Library

BISLIG BAY LUMBER CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2393

1/31/75

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

D E C I S I O N

Petitioner has appealed from respondent's decision imposing and assessing against it the 25% surcharge for delinquency in the payment of forest charges from September 22, 1970 to April 30, 1971, amounting to ₱129,965.24, computed as follows:

1970

Total timber (1st group) cut from September 22 to December 31, 1970 - 149,214.38 cubic meter

Forest charges at ₱3.50 per cubic meter	₱522,250.33
Less: Deposits and payments until December 31, 1970	244,260.96
Deficiency forest charges for 1970	₱277,989.37
Add: 25% surcharge for late payment	69,497.34
Total deficiency and surcharge	₱347,486.71
Deduct: Payments after December 1970	277,871.46
Unpaid surcharge and deficiency	₱ 69,615.25

1971

Total timber (1st group) cut from January 1 to April 30, 1971 - 168,512.25 cubic meter

Forest charges at ₱3.50 per cubic meter	₱589,792.88
Less: Deposits from January to April, 1971	350,952.57
Deficiency forest charges for 1971	₱238,840.31
Add: 25% surcharge for late payment	59,710.08
Total deficiency and surcharge	₱298,550.39
Deduct: Payments from April to July 1971	238,200.40
Unpaid surcharge and deficiency	₱ 60,349.99

SUMMARY

Unpaid surcharge and deficiency for 1970---₱ 69,615.25
Unpaid surcharge and deficiency for 1971--- 60,349.99
TOTAL------₱129,965.24

(Exh. 2-A, p. 22, BIR rec.)

Petitioner is a domestic corporation operating a logging concession and a sawmill at Bislig, Surigao del Sur. It exported logs abroad and sold logs to locally based dealers. By virtue of Forestry Administrative Order No. 32-1 of the Department of Agriculture and Natural Resources which took effect on September 22, 1970, certain timbers which belong to the 3rd group were classified and included in the 1st group, thereby increasing the forest charges thereon at ₱3.50 per cubic meter.

This case was investigated by Lt. Benito P. Gonzales, Team Leader, and Revenue Examiners Miguel A. Alcon and Hazaar M. Mingoa, BIR representatives, as shown by their reports dated April 19, 1971 (p. 4, BIR rec.) On June 2, 1971, the same revenue examiners submitted another report (p. 12, BIR rec.). On August 3, 1971, the aforesaid revenue examiners submitted a final report recommending the assessment and collection of ₱129,965.24 as 25% surcharge allegedly due from petitioner for 1970 and 1971 (p. 28, BIR rec.). On August 24, 1971, a formal assessment was issued by respondent against petitioner. Subsequently, a warrant of distraint and levy was issued by respondent against the same petitioner on March 13, 1972. Hence, the appeal made by petitioner to this

Court on March 29, 1972.

The evidence adduced shows that petitioner has paid on time all the forest charges due from it from September 22 to December 31, 1970 according to the classification existing under the old forestry regulations based on the old rate of forest charges adopted by the forest officers on their scale report. While the said FAO No. 32-1 took effect on September 22, 1970, the recomputation of the increased forest charges was made by the District Forester of Surigao, Mr. Porfirio O. Quintana, only on May 18, 1971. The said recomputation is evidenced by Exhibits C, C-1, C-2 and C-3 which amounted to ₱269,502.01 and paid by petitioner on July 16, 1971 under Official Receipt No. 4629129-E. (See CTA Rec., pp. 8-11, and BIR Rec. p. 30).

On the basis of the foregoing facts, the principal issue submitted to this Court for resolution is whether or not petitioner is subject to the 25% surcharge for late payment of forest charges imposed by Section 267 of the Revenue Code.

At the outset, it may be stated that respondent Commissioner of Internal Revenue submitted this case for decision on the basis of the evidence taken from the records of petitioner. He failed to present as evidence the original and revised monthly scale reports of the forest officers; he failed to adduce any testimonial evidence during the trial of the case on the merits; and he likewise failed thereafter to file a memorandum in support of his stand.

As a general rule, the forest charges are payable before the removal of the forest products from the place where the same are cut. A bond may, however, be filed by the concessionaire to guarantee the payment of forest charges at the point of destination not later than the 45th day from the last day of the month in which the timber was sealed by the forest officer. In brief, the implementing regulations allow a period of 75 days within which to pay forest and other charges. (BIR Ruling No. 121, February 20, 1959). In fact, Section 273 of the Revenue Code provides as follows:

> SEC. 273. Time for payment of forest charges. - Except as hereinbelow provided, the charges on forest products shall be payable at the time of the removal of the same from the forest.
>
> With the approval of the Commissioner of Internal Revenue, lumber may be removed from a sawmill situated on a licensed cutting area upon the giving of a bond conditioned upon the monthly payment of the charges due on the output of such mill. He may also authorize the shipment of forest products under auxiliary invoices without the prepayment of charges in special cases where the payment of the charges at the point of origin would result in undue hardship, if the owner or concessionaire shall first file a bond with the Bureau of Internal Revenue in the form and amount and with such sureties as the Commissioner of Internal Revenue may require, conditioned upon the payment of the forest charges at the point of destination or at such time and place as the Commissioner may direct.

In implementing the foregoing provisions of law, Section 28(b) of Revenue Regulations No. 85 of the Department of Finance provides as follows:

> SEC. 28. Class C sawmills.
>
> (a) xx xx xx xx xx
>
> (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 shall not be latter than the 45th day 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 over charges, the necessary adjustment shall be made on the Monthly Scale Report (B.F. Form No. 1-8) for the subsequent month.

Respondent claimed that the increased rates of forest charges imposed by FAO No. 32-1 were not paid by petitioner within sixty (60) days after the same became due and payable and, therefore, such charges shall be increased by 25% under Section 267 of the Revenue Code which provides:

> SEC. 267. Surcharges for illegal cutting and removal of forest products or for delinquency. - Where forest products are unlawfully cut or gathered in any public forest without license or, if under license, in violation of the terms thereof, the charges

> on such products shall be increased by three hundred *per centum*. If forest products shall be removed without invoice, or upon removal, shall be discharged without permit from boat, car, cart, or other means of transportation, the charges shall be increased by twenty-five *per centum*, and if, in any case the proper charges upon forest products are not paid within sixty days after the same shall be due and payable, such charges shall be increased by twenty-five *per centum*: *Provided, however,* That the Commissioner of Internal Revenue may, in meritorious cases, waive or grant an extension of time not exceeding thirty days for the payment of the forest charges without surcharge. (As amended by Rep. Act No. 434).

Respondent's interpretation of Section 267 of the Revenue Code is strict and literal because the provisions of Section 273 of the same Code and Section 28(b) of Revenue Regulations No. 85, *supra*, were ignored and relegated to the background. On the other hand, petitioner asserts and maintains that the imposition of 25% surcharge for alleged late payment of forest charges is baseless and illegal because it has paid on time all the deficiency forest charges after receiving the corresponding notice of the revised computation from the District Forester of Surigao del Sur.

Although Section 267 of the Revenue Code requires payment of the forest charges within 60 days from the date of removal of the forest products from the place where the same are cut, the said period of payment is not applicable to the petitioner at bar. In the first place, petitioner had filed a bond duly approved by the respondent Commissioner of Internal Revenue authorizing the payment of forest charges at the point of destination after the removal of timber from the logging area.

Secondly, under Revenue Regulations No. 85 of the Department of Finance, supra, forest officers are required at the end of each month to forward to the Municipal Treasurer the Monthly Scale Report and a copy thereof furnished the manager of the sawmill who shall pay the forest charges indicated therein within the period prescribed by law or revenue regulations. Thirdly, the monthly scale reports which are erroneous are subject to revision by the Bureau of Forestry thru their forest officers. And lastly, petitioner's evidence shows that all the deficiency forest charges due on the basis of the adjusted monthly scale reports were paid on time.

As the short forest charges covering the period from September 22 to December 31, 1970 and January 1 to April 30, 1971 were paid by petitioner within the period prescribed by Revenue Regulations No. 85, in relation to Section 273 of the National Internal Revenue Code, supra, petitioner is not subject to the 25% surcharge imposed by Section 267 of the same Code, supra. Thus, in 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, this Court in resolving an issue identical to the case at bar, held as follows:

> 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 correction for if upon revision made in the Bureau of Forestry, there should be found any short charges or over charges, the neces-

sary 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.

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 Connel Bros. Co. /Phil./ vs. Collector of Internal Revenue, G. R. No. L-15470, Dec. 26, 1963.)'

The foregoing decision of the Tax Court was sustained by the Supreme Court in the case of Commissioner of Internal Revenue vs. Paper Industries Corp. of the Philippines (formerly Bislig Industries, Inc), et al., G. R. No. L-26499, when in a resolution of November 11, 1966, the Supreme Court dismissed the petition for review filed by the Commissioner of Internal Revenue for lack of merit.

WHEREFORE, the decision of the respondent Commissioner of Internal Revenue appealed from is reversed and his assessment of ₱129,965.24, representing 25% surcharge for late payment of forest charges for 1970 and 1971, issued against petitioner, is hereby withdrawn, cancelled, and declared of no force and effect. Without pronouncement as to costs.

SO ORDERED.

Quezon City, January 31, 1975.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R. M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

/dma