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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARINDUQUE MINING & INDUSTRIAL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 1932

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

MARINDUQUE MINING AND INDUSTRIAL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2061

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

3/30/84

MARINDUQUE MINING AND INDUSTRIAL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2358

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

# D E C I S I O N

Marinduque Mining & Industrial Corporation, petitioner in these three cases, poses the question of whether its importations of machineries, equipment, spare parts and supplies used in the construction, installation, operation and maintenance of its cement plant in Barrio Tagbac, Antipolo, Rizal, are covered by its tax exemption privilege as a New Mine within the purview of Section 79-A of Commonwealth Act No. 137, otherwise known as "The Mining Act", the insertion of which therein has been authorized by Republic Act No. 3823.

In pursuance of Section 306 (now Section 292) of the National Internal Revenue Code, petitioner filed with respondent Commissioner of Internal Revenue written claims for refund or tax credit in the following amounts:

(1) ₱171,706.00 and ₱103,460.00 in C.T.A. Case No. 1932 - as alleged erroneous payments for compensating tax and advance sales tax, respectively, on importations of machineries, equipment and spare parts for the period from June 3, 1966 to January 16, 1968;

(2) ₱235,691.00 in C.T.A. Case No. 2061 - as alleged erroneous payments for compensating tax on importations of machineries, equipment, spare parts and other supplies for the period from February, 1968 to July, 1968; and

(3) ₱261,745.00 in C.T.A. Case No. 2358 - as alleged erroneous payments for sales tax and compensating tax on imported equipment and/or spare parts

and kraft sacking paper for its cement plant during the period from February, 1968 to July, 1968.

After no action was seasonably taken by respondent on its claims for refund or tax credit, petitioner appealed to this Court. The three appeals are consolidated inasmuch as they raise the same issue.

The opposing parties are not in dispute on the provisions of law involved, the administrative rules and regulations promulgated thereunder, as well as the computation of the taxes paid by, or amount refundable to, petitioner as the case may be. And while petitioner was given ample time, and was granted all extensions requested by it, within which to file its memorandum in support of its claims for refund or tax credit, no memorandum was submitted by petitioner.

The undisputed facts are stated in the memorandum of respondent dated July 21, 1983:

> As alleged in the three (3) petitions filed with this Honorable Court, the facts common to all cases are as narrated herein.
>
> Petitioner is a domestic corporation engaged in mining and industrial enterprises.
>
> In line with its diversification program, petitioner put up and constructed a cement plant in Barrio Tagbac, Antipolo, Rizal. It imported machineries, equipment, spare parts and supplies for the construction, installation, operation and maintenance of its cement plant. Then, to avail itself of the provisions of Republic Act No. 3823,

it applied for tax exemption on all its aforesaid importations. Subsequently, it was granted a Certificate of Qualification for Tax Exemption (CQTE-6) which states among other things, that petitioner was granted "exemption for five (5) years from November 2, 1965 to November 1, 1970 from payment of all taxes except income tax, payable by him in the conduct of his business and in the importation of machinery, spare parts and/or equipment listed in the stamped "ANNEX 1" which were considered to be indispensable in the operations and will be used by said operator/lessee exclusively in the mineral land(s) mentioned above." (p. 2, additional BIR rec., CTA Case No. 1932, Folder I)

Notwithstanding the above privilege, however, there were levied, assessed and collected from petitioner the sums earlier enumerated. Consequently, in its letters dated March 20, 1968 (pp. 1-4, BIR rec., CTA Case No. 1932, Folder I); January 12, 1970, (pp. 1-5, BIR rec., CTA Case No. 2061); February 24, 1971, (Annex "B" of Petition for Review, CTA Case No. 2358) and October 21, 1971, (Exh. 1, p. 1, BIR rec., CTA Case No. 2358), petitioner requested from respondent the refund of the aforestated sums, on the ground that it is exempt from such taxes for which payments were effected. No action having been taken on said request, petitioner filed with this Honorable Court the three (3) instant Petitions for Review. Respondent resisted the claims on the ground that petitioner is not entitled to the exemption and, if at all, the exemption does not cover consumable articles as asserted by taxpayer.

Petitioner bases its claims for exemption from the compensating and advance sales taxes on its importations of machineries, equipment, spare parts, supplies and materials for its cement plant in Barrio Tagbac, Antipolo, Rizal, on a Certificate of Qualification For

Tax Exemption (CQTE-6) dated November 23, 1965, issued by the then Secretary of Agriculture and Natural Resources Jose Y. Feliciano upon recommendation of the then Director of Mines Fernando S. Busuego, Jr., which we reproduce:

CERTIFICATE OF QUALIFICATION
FOR TAX EXEMPTION

CQTE No. 6

TO WHOM IT MAY CONCERN:

Be it known that upon application filed by

MARINDUQUE MINING & INDUSTRIAL CORP.

operator/lessee of the mineral land in Antipolo, (Municipality) Rizal, (Province) listed in stamped "ANNEX 1" of this Certificate, the said mineral land has been ascertained to be a New Mine within the purview of Section 79-A of the Mining Act (C.A. 137, as amended), the insertion of which therein has been authorized by virtue of Republic Act No. 3823, and Mines Administrative Order V-25, in view of which this Certificate of Qualification for Tax Exemption has been issued entitling the above-named operator/lessee to exemption for five years from Nov. 2, 1965 to Nov. 1, 1970 from payment of all taxes, except income tax, payable by him in the conduct of his business and in the importation of machinery, spare parts and/or equipment listed in the stamped "ANNEX 1" which were considered to be indispensable in the operations and will be used by said operator/lessee exclusively in the mineral land(s) mentioned above.

The enjoyment of the exemption granted to the above-named operator/lessee is subject to the faithful compliance of all the requisites, terms and conditions prescribed in Mines Administrative Order V-25 dated December 3, 1963.

Given at Diliman, Q.C., Philippines, this 23rd day of November 1965.

RECOMMENDED BY:

(SGD.) FERNANDO S. BUSUEGO, JR.
Director of Mines

(SGD.) JOSE Y. FELICIANO
Secretary of Agriculture and Natural Resources

Are the importations of machineries, equipment, spare parts and supplies of petitioner Marinduque Mining & Industrial Corporation used in the construction, installation, operation and maintenance of its cement plant in Barrio Tagbac, Antipolo, Rizal, exempt from compensating and advance sales taxes under its tax exemption privilege provided for under Republic Act No. 3823?

It is to be admitted, as contended by respondent, that an exemption from taxation must be justified by words too clear to be misread (Acting Commissioner of Customs vs. Manila Electric Company and Court of Tax Appeals, L-23632, June 30, 1977, 77 SCRA 469), because the law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Reagan vs. Commissioner of Internal Revenue, L-26379, December 29, 1969, 30 SCRA 968; Commissioner of Internal Revenue vs. P.J. Kiener Company, Ltd. et al., L-24754, July 18, 1975, 65 SCRA 142). As set forth in Manila Electric Company vs. Vera, L-29987 & L-23847, October 22, 1975, 67 SCRA 351): "One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said 'to be odious to the law.' He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs.

Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County Shelby, 95 U.S. 679, 686)." Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris. (Jai-Alai Corporation vs. Collector, 106 Phil. 345; Esso Standard Eastern vs. Commissioner of Customs, L-21841, Oct. 28, 1966, 25 SCRA 488; Phil. Acetylene vs. Commissioner of Internal Revenue, L-19707, Aug. 17, 1967, 20 SCRA 1056; Commissioner of Internal Revenue vs. Guerrero, L-20942, Sept. 22, 1967, 21 SCRA 180.)

In these cases, we do not see in petitioner's Certificate of Qualification For Tax Exemption (CQTE No. 6) what may be considered as "words too plain to be mistaken and too categorical to be misinterpreted", or "clear and unmistakable terms", declaring Marinduque Mining & Industrial Corporation exempt from paying compensating and advance sales taxes on its imports of machineries, equipment, spare parts and supplies used in the construction, installation, operation and maintenance of its cement plant in Barrio Tagbac, Antipolo, Rizal. Note that what the above Certificate of Qualification for Tax Exemption exempts petitioner from, for five years from November 2, 1965 to November 1, 1970, is the payment of all taxes, except income tax, payable by petitioner on the conduct of its business and "in the importation of machinery, spare parts and/or equipment x x x x which were considered to be indispensable in the operations and will be used by" petitioner "exclusively in the mineral land(s) mentioned above; i.e., mineral land in Antipolo, Rizal, ascertained to be a New Mine within the purview of Section 79-A of the Mining Act. Reduced to simple terms, the privilege of tax free importation granted to petitioner under its certificate of qualification authorized by virtue of Republic Act No. 3823 is restricted and limited to imports which are directly related to and necessarily connected with the exploration, development and extraction of natural resources from its mineral land in Barrio Tagbac, Antipolo, Rizal, because the said mineral land has been ascertained to be a New Mine within the purview of Section 79-A of the Mining Act. The phrase "considered to be indispensable in the operations and will be used by said operator/lessee exclusively in the mineral land(s) mentioned above" is not so broad and sweeping as to include cement-manufacturing because it is conditioned upon the prerequisite that the mineral land should be a New Mine. Cement manufacturing cannot, by any stretch of the imagination, be considered a new mine, much less indispensable in the operation of a new mine.

A "new mine" as amplified in Mines Administrative Order No. V-25, Series of 1963, and Mines Administrative Order No. V-31, Series of 1970, promulgated by the Secretary of Agriculture and Natural Resources upon recommendation of the Director of Mines, is a mineral land that has never been in actual commercial production on the date of filing of the application for tax exemption, and not considered to be a continuation and/or expansion of the operation of an existing mine. Indeed, the ordinary and even jurisprudential meaning of the word "mine" is simply an excavation or pit in the earth from which ores, coal, precious stones, or other mineral substances are removed by digging or other mining methods. (Webster's New International Dictionary of the English Language; 27 Words and Phrases, 1954 Cumulative Annual Pocket Part; Acoje Mining Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1835, March 30, 1970.) From this, we cannot but extract the view that the tax exemption granted to petitioner "from payment of all taxes, except income tax, payable by him in the conduct of his business and in the importation of machinery, spare parts and/or equipment listed in the stamped 'Annex 1' which were considered to be indispensable in the operations and will be used by said operator/lessee exclusively in the mineral land(s) mentioned above" refers to taxes related to, or connected with, petitioner's privilege of exploring, developing, mining and disposing of the minerals from its mineral land in Antipolo, Rizal, which has qualified as a "New Mine" under Section 79-A of the MIning Act. In other words, taxes directed against the production or severance from the mineral land of such natural resources as oil, natural gas, ores, or the like, and the importation of machinery, spare parts and/or equipment considered to be indispensable in such operations or activities and to be used by petitioner exclusively in said mineral land.

On this point, respondent correctly argues that what was ascertained and certified to be a "New Mine" within the purview of Section 79-A of the Mining Act by the Secretary of Agriculture and Natural Resources entitling petitioner certain tax exemption privileges as operator/lessee thereof was only the mineral land, no more no less, in Barrio Tagbac, Antipolo, Rizal. Hence, in order that petitioner may avail itself of its tax exemption privilege, its imported machinery, equipment and spare parts must be used solely for mining purposes. In other words, they must be utilized for the process of extracting ores and other minerals from the soil of its mineral land. Considering that petitioner admitted in all its petitions that its imported machineries, equipment, spare parts and supplies were used for the construction, installation and operation of its cement plant, it is patently not exempt from the payment of compensating and advance sales taxes due on said importations. Since a cement plant is a manufacturing establishment, it can never be considered a "new mine" or "old mine" within the contemplation of Republic Act No. 3823. (pp. 239-241, CTA records, CTA No. 1932.)

That cement is a manufactured product, and the process involved in the production thereof is considered manufacturing and not mining, first found support in Cebu Portland Cement Co. vs. Commissioner of Internal Revenue, L-18649, Feb. 27, 1965, 13 SCRA 333. The Supreme Court, in its resolution dated December 29, 1967, stated that "while cement is composed of 80% minerals, it is not merely an admixture or blending of raw materials, as lime, silica, shale and others. It is the result of a definite process - the crushing of minerals, grinding, mixing, calcining, cooling, adding of retarder or raw gypsum. In short, before cement reaches its saleable form, the minerals had already undergone a chemical change through manufacturing process." This ruling was reiterated in the subsequent case of CEPOC vs. Commissioner of Internal Revenue, L-22605, Jan. 17, 1968, 22 SCRA 56; and still later in Republic Cement Corp. vs. Commissioner of Internal Revenue, L-20660, June 13, 1968, 23 SCRA 967. Consequently, in Commissioner of Internal Revenue vs. Republic Cement Corporation, et al., L-35668-72, L-35683; Commissioner of Internal Revenue vs. Cepoc Industries, Inc., et al., L-35677, Aug. 10, 1983, 124 SCRA 46, the Supreme Court clearly and unequivocally ruled that cement _qua_ cement was never considered as a mineral product within the meaning of Section 246 of the Tax Code, notwithstanding that at least 80% of its components are minerals, for the simple reason that cement is a product of a _manufacturing_ process and is no longer the "mineral product" contemplated in the Tax Code.

While it is to be admitted that this ruling has reference to the law imposing the _ad valorem_ tax, the pronouncement that cement is a product of a manufacturing process patently demonstrates in clear and unmistakable terms the absence of similarity or analogy of a mineral land which has been ascertained to be a new mine and a cement plant which is a manufacturing establishment. To say, therefore, that the imported machineries, equipment, spare parts and supplies used in the construction, installation and operation of. petitioner's cement plant were indispensable in the mining operations and used exclusively in the mineral land ascertained to be a New Mine in Antipolo, Rizal, is to read an exemption into petitioner's certificate of qualification for tax exemption which is not clearly intended to be so included.

We cannot ignore the principle that express mention of one exemption precludes reading others into it. (Manila Electric Company vs. Vera, L-29987 & L-23847, Oct. 22, 1975, 67 SCRA 351, citing Hoard vs. Sears, Roebuck & Co., 122 Conn. 185, 193, 188A. 269.)

The explanatory note of the house bill which later became Republic Act No. 3823, authorizing the insertion of Section 79-A of the Mining Act, furnished the motive for which the Mining Law was amended and bolsters the conclusion that a cement plant can never be considered a "new mine" or "old mine" within the tax-exemption provision of the law. The law was motivated by the desire to stimulate mine prospecting and give impetus to the development of new mining deposits. To quote:

> "This bill seeks to stimulate mine prospecting and develop new mining deposits. It will invite, encourage, and induce the general public to invest in new companies that may be formed to promote the expansion of the mining industry. It is believed that the five years' tax exemption proposed here will provide the much-needed incentive to the development of new mines which have tremendous potential. The proposed bill, if enacted, will release hoarded local capital for investment in new mines. The concessions granted by the Government will eventually produce greater returns in the form of increased national income. It might even eliminate the need for foreign capital to develop our mining potential with the exception of Surigao nickel-iron deposits.
>
> "It is also our considered opinion that a five-year period of tax exemption for the expansion or development of new mines will result in the collection of more taxes.
>
> "For these reasons, approval of the attached bill is strongly recommended."
>
> (Sgd.) LUIS HORA
> Congressman, 3rd District Mountain Province

(Explanatory Note, House Bill No. 5603).

Unquestionably, if the spirit of the law is to be followed and its objective fulfilled, the term "mineral land has been ascertained to be a <u>New Mine</u> within the purview of Section 79-A of the Mining Act", should not be given a meaning so as to include a cement plant, or cement manufacturing, for the latter is distinct and different from mine prospecting or development of new mining deposits.

Premises considered, the machineries, equipment, spare parts, supplies and materials imported by petitioner Marinduque Mining & Industrial Corporation for its cement plant are not exempt from the compensating and advance sales taxes under the provisions of Republic Act No. 3823.

WHEREFORE, the petitions for review filed in these cases are hereby dismissed, with costs against petitioner in all instances.

SO ORDERED.

Quezon City, Metro Manila, March 30, 1984.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

Alex Z. Reyes

ALEX Z. REYES
Associate Judge