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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

(5)

CEPOC INDUSTRIES INC.
(Formerly Cebu Portland
Cement Company),
Petitioner,

- versus - C.T.A. CASE NO. 1617

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

8/11/78

D E C I S I O N

Disputed by petitioner CEPOC Industries Inc. (formerly, Cebu Portland Cement Company) in this suit for recovery of overpaid ad valorem tax alleged to have been erroneously or illegally collected by respondent Commissioner of Internal Revenue is the computation of the correct amount of ad valorem tax refundable to petitioner.

None of the essential facts is in dispute and as may be gathered from the records of the case, specially the pleadings, the evidence presented and the records of the Bureau of Internal Revenue pertaining to this proceeding, the relevant facts are as follows:

Petitioner is a government owned and controlled corporation, duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in the production of Apo Portland Cement. For the period from July 1, 1962 to August 31, 1963, petitioner paid to the Bureau of Internal Revenue the total amount of ₱92,763.96 as 1½ ad valorem tax based on the actual selling price of cement sold by it to the public. (Exh. "10", pp. 131-133, BIR records.)

Pursuant to the ruling of the Supreme Court in Cebu Portland Cement Company vs. Commissioner of Internal Revenue, No. L-18649, February 27, 1965, 13 SCRA 333, that the collectible ad valorem tax on cement under the then Sections 243 and 246 of the National Internal Revenue Code is based on the actual market value of the quarried minerals, like limestone and shale, and not on the selling price of the cement produced, petitioner, on April 19, 1965, filed with the Bureau of Internal Revenue a claim for refund of the amount of ₱80,095.07 as alleged overpaid ad valorem tax for the period from July 1, 1962 to August 31, 1963, inclusive. (Exh. "1", Exh. "F", p.2, BIR records.) And on the same date, the instant petition for review was filed by herein petitioner with this Court for the recovery of the sum of ₱80,095.07, with interest at the legal rate from the time of the claim for refund.

After determining the actual market value of the quarried lime for the taxable year in question, and after readjusting the ad valorem tax paid by petitioner, following the decision of the Supreme Court in the aforementioned case of Cebu Portland Cement Company vs. Commissioner of Internal Revenue, supra, respondent, in his letter of October 9, 1972, informed petitioner, in connection with its claim for refund of ₱80,095.07 as alleged overpaid ad valorem tax, that it is entitled to a creditable amount of ₱15,330.69 only. (Exh. "11", pp. 136-137, BIR records.) The reduction of petitioner's tax credit claim, as stated in respondent's letter, is the result of the deduction of the portion of the tax payments amounting to ₱49,406.78 which has prescribed under the then Section 309 of the National Internal Revenue Code. The sum of ₱17,212.06, which allegedly represents the unremitted amount to the government, has likewise been deducted by respondent from the total creditable amount.

A computation of the net creditable amount is shown below: (Exh. "11", pp. 136-137, BIR records.)

Approved overpaid amount		₱81,949.53
Less:		
(1) Amount prescribed (Under Sec. 309, Tax Code)	-₱49,406.78	
(2) Unremitted amount	- 17,212.06	66,618.84
CREDITABLE AMOUNT - - - - - - - - - -		₱15,330.69

Release of the tax credit certificate covering the unremitted portion to petitioner was therefore held in abeyance by respondent until the official receipts evidencing payment of the same are submitted to the Appeallate Division, and after the Accounting Division of the Bureau of Internal Revenue shall have finally verified the remittance thereof. A Tax Credit Memo (Taxpayer Record No. 94-72) covering the approved creditable amount of ₱15,330.69 was however issued by respondent to petitioner. (Exh. "11", pp. 136-137, BIR records.)

Since there was no showing how these deductions were arrived at nor how respondent computed the fair market value of the raw materials, petitioner, in its letter of November 6, 1972 invited the attention of the Commissioner of Internal Revenue to the theory advanced by his Office in another case then pending before this Court entitled Cebu Portland Cement Company vs. Commissioner of Internal Revenue, C.T.A. No. 1336, where the fair market value of the raw materials was determined by deducting or adding to the total cost of quarrying and crushing the proportionate portion of the gross loss or gross profit for the period. The fair market value of the materials thus determined is multiplied by 1½% to get the ad valorem tax due for the period. The total ad valorem tax paid minus the total ad valorem tax due equals the overpayment to be refunded to petitioner. For consistency, petitioner therefore requested respondent to apply the same formula of computations in instant case. (p. 141, BIR records.)

Parenthetically, it may be stated that C.T.A. Case No. 1336, involving the same parties, was decided by this Court on November 12, 1975 in favor of Cebu Portland Cement Company, and the decision became final and executory on December 20, 1975.

In its letter of June 2, 1975, petitioner returned to respondent the Tax Credit Memo (Taxpayer Record No.

94-72) of ₱15,330.69. Enclosed therewith for respondent's verification were also a (1) photostat copy of Official Receipt No. 069210 paid on October 17, 1963 of the amount of ₱17,212.06 for ad valorem tax for the quarter ending August 31, 1963; (2) duplicate copy of the Statement of Results of Operation for the period July 1, 1962 to August 31, 1963 of petitioner showing a gross loss of ₱1,339,722.35; (3) duplicate copy of the Statement of Ad Valorem Tax Overpaid for the said period based on the cost of raw materials quarried and crushed less proportionate portion of gross loss for the period (formula adopted by the Bureau of Internal Revenue); and (4) duplicate copy of the Statement of Proportionate Ad Valorem Tax Overpaid for said period based on actual payments not prescribed, all showing that the amount to be refunded is ₱38,382.41. Petitioner therefore requested that the corresponding check for said amount be remitted to it in complete settlement of this proceeding. (p. 158, BIR records.)

In a Memorandum for the Commissioner of Internal Revenue dated December 12, 1975 submitted by the Chief, Appellate Division, and concurred with by the Revenue Service Chief (Legal), Bureau of Internal Revenue, the sum of ₱30,688.29, computed as follows, was recommended to be refunded to petitioner: (Exh. "14", pp. 183-184, BIR records.)

Total amount claimed and approved -		P80,095.07
Less:		
Prescribed payments under Section 309 of the Tax Code	- - - -	49,406.78
Total refundable amount		P30,688.29

The recommendation was approved by respondent Commissioner of Internal Revenue and the amount of P30,688.29 was paid to petitioner under Treasury Warrant No. B-04,117,812 dated April 30, 1976.

In this connection, it may be stated that previously, the Bureau of Internal Revenue computed the creditable amount of P81,949.53 as overpaid _ad valorem_ tax in favor of petitioner as follows:

Total Amount paid	- - - - -	P92,763.93
Less:		
Amount legally due	- - -	10,814.43
		P81,949.00

However, since only the amount of P80,095.07 was claimed by petitioner in its claim for refund filed with the Bureau of Internal Revenue, respondent allowed only a refund of P80,095.07. (Exh. "14", pp. 183-184, BIR records.)

In its letter of September 20, 1976 to respondent, petitioner acknowledged receipt of Treasury Warrant No. B-04,117,812 dated April 30, 1976 in the amount of P30,688.29 representing refund of overpaid _ad valorem_ tax for the period July 1, 1962 to August 31, 1963. (Exh. "P", p. 72, CTA records.) Petitioner, however, received said treasury warrant under protest for inaccurate computation, claiming as per computation previously furnished the Bureau of Internal Revenue in its letter dated June 2, 1975 that the amount to be refunded should be ₱38,382.41. And if the difference of ₱7,694.12 is not received within ten days from receipt thereof, petitioner would be constrained to recover the difference in this proceeding.

What is the correct computation, and of course the exact amount, of the ad valorem tax refundable to petitioner CEPOC Industries Inc.?

There is no genuine controversy between the parties as to the formula for ascertaining the fair market value of the raw materials used by petitioner in the production of cement. (Cebu Portland Cement Company vs. Commissioner of Internal Revenue, CTA Case No. 1336, November 12, 1975.) They are agreed that: (Exh. "12", p. 70, CTA records.)

Total Cost of Quarrying and Crushing

Less:

$$\frac{\text{Cost of Quarrying and Crushing}}{\text{Cost of Manufacturing}}$$

Times:

Gross (Loss) or Profit

Equals:

Fair Market Value of Raw Materials.

Based on this formula, both parties presented their computations as follows:

For the Period July 1, 1962 to August 31, 1963

	Exhibit 9-A Per Respondent p. 105 BIR rec. p. 183 BIR rec.		Exhibit O Per Petitioner pp. 70-71 CTA rec. pp. 152-155 BIR rec.	
Sales	₱ 7,041,010.15		₱ 7,041,010.15	
Cost of Cement Sold	8,380,732.50		8,380,732.50	
Gross Loss	₱ 1,339,722.35		₱ 1,339,722.35	
Quarrying Cost / Manufacturing Cost x Gross Loss	₱ 844,592.70 / ₱ 9,158,047.03	x ₱ 1,339,722.35 =	₱ 844,592.70 / ₱ 8,380,732.50	x ₱1,339,722.35 =
Portion of Gross Loss deductible from quarrying cost	(₱ 123,630.75)		(₱ 135,014.41)	
Quarrying Cost	₱ 844,592.70		₱ 844,592.70	
Market Value of Quarried Materials	₱ 720,961.95		₱ 709,578.29	
Ad Valorem Tax Rate	x .015		x .015	
Total Ad Valorem Tax Due	₱ 10,814.43		₱ 10,643.67	
Ad Valorem Tax Paid	₱ 92,763.96		₱ 92,763.96	
Refundable Tax	₱ 81,949.53		₱ 82,120.29	
Tax Claimed	₱ 80,095.07			
Less Prescribed Payments	49,406.78	Unprescribed Refundable Ad valorem Tax / Total Ad Valorem Taxes Paid	₱ 43,357.18 / 92,763.96	x ₱ 82,120.29 =
Total Refundable Amount	₱ 30,688.29	Total Refundable Amount	₱ 38,382.41	

All the figures in the above computations for the fair market value of the raw materials tally with the figures reflected or stated in Petitioner's Statement of Results of Operations for the Period July 1, 1962 to August 31, 1963 (pp. 154-155, BIR records) with the exception of Respondent's Manufacturing Cost in the amount of ₱9,158,047.03. It will be noted that the parties differ only in their figures for the manufacturing cost. Respondent having no explanation as the discrepancy, petitioner's computation of the fair market value of the quarried minerals and refundable ad valorem tax in the sums of ₱709,578.29 and ₱82,120.29, respectively, appear to be more accurate, the same having been certified to as correct by its Chief Accountant and reflected in Exhibit "N". (p. 70, CTA records).

In computing the refundable ad valorem tax due petitioner, respondent simply deducted the prescribed payments from the amount of the refund as originally claimed by petitioner. The deduction of the prescribed payments in full from the refundable ad valorem tax for the entire period July 1, 1962 to August 31, 1963, which includes that of the prescribed portion of the claim, would result in a lesser tax refund than that which should be refundable, as these payments comprised not only of the refundable ad valorem tax but also of those which should have been payable (p. 151, BIR records).

On the other hand, petitioner employed the following method to arrive at the refundable amount:

$$\frac{\text{Unprescribed Payments}}{\text{Total Payments}} \times \frac{\text{Refundable}}{\textit{Ad Valorem}\text{ Tax}} = \text{Refund Due}$$

Not escaping notice is the creditable or refundable amount of ₱82,120.29 which is higher than the amount of ₱80,095.07 claimed by petitioner. As shown above, respondent allowed only a refund of ₱80,095.07 instead of ₱81,949.53, the amount computed by him as due petitioner in accordance with the method applied by the parties in computing the fair market value of the raw materials used by petitioner in the production of cement since that is the amount claimed by it. However, because of the difference of the parties in their figures for the manufacturing cost, wherein this Court found that petitioner's figure is more accurate since it is certified to as correct by its Chief Accountant and not controverted by respondent, the refundable amount due petitioner as overpaid ad valorem tax is ₱82,120.29. If in all cases which are within the jurisdiction of Court of Tax Appeals under the law creating it (Section 7, Republic Act. No. 1125), the Court shall have the right to do whatever is necessary to decide the issue properly brought before it, including the power to sentence the taxpayer to pay what is due from him under the law (Alhambra Cigar and Cigarette Manufacturing Co. vs. Collector of Internal Revenue, 105 Phil, 1337, unpub.; Collector of Internal Revenue vs. Bohol Land Transportation, 107 Phil. 905; Sunga vs. Collector of Internal Revenue, CTA Case No. 676, October 25, 1961; Fernandez Hnos. vs. Commissioner of Internal Revenue, L-21551, L-21557, L-24972 and L-24978, September 30, 1967, 29 SCRA 552), conversely, this Court must also have the right and authority to order the refund to the taxpayer of what is due him under the law. Surely, the Government should be the first to set an example of honesty and fairness in dealing with taxpayers.

Not much need be said on petitioner's claim for interest on the amount to be refunded to it. Well-settled is the rule that interest may be awarded to the taxpayer only if the collection of an internal revenue tax is attended with arbitrariness. Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. (Collector of Internal Revenue vs. Prieto, L-11976, September 26, 1961, 112 Phil. 907; Commissioner of Internal Revenue vs. Asturias Sugar Central, L-15013, August 3, 1961, 2 SCRA 1140; Victorias Milling vs. Commissioner of Internal Revenue, L-24765 and L-24779, February 25, 1967, 19 SCRA 430.) Nothing in the records of the case shows that the collection of the refundable tax in question, which had been overpaid by petitioner, is attended with arbitrariness.

The net result is that petitioner CEPOC Industries Inc. (formerly, Cebu Portland Cement Company) is entitled to a refund of ₱38,382.41 representing overpaid ad valorem tax for the period from July 1, 1962 to August 31, 1963. Since the amount of ₱30,688.29 has already been paid to petitioner under Treasury Warrant No. B-04,117,812 dated April 30, 1976, duly acknowledged by it in its letter to respondent dated September 20, 1976 (Exh. "P", p. 72, CTA records), there still remains a difference of ₱7,694.12 refundable to petitioner.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner CEPOC Industries Inc. the amount of ₱7,694.12. Without pronouncement as to costs.

SO ORDERED.

Quezon City, August 11, 1978.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge