WESTERN MINOLCO CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3011

EFREN I. PLANA
COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

5/21/82

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

D E C I S I O N

Disputed by petitioner Western Minolco Corporation in this appeal is the Government's right to the sum of ₱1,317,801.03 representing payment of the 35% transaction tax which it paid from June 27, 1977 to October 21, 1977, pursuant to Presidential Decree No. 1154, formerly embodied in Section 210(b) of the National Internal Revenue Code, but now prescribed under Section 24(cc) of the same Code, pursuant to Presidential Decree No. 1739.

Petitioner, a domestic corporation with principal office at 231 Salcedo St., Legaspi Village, Makati, Metro Manila, is engaged in mining industry, particularly copper concentrates for export mined from its mineral lands in Atok and Kibungan, Benguet. Upon application for tax exemption filed with the Bureau of Mines, Certificate of Qualification for Tax Exemption No. 34 was issued in its favor in October, 1972, by the then Secretary of Agriculture and Natural Resources.

It appears that petitioner applied to the Securities and Exchange Commission for authority to borrow money and issue commercial papers (promisory notes), and which application was granted under Certificate of Renewal No. R-1056 dated December 24, 1976. Pursuant to this authority, petitioner borrowed funds from several financing institutions by issuing promisory notes during the period from June, 1977 to October, 1977 and paid the 35% transaction tax due thereon in the amount of ₱1,317,801.03 imposed under the then Section 210(b) of the National Internal Revenue Code of 1977.

Believing that it is not liable to pay the 35% transaction tax pursuant to its Certificate of Qualification for Tax Exemption No. 34 issued by the then Secretary of Agriculture and Natural Resources by virtue of Section 79-A of Commonwealth Act No. 137, otherwise known as "The Mining Act", and Presidential Decree No. 463, otherwise known as " The Mineral Resources Development Decree of 1974", as implemented by Consolidated Mines Administrative Order of the Secretary (now Minister) of Natural Resources dated May 17, 1974, particularly Section 83 thereof, petitioner in his letter dated February 16, 1978 requested the refund of the said tax amounting to ₱1,317,801.03. Respondent, however, denied petitioner's request in his letter dated February 19, 1979.

Hence the present recourse.

In his denial dated February 19, 1979 of petitioner's request for refund, respondent contends:

(1) That the 35% transaction tax is actually a tax on the interest earnings of the lender who is actually the taxpayer on whose income the tax is imposed;

(2) That since the financing institutions which loaned money to petitioner are the lenders, petitioner merely acted as witholding agent;

(3) That petitioner cannot claim exemption under Section 52 (tax on mining claims) and Section 53 (tax on importations) both of Presidential Decree No. 463 because the 35% transaction tax is neither a tax on mining claims nor a tax on importations.

Adverting to the terms of the certificate of qualification for tax exemption of petitioner, as well as the provisions of the law under which it was granted, it is quite apparent, despite the seemingly conflicting arguments advanced by the parties as to the extent and scope of petitioner's tax exemption, that there is no real dispute between them that petitioner is liable for income tax and exempt only from taxes imposed upon and payable by it in the conduct of its mining business and in the importation of machinery, equipment, spare parts, supplies and materials absolutely necessary in the operation of such business in the mineral land indicated therein. Certificate of Qualification for Tax Exemption No. 34 employs the words"x x x x from payment of all taxes, except income tax, payable by him in the conduct of his business and in the importation of machinery, spare parts and/or equipment listed in the stamped " ANNEX I" which were considered to be indispensable in the operations and will be used by said operator/lessee exclusively in the mineral land mentioned above." Section 79-A of Republic Act No. 3823, amending Commonwealth Act No. 137, otherwise known as "The Mining Act," specifies "x x x complete tax exemptions, except income tax, from the time of its actual bona fide orders for equipment for commercial production." And Section 53 of Presidential Decree No. 463, otherwise known as "The Mineral Resources Development Decree of 1974", provides: "Machineries, equipment, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals and transportation and communication facilities imported by and for use of new mines and old mines which resume operation, x x x x are exempt from the payment of customs duties and all taxes except income tax x x x".

Accordingly, if the transaction tax of ₱1,317,801.03 paid by petitioner under the then Section 210(b) of the National Internal Revenue Code was not actually imposed upon and payable by it in the conduct of its mining business and in the importation of machinery, spare parts and/or equipment listed in the stamped "ANNEX I" of its certificate of qualification for tax exemption which were indispensable in the operations and used exclusively by petitioner in its mineral land, then said tax of ₱1,317,801.03 is not covered within the purview of its certificate of qualification for tax exemption and petitioner is not entitled to the refund thereof. The same result follows if the said 35% transaction tax is an income tax payable by petitioner.

Is the 35% transaction tax of ₱1,317,801.03 paid by petitioner under the then Section 210 (b) of the National Internal Revenue Code an income tax payable by it? If not, is it a tax actually imposed upon and demanded from petitioner who it is intended should pay it in the conduct of its mining business and in the importation of machinery, spare parts and/or equipment listed therein and essential in the operations of its mineral land, in accordance with its certificate of qualification for tax exemption?

Section 210(b) of the National Internal Revenue Code read at the time as follows:

> "Sec. 210. Percentage tax on certain transactions. -
>
> "(a) x x x x
>
> "(b) Commercial paper transactions.- There shall be levied, assessed, collected and paid on every commercial paper issued in the primary market as principal instrument, a transaction tax equivalent to thirty-five per cent (35%) based on the gross amount of interest thereto as defined hereunder, which shall be paid by the borrower/issuer; Provided, however, That in the case of a long-term commercial paper whose maturity exceeds one year, the borrower shall pay the tax based on the amount of interest corresponding to one year, and thereafter shall pay the tax upon accrual or actual payment (whichever is earlier) of the untaxed portion of the interest which corresponds to a period not exceeding one year.
>
> " The transaction tax imposed in this section shall be a final tax to be paid by the borrower and shall be allowed as a deductible item for purposes of computing the borrower's taxable income.
>
> "For purposes of this tax -
> (1) 'Commercial paper' shall be de-

fined as an instrument evidencing indebtedness of any person or entity, including banks and non-banks performing quasi-banking functions, which is issued, endorsed, sold, transferred or in any manner conveyed to another person or entity, either with or without recourse and irrespective of maturity. Principally, commercial papers are promisory notes and/or similar instruments issued in the primary market and shall not include repurchase agreements, certificates of participations, and such other debt instruments issued in the secondary market.

"(2) The term 'interest' shall mean the difference between what the principal borrower received and the amount it paid upon maturity of the commercial paper which shall, in no case, be lower than the interest rate prevailing at the time of the issuance or renewal of the commercial paper. Interest shall be deemed synonymous with discount and shall include all fees, commissions, premiums and other payments which form integral parts of the charges imposed as a consequence of the use of money.

"In all cases, where no interest rate is stated or if the rate stated is lower than the prevailing interest rate at the time of the issuance or renewal of commercial paper, the Commissioner of Internal Revenue, upon consultation with the Monetary Board of the Central Bank of the Philippines, shall adjust the interest rate in accordance herewith, and assess the tax on the basis thereof.

"The tax herein imposed shall be remitted by the borrower to the Commissioner of Internal Revenue or his collection agent in the municipality where such borrower has its principal place of business within five (5) working days from the issuance of the

> commercial paper. In the case of long term commercial paper, the tax upon the untaxed portion of the interest which corresponds to a period not exceeding one year shall be paid upon accrual of payment, whichever is earlier."

A similar issue was settled by this Court in the case of Marinduque Mining and Industrial Corporation vs. Efren I. Plana, Commissioner of Internal Revenue, CTA Case No. 3019, March 27, 1981, where we ruled that the 35% transaction tax imposed under Section 210(b) of the National Internal Revenue Code, supra, is a tax on interest earnings of the lenders or placers who are actually the taxpayers on whose income is imposed.

In that case, the Marinduque Mining and Industrial Corporation, a domestic corporation, is engaged in mining operations which has such principal products as nickel, copper, gold and silver concentrates and cement. In an Operating Contract with the Philippine Government pursuant to the provisions of Republic Act No. 1828, as amended by Republic Act Nos. 2077 and 4167, otherwise known as the "Nickel Law", it has undertaken the exploration, development, exploitation and operation of Parcel II of the Surigao Mineral Reservation in the province of Surigao del Norte, together with the right to extract, process, utilize and dispose of the minerals, mineral and metal products, by-products, residues and other products that may be extracted or produced or may result from such operations; furnishing at its own cost and expense all materials, labor, equipment, plants and other installations and processes that may be required for carrying on the operations authorized or necessary or incident thereto, and all operations, processes, work or acts shall be carried out at its own cost and expense. Among the considerations, it is entitled to the additional privilege provided in Article VI(5) of the Operating Contract taken from the provisions of Section 6(1) of Republic Act No. 1828, which, insofar as pertinent, reads:

> "That the operator shall, from the effective date of the contract of operation up to and including the fifth year after commencement of actual production, be exempt from all taxes, duties, fees and charges, both national and local, directly payable by it for any work or activity, equipment, machinery, materials, instruments, supplies, accessories, structures, buildings, lands, improvements and/or other pro-

period from July 15, 1977 to January 27, 1978, imposed under Section 210(b) of the National Internal Revenue Code of 1977, supra.

In denying the claim for refund, this Court, through Judge Alex Z. Reyes, made observations, among others, as follows:

> "Accordingly, we need not and do not think it necessary to discuss further the nature of the transaction tax more than to say that the incipient scheme in the issuance of Letter of Instructions No. 340 on November 24, 1975 (O.G. Dec. 15, 1975), i.e., to achieve operational simplicity and effective administration in capturing the interest-income "windfall" from money market operations as a new source of revenue, has lost none of its animating principle in parturition of amendatory Presidential Decree No. 1154, now Section 210(b) of the Tax Code. The tax thus imposed is actually a tax on interest earnings of the lenders or placers who are actually the taxpayers in whose income is imposed. Thus, "the borrower withholds the tax of 35% from the interest he would have to pay the lender so that he (borrower) can pay the 35% of the interest to the Government." (President Marcos, Times Journal, June 17, 1977 cited in Respondent's Memorandum, p. 6). Petitioner's contention that LOI No. 340 was not carried into law and therefore not a law is a profligacy of inference and Non Sequitor. We are unlikely impressed. It falls flatly in conflict with law. Instructions of the President are part of the law of the land (Art. XVII, Sec. 3(2), Philippine Constitution) and their non-observance shall not be excused by disuse (Art. 7, Civil Code of the Philippines). Suffice it to state that the broad concensus of fiscal and monetary authorities is that "even if nominally, the borrower is made to pay the tax, actually, the tax is on the

> interest earning of the immediate and all prior lenders/placers of the money". These are no mere splendiferous fustians but respectable opinions which make us hesitate to correct.
>
> We therefore uphold the correctness of the construction given the statutory grant as well as the soundness of the ruling with respect to the nature and purpose of the transaction tax imposed under Section 210(b), supra, by respondent Commissioner of Internal Revenue".

We find no cogent and valid reason to deviate, much less depart, from the conclusion reached in Marinduque Mining & Industrial Corporation, as expressed in the above-quoted opinion of the Court there, and the same should resolve the identical problem now brought before us in this proceeding. As clearly and unequivocally stated therein, the 35% transaction tax formerly embodied in Section 210(b) of the National Internal Revenue Code is an income tax on interest earnings of the lenders or placers who are actually the taxpayers. It is axiomatic therefore that the said tax cannot be a tax imposed upon and payable by petitioner (borrower). Consequently, petitioner is not the taxpayer entitled to the refund thereof in case the tax is erroneously perties directly connected with or needed and to be used exclusively in the operation, other than those provided in this Act and except those fees and charges that are imposed for work or services actually rendered to the operator: xxx xxx xxx."

Likewise, Section 53 of Presidential Decree No. 463, entitled "The Mineral Resources Development Decree of 1974" was invoked, to wit:

"Tax Exemptions. - Machineries, equipment, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals and transportation and communication facilities imported by and for the use of new mines and old mines which resume operation, when certified as such by the Secretary upon recommendation of the Director, are exempt from the payment of customs duties and all taxes except income tax for a period starting from the exploration and ending five years from the first date of actual commercial production of saleable mineral products: Provided, That such articles are not locally available in reasonable quantity, quality and price and are necessary or incidental in the proper operation of the mines."

On the basis of the foregoing provisions, the taxpayer therein sought to enforce its claim for the refund of an amount representing payments of the 35% transaction tax based on the gross amount of interest on borrowing from financial institutions during the or illegally collected. And if petitioner is <u>not</u> the taxpayer who actually made payment of the 35% transaction tax in question, it logically follows that said tax is <u>not</u> a tax payable by petitioner "in the conduct of its business and in the importation of machinery, spare parts and/or equipment listed in the stamped "ANNEX I" which were considered to be indispensable in the operations and will be used by said operator/lessee (petitioner) exclusively in its mineral land", in accordance with the terms and conditions of its certificate of qualification for tax exemption.

Petitioner Western Minolco Corporation having failed to justify its exemption from the 35% transaction tax by words too clear to be misread (Acting Commissioner of Customs vs. Manila Electric Company and Court of Tax Appeals, L-23632, June 30, 1977, 77 SCRA 469), the decision of respondent Commissioner of Internal Revenue dated February 19, 1979 denying petitioner's claim for refund of the amount of ₱1,317,801.03 representing the 35% transaction tax must have to be affirmed.

It is hardly necessary to add that the law "does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted." (Reagan vs. Commissioner of Internal Revenue, L-26379, December 27, 1969, 30 SCRA 968; Commissioner of Internal Revenue vs. P. J. Kiener Company, LTD., International Construction Corporation, et.al., L-24754, July 18, 1975, 65 SCRA 142.)

WHEREFORE, finding no merit in the petition for review, the same is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, May 21, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge