem tax payable to the Collector of Internal Revenue, as follows:
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> x x x x x x x
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> "(2) On all other minerals, one and one-half per centum of the value of said output.
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> "Sec. 246: Definition of the term 'gross output':- The term 'gross output' shall be interpreted as 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: Provided, however, That if the mineral 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 not be subdivided. All the royalties or ad valorem taxes herein provided shall accrue to the National Treasury."

It will be noticed from the last sentence of the above quoted law that the word royalty is mentioned. While the law defines the ad valorem tax as a tax for the privilege of extracting and exploiting minerals from mineral lands, it failed to go further as to explain the connotation of the word "royalty". We venture to interpret what was in the mind of Congress when it used the word royalty or ad valorem duty in the definition of "gross output". In passing the Mining Law (Commonwealth Act No. 137) Congress had in mind the Regalian doctrine, that all minerals found in public as well as private land belong to the state. That is why royalty is charged on the minerals extracted and removed from the mines, based on the market value of the gross output of the minerals. The respondent has charged the petitioner the percentage sales tax on the sale of Rizal cement as a manufactured product and not as a mineral product. Altho we have refrained from ruling that Rizal cement is a manufactured product, if such is the contention of the respondent, there can not be double taxation because the ad valorem tax is based on the raw minerals extracted from the mines while the sales tax is based on Rizal Cement as a manufactured product of the petitioner.

Having assumed that the petitioner is liable for both the sales tax of the Rizal cement and the ad valorem tax on the raw minerals used in the manufacture of portland cement, we are with the petitioner in its claim that the ad valorem tax should be assessed on the limestone rock and other silicious and argillaceous materials in their raw form as extracted and removed from the mines. It is an admitted fact that the limestone rocks quarried from the mines are removed and transported to the factory six kilometers away by means of cable conveyors. Section 245 of the Tax Code provides:

> "Sec. 245. Time and manner of payment of royalties or ad valorem taxes. - The royalties or ad valorem taxes, as the case may be, shall be 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 the prepayment of such royal-

ties or ad valorem taxes if the lessee, owner, or operator shall file a bond in the form and amount and with such sureties as the Collector of Internal Revenue may require, conditioned upon the payment of such royalties or ad valorem taxes, in which case, it shall be the duty of every lessee, owner, or operator of a mine 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 pay the royalties or ad valorem taxes due thereon within twenty days after the close of said quarter.

"In case the royalties or ad valorem taxes are not paid within the period prescribed above, there shall be added thereto a surcharge of twenty-five per centum. Where a false or fraudulent return is made, there shall be added to the royalties or ad valorem taxes a surcharge of fifty per centum of their amount. The surcharge so added shall be collected in the same manner and as part of the royalties or ad valorem taxes, as the case may be."

The aforequoted law provides that the ad valorem tax should be paid before removal of such products from the locality where they are stored after being mined. Therefore, the ad valorem tax should be assessed on the minerals in their raw form or the limestone rocks in this present case, before they are removed and transported to the factory. The respondent contends that the tax should be assessed on the pulverized limestone because Section 246 of the Tax Code, in defining gross output, provides that no deduction shall be allowed for mining, milling, refining, transporting, handling and marketing. To allow deducting the expenses for milling and marketing would be contrary to the provisions of the law. We would agree with the contention of respondent if the petitioner were selling the pulverized limestone, because in selling limestone powder, the petitioner would not be liable for the sales tax and therefore the ad valorem tax should be assessed on the powdered limestone as a mineral product. But the petitioner does not sell the powdered limestone; it uses it in mixing with clay in proper proportion in order to produce portland cement. Consequently, the ad valorem tax should be assessed on the minerals in their raw form, before they are removed from the locality.

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, we abstain from handing down a ruling on whether or not the petitioner is liable to pay sales tax on the Rizal cement it produces. We affirm the rest of the respondent's decision with the sole modification that the ad valorem tax should be assessed on the limestone rock or other argillaceous minerals extracted from the mines before they are removed therefrom. Without costs.

SO ORDERED.

Manila, January 15, 1954.

JOSE R. QUERUBIN
Member

We concur:

MARIANO NABLE
Chairman

Guillermo Gomez
GUILLERMO GOMEZ
Member