ASTURIAS SUGAR CENTRAL, INC.,
Petitioner

versus CTA CASE NO. 671

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

D E C I S I O N

This is an appeal by petitioner from respondent's decision denying the claim for the refund of ₱3,885.21 alleged to have been collected as 2% miller's tax on the amount of ₱153,408.72, representing freight charges and handling expenses incurred in transporting petitioner's sugar from its mill warehouse in Dumalag, Capiz, to its other warehouse in Iloilo City during the period from December 1949 to June 30, 1951, and compromise penalty.

Petitioner is a domestic corporation which operates a sugar mill in Dumalag, Capiz, where it likewise maintains a warehouse for storing the centrifugal sugar it produces. For marketing purposes, the sugar is transported to its Iloilo warehouse. In computing the 2% miller's tax for the period from December 1949 to June 1951, petitioner used as basis thereof the selling price of sugar in Iloilo, including the cost or value of the bags used as containers, but minus the freight charges and handling expenses incurred in transporting the sugar from the mill warehouse in Dumalag, Capiz, to its warehouse in Iloilo City. The cost of the containers amounted to ₱243,-714.12 and the freight charges and handling expenses to ₱153,408.72.

On November 25, 1953, respondent determined against petitioner a deficiency percentage tax and surcharge for the period from December 1949 to June 30, 1951, in the sum of ₱3,835.21, plus ₱50.00 compromise penalty. (See Exhibit "2," pp. 182-183, BIR rec. Vol. I)

On July 12, 1957, respondent effected the collection of the assessed amount by the application of a certain refundable amount in favor of petitioner. (See p. 182, BIR rec. Vol. II)

Subsequently, on August 18, 1959, petitioner filed a claim for refund of said amount of ₱3,885.21. (See Exhibit "9," pp. 206-207, BIR rec. Vol. I) This claim was denied by respondent on May 11, 1959. (See Exhibit "10," p. 208, BIR rec. Vol. I) On June 12, 1959, the instant petition for review was filed by petitioner.

The only issue involved in this case is whether or not the freight charges and handling expenses incurred by petitioner in transporting the sugar in question from Dumalag, Capiz, to Iloilo City should be deducted from the selling price in Iloilo City in computing the 2% miller's tax under Section 189 of the Tax Code.

This case is on all fours with a previous one decided by this Court, wherein we said:

> "In the present case, the sugar in question was not actually sold when it left petitioner's sugar central or mill warehouse. Hence, the only possible legal basis for computing the miller's percentage tax was its 'market value' when it left the sugar central or mill warehouse of the petitioner in Dumalag, Capiz.
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> "Inasmuch as there is no proof of the actual market value of the sugar when the same left the sugar central or mill warehouse, and on the contrary, the evidence shows that there were no buyers of sugar in commercial quantities in the town of Dumalag, Capiz, we believe and so hold that the petitioner correctly deducted the freight charges and handling expenses incurred in transporting the sugar in question from its mill warehouse in Dumalag, Capiz, to its subsidiary warehouse in Iloilo City from the actual Iloilo City selling prices in computing the 2% miller's tax. To hold otherwise and include the freight charges and handling expenses as part of the taxable basis for computing the miller's tax, as insisted by the respondent, would be tantamount to assessing the tax on the basis of the sugar's market value in Iloilo City, and not in Dumalag, Capiz, and would therefore be contrary to law. To our mind, the petitioner in the case at bar, computed its 2% miller's tax liability in accordance with law, using as the basis the fair and equitable market value of the sugar at the time it left it's mill warehouse in Dumalag, Capiz." (Asturias Sugar Central, Inc. vs. Com. of Internal Revenue, C. T. A. No. 983, Feb. 14, 1963)

In the light of the above ruling, it is clear that the freight charges and handling expenses incurred by petitioner in transporting its sugar from Dumalag, Capiz to Iloilo City should have been deducted from the selling price in Iloilo City in computing the miller's 2% tax for the period in question. Consequently, petitioner is entitled to the refund of the amount asked. However, respondent Commissioner is not liable for interest thereon as the collection was not attended with arbitrariness. (Collector of Internal Revenue vs. Prieto, et al., G. R. No. L-11976, September 26, 1961)

WHEREFORE, respondent is hereby ordered to refund to petitioner Asturias Sugar Central, Inc. the sum of ₱3,885.21. Without pronouncement as to costs.

SO ORDERED.

Manila, July 27, 1964.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge