Library

CEBU PORTLAND CEMENT COMPANY,
Petitioner,

versus

CASE NO. 1113

February 8, 1964

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

This refers to a claim for refund by petitioner, Cebu Portland Cement Company, in the amount of ₱174,032.85 allegedly as overpayment of *ad valorem* tax for the period from July 1, 1959 to December 31, 1960, inclusive.

Petitioner is a government-owned and controlled corporation engaged in the production of APO portland cement. During the period from July 1, 1959 to December 31, 1960, petitioner paid the sum of ₱190,115.24 as *ad valorem* taxes imposed by Section 243 of the Tax Code based on the gross sales of its cement.

On the theory that overpayments of *ad valorem* taxes were made, petitioner requested on May 8, 1961 the respondent to refund the amount of ₱174,032.85, the difference between ₱190,115.24, and ₱16,082.39, the alleged correct amount of *ad valorem* taxes due for the period in question.

Pending decision of respondent on petitioner's claim for refund, the latter filed with this Court a petition for review on June 29, 1961, seeking the recovery of the aforementioned amount of ₱174,032.85.

The controversy in this case involves purely a question of law which is:

> Whether or not the ad valorem taxes paid by petitioner is in accordance with law.

Petitioner contends that the computation of the ad valorem taxes due from it should be based on the market value of the raw materials extracted from its mineral lands. Citing the provisions of Sections 243, 245 and 246 of the Tax Code, petitioner argues that "the gross output of petitioner's APO portland cement is the total sum of the expenses incurred in converting the raw materials extracted from its mineral lands into cement, the mineral product, before the same is removed from the factory plants." It is further argued that the "gross output" is not the "gross selling price" and that the latter should not be the basis of computing the ad valorem tax. Hence, the overpayment of ₱174,032.85.

Respondent, on the other hand, invokes our decision in the cases of Cebu Portland Cement Co. v. Commissioner of Internal Revenue, C. T. A. Case No. 706, June 21, 1961, and Republic Cement Corporation v. Commissioner of Internal Revenue, C. T. A. Case No. 947, November 10, 1962, and maintains that the ad valorem taxes assessed and collected from petitioner based on the "gross selling" price of the cement is correct.

We agree with respondent. The taxable mineral product is the finished cement. In the cases cited above which are on all fours with the case at bar, we ruled as follows:

> "It is not disputed by the parties that cement produced by petitioner company is 'almost completely derived from limestones rock.' Construing therefore, Section 246 (particularly on the meaning of 'mineral products') in relation to Sections 243 and 245, one can safely conclude that the cement in question is composed of eighty per cent of minerals and consequently falls under the classification of mineral products. Therefore, petitioner's contention that the *ad valorem* tax should have been based on the cost of production (quarrying and crushing) or rather on the cost of minerals (raw materials) before removal from the mine is without basis."

In view of the foregoing, we find that the *ad valorem* taxes assessed and collected during the period from July 1, 1959 to December 31, 1960, based on the gross selling price of cement, is in accordance with law and should not be refunded.

WHEREFORE, the instant petition for review is hereby dismissed and petitioner's request for refund in the amount of ₱174,032.85 paid as *ad valorem* taxes on its sale of cement is hereby denied. Without pronouncement as to costs.

SO ORDERED.

Manila, February 8, 1964.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge