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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CEBU PORTLAND CEMENT COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 706

June 21, 1961

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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DECISION

This involves a claim for refund by petitioner Cebu Portland Cement Company of the sum of ₱476,208.50 representing alleged overpayments of ad valorem taxes for the period from January 1, 1957 to June 30, 1959.

The petitioner herein, Cebu Portland Cement Company, is a government-owned and controlled corporation engaged in the quarrying of limestone rock which it uses in its manufacture of cement. During the period from January 1, 1957 to June 30, 1959, petitioner paid the amount of ₱502,975.28 as ad valorem taxes under Section 243 of the Tax Code, based on the gross sales of cement, minus the cost of the containers. (See Exhs. C, C-1 to C-9; B, B-1 to B-9, pp. 15-24, CTA rec.)

On the assumption that overpayments of ad valorem taxes were made, petitioner requested on October 2, 1959 the respondent to refund the amount of ₱476,208.50, the difference between ₱502,975.28, the actual amount paid and ₱26,766.78, the alleged correct amount of ad valorem taxes due for the period in question. (See p. 2, BIR rec.) However, before its claim for refund could be decided by respondent, petitioner filed the instant petition for review with this Court on October 23, 1959, seeking the recovery of the sum of ₱476,208.50.

The facts are not controverted. The issues left involve purely questions of law, which are:

1. Whether or not the ad valorem tax paid by petitioner is in accordance with law; and

2. Whether or not petitioner's claim for refund prior to October 23, 1957 has already prescribed.

In connection with the first issue, petitioner advances the theory that the ad valorem tax due from it should have been based on the cost of quarrying and crushing the limestone rock from which cement is almost completely derived; or at most, on the cost of manufacturing powdered cement; and not, as erroneously based, on the selling price of the cement. Hence, it made an overpayment of ₱476,208.50 as ad valorem taxes which should be refunded.

Respondent on the other hand contends that cement is the taxable mineral product and not the limestone rock, therefore the tax was correctly assessed and collected.

The pertinent provisions of law involved in this controversy are the following:

> 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 pro-

> duced from all mineral lands, not covered by lease, an ad valorem tax, payable to the Collector of Internal Revenue, in the amount of one and one-half per centum of the value of said output.
>
> Before the minerals or mineral product are removed from the mines the Collector of Internal Revenue or his representatives shall first be notified of such removal on a form prescribed for the purpose. (As amended by Sec. 2, Republic No. 909.)
>
> 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. x x x.
>
> SEC. 246. Definitions of the terms 'gross output', 'minerals' and 'mineral products'- Disposition of royalties and ad valorem taxes.- The term 'gross output' shall be interpreted as the actual market value of minerals or mineral products, or of bullion from each mine or mineral lands operated as a separate entity without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses: x x x. The word 'minerals' shall mean all inorganic substances found in nature whether in solid, liquid, gaseous, or any intermediate state. The term 'mineral products' shall mean things produced by the lessee, concessionaire or owner of mineral lands, at least eighty per cent of which things must be minerals extracted by such lessee, concessionaire, or owner of mineral lands.

A perusal of the afore-quoted provisions of law bear out the following outstanding guideposts: Section 243 states that the ad valorem tax should be based "on the actual market value of the annual gross output of the minerals or mineral products extracted or produced x x x;" Section 245 provides that the ad valorem taxes "shall be due and payable upon the removal of the mineral products from the locality where mined." The term "gross output" is defined by Section 246 "as the actual market value of minerals or mineral products x x x without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses x x x;" while "mineral products" shall mean things produced by the lessee, concessionaire, or owner of mineral lands, at least eighty per cent of which things must be minerals extracted by such lessee, concessionaire, or owner of mineral lands." (Underscoring provided.)

With these definitions in mind, we shall now proceed in the resolution of the first issue.

Petitioner contends that in the light of the provisions of Sections 243 and 245 of the Tax Code, the ad valorem taxes it paid are not in accordance with law because they are based on the selling price of the cement and not on the cost of quarrying and crushing the limestone rock from which cement is almost completely derived. It argues that since the aforecited sections speak of notice to the Commissioner of Internal Revenue and that the ad valorem taxes are due and payable upon removal of the mineral products from the locality where they are mined, it logically follows that the basis of the same should be the cost of production or rather the cost of the minerals before removal and not the selling price of the cement.

It is true that the said sections provide for the assessment of the ad valorem tax on the actual market value of the minerals or mineral products and that the same is collectible prior to removal thereof from the locality where mined, however, said sections do not confine the term "actual market value" to the value of the minerals or mineral products at the time and place of removal.

This conclusion is rendered more obvious when one takes into consideration Section 246 which provides in part, that:

> "The term 'gross output' shall be interpreted as the actual market value of minerals or mineral products, x x x without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses. x x x."

From the above-quoted provision, it is patent that the expenses for mining, milling, refining, transporting, handling, marketing, etc., form part of the market value of the minerals or mineral products subject to ad valorem tax. Since Section 243 is definite in stating that the ad valorem tax should "be assessed and collected on the actual market value of the annual gross output of the minerals or mineral products extracted or produced", hence, the selling price of the cement should be the basis of the tax.

"Actual market value" has been defined as:

> "x x x the price which the owner or purchaser of the goods is willing to receive for them, if they are sold in the ordinary course of trade; the price which a purchaser must pay to get them. This is common sense and reason.

> It is the popular meaning of the term, and it is also the legal meaning. Three Thousand One Hundred Nine Cases of Champagne, 23 Fed. Cas. 1168, 1172. Six Cases of Silk Ribbon, 22 Fed. Cas. 247 (See Words and Phrases, Vol. 2, p. 276).
>
> "x x x In Cliquot's Champagne, 70 U.S. (3 Wall) 114, 18 L Ed. 116, the court defines the 'actual market value' as the price at which the owner or manufacturer of goods holds them for sale; the price at which he freely offers them in the market, such price as he is willing to receive for them if they are sold in the ordinary course of trade. Twelve Hundred and Nine Quarter Casks, etc. of Wine, 24 Fed. Cas. 398, 405 (See Words and Phrases, supra)."

As could readily be seen from the definitions above, the actual market value of a good is the price for which it is bought and sold in the open market.

Applying said definition to the product in question, we arrive at the inevitable conclusion that the actual market value of the same is the selling price thereof. This conclusion is strengthened by the fact that cement falls under the classification of "mineral products" as defined in Section 246 of the Tax Code, which partly states:

> "x x x The term 'mineral products' shall mean things produced by the lessee, concessionaire or owner of mineral lands, at least eighty per cent of which things must be minerals extracted by such lessee, concessionaire, or owner of mineral lands." (Underscoring supplied.)

Much reliance has been placed by petitioner on the provision of Section 245 of the Tax Code and, in so doing, failed to appreciate an important canon of statutory construction that provisions of law should be construed together so as to give meaning and effect to each and every provision. Lawmakers did not intend to give meaning to one section and nullify the other. Seemingly contradictory provisions must be harmonized and only by reading the entire context of the law can this be attained.

It is not disputed by the parties that the cement produced by petitioner company is "almost completely derived from limestone 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 above findings, we rule that the *ad valorem* tax assessed and collected during the period from January 1, 1957 to June 30, 1959 in the amount of ₱502,975.28 is in accordance with law and should not be refunded.

Having ruled that the *ad valorem* tax was legally assessed and collected, a determination of the second issue becomes academic.

WHEREFORE, the instant petition for review is dismissed and petitioner's request for refund of the amount of ₱476,208.50 paid as ad valorem taxes on its sale of cement is hereby denied. No costs.

SO ORDERED.

Manila, June 21, 1961.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part.