Lib.

SURIGAO CONSOLIDATED MINING CO., INC.,
Plaintiff,

- versus -

MANILA CIVIL CASE NO. 4770

COLLECTOR OF INTERNAL REVENUE,
Defendant.

x - - - - - - - - - - - - - - - - x July 16, 1958

D E C I S I O N

This is an action instituted by plaintiff for the recovery of the amount of ₱17,051.14 allegedly representing overpayment of mining taxes for the fourth quarter of 1941.

On the basis of the oral and documentary evidence as well as the partial stipulation of facts (hereinafter referred to as STIPULATION) presented by the parties, the facts established in this case are summarized hereunder.

Plaintiff, Surigao Consolidated Mining Company ("Surigao Co." for short), is a domestic corporation with its principal office in the City of Manila. Before the outbreak of World War II, its principal office was located in Iloilo City. At that time, plaintiff was operating its mining concessions in Mainit, Surigao. As it had filed its bond in accordance with the requirements of Section 245 of the National Internal Revenue Code, Surigao Co. had been paying its ad valorem mining taxes within twenty days after the close of the corresponding calendar quarter on the basis of the returns it had filed of the minerals removed from the mines during said calendar quarter. In each case the tax had been computed on the basis of the market value of the minerals declared by plaintiff in its returns, subject to an adjustment that is made by it upon receipt of the smelter returns from the consignees abroad indicating the actual market value of the minerals minus the corresponding adjustments for ocean freight and insurance between the Philippines and the United States (see Section 246, Tax Code).

Due to the outbreak of World War II, Surigao Co. lost contact with its mines in Mainit, Surigao and due to the lack of communication and transportation, it failed to receive the production reports from its mines corresponding to the last quarter of 1941. However, in order to avoid incurring penalties provided for by law for late payment of taxes, plaintiff caused to be paid to or deposited with (this is disputed) the City Treasurer of Iloilo on January 19, 1942 the sum of ₱27,000.00 which was covered by Check No. 601627 of even date drawn against the current account deposit of plaintiff in the Chartered Bank of India, Australia and China of Iloilo (Exhibit "F-1", pp. 173-174, CTA rec.). The check was made payable to the City Treasurer and on the back thereof bears the following notation:

> "Indorsed in favor of the City Treasurer in payment of the ad valorem taxes (approximate adjustment to be made when circumstances allow it) for the 4th quarter of 1941".

On the back of the check (photostatic copy), there also appears the notation, "F-A-142984" and the indorsement of the City Treasurer made by and upon the signature of Margarita C. Bretaña, cashier, indorsing in behalf of the City Treasurer (see Exhibit "F", Deposition of Margarita Bretaña; "F-1" and "F-2", pp. 173-175, CTA rec.; Exh. 5, 5-A, p. 162, BIR rec.; Exh. 6 and 6-A, pp. 1 and 2, CTA rec.) The notation "F-A142984" represents the number of the official receipt issued by the City Treasurer to acknowledge receipt of the check. This check was deposited with the Philippine National Bank (Iloilo Branch) to the account and credit of the Iloilo City Treasurer and bears the stamp of the bank on the face and the back thereof.

On December 28, 1945, plaintiff filed its ad valorem tax returns for the 4th quarter of 1941 indicating therein its mining tax liability of ₱43,486.54 (Par. 1 and Annex "A", Stipulation; Exh. "H" and "I", p. 188 BIR rec.). On this amount declared as its tax liability, Surigao Co. stated in said return the application of the aforesaid ₱27,000.00 leaving an unpaid balance of ₱16,486.54 as "tax due subject to revision". On February 27, 1946, plaintiff filed an amended ad valorem tax return for the output of minerals for said last quarter of 1941 indicating an ad valorem mining tax of ₱37,189.00 (par. 1 and Annexes B, and C, Stipulation; Exhibits "B" and "2", pp. 182-186, BIR record). With this declaration or return, plaintiff attached a letter dated February 26, 1946, which in turn was accompanied by CBIAC Check No. 011762 in the sum of

₱10,189.00. This last named sum was the final payment of said liability of ₱37,189.00 after deducting from the latter sum the ₱27,000.00 referred to above. This payment of ₱10,189.00 is covered by official receipt No. J-627476 dated February 27, 1946 (Exhibit B-2, p. 172, CTA rec.). Although the copies of the receipts respectively covering the said sum of ₱27,000.00 delivered on January 19, 1942 and that of ₱10,189.00 delivered on February 27, 1946 were not presented by plaintiff to this Court, the same having been lost, defendant however, does not dispute the receipt of said amounts.

On September 24, 1946, plaintiff filed a statement of adjustments dated September 18, 1946 accompanied by a letter dated September 19, 1946 requesting the refund of the sum of ₱18,107.87 (Annex "D" and "E", Stipulation, Exhibit "C" and "C-1", pp. 178-181, BIR rec.). In another letter dated October 18, 1946 received by defendant on October 19, 1946, plaintiff presented another statement of adjustment and at the same time manifesting that its claim for refund of alleged overpaid mining taxes for the fourth quarter of 1941 has been reduced to only ₱17,158.01 (Annexes "F" and "G", Stipulation, pp. 176-177, BIR rec.). Finally, in a third letter dated March 3, 1947 and received by defendant on March 5, 1947, plaintiff indicated a further reduction of its refund claim to the amount of ₱17,051.14 (Annex "H", Stipulation; Exhibit "E", p. 175, BIR rec.). Hence, on the basis of the aforementioned statements of adjustment, plaintiff's refund claim may be simplified and summarized as follows:

(1) Overpayment of *ad valorem* tax arising from adjustment of the value of products in the shipments made between August 24, to September 30, 1941 (3rd Quarter, 1941) as covered by the first five items of Statement of Adjustment marked Annex "D" Stipulation - - - - - - - -	₱392.48	
Less: Correction as per Statement of adjustment marked Annex "E", Stipulation - - - - - - - - - -	₱106.87	₱ 285.61
(2) Overpayment of *ad valorem* tax arising from adjustment of value of products covered by shipments made between October 17 to December 19, 1941, items 6 to 11, inclusive, as appearing in Statement of Adjustment marked as Annex "D", Stipulation - - - - - - - -		₱ 914.20
(3) Overpayment of *ad valorem* tax paid on minerals with value of ₱22,335.54 allegedly shipped on Dec. 2 and lost in transit by war operations as per the 12th item of Statement of Adjustment marked as Annex "D", Stipulation - - - - - - - - - - - -		₱ 1,191.46
(4) Overpayment of *ad valorem* tax paid on mineral products with a value of ₱256,159.76 allegedly lost in the mines with a corresponding tax of ₱15,609.73, as per the 13th item of Statement of Adjustment marked Annex "D", Stipulation, minus the correction of ₱949.86 as per Statement of Adjustment, Annex "F", Stipulation or - - - - - - - - - - - -		₱14,659.87
Total Sum of Refund Claim - - - - - - -		₱17,051.14

In view of the failure of defendant to refund the amount claimed for, Surigao Co. filed a complaint against the former in the Court of First Instance of Manila on February 26, 1948. This was subsequently substituted by an amended complaint on July 12, 1951. After issues had been joined by the filing of defendant's amended answer, defendant raised the issue of the jurisdiction of the Court of First Instance. Having found that it had no jurisdiction to try the case, the said court ordered the complaint dismissed. From the said order, plaintiff appealed to the Supreme Court. The latter Tribunal in its decision of March 5, 1954 in G.R. No. L-5692 (Sorsogon Consolidated Mining Co. vs. Collector of Internal Revenue) reversed the order of dismissal and returned the records of the case to the court of origin for further proceedings. However, pursuant to Section 22 of Republic Act No. 1125, this case was remanded to this Court for final disposition.

The issues in this case may be summarized as follows :

1. Whether or not in the light of section 306 of the Tax Code this Court has jurisdiction to determine plaintiff's refund claim for taxes alleged to have been illegally or erroneously collected by defendant; and

2. Whether or not plaintiff is entitled on the merits to the refund of the afore-mentioned taxes paid.

Relative to the first question of jurisdiction, in order that a taxpayer is entitled to a refund of taxes, the taxpayer must institute the action in accordance with Section 306 of the National Internal Revenue Code which is quoted hereunder:

> "SEC. 306. Recovery of tax erroneously or illegally collected. - No suit or prodeeding shall be main-

> tained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

Pursuant to the above provision, the suit for the recovery of the tax alleged to have been illegally or erroneously collected must be instituted within two years from the date of payment of the tax. Thus, the crux of the question here involved is the "date of payment of the tax" in order to determine when the two-year period of petitioner expires. As previously stated, there is no dispute that defendant received from plaintiff two separate sums, respectively the amount of ₱27,000.00 on January 19, 1942 and the sum of ₱10,189.00 on February 27, 1946. However, defendant maintains that the ₱27,000.00 must be deemed a payment of the tax on January 19, 1942, so that a recovery of any portion thereof would be barred by prescription under Section 306. And in defendant's summary of facts of this case (see p. 4, Defendant's Memorandum) it is stated that the present action was instituted on February 28, 1948, and if considered in relation to the payment of ₱10,189.00 on February 27, 1946, it would also be argued that a recovery of any portion thereof would likewise be barred.

On the latter fact as regards the date of the institution of the suit, we believe, there has been a mere oversight of defendant. The stipulation of facts expressly indicates that the suit was instituted in the Court of First Instance on February 26, 1948 and the stamp appearing on the first page of the original complaint (Exhibit 6, p. 1, CTA record) clearly indicates that the suit was filed and instituted on February 26, 1948. Hence, we shall proceed to consider whether or not the ₱27,000.00 delivered by plaintiff to defendant on January 19, 1942 was a payment of the tax on said date within the purview of said section 306.

It is to be noted that as of January 19, 1942, plaintiff was not in a position to ascertain its tax liability and that the primary purpose of plaintiff in the transfer or delivery of the said sum of ₱27,000.00 by Surigao Co. to defendant (thru his deputy the City Treasurer of Iloilo) was to prevent the imposition of penalties for the delinquency of its mining tax should the liability thereof be subsequently ascertained. Moreover, the "payment" was made on the ad valorem tax which was merely an estimate and therefore subject to "adjustment to be made when circumstances allow it".

In the instant case, the liability for the ad valorem mining tax is based upon a return filed by the taxpayer stating the value of the mineral products extracted and produced and as such is a self-assessing tax. There being no return filed on January 19, 1942, plaintiff's tax liability was not yet defined at the time the transfer of funds was effected. Hence, the transfer or payment (in the ordinary sense) thereof was merely an ad interim arrangement to cover whatever contingencies may arise should the production reports from plaintiff's mines be subsequently obtained and its tax liability properly determined. Thus, by the transaction of January 19, 1942, the taxpayer did not discharge what it deemed its definite liability, nor pay one that is assessed or asserted by defendant. In a situation like this where the status of the same cannot be finally determined at the time transaction takes place, government accounting practice and procedure provide that the amount received be set up as deferred credits and shall "partake of the nature . . . of suspense accounts to be adjusted when the proper time for making necessary adjustment comes or, when the true nature or status of the transaction is finally known." This procedure would include such "payment by taxpayers for taxes, fees, and other dues which cannot for valid reasons, be debited at once to the proper revenue account . . . at the time they are received" (see Sections 100 and 101, Manual of Instructions to Treasurers by the Auditor General, 1939 ed., and 1954 (rev.) ed.). Such special suspense account is usually established for depositing money received when no assessment is then outstanding against the taxpayer, for as in this case, the assessment would only arise when a return is filed by the taxpayer in the character of a self-assessment thereof or an assessment (initial or deficiency assessment) is made by the government. Money received under these circumstances and in these special suspense accounts is held not as taxes paid or duly collected but as a mode to answer for the payment of taxes thereafter found to be due. This view finds support in the case of Rosenman v. United States (1945, 323 U.S. 658, 89 L. Ed. 535) involving substantially similar circumstances as the case at bar. In that case, a payment on account of an estimated tax prior to its assessment, made for the purpose of avoiding penalties and interest and held in a suspense account to the credit of the taxpayer pending assessment of the tax was held not to be a payment as is contemplated by the statutory provision which requires claims for refund to be presented within three years (in our law, two years) next after the payment of the tax.

> "But the Government contends 'payment of such tax' was made on December 24, 1934, when petitioners transferred to the Collector a check for $120,000. This stopped the running of penalties and interest, says the Government, and therefore is to be treated as a payment by the parties. But on December 24, 1934, the taxpayer did not discharge what he deemed a liability nor pay one that was asserted. There was merely an interim arrangement to cover whatever contingencies the future might define. The tax obligation did not become defined until April 1938. And this is the practical construction which the Government has placed upon such arrangements. The Government does not consider such advances of estimated taxes as tax payments. They are, as it were, payments in escrow. They are set aside, as we have noted, in special suspense accounts established for depositing money received when no assessment is then outstanding against the taxpayer. The receipt by the Government of moneys under such an arrangement carries no more significance than would the giving of a surety bond. Money in these accounts is held not as taxes duly collected are held but as a deposit made in the

> nature of a cash bond for the payment of taxes thereafter found to be due. x x x Accordingly, where taxpayers have sued for interest on the 'overpayment' of moneys received under similar conditions, the Government has insisted that the arrangement was merely a 'deposit' and not a "payment' interest on which is due from the Government if there is an excess beyond the amount of the tax eventually assessed. x x x If it is not payment in order to relieve the Government from paying interest on a subsequently determined excess, it cannot be payment to bar suit by the taxpayer for its illegal retention. It will not do to treat the same transaction as payment and not as payment, whichever favors the Government." (Rosenman vs. U.S. supra at 662, 540)

It would have probably been a stronger argument (we are not necessarily holding so) to maintain that the payment of the tax in the sum of ₱27,000.00 was deemed made on December 28, 1945 when plaintiff itself had declared, fixed and determined its mining tax liability by the filing of its return and manifested application thereon of said ₱27,000.00. However, we deem it unnecessary to make a finding in that respect, for as will be hereafter shown to be material in this case, we are confronted by a situation where the tax was not made in a single and full payment rather in installments.

Hence, even assuming arguendo that the sum of ₱27,000.00 was paid on January 19, 1942, that fact alone did not by itself start the running of the two-year period prescribed by Section 306 of the Tax Code within which a claim for refund may be instituted. For in this case, the entire tax liability of plaintiff as declared by it was in the total sum of ₱37,189.00 and the second or final payment thereof in the sum of ₱10,189.00 was made

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on February 27, 1946. Following the uniform doctrine in American jurisdictions, we have held that "when the tax is paid in installments, the prescriptive period of two years provided in Section 306 of the Revenue Code should be counted from the date of final payment." (Prieto vs. Collector, C.T.A. Case No. 77, December 29, 1956.) As we had there stated, this rule proceeds from the theory that in contemplation of tax laws, "there is no payment until the whole or entire tax liability is completely paid". Thus, a payment of a part or a portion thereof cannot operate to start the commencement of the statute of limitations. In this regard, the word "tax" stated in Section 306 of our Internal Revenue Code refers to the entire tax and not a portion thereof and the payments of the tax involving claims for refund refers to the date when all the taxes were paid and not when a portion thereof was paid (see Prieto et al vs. Collector of Internal Revenue, supra, citing cases of Clark vs. U.S. 69 F 2d 748, 94 ALR 975, cert. den. 293 U.S. 564; A.S. Krieder Co. vs. U.S. 1939, 30 F. Supp. 724; Hills vs. U.S. 50 F 2d 302 and (1932) 55 F 2d 1001; Braun vs. U.S. 8 F Supp. 860, 863). The above rule appears to have been consistently applied in several decisions subsequent to the above-cited cases which involved substantially similar or analogous circumstances to the case at bar (Union Trust Co. v. U.S., 1934, 70 F 2d 629 cert. den. 293 U.S. 564; U.S. v. Magoon, 1935, 77 F 2d 804; Marr v. U.S. 1937, 20 F Supp 206; Braun v. U.S. 1942, 46 F. Supp 993).

Hence, applying the foregoing doctrine to the instant case insofar as it refers to the mining tax for the fourth quarter of 1941, the filing of the claim for refund of such tax on September 24, 1946 and the institution of this action on February 26, 1948 were well within the two-year period counting from February 27, 1946 when the final payment was made. However, upon a close scrutiny of plaintiff's claim for refund, we note that there is also included therein the sum of ₱285.61 which actually represents the alleged overpayment of mining taxes corresponding to the third quarter of 1941 which tax had been paid under Official Receipt No. A-142822 dated October 18, 1941 (see Annex "A", Stipulation; Exhibits H and 1-A, p. 188, BIR rec.). It becomes apparent that this particular portion of the refund claim is not covered within the payment made of February 27, 1946. Accordingly, the action for the recovery thereof should have been brought within two years from October 18, 1941. After allowing plaintiff the benefits granted by Commonwealth Act No. 722, that two-year-period expired on January 11, 1947 and accordingly a suit instituted after that period for the recovery of said taxes could no longer be made. We are therefore of the opinion and so hold that except insofar as it refers to the said sum of ₱285.61 covering alleged overpayment of taxes for the third quarter of 1941, the present action for the refund of mining taxes which is in the sum of ₱16,765.53, corresponding to the fourth quarter of 1941 was filed seasonably within the purview of Section 306 of the Tax Code and accordingly is within the jurisdiction of this Court to determine.

We shall therefore proceed to consider the issue on the merits, i.e. whether or not Surigao Co. is entitled to the refund of the taxes it has allegedly overpaid. As previously discussed, the refund claim over which this Court has jurisdiction to consider is limited to the last three (3) items given in our summary of facts. We shall take up each item separately.

Claim of ₱914.20 for alleged erroneous or adjusted valuation of mineral products. - Pursuant to Section 243 of the Tax Code (quoted *infra*), the computation of plaintiff's mining tax for the fourth quarter of 1941 was based on the market value of the minerals extracted or produced from its mines which it had declared in its returns (see Exhibits 3 and 2, pp. 184-186, BIR rec.; Annex "B" Stipulation). Surigao Co. paid its tax in accordance with such declaration, but now seeks to recover the sum of ₱914.20 as alleged overpayment thereof arising from the adjustment or correction of the market value of the minerals as declared in said returns. This correction or adjustment is allegedly made to conform with the values obtained from the smelter returns received from plaintiff's consignees in the United States, after deducting the corresponding actual ocean freight and insurance allowed by Section 246 of the Revenue Code. For this purpose, plaintiff submitted its Statements of Adjustment (Annex "D"), Stipulation, more particularly items 6 to 11 inclusive thereof) which purports to show such overpayments.

Under the return filed for the mining taxes (Annexes "A" and "B", Stipulation) Surigao Co. determined its own tax liability. These were accepted and became in effect the assessment of said taxes by defendant, more so because the tax thereon has actually been paid. Hence, when a suit is instituted for the recovery of the payment of the tax or any portion thereof as having been illegally or erroneously collected, the burden is upon the taxpayer to establish the facts which shows the illegality of the tax or that the determination thereof is in face erroneous. (Compañia General de Tabacos vs. Collector, 1929, 279 US 306 aff'g 51 Phil. 154; Stone v. White, 1937, 301 U.S. 532; Helvering vs. Taylor, 1935, 293 US 507; Lewis v. Reynolds, 1932, 284 U.S. 281; Roybark v. U.S. 1954, 218 F 2d 164; U.S. v. Harris, 1954, 216 F 2d 690; Maroosis v. Smyth, 1951, 187 F 2d 228.) This doctrine appears to be settled law. Thus, in this case, Surigao Co. must show that it did not owe the money which it paid and which it seeks to recover or that every peso it recovers is unjustly withheld. It was bound to produce the best evidence available to explain the errors or inaccuracies in the values previously declared, such proof being necessary to show that the tax was overpaid. In this respect, we observe that plaintiff has failed to present the alleged smelter returns obtained from its consignees of the minerals involved or such other competent evidence so that we may ascertain the true facts of the case. These returns were available to plaintiff and it could have presented the same to support the allegations contained in the Statement of Adjustments relative thereto. The fact that plaintiff has failed to present these records gives rise to inference that the evidence if presented would be adversed to it (par. e, Sec. 69, Rule 123 of the Rules of Court). And assuming that they were not so, we cannot speculate on that finding. It may be argued that B.I.R. Revenue Agent Moises San Agustin, who was presented by plaintiff, confirmed that he had investigated plaintiff's records. He merely testified generally that the books of Surigao Co. tally with the exhibits (statements of adjustment). While he also testified as having examined the smelter returns, he did not testify that the corrected values appearing in the statements of adjustment agreed with said smelter returns. The next part of his testimony was confined to the explanation of the alleged revenue procedure of making adjustments. The general statements made by plaintiff's witnesses as regards the alleged true market values of the minerals cannot, we believe, be adequate basis to justify a finding that there has been errors made in the values previously declared which required adjustments. Consequently, we are of the opinion and so hold that, plaintiff's claim for the refund of the said sum of ₱914.20 as alleged overpaid mining tax is not meritorious and is therefore denied.

Refund claim of ₱1,191.46 as overpaid taxes on mineral products "lost in transit". - The second item sought to be refunded is the sum of ₱1,191.46, allegedly overpaid mining tax paid in mineral products which were removed from plaintiff's mines on December 2, 1941, but which were allegedly lost in transit on account of operations in World War II. That the minerals in question were extracted and produced from plaintiff's mines is not denied. But plaintiff has not presented evidence to show that the same were in fact lost, that is, the time, place, manner and circumstances of their loss. All that we have before us are the general and uncorroborated statements made by the officers of Surigao Co. that the same were lost in transit on account of the war operations. But it is to be noted that these are mere allegations of the witnesses who did not have personal knowledge of the circumstances which gave rise to the loss and consequently we cannot make a finding in that respect.

However, even assuming arguendo that there was in fact such loss in transit, we believe that Surigao Co. has no lawful basis to the refund of the taxes paid on said minerals. The liability of the Surigao Co. for the minerals it extracted or produced from its mines is governed by Sections 243 and 245 of the National Internal Revenue Code, which we quote hereunder:

> SEC. 243. Ad valorem taxes on output of mineral lands not covered by lease.-- There shall be assessed and collected on the actual market value of the annual gross output of the minerals or mineral products extracted or produced from all mineral lands, not covered by lease, an ad valorem tax, payable to the Collector of Internal Revenue, as follows:
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> x x x x

SEC. 245. Time and manner of payment of royalties or ad valorem taxes.-- The royalties or ad valorem taxes, as the case may be, shall be due and payable upon the removal of the mineral products from the locality where mined. However, the output of the mine may be removed from such locality without the prepayment of such royalties or ad valorem taxes if the lessee, owner, or operator shall file a bond in the form and amount and with such sureties as the Collector of Internal Revenue mayrequire, conditioned upon the payment of such royalties or ad valorem taxes; in which case, it shall be the duty of every lessee, owner, or operator of a mine to make a true and complete return in duplicate under oath setting forth the quantity and the actual market value of the output of his mine removed during each calendar quarter and pay the royalties or ad valorem taxes due thereon within twenty days after the close of said quarter.

In case the royalties or ad valorem taxes are not paid within the period prescribed above, there shall be added thereto a surcharge of twenty-five per centum. Where a false or fraudulent return is made, there shall be added to the royalties or ad valorem taxes a surcharge of fifty per centum of their amount. The surcharge so added shall be collected in the same manner and as part of the royalties or ad valorem taxes, as the case may be.

It will be observed from the aforecited Section 243 that the tax is "assessed and collected on . . . . minerals or mineral products extracted or produced . . . ." Hence, the tax liability accrues from the moment the minerals are extracted or produced. Although it is true that under Section 245, the tax is "due and payable upon the removal of the mineral products from the locality where mined" or in a case where a bond is filed within twenty days after the close of the quarter, such time is fixed solely to determine delinquency of the taxpayer but not the time when the liability arises.

Moreover, it should be important to note that the minerals in question had been already removed from the mines or locality where they were mined and therefore Surigao Co. was already liable for the taxes thereon. The mere fact that they were subsequently lost in transit does not by such occurrence abate the tax or exempt plaintiff from liability therefor, for nowhere in the Tax Code is the same authorized. However, plaintiff maintained that it is entitled to a refund of these taxes on the basis that the minerals have been lost by reason of war or circumstances arising therefrom. Although plaintiff does not expressly point out the basis of this claim and denied it, the only rule applicable in this regard would be that found in Section 1-d of Republic Act No. 81, which provides as follows:

> "Sec. 1-(d). All unpaid royalties, ad valorem or specific taxes on all minerals mined from mining claims or concessions existing and in force on January first, nineteen hundred and forty-two, and which minerals were lost by reason of the war or circumstances arising therefrom, are hereby condoned. Provided, That if said minerals had been or shall be recovered, by the miner or producer, such royalties, ad valorem or specific taxes on the same shall immediately become due and payable."

It will be observed that the aforecited provision condones taxes which had been unpaid at the time of the approval of the law, which taxes, refer to ad valorem taxes or specific taxes on minerals at the time of passage of this law. Plaintiff had already paid its ad valorem taxes at the time of its approval and could no longer claim the benefits under this law which merely condones the unpaid taxes. Nowhere in said Act does it provide for the refund of the ad valorem taxes already paid. The condonation of a tax liability is equivalent to and is in the nature of a tax exemption and we cannot extend its provisions for the purpose of granting plaintiff a refund of the taxes it has already paid. Consequently, we are of the opinion and so hold that Surigao Co. is not entitled to the refund of the sum of ₱1,191.46 allegedly representing the taxes paid on its mineral products which were lost in transit after removal from its mines.

Claim of the sum of ₱14,659.87 paid on minerals allegedly lost in the mines. - The minerals or mineral products herein involved had a market value of ₱237,820.69 (₱256,159.76 less the adjustment of ₱18,339.07). Plaintiff had already paid the tax thereon, but alleged that said minerals have been lost in the mines prior to its removal therefrom and it is entitled to the refund of the taxes paid.

We are again confronted with the case where plaintiff has, to our mind, failed to present adequate evidence to prove such loss. The evidence if at all, is merely limited to the general and uncorroborated statements of plaintiff's officers that the same were lost in the mines. These testimonies cannot be taken on their full face value, especially because they had no direct supervision over the handling of such minerals at the time of the alleged loss, nor of the persons in charge of the minerals at that time. Much less had these officers have personal knowledge of the loss. Under the circumstances, we cannot make the finding that the minerals were in fact lost.

However, even assuming arguendo that the minerals were in fact lost, that circumstance alone does not of itself entitle plaintiff an exemption from the tax thereon. As discussed earlier, under said Section 243, the liability of Surigao Co. for the mining ad valorem tax accrued from the moment the mineral had been extracted or produced from the mines. Consequently, the loss thereof subsequent to the extraction or production of such mines did not relieve plaintiff of liability for the ad valorem tax on the minerals in question.] It followsthat the refund claim of said taxes in the amount of ₱14,659.87 is not meritorious and we so hold accordingly.

IN VIEW OF THE FOREGOING CONSIDERATIONS, and finding that defendant had lawfully collected from plaintiff the sum of ₱37,189.00 as mining ad valorem tax due from the latter for the fourth quarter of 1941, the complaint of plaintiff for the recovery of the sum of ₱17,051.14 as alleged overpaid tax should be as it is hereby dismissed for lack of merit, with costs against plaintiff.

SO ORDERED.

Manila, July 16, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Aff'd. in G.R. No. L-14878, Dec. 26, 1963.

ROMAN M. UMALI
Associate Judge