REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BACNOTAN CEMENT
INDUSTRIES, INC.,
Petitioner,

- versus - C.T.A. CASE No. 1582

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - x June 18/68

R E S O L U T I O N

This is in connection with the motion filed by respondent on April 3, 1965, seeking the dismissal of petitioner's appeal on the ground that it was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125.

On March 7, 1960, respondent assessed against petitioner the amount of ₱42,960.27, as 25% surcharge for late payment of ad valorem tax on minerals removed by it from May, 1957 to February, 1959, plus ₱300.00 as compromise penalty, or a total of ₱43,260.27 (Exh. 1, p. 42, CTA rec.). In a letter dated June 10, 1960, petitioner requested withdrawal and cancellation of the said assessment on the grounds that it merely adopted the practice of its predecessor, the Cebu Portland Cement Co.,Inc., in paying the corresponding ad valorem tax due on the cement removed regularly at the end of each month;that it believes that this practice of the former owner was perfectly in order;and that it acted in good faith and without any intention of defrauding the

Government by not filing the prerequisite bond (Annex "A", Petition, pp. 9-10, CTA rec.; Exh. 2, pp. 43-44, CTA rec.). On November 15, 1962, pending petitioner's request for cancellation of the assessment, respondent issued a warrant of distraint and levy against petitioner (see pars. 13 & 14, Petition, p. 4, CTA rec.).

In a letter dated February 5, 1963, petitioner asked that the warrant of distraint and levy be recalled and requested withdrawal and cancellation of the assessment (Exh. 3, p. 45, CTA rec.). On March 11, 1963, petitioner reiterated its request for cancellation and withdrawal of the assessment, premised on the same contentions mentioned above (Exh. 4, pp. 49-51, CTA rec.). In reply, the Deputy Commissioner of Internal Revenue informed petitioner that its request for reconsideration may be given due course provided that petitioner would execute a waiver of the statute of limitation (par. 17, Petition, pp. 4-5, CTA rec.). On October 8, 1963, petitioner asked exemption from accomplishing the waiver and reiterated its request for withdrawal and cancellation of the assessment (par. 18, Petition, p. 5, CTA rec.). Decision In a letter dated January 19, 1965, respondent denied petitioner's request for reconsideration and demanded payment of ₱42,260.27 (Annex "B", Petition, pp. 11-13; Exh. 5, pp. 54-57, CTA rec.). Said letter was admitted to have been received by petitioner on January 26, 1965 (par. 4, Opposition to Motion to Dismiss, pp. 27-28, CTA rec.).

On February 4, 1965, petitioner again requested reconsideration of respondent's decision (Annex "C", Petition, pp. 14-16, CTA rec.). Pending action on the said request, respondent issued another letter dated February 25, 1965, thru the Regional Office at Baguio City, demanding from petitioner the payment of the amount assessed until March 5, 1965, otherwise, execution of the warrant of distraint and levy would be effected, or judicial action would be instituted to enforce collection without further notice (par. 21, Petition, pp. 5-6, CTA rec.).

The instant petition for review was filed on March 11, 1965 (p. 1, CTA rec.).

The only issue to be resolved is whether or not the appeal of petitioner was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125.

Respondent maintains that the appeal was filed out of time because the assessment which was actually contested was issued on March 7, 1960, and the various requests for reconsideration all giving the same grounds were finally decided by respondent on January 19, 1965. Therefore, the appealable decision is the letter dated January 19, 1965, which is acknowledged to have been received by petitioner on January 26, 1965, and the thirty-day period for appeal is to be counted from the latter date.

On the other hand, petitioner contends that the appeal has been taken within the 30-day statutory period. The reason advanced by petitioner in support of its contention is that the letter of January 19, 1965, was revised or superseded by respondent's letter dated February 25, 1965, thru the Regional Office of Baguio City, which was received by petitioner at its home office on March 5, 1965, and that the running of the 30-day period has been suspended or interrupted by the filing of petitioner's request for further reconsideration on February 4, 1965.

To our mind, the letter of January 19, 1965, being the last unrevised and unmodified decision rendered by respondent after previous requests for reconsideration, is the decision appealable to this Court (see Pangasinan Transportation Co. v. Blaquera, G. R. No.L-13101, April 29, 1960; Tomas Villamin v. Coll., G.R. No.L-11536, Oct. 31, 1960; Ker & Co. v. Coll., G. R. No. L-12396, Jan. 31, 1962; Tuason & Legarda Ltd. v. Com. of Int. Rev. et al., G. R. No. L-18552, Sept. 30, 1965). Consequently, the period for appeal should be counted from receipt thereof by petitioner on January 26, 1965, that is, not later than February 25, 1965. The present petition for review having been filed on March 11, 1965, it is, therefore, late by fourteen (14) days.

The request for further reconsideration filed by petitioner on February 4, 1965, did not have the effect of suspending the running of the 30-day period for appeal because it did not advance new grounds not alleged in its previous requests for reconsideration; hence, merely <u>pro forma</u>. (See Roman Catholic Archbishop of Cebu v. Coll. of Int. Rev., G. R. No. L-16683, Jan. 31, 1962 and Jose Ma. del Rosario v. C.T.A. et al., G. R. No. L-17991, Oct. 31, 1962).

IN VIEW OF THE FOREGOING, the herein appeal is hereby dismissed for lack of jurisdiction, without pronouncement as to costs.

SO ORDERED.

Quezon City, June 10, 1968.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge