REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

March 1, 1962

PHILIPPINE IRON MINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 294

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner seeks to recover from respondent Collector (now Commissioner) of Internal Revenue the amount of ₱18,686.00 alleged to have been erroneously paid as ad valorem tax on iron ores delivered to the former during the period from the second quarter of 1954 to the last quarter of 1955.

Petitioner, a corporation engaged in the mining and sale of iron ore, separately entered into agreements with Eco, Madarang & Co., Pedro Lamadrid, Jovito Palado, Ores, Incorporated Anastacio Calo, P. B. Dionisio, Villasan Iron Mines, Avu & Co., Fernando Suzara and Benjamina Pajarillo, who, by stipulation of the parties herein, are designated outside contractors. As further stipulated, the outside contractors, in pursuance of these contracts, delivered to petitioner iron ores mined and extracted from mineral claims owned by them.

During the years 1954 and 1955, petitioner shipped to its buyers in Japan iron ores, including the quantities of iron ore delivered by the outside contractors, on which it paid *ad valorem* tax. Subsequently, believing that it is not subject to the *ad valorem* tax provided for in Sections 243 and 245 of the Tax Code, it asked for the refund of ₱7,866.78, later increased to ₱19,004.26 as *ad valorem* tax erroneously paid on the iron ore delivered by the latter.

Receiving no reply to its request for refund, petitioner filed before this Court its petition for review to which respondent answered. In his reply to respondent's answer, petitioner prayed that the sum of ₱318.26, which corresponds to the *ad valorem* tax on iron ores delivered from its mineral claim by outside contractor Marciano Agus, be deducted from the ₱19,004.26 sought to be recovered, thereby leaving only the sum of ₱18,686.00 as the object of the instant action for refund. However, respondent, in his amended answer, seeks the payment by petitioner of ₱9,037.55 as deficiency *ad valorem* tax and surcharge for 1954 and 1955, which the parties herein finally agreed to submit to further verification, thus withdrawing it from our consideration.

In the interim, respondent denied the request for refund.

The case at bar yields the question of whether or not petitioner is entitled to the refund prayed for. And the resolution of this question turns upon the relationship of petitioner and the various outside contractors at the time the deliveries of the iron ores were made. If it is that of a seller and buyer, then petitioner is not liable for ad valorem tax on the iron ores delivered, and, therefore, the action for refund is in good order. Contrarily, should we find that the relationship between the petitioner and the various outside contractors is one of lease of service, then the petitioner is liable for the payment of the ad valorem tax in question under Sections 243 and 245 of the Tax Code and, therefore, the instant appeal is without merit.

We have perused the contracts entered into by petitioner and made integral parts of the stipulation of facts as Annexes. We observe that Annexes A and A-1, recite that the parties of the second part, who are owners of the mining claims described in the indentures, have submitted proposals to party of the first part (petitioner) "to sell iron ores mined" from the mining claims (see paragraph 2 of the premises of the Contracts), to which proposals the latter is agreeable (see paragraph 3, Ibid.). By the conditions in the Annexes, petitioner shall pay to the parties of the second part a laid down cost of all ores delivered, plus haulage. Moreover, the latter represent to petitioner that the mining claims in question are free and clear of any lien, charge or incumbrance. The proposal and the conditions stated therein were accepted by petitioner.

Annex A-2 is supplementary to Annex A-1 and treats of a proposal to sell to petitioner iron ores mined from additional mining claims. Like the first two proposals, this one was accepted by petitioner.

By Annexes A-3 and A-6 to A-10, the outside contractors, as sellers, individually "hereby offers to sell to the Philippine Iron Mines, Inc., hereinafter referred to as the Buyer", iron mines extracted from mineral claims owned by the former and described in the Annexes at prices between ₱11.50 and ₱12.00 per dry metric ton. The seller warrants that he "is vested with full authority to sell and dispose of ores" within the described mineral claims. And "all taxes x x x including mining and ad valorem taxes which now or in the future are, or may be, imposed by the Philippine Government on the operations of the Seller shall be for account of the Seller." However, the failure of the Seller to produce before the buyer (petitioner) official receipts showing payment of the corresponding ad valorem taxes shall entitle the buyer to withhold payment of ores delivered until such production.

Annex A-4 is a proposal for an extension and renewal of the contract identified as Annex A-3 to cover the sale and delivery of additional 30,000 tons of iron ore, which proposal, like those contained in the other annexes, was accepted by petitioner.

From the foregoing observations, it is clear and positive that the relationship intended by petitioner and the so-called outside contractors at the time the deliveries of iron ore were effected is one of buyer and seller. This conclusion is further bolstered by the fact that, with respect to Annexes A-3, A-4, A-6, A-7, A-8, A-9 and A-10, the parties are invariably referred to as buyer and seller. The clarity of the terms employed in the various contracts, identified as Annexes of the stipulation of facts, do not admit contrary interpretation. Hence words cannot be read into the contracts which import an intent wholly unexpressed when they were executed (see City of Manila vs. Rizal Park Co., Inc., 53 Phil. 515).

It appearing clearly and positively from the agreements, evidenced by Annexes A to A-2, A-3 to A-4, and A-6 to A-10, that petitioner is a buyer of the iron ores mined from the mineral claims of Eco, Madarang & Co., Ltd., Pedro Lamadrid and Jovito Palado, Ores, Inc., P. B. Dionisio, Villasan Iron Mines, Avu & Co., Fernando Suzara, and B. T. Pajarillo, and there being no evidence that what actually transpired was other than what was provided in the contracts, it follows that it is not liable for the payment of ad valorem taxes on said iron ores. It is neither the lessee, owner nor operator of the mineral claims in question who, under Section 245 of the Tax Code, is liable therefor. This conclusion is further strengthened by the provisions in Annexes A-3 and A-6 to A-10 that "all taxes x x x including mining and ad valorem taxes which now or in the future are, or maybe, imposed by the Philippine Government in the operations of the Seller shall be for the account of the Seller."

However, from a perusal of Annex-5, we gather that the relationship between petitioner and Anastacio Calo differs from that of the former and the other contracting parties. Annex A-5 is an agreement "for the mining and hauling of iron ores in trucks, mined and extracted from the aforestated mineral claims" (paragraph 2, Annex A-5, p. 144, CTA rec.). It is agreed that the party of the second part (Anastacio Calo) shall haul and deliver to petitioner at least 3,000 tons a month (paragraph 17, Ibid., p. 149, CTA. rec.), for which the latter agrees to pay to the former ₱8.00 for every metric ton of iron ore mined and loaded in trucks, plus a haulage.

The language employed by the contracting parties in Annex A-5 suggests the intention of the parties to create a relationship resulting from the lease of service, with petitioner as operator of mining claim and recipient of the benefits of the service. Such being the case, petitioner is liable for the payment of ad valorem tax on the iron ores delivered by Anastacio Calo in pursuance of Annex A-5.

But, respondent, in disputing the proposition that the several Annexes are for the purchase and sale of iron ores, contends that the cash vouchers and their accompanying statements (Exhs. G to G-4-a, Folder of Additional Exhibits) represent that the amounts of money indicated therein are payments for mining and hauling, thereby concluding that the agreements in the Annexes are not of purchase and sale, as urged upon us by petitioner. The question as to who is liable for the mining tax on the ores in question is determined not by what appears in the invoices but by the facts which show who is the owner, operator or lessee of the mining claims from which the ores were mined.

Furthermore, respondent alleges that the contracting parties actually received from petitioner amounts of money less than the amounts due under the contracts. Assuming this to be true, we cannot see how the contracts can be interpreted otherwise. It does not necessarily disprove the character of purchase and sale.

Finally, respondent points to the inventories of iron ores (Annexes B to B-20, Stipulation of Facts) which do not show that the iron ores come from some of the mineral claims at bar. Upon this, he theorizes that portion of the iron ores delivered to petitioner must have come from mineral claims owned and/or operated by the latter.

Petitioner and respondent have stipulated that pursuant to the contracts, Annexes A to A-10, the (so called) outside contractors delivered to petitioner iron ores mined and extracted from the mineral claims mentioned in their respective agreements (paragraph 4, Stipulation of Facts). Immediately following this stipulalation, the tons of iron ores delivered by them to petitioner are itemized. In view of these, respondent cannot now be permitted to disprove that the iron ores in question were mined and extracted from the mineral claims described in the Annexes and owned by the parties with whom petitioner had contracted.

Finding that the relationship between petitioner and Eco, Madarang & Co., Pedro Lamadrid and Jovito Palado, Ores, Incorporated, P. B. Dionisio, Villasan Iron Mines, Avu & Company, Fernando Suzara, and Benjamina Pajarillo is one of buyer and seller (see Annexes A to A-2, A-3 to A-4, A-6 to A-10), we hold that petitioner is not liable for the ad valorem tax provided in Sections 243 and 245 of the Tax Code, and, therefore, is entitled to recover the amount of ad valorem tax paid on the iron ores delivered by these sellers. However, petitioner is liable for the tax on the iron ores delivered by Anastacio Calo pursuant to Annex A-5. The amount of the tax due on the iron ore delivered by Anastacio Calo and the sum of ₱318.26, which petitioner admits to have paid on the iron ores delivered from its own mineral claim by Marciano Agua, should be discounted from the amount to be refunded to petitioner.

We note that petitioner also seeks the payment of interest on the amount to be refunded and costs. In this connection, it may be stated that the records of the case do not indicate that neither respondent nor his representatives initially demanded the payment of ad valorem tax from petitioner. On the contrary, it appears that petitioner had voluntarily kept on paying until, believing that it is not liable therefor, it claimed for refund. No arbitrariness can be imputed to respondent in the payment of ad valorem tax effected by petitioner. Consequently, respondent is not liable for interest (Carcar Electric & Ice Plant Co., Inc. vs. Collector, 53 O.G. 1068; Commissioner vs. Asturias Sugar Central, Inc., G. R. No. L-15013, August 31, 1961; Collector vs. Prieto et al., G. R. No. L-11976, August 29, 1961). Similarly, respondent is not liable for costs, there being no law providing otherwise.

WHEREFORE, the respondent Collector (now Commissioner) of Internal Revenue is hereby ordered to refund to petitioner Philippine Iron Mines, Inc., the sum of ₱18,686.00, from which shall be deducted the amount of ad valorem tax due on the iron ore delivered by Anastacio Calo pursuant to Annex A-5 of the stipulation of facts. No costs.

SO ORDERED.

Manila, March 1, 1962.

MARIANO NABLE
Presiding Judge

We concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge