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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE MANUFACTURING
COMPANY,
Petitioner,

versus

C.T.A. CASE NO. 1159

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

7/15/75

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D E C I S I O N

Petition to review the decision of respondent Commissioner of Internal Revenue dated May 5, 1961 holding petitioner Philippine Manufacturing Company liable for deficiency percentage taxes and surcharge for the period from April 1 to December 31, 1956 in the amount of ₱169,379.18 plus compromise penalty of ₱5,000.00, or a total of ₱174,379.18.

Petitioner is a domestic corporation engaged in the manufacture of lard, soap and margarine, the principal ingredient in the manufacture of which is coconut oil, which is also manufactured by it. As such, petitioner paid the sales tax on sales of lard, soap and margarine pursuant to Section 186 of the National Internal Revenue Code and the miller's tax of 2% on the coconut oil provided in Section 189 of the same Code.

After investigation of the business operations of petitioner, an assessment was made against it on December 2, 1957 in the amount of ₱192,432.23, representing deficiency percentage taxes under Sections 186 and 189 of the Revenue Code for the period from April 1 to

December 31, 1956, inclusive of surcharge as provided in Section 183 of the same Code. In due time, petitioner disputed this assessment and requested that the same be countermanded. On May 5, 1961 respondent revised his assessment by demanding the reduced sum of ₱174,379.18, broken down as follows:

Sales tax (Section 186) . .	₱132,884.86	
25% surcharge	33,221.21	₱166,106.07
Miller's tax (Section 189)	₱ 2,618.49	
25% surcharge	654.62	3,274.11
Compromise penalty		5,000.00
T O T A L.		₱174,379.18

Several attempts were made by petitioner to have the above revised assessment reconsidered but all of them were denied by respondent. It is, therefore, understandable that respondent, in his answer, raised the affirmative defense of lack of jurisdiction of this Court, alleging that the petition for review was filed beyond the statutory period of thirty days prescribed in Section 11 of Republic Act No. 1125. However, after a preliminary hearing on this issue, the Court resolved on April 15, 1966 that the petition for review was seasonably filed and that it has jurisdiction to hear and decide the case.

The various issues presented by the parties may be briefly summarized as follows:

1. Whether or not the cost of packing materials used in the manufacture and sale of coconut oil is deductible from the selling price or market value of the oil manufactured and sold by petitioner under Section 189 of the Revenue Code;

2. Whether or not the cost of certain raw materials used in the manufacture and sale of lard, soap and margarine and the 2% tax on the coconut oil used in the manufacture of such articles are deductible from the taxable gross selling price thereof for purposes of the sales tax under Section 186 of the Revenue Code;

3. Whether or not, assuming the legality of the assessment for deficiency percentage taxes against petitioner, the imposition of the surcharge of 25% provided in Section 183 of the Revenue Code is proper;

4. Whether or not the imposition of the "compromise penalty" is proper; and

5. Whether or not respondent's answer tendered specific denials of the material allegations in the petition for review of petitioner.

<u>As to deductibility of the cost of packaging materials used in the manufacture and sale of coconut oil.</u>

There is no dispute as to the amount deducted from the actual selling price or market value of the coconut oil which is broken down as follows:

Cost of containers used in the sale or marketing of oil . . .	₱128,048.19
Cost of abaca twines, bags, etc., used in export sales of oil	5,494.94
Total . .	₱133,543.13

The corresponding tax on said materials is ₱3,273.11, computed as follows:

Cost of materials and labor disallowed (represented at 102%)	₱133,543.13
Tax: ₱133,543.13 ÷ 102% x 2%	2,618.49
25% surcharge	654.62
Total amount due	₱ 3,273.11

In petitioner's memorandum, it is alleged that the 2% tax provided in Section 189 of the Revenue Code is imposed on the articles (rope, sugar, rice, coconut oil, ground or milled corn, and desiccated coconut) manufactured or milled by the proprietor or operator of the factory or mill. Consequently, containers and packaging materials, particularly where, as in this case, the miller or the manufacturer merely purchased them from others, are not a proper part of the taxable base. In other words, the position taken by petitioner milled oil is produced, but that the proper basis for the 2% tax is only the value of the article (coconut oil) which was manufactured or milled by petitioner. (Memorandum for Petitioner, p. 7; CTA rec. p. 151.)

As a tax laid on the article manufactured or milled by the proprietor or operator of the factory or mill, petitioner's view appears tenable. Nonetheless, it must give way to the specific language of the law which is controlling. In so far as pertinent hereto, the first part of the opening paragraph of Section 189 of the Revenue Code reads thus: "Proprietors or operators of . . . coconut oil mills. . . shall pay a tax equivalent to two per centum of the gross value in money of all the . . . coconut oil . . . manufactured or milled by them. . ." Then comes the crucial and decisive provision: ". . . such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: . . ." Construed together, the above provisions yield no other conclusion but that the tax imposed by Section 189 is measured by the "gross value in money" or "actual selling price" or "market value" of the coconut oil at the time of the removal from the factory or mill warehouse, and not by the mere or plain cost or value of the manufactured or milled article.

This brings us to the meaning of the terms "gross value in money", "actual selling price" or "market value". The ordinary dictionary meaning of price is the "amount of money given, or set as the amount that will be given or received, in exchange for anything; the cost at which something is obtained." (Webster's New International Dictionary, second edition, at p. 1961.) It is the sum stipulated as the equivalent of the thing sold, and also every incident taken into consideration for the fixing of the price put to the debit of the vendee and agreed to by him. (Inchausti v. Cromwell, 20 Phil. 345.) Thus, "gross selling price" or "gross value in money" of the articles sold, bartered, exchanged, or transferred, as used in the law, is the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods. (Philippine Acetylene Co. v. Commissioner of Internal Revenue, G.R. No. L-19707, August 17, 1967, 20 SCRA 1056.) The gross selling price includes all expenses incident to placing the article in a deliverable state, such as expenses of packing and transportation up to the place of delivery. (Inchausti v. Cromwell, supra; Macondray v. Adm. de Rentas Internas, 90 Phil. 123; Insular Lumber v. Collector of Internal Revenue, 98 Phil. 1012, unpub.)

It is to be admitted, as petitioner points out, that the cases cited above are not squarely in point because the law involved therein imposes a sales tax on articles sold, bartered, exchanged or transferred by the manufacturer or producer. On the other hand, the law involved in the instant case is Section 189 and the tax is on the articles milled or manufactured regardless of whether ownership thereof is transferred or not. Nonetheless, the imperative requirement of the law that the tax under Section 189 is "equivalent to two per centum of the gross value in money" of the articles manufactured or milled, "such tax to be based on the actual selling price or market value of the articles at the time they leave the factory or mill warehouse," is so clear and unambiguous that a deviation from the language of the statute cannot be permitted.

Thus, in C.T.A. Case No. 658, Victorias Milling Co., Inc. v. Commissioner of Internal Revenue, March 11, 1963, affirmed by the Supreme Court in G.R. No. L-21171, January 31, 1967, 19 SCRA 247, this Court held that the selling price or market value of sugar includes the value of the sugar bags because no delivery or withdrawal of sugar from the mill warehouse can be effected without said containers. Hence, the miller's percentage tax is collected, not only on the sugar itself, but also on the sugar bags or containers, and in justice to the proprietor or operator of the sugar central or factory, and in order to avoid double taxation on the same article, Congress has provided in Section 188(d) of the Revenue Code that no "percentage tax on sales" should be assessed against and collected from said proprietor or operator of the sugar central. And in denying the motion for reconsideration of the decision in the above-cited case, the Supreme Court in its resolution dated April 13, 1967 stated, among others, "that the tax under Section 189, being payable 'on the selling price or market value' of the sugar 'at the time it leaves the factory or mill warehouse' is as much a tax on sales as that imposed by Sections 184, 185 and 186 of the Tax Code, except as to the rate of the tax."

In the light of the above, respondent was not in error when he disallowed the amount of ₱133,543.13 as a deduction from the gross value of the oil manufactured and sold by petitioner in computing the 2% miller's tax under Section 189 of the Code.

<u>As to deductibility for purposes of the sales tax, of raw materials used in the manufacture of lard, soap and margarine, and the 2% tax paid under Section 189 of the Revenue Code</u>. -

1. <u>Materials purchased from tax-exempt industries - ₱950,771.44</u>

It appears that during the period involved in this case, petitioner bought (a) corrugated cartons from San Miguel Brewery; (b) newsboard from Philippine Paper Mills, Inc. and World Wide Paper, Inc.; (c) polythelene bags from Merchandise Promotions, Inc; and (d) tin cans from Philippine Tin Lithography, San Miguel Brewery and Chua Tiat To. All these suppliers were granted tax exemptions as new and necessary industries in respect to the manufacture of the said articles. The materials purchased by petitioner amounting to ₱950,771.44 were used by it in connection with the sale of its manufactured products.

In computing the sales tax on its sales of lard, soap and margarine, petitioner deducted from the gross selling price thereof the sum of ₱950,771.44 on the ground that the containers and packaging materials are not raw materials out of which its finished products were manufactured. Contending that under Section 186 of the Revenue Code the manufacturer is subject to the sales tax only on the articles manufactured by him, and since admittedly, the containers and packaging materials were not manufactured by petitioner and are not materials out of which the finished products were manufactured, the value thereof (₱950,771.44) does not form part of the gross selling price or gross value in money of the lard, soap and margarine manufactured and sold by petitioner. In effect, petitioner submits that since it is not the manufacturer of the containers and packaging materials, although they were sold together with the finished products, it could not be considered the original seller liable for the sales tax on the sale of said containers and packaging materials, whether the same were taxpaid or tax-exempt.

The fallacy of petitioner's position is its assumption that manufacturing refers only to the actual process of altering, combining, making or preparing raw materials into different or finished products but does not include the sale or distribution to others of the finished articles. Under Section 194(x) of the Revenue Code, a "manufacturer" subject to the sales tax "includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished product of such process of manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption." (Emphasis supplied.) The accent is on the words "to produce such finished products for the purpose of their sale or distribution to others." Accordingly, a manufacturer not only manufactures the finished article but also sells or distributes it to others in order to be subject to the sales tax. Selling or distribution to others is an essential ingredient of manufacturing. It follows that any raw material or manufactured or partially manufactured product used in the sale or distribution to others of a finished article is as much as a raw material or manufactured or partially manufactured product used in the process of actual manufacturing of such finished article.

Since articles consisting of containers and packaging materials, whether in the form of raw materials or manufactured or partially manufactured products, out of which the finished articles are sold are also raw materials out of which such finished articles are actually manufactured, it logically follows that the value of the containers and packaging materials form part of the gross selling price or gross value in money of the articles manufactured and sold by petitioner. Indeed, the sale by petitioner of its lard, soap and margarine could not be effected without containers and packaging materials. As already stated earlier, the gross selling price includes all expenses incident to placing the article in a deliverable state, such as expenses of packing and transportation up to the place of delivery. (Inchausti v. Cromwell, supra; Macondray v. Adm. de Rentas Internas, supra; Insular Lumber v. Collector of Internal Revenue, supra.) "Gross selling price" or "gross value in money" of the articles sold, bartered, or exchanged, or transferred, as used in the law, is the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods (Philippine Acetylene Co. v. Commissioner of Internal Revenue, supra), and that certainly includes the cost of containers and packaging materials.

Prior to the effectivity on June 22, 1957 of Section 186-A of the Revenue Code, which exempts the costs of raw materials purchased from tax-exempt industries used in the manufacture of finished articles, the settled doctrine was that the cost of materials purchased from tax-exempt industries was not deductible from the gross selling price of the manufactured article in which the materials were used. (Tan Chiu v. The Collector of Int. Rev., G.R. No. L-15008, Jan. 28, 1961, 1 SCRA 301; Pacific Oxygen & Acetylene Co. v. Comm. of Int. Rev., G.R. No. L-17708, April 30, 1965, 13 SCRA 622.) Considering that this case involves the period April 1, 1956 to December 31, 1956, that is, prior to the effectivity of said law, the aforestated ruling of the Supreme Court in the above-cited cases is controlling. Tax laws are of prospective effect and there is nothing in Section 186-A of the Revenue Code that provides for its retroactive application. (Philippine Manufacturing Company, Inc. v. The Collector of Internal Revenue, C.T.A. Case No. 448, Sept. 3, 1974.)

In fine, the amount of ₱950,771.44 representing the cost of containers and packaging materials purchased from tax-exempt industries and used by petitioner in connection with the sale of its products is not deductible from the gross selling price of the lard, soap and margarine for purposes of the sales tax.

2. Cost of labor, printed materials, freight, etc. - ₱727,008.42. -

Respondent's breakdown of this item, which petitioner does not dispute, is as follows:

a.	Tin can containers . . .	₱37,429.73
b.	Wooden boxes containers	37,572.61
c.	Printed materials purchased	536,413.25
d.	Freight and hauling expenses	4,440.10
e.	Tin plates plus lacquering, lithography, 17% exchange and 7% advance sales tax . .	111,152.73
		₱727,008.42

(Exh. "6", p. 91 BIR rec.)

In C.T.A. Case No. 448, Philippine Manufacturing Company, Inc. v. The Collector of Internal Revenue, September 3, 1974, involving the same parties and identical issues as the instant case, this Court ruled that from the language of Section 186 of the Revenue Code what is deductible from the gross selling price of manufacturers, like petitioner herein, is the price of materials obtained by them from manufacturers or producers thereof which are also subject to the sales tax upon sale, barter or exchange of said materials. The theory is that since the materials have already been subjected to the sales tax, they should not be again subjected to the same sales tax when used by subsequent manufacturers.

The materials covered by the law include materials used for manufacturing and marketing of the finished products. Thus, it has been held that the cost of paper bags used in the sale of ice cream is deductible (Arcega, et al. v. Commissioner of Internal Revenue, C.T.A. Case No. 574, October 30, 1964, citing La Tondeña Inc. v. Comm. of Int. Rev., C.T.A. Case No. 1017, Nov. 9, 1962). The cost of bottles, tin cans, cartons and wooden boxes used as containers of finished products has been declared by the Bureau of Internal Revenue to be deductible from the gross selling price of manufactured articles sold. (See Philippine Manufacturing Company, Inc. v. The Collector of Internal Revenue, supra.)

In the light of the above, we shall now discuss these items separately, to wit:

a. <u>Tin can containers - ₱37,429.73</u>:

As reported by the investigating examiners of the Bureau of Internal Revenue in their memorandum report (Exh. "10", pp. 14-23, BIR rec.), the total cost of labor paid to various contractors for the manufacture of tin can containers is itemized as follows:

Chua Tiat Co.	₱ 4,137.76
Phil. Tin Lithography . .	30,405.48
M. J. Gonzales	1,273.40
San Miguel Brewery . . .	1,613.09
	₱ 37,429.73

In his memorandum filed with this Court (pp. 8-9), respondent attempted to describe the manner by which these tin cans are turned into finished containers by using the evidence introduced in C.T.A. Case No. 448, Philippine Manufacturing Company, Inc. v. The Collector of Internal Revenue, decided by this Court on September 3, 1974, which, as already stated above, involved the same parties and identical issues as the instant case. In that case, this Court held that the contracts relating to the delivery to petitioner by Philippine Tin Lithography and M. J. Gonzales of tin can containers, two of the suppliers also involved in the case at bar, were obviously for service or piece work, that is, assembling the tin sheets of petitioner into cans and buckets are not contracts of sale, barter or exchange. The items therein were not, therefore, considered deductible because Philippine Tin Lithography and M. J. Gonzales are subject to the 3% contractor's tax under Section 191(18) of the Revenue Code, not to the sales tax.

In its reply memorandum (pp. 208-209, CTA rec.), however, petitioner objected vigorously to the use of such evidence arguing that under Section 41, Rule 130 of the Rules of Court, the testimony of a witness given in a former case between the same parties, relating to the same matter, may not be given in evidence unless the witness is already deceased or out of the Philippines or unable to testify. Furthermore, such testimony had not been formally offered as evidence in this case. While much stress was laid by petitioner on the thesis that respondent is presuming that conditions involved in C.T.A. Case No. 448 were the same as those involved in this case (although actually it did not say why and although the period covered by the former case was from the first quarter of 1951 to the first quarter of 1956 with this case covering the remaining quarters of 1956), petitioner has not justified the deduction of the amount involved in this item. Since an assessment is presumed to be correct and it is the taxpayer's duty to justify a deduction, the sum of ₱37,429.73 cannot be deducted for failure of petitioner to prove its claim. (Inter-Provincial Bus Co., Inc. v. Collector of Int. Rev., G.R. No. L-6741, Jan. 31, 1956, 98 Phil. 290; Perez v. Court of Tax Appeals, et al., G.R. No. L-10507, May 30, 1958, 103 Phil. 1167, unpublished; Collector of Int. Rev. v. Bohol Land Transportation Co., G.R. No. L-13099, April 29, 1960, 107 Phil. 965; see also Philippine Manufacturing Company, Inc. v. The Collector of Int. Rev., _supra_.)

b. <u>Wooden boxes containers - ₱37,572.61</u>:

The evidence presented shows that the amount of ₱37,572.61 represents purchases of wooden boxes from several suppliers, namely: Philips Woodcraft (₱11,531.50); Sarangaya (₱9,747.46); Vio Sing (₱946.50); Manila Box (₱1,483.00); Victor Oh (₱11,609.15); Perez Woodcraft (₱2,255.00). These were just plain lumber nailed together to form wooden boxes used as containers of petitioner's products. They were mere boxes without any special feature that would make them usable exclusively by petitioner.

The aforesaid suppliers appear to be ordinary manufacturers engaged in the business of supplying other manufacturers with wooden boxes. There can be no question as to the deductibility of this amount of ₱37,572.61 for it seems clear that these suppliers paid 7% sales tax for the wooden boxes they sold to petitioner. Nailing together plain lumber to form wooden boxes wherein the finished products of a manufacturer are placed obviously does not involve a contract for service or piece work subject to the contractor's tax under Section 191 of the Revenue Code.

Respondent alleges that petitioner, to be entitled to the deduction, must prove that the 7% sales tax was paid by the manufacturer of the wooden boxes since payment of the sales tax on raw materials cannot be presumed but must be proven. Whether or not the above-named suppliers paid sales tax on the wooden boxes sold to petitioner and used by the latter in the manufacture of other articles, the cost of said materials purchased by petitioner is deductible. There is nothing in the language of Section 186 of the Revenue Code that requires actual payment of the sales tax on the raw material as a prerequisite to the right to deduct the value of said material when used for manufacturing by the purchaser. The tax is presumed to be collected by the Bureau of Internal Revenue at the proper time and from the proper taxpayer - the aforesaid suppliers of petitioner in this case. (Cebu Portland Cement Co. v. Collector [now Commissioner] of Internal Revenue, G.R. No. L-20563, October 29, 1968, 25 SCRA 781.) And there is also good authority to the effect that the fact that the suppliers of petitioner did not actually pay sales tax on such materials is no reason for burdening petitioner with said tax. (Abad v. Court of Tax Appeals and the Commissioner of Internal Revenue, G.R. Nos. 20834 & 20903, October 19, 1966, 18 SCRA 374; see also Philippine Manufacturing Company, Inc. v. The Collector of Internal Revenue, supra.)

c. Printed materials purchased - ₱536,413.25:

As in the case of the tin can containers discussed above, respondent tried to use the evidence introduced in C.T.A. Case No. 448, Philippine Manufacturing Company, Inc. v. The Collector of Internal Revenue, to prove that the printed materials supplied to petitioner were made in accordance with its specifications, exclusively for its own use. It was held in that case that the making of such printed labels and stickers is essentially a printer's job and the transactions between petitioner and its different suppliers are subject to the 3% contractor's tax under Section 191(17) of the Revenue Code and not to the sales tax. The item involved therein was not, therefore, held to be deductible.

While herein petitioner, in its memorandum, objected to the use of such evidence for reasons already stated above, what it failed to observe is that, just like the item on the tin can containers, petitioner has not justified the deduction of the amount of ₱536,413.25 involved in this item. Since an assessment is presumed to be correct and it is the taxpayer's duty to justify a deduction, the item on printed materials cannot be deducted for failure of petitioner to prove its claim. (Inter-Provincial Bus Co., Inc. v. Collector of Int. Rev., supra; Perez v. Court of Tax Appeals, et al., supra; Collector of Int. Rev. v. Bohol Land Transportation Co. supra; Philippine Manufacturing Company, Inc. v. The Collector of Int. Rev., supra.)

d. Freight and hauling expenses - ₱4,440.10:

From a perusal of Section 186 of the Revenue Code it is at once patent that the cost of freight and hauling is not deductible from the gross selling price of petitioner's manufactured products. The law specifies what may be deducted from the taxable gross selling price in computing the sales tax; the cost of freight and hauling is not included. (Insular Lumber Co. v. Collector of Int. Rev., G.R. No. L-7190, April 28, 1956, 98 Phil. 1012, unpublished; Philippine Manufacturing Company, Inc. v. The Collector of Int. Rev., *supra*.)

e. Tin plates plus lacquering, lithography, 17% exchange tax and 7% advance sales tax - ₱111,152.73.

Based on the records of this case, both oral and documentary, there is no means by which the exact nature of this item can be ascertained. And neither do the records of this case show the nature of the transaction between petitioner and its supplier of tin plates. In other words, petitioner has not justified the deduction. As already stated above, since an assessment is presumed to be correct and it is the taxpayer's duty to justify a deduction, this item of ₱111,152.73, representing the cost of tin plates plus lacquering, lithography, 17% exchange tax and 7% advance sales tax, cannot be allowed as deduction for failure of petitioner to prove its claim. (Inter-Provincial Bus Co., Inc. v. Collector of Int. Rev., *supra*; Perez v. Court of Tax Appeals, et al., *supra*; Collector of Int. Rev. v. Bohol Land Transportation Co., *supra*; Philippine Manufacturing Company, Inc. v.

The Collector of Int. Rev., supra.)

3. Proportionate chemicals used in the manufacture of oil - ₱163,875.51.

This item represents the value of chemicals used in deodorizing edible oil which was erroneously deducted from the gross sales of lard, soap and margarine. Crude (coconut) oil is a raw material for cooking or edible oil, as well as for lard, margarine and soap. Before the crude oil is manufactured into cooking or edible oil, it passes through different stages of refining, re-refining, bleaching and deodorizing. Various chemicals are introduced at these stages. At each stage, certain materials or by-products, or even rejects, remain over and these are manufactured into lard, margarine, laundry and toilet soap. The finished products - edible or cooking oil and lard, margarine and soap - bear a portion of the cost of the chemicals used in processing the crude oil.

According to respondent, petitioner has deducted that portion of the chemicals used in deodorizing edible oil from the sales of lard, margarine and soap; and as estimated by his agents, such portion pertaining to edible oil is 13.33%, while that proportion properly chargeable to lard, margarine and soap is 87.67%. Applying this estimate to certain purchases or importations of chemicals made by petitioner during the period from

May to December, 1956, respondent concluded that the value of chemicals used in deodorizing edible oil which was erroneously deducted from the gross sales of lard, margarine and soap amounted to ₱163,875.51. Respondent admits that the proportion of the chemicals that was erroneously deducted from the gross sales of petitioner's lard, margarine and soap was only the estimate of his agents but avers that in "the absence of a better estimated proportion of the chemicals that were erroneously deducted in the gross sales of manufactured products of (petitioner), the estimates of said agents should stand." (Exh. 6, p. 90, BIR rec.)

Inferentially, respondent concedes that the amount of ₱163,875.51 was not based on facts and figures but on assumptions. And undoubtedly, respondent's agents did not verify whether the chemicals that were purchased or imported by petitioner were actually utilized in the manufacture of the finished products during the period covered by the assessment.

On October 25, 1961, in a letter filed with the Appellate Division of the Bureau of Internal Revenue, petitioner stated that the total amount of chemicals used in deodorizing edible oil during the period covered by the assessment was ₱13,483.00 and not ₱163,875.51 as reported by the investigating examiners. In support thereof, petitioner submitted calculation sheets, consisting of five pages, which included a flow chart of the processes for making oil, as well as the details and pertinent figures of how the amount of ₱13,483.00 was determined. (Exhs. B, B-1, B-2, B-3, B-4 and B-5, pp. 108-113, BIR rec.)

The sum of ₱13,483.00 was not based on estimates but on figures from the records of petitioner. This amount has not also been controverted by respondent. Since the onus of proving the deductible amount is on the taxpayer, and petitioner has complied with this burden, only the sum of ₱13,483.00 should be disallowed as a deduction from the gross selling price of lard, margarine and soap.

4. <u>2% tax paid under Section 189 of the Tax Code - ₱189,584.66</u>.

The amount of ₱189,584.66 represents the 2% miller's tax paid under Section 189 of the Tax Code by petitioner and which was claimed by it as part of the deductible cost in the sales of lard, margarine and soap. As already stated above, petitioner is a manufacturer of lard, soap and margarine, the principal ingredient in the manufacture of which is coconut oil, which is also manufactured by it. In computing the sales tax on lard, soap and margarine during the period covered by the assessment under question, pursuant to Section 186 of the National Internal Revenue Code, petitioner deducted from the gross selling price the amount of ₱189,584.66

representing the 2% miller's tax which it had previously paid on said oil.

It seems that the amount of ₱189,584.66 representing the 2% miller's tax was disallowed by respondent because the said "tax was paid on the basis of the market value of the coconut oil" and not on the production cost. (Exh. 6, pp. 89-93, BIR rec.) So that, inferentially, had the miller's tax been computed on the production cost and not on the market value, respondent would have allowed it as part of the "total cost" under Section 186 of the Code.

As already stated above, Section 186 of the Revenue Code imposes a percentage tax on sales by the manufacturer of lard, soap and margarine at the rate of 7% of the gross selling price of such articles. From the gross selling price, Section 186 allows deduction of the "total cost" of the raw materials used in the manufacture of said articles where such raw materials are "subject to tax under this section and section one hundred and eighty-nine." The pivotal question, therefore, with respect to this item is whether or not the term "total cost" of the coconut oil used in the manufacture of lard, soap and margarine includes the miller's tax on such coconut oil paid by petitioner under Section 189. And if the total cost of coconut oil used by petitioner in the manufacture of lard, soap and margarine includes the miller's tax paid by it, whether or not such tax should be computed on the production cost or on the market value of the coconut oil.

As far as this Court is concerned, its decision in C.T.A. Case No. 1710, Procter & Gamble Philippine Manufacturing Corporation v. Commissioner of Internal Revenue, dated October 30, 1970, involving the same parties, same facts and same issue as this case, has already foreclosed the first and crucial question involved in this item. It was held therein that the 2% miller's tax paid by petitioner under Section 189 of the Revenue Code on the coconut oil manufactured by it in its own oil mill and used by it as raw material in manufacturing lard, soap and margarine, does not form part of the deductible "total cost" of the raw material for purposes of the sales tax on the lard, soap and margarine under Section 186 of the same Code. While the case is on appeal with the Supreme Court in G.R. No. L-33425, Procter & Gamble Philippine Manufacturing Corporation v. The Commissioner of Internal Revenue, et al., in the absence of a contrary ruling of the Supreme Court on the matter, this Court is bound by its decision. With this conclusion, it is unnecessary to consider the question whether or not the miller's tax should be based on the market value or production cost of the coconut oil for purposes of the computation of the taxable gross selling price of the lard, soap and margarine manufactured and sold by petitioner. Accordingly, the amount of ₱189,584.66 representing the 2% miller's tax paid under Section 189 by petitioner on the coconut oil manufactured by it in its own oil mill does not form part of the deductible "total cost" of the raw material in the manufacture of lard, soap and margarine.

As to the legality of the imposition of the 25% surcharge. -

The imposition of the 25% surcharge for late payment prescribed in Section 183(a) of the Revenue Code is mandatory, and neither the Commissioner of Internal Revenue nor the courts may waive the same. It is enough that the tax was not paid on time in order for the surcharge to accrue, it being immaterial whether the non-payment or delay in the payment of the correct tax was due to fortuitous events or to circumstances not attributable to the taxpayer. (Lim Co Chui v. Posadas, 41 Phil. 460; Republic v. Luzon Industrial Corp., 102 Phil. 189, cited in Arcega, et al. v. Comm., C.T.A. Case No. 574, Oct. 30, 1964; Koppel v. Coll. 87 Phil. 348; see also Liddel & Co., Inc. v. Coll., 2 SCRA 632; Yutivo Sons Hardware Co. v. Court of Tax Appeals, et al. 1 SCRA 160; Phil. Manufacturing Company, Inc. v. The Coll. of Int. Rev., Supra.) Apparently, the only exception to this is when the non-payment or delay in the payment of the tax is due to circumstances attributable to the Government itself. (See National Power Corp. v. Arañas, G.R. No. L-21402, Sept. 23, 1968, 25 SCRA 91; Continental Mfg. Corp. v. Comm. of Int. Rev., C.T.A. Cases Nos. 1027, 1324 & 1351, Dec. 27, 1968; Connel Bros. v. Coll. of Int. Rev., G.R. No. L-15470, Dec. 26, 1963, 9 SCRA 738-741; Phil. Mfg. Company, Inc. v. The Coll. of Int. Rev., supra.) In the instant case, we find no such positive act or ruling of the Commissioner of Internal Revenue which caused the delay in the payment of the correct sales tax. Consequently, the imposition of the 25% surcharge is in order.

As to the compromise penalty of ₱5,000.00. -

There is no need of discussing this issue as respondent admits that "a compromise penalty cannot be imposed where the taxpayer has not agreed thereto." (See p. 18, Memorandum for Respondent.)

Whether or not respondent's answer tendered specific denials of petitioner's material allegations in the petition for review. -

Coming now to the last issue, petitioner contends that respondent's denial of paragraph 10 of the petition for review is general and not specific as required by Section 6 of Rule 9 of the Rules of Court which was applicable at the time respondent filed his answer. Such being the case, the allegations in paragraph 10 should be deemed admitted for purposes of the action.

In paragraph 10 of the petition for review, petitioner avers that respondent's decision or assessment under review "is erroneous, illegal and invalid" because:

(a) In computing the deficiency sales tax, and the surcharge incident to delinquency, on lard, soap and margarine, the following items should have been deducted from the gross selling price, to wit: (i) the cost of raw materials purchased by petitioner from tax-exempt industries; (ii) the cost of cartons, crates, cans, liners and other containers purchased from various manufacturers and used by petitioner in marketing its manufactured products; (iii) the value of chemicals used by petitioner in deodorizing edible oil; (iv) the miller's tax of 2% which petitioner had previously paid on the coconut oil used in the manufacture of its finished products.

(b) In computing the deficiency miller's tax of 2%, and the surcharge incident to delinquency, on the coconut oil manufactured by petitioner in its own mill, the cost of containers used in the local or domestic sales of oil by petitioner should have been deducted from the gross selling price or gross value in money of the oil.

(c) The inclusion of the compromise penalty of ₱5,000.00.

In paragraph 6 of the answer, respondent specifically denied all these allegations "for being mere conclusions of fact and of law", and by way of special and affirmative defense in paragraph 8 of the same answer, for the reason that his "assessment was issued in accordance with the applicable provisions of law."

Since these allegations in paragraph 10 of the petition for review merely involve the legality or propriety of the inclusion of certain items in the computation of the gross selling price for purposes of the sales tax and miller's tax, as well as the inclusion of the compromise penalty in the assessment, to our mind, the specific denial of respondent that such allegations are mere conclusions of law and that his assessment was issued in accordance with the applicable provisions of law has fully and completely advised petitioner and this Court of the nature of his defense. Except with respect to the statement that the value of chemicals used by petitioner in deodorizing edible oil is ₱13,483.00, and which is the amount disallowed by this Court, there is nothing in paragraph 10 of the petition for review which involves material allegations of fact and which, if not specifically denied, would be deemed admitted. Respondent's averment that he specifically denies all the allegations of petitioner for being mere conclusions of fact and of law and that his assessment was issued in accordance with applicable provisions of law has sufficiently set forth the substance of the matter which he relied upon to support his denial. Respondent had clearly and explicitly alleged in his answer that he intended to prove and disclose the legality, propriety and correctness of his assessment.

In resumé, petitioner is liable for deficiency sales and miller's percentage taxes, inclusive of 25% surcharge, for the period from April 1 to December 31, 1956 in the total amount of ₱154,008.20, computed as follows:

I. Cost of materials and labor disallowed (represented at 102%)	₱ 133,543.13	
Tax due - ₱133,543.13 ÷ 102% x 2%	2,618.49	
25% surcharge	654.62	
Total amount due. . . .		₱ 3,273.11
II. A. Purchases from tax exempt industries	₱ 950,771.44	
B. Cost of labor, printed materials, freight and outlaying, deducted and disallowed:		
a. Tin can containers . . . ₱ 37,429.73		
b. Printed Materials purchased . . 536,413.25		
c. Freight & hauling expenses . . 4,440.10		
d. Tin plates plus lacquering lithography, 17% exchange and 7% advance sales tax . . . 111,152.73	689,435.81	
C. Total proportionate chemicals used in the manufacture of oil forming part of gross selling price	13,483.00	
D. 2% tax paid under Section 189 included in deductible cost	189,584.66	
Total (represented at 107%)	₱1,843,274.91	
Tax due - ₱1,843,274.91 ÷ 107% x 7%	₱ 120,588.07	
25% surcharge thereon	30,147.02	
Total amount due		₱150,735.09

TOTAL deficiency sales and millers
percentage taxes due . . . . ₱154,008.20

WHEREFORE, the decision appealed from is hereby modified. Petitioner Philippine Manufacturing Company is ordered to pay respondent Commissioner of Internal Revenue, or his authorized representative, the total amount of ₱154,008.02 as deficiency sales and miller's percentage taxes, including surcharge, for the period under review. Without pronouncement as to costs.

SO ORDERED.

Quezon City, July 15, 1975.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

(22)