REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MOBIL PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4183

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

5/21/91

D E C I S I O N

This case is about an assessment of a 25% surcharge imposed against petitioner for the breach of Section 110 of the Tax Code, as amended, infra, having failed to pay the additional ad valorem taxes on the withdrawal of petroleum products within the time prescribed.

Petitioner corporation duly incorporated under the laws of the Philippines is engaged in the marketing of aviation turbo (jet) fuel, diesel, and bunker oil to international carriers. It procures the petroleum products from the refinery of Caltex Philippines, Inc., San Pascual, Batangas and/or Bataan Refinery, Limay Bataan.

Petitioner pays the excise taxes (specific and ad valorem) due on the petroleum products withdrawn from the said refineries pursuant to the authority granted under letters dated September 1, 1983 and

November 7, 1984 of the Deputy Commissioner of Internal Revenue.

On February 11, 1987 the Board of Energy (now Energy Regulatory Board) issued BOE Resolution No. 87-02 increasing the cost recovery of the oil companies on the various petroleum products refined or marketed by them by an average of 30.2 centavos (P0.302) per liter retroactive to January 1, 1987.

On February 20, 1987 petitioner was assessed for the additional ad valorem taxes (OMTD Demand No. OP-003-87) by reason of the aforesaid resolution for product withdrawal for the month of January 1987 and which amount of P981,435.35 was paid by petitioner on March 12, 1987.

Again on March 16, 1987 BOE Resolution No. 87-03 was promulgated which further increased the existing cost of recovery of the oil companies on the petroleum products by an average of 54.7 centavos (P0.547) per liter retroactive to March 1, 1987.

On April 24, 1987, respondent sent petitioner OMTD Demand No. OP-008-87, stating, "per BOE Resolution Nos. 87-02 and 87-03 dated February 7, 1987 and March 16, 1987, respectively, the posted price of your petroleum products subject to ad valorem tax and removed from January 1, 1987 to March 31, 1987 was increased which correspondingly increased your ad valorem tax liability. More than fifteen (15) days from the date of the aforesaid BOE Resolutions have already elapsed but our records do not show that you have paid the additional ad valorem tax as a consequence thereto." Hence, the demand for the payment of P1,305,455.76 plus P326,363.94 as the 25% surcharge for failure to pay the deficiency tax due per BOE resolutions.

On May 15, 1987, petitioner paid P1,305,455.76 corresponding to the additional basic ad valorem tax but protested and refused the payment of the 25% surcharge.

Respondent denied the protest; petitioner filed the instant petition.

The case presents no dispute as to the relatively simple material facts but the parties seem trying to get the better of each other over by a quibble on the assessment for a 25% surcharge prescribed under Section 110, Tax Code, as amended, which reads:

> Sec. 110. Payment of excise taxes on domestic products - (a) Persons liable; time of payment - Unless otherwise espe-

> cially allowed, excise taxes on domestic products shall be paid by the manufacturer or producer before removal from the place of production: Provided, however, That excise tax on locally manufactured petroleum products levied under Section 128 of this Title shall be paid within fifteen (15) days from the date of removal thereof from the place of production. Should domestic products be removed from the place of production without payment of the tax, the owner or person having possession thereof shall be liable for the tax due.

Petitioner avers that the additional ad valorem tax was not paid within the 15-day period from removal of the products made subject to tax as required by Section 110, Tax Code, as amended, "because the adjustment in the tax base resulting from the adjustment of the posted price under BOE Resolutions dated February 11, 1987 and March 16, 1987 were post facto or retroactive to January 1, 1987. At that time the excise tax or ad valorem tax on the products were due (which was 15 days after removal of the products), the additional tax base was not yet in existence, hence we could not pay the appropriate tax due per BOE Resolution. Therefore, to require as (sic) to pay the 25% surcharge for payment beyond the 15-day period required in said Sec. 110, Tax Code, as amended would be unfair and arbitrary."

Respondent considers petitioner's payment of P1,305,455.76 representing the basic additional ad valorem taxes for the products withdrawal during January to March 1987 beyond the statutory limitation, thus, "The excise tax on locally manufactured petroleum products levied under Section 128 of this Title should be paid within fifteen (15) days from the date of removal thereof from the place of production (Sec. 110, supra)." Hence the imposition of the 25% surcharge for having failed compliance. The date of the removal of the petroleum products involved was deemed by the respondent to be the date of the promulgation of the BOE resolutions.

We reach the same conclusion as the respondent Commissioner of Internal Revenue since the liability for the additional ad valorem taxes arose as a consequence of the promulgation of the aforesaid BOE resolution and was determinable only at that time.

The sprouting impression broached by the petitioner that it did not pay the additional ad valorem taxes per BOE resolutions within the 15-day period from date of removal of the petroleum products as required under Section 110 on the ground that the posted price was not yet in existence, can hardly be a reassuring prospect that can readily be reconciled with the circumstances obtaining. As plainly manifested by the respondent, "the BOE Resolutions are invariably the result of notices and hearing on the petition of the oil companies, which seeks amendment of Section 128 of the Tax Code. Hence, it was the groups of oil companies, petitioner in this case being not excluded, that provide the BOE, among others, with figures used as basis in analyzing the correctness of the petition, amount of oil company recovery to be added to the current oil company taken (sic) in arriving at the posted price, increase in cost of material, cost of manufacturing, sales profits, and so forth."

It taxes credulity to think that the petitioner could still feign ignorance as to the existence of the posted price of any particular oil product and the period covered by the increase of said particular product as well as the date of issuance of the BOE Resolution Nos. 87-02 and 87-03 on February 11, 1987 and March 16, 1987, respectively. Ludicrous and expedient piffle indeed if such actual knowledge of the facts cannot be infused valid cognizance under relevant legal standards unless petitioner is unwilling to take responsibility or simply unable to discern what they are. Petitioner has stumbled on its own premise.

All told, petitioner paid the deficiency ad valorem tax in the amount of P1,305,455.76 only on May 15, 1987, more than fifteen days after the issuance of BOE Resolution Nos. 87-02 and 87-03 dated February 11, 1987 and March 16, 1987, respectively, and only after it received respondent's letter of demand dated April 24, 1987.

So it appears and We so hold that far from a comedy of errors, respondent Commissioner of Internal Revenue has not fumbled into a precipitate action in demanding the payment of P326,363.25 representing the 25% surcharge consistent with the statutory proscription. Certainly the law requires no more and expects no less.

ACCORDINGLY, petition is without merit and is hereby dismissed with costs.

SO ORDERED.

Quezon City, Metro Manila, May 31, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ERNESTO D. ACOSTA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals