REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARCELO STEEL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4311

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

10/29/91

D E C I S I O N

The question which remains to be resolved is centered on the sole issue of legality of respondent's 1982 deficiency sales tax assessment disallowing petitioner's claim for tax credit deductions on its purchases of scrap metals from its sales tax liability for the same year.

The material facts of this case are simple.

Petitioner is a domestic corporation engaged in the manufacture and sale of various steel products. By virtue of a Letter of Authority No. 0002827 NA dated May 10, 1984 sent to petitioner, respondent's examiner was able to examine petitioner's 1982 books of accounts and other accounting records for internal revenue tax purposes (p. 164, BIR rec.).

On the basis of the examiner's report of investigation, petitioner was assessed on July 15, 1987 deficiency income and business taxes for 1982 totalling to P3,002,263.51, summarized as follows (pp. 218-219, BIR rec.):

Deficiency income tax	P 51,089.60
Deficiency expanded withholding tax	7,650.29
Deficiency sales tax	2,714,636.04
Deficiency contractor's tax	7,442.47
Deficiency common carrier's tax	10,571.31
Deficiency documentary stamp tax	210,873.80
T o t a l	P3,002,263.51

Petitioner filed a formal protest dated August 24, 1987 with the Bureau of Internal. On November 4, 1988, petitioner received respondent's final decision dated October 5, 1988 upholding the deficiency income and business tax assessments except for the deficiency documentary stamp tax assessment which was modified and reduced to P153,005.95 (Annex "A", pp. 6-7, CTA rec.).

Hence this petition for review.

On the basis of the pleadings filed and the BIR records, the parties agree to submit this case for decision on the sole issue of whether or not petitioner could deduct the sales tax on its purchases of scrap irons (raw materials) used in the manufacture of steel products, from its sales tax liability.

By and large the center of discussion is now limited to the 1982 deficiency sales tax amounting to P2,714,626.04, computed as follows:

1982 Deficiency Sales Tax

Sales		P56,914,483.90
10% sales tax due thereon		P 5,691,448.39
Less: Quarterly payments.......	P2,937,340.38	
Tax credit applications	855,437.00	
Allowable tax credit..	742,045.88	4,534,823.26
Deficiency		P 1,156,625.13
Add: 25 % surcharge		28[illegible].28
Total		P 1,445,781.41
Add: 20% int. fr. 3-21-83 to 7-15-87		1,268,854.63
TOTAL AMOUNT DUE AND COLLECTIBLE		P 2,714,636.04

The rest of the deficiency income and business tax assessments for 1982 were already admitted by petitioner to be correct (Manifestation dated Nov. 6, 1989, p. 40, CTA rec.).

Petitioner assails the decision of respondent disallowing the tax credit claimed on the purchases of scrap iron used as raw materials in the manufacture of steel products. First, it contends that the BIR has previously allowed the application of tax credits on purchases of scrap iron for 1981 and prior years. Second, scrap irons gathered by petitioner's suppliers from construction projects and individual home builders still has a residual value and retains its tax paid element. Petitioner's suppliers have indicated the tax burden in their invoices. Thirdly, petitioner as buyer of scrap iron is not subject to sales tax. Respondent's recourse is on the gatherers of scrap irons. They should be considered producers subject to sales tax.

Respondent in his usual line of defense raises that all presumptions are in favor of the correctness of the tax assessments and the burden of proof rests upon petitioner to show otherwise. The assailed decision is valid being in accordance with law and evidence on record.

The issue boils down to whether or not petitioner can claim a tax credit on its purchases of scrap irons used as raw materials for the manufacture of steel products for the purpose of computing the sales tax.

Without presenting any evidence and sans any memorandum both parties agree to submit this case for decision based on the pleadings and the BIR records.

The governing provision of the National Internal Revenue Code, insofar as pertinent, provides:

> "SEC. 199. **Percentage tax on sales of other articles.** - There shall be levied, assessed and collected once only on every original sale, barter, exchange and similar transaction either for nominal or valuable, consideration intended to transfer ownership of, or title to, the articles not covered in Sections 194, 195, 196, 197, 198 and 201, a tax equivalent to ten (10%) per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: **Provided,** that any percentage, specific or mining tax paid under this title, Title IV or Title VII, respectively, on domestically manufactured, processed or produced, or imported raw material, part, accessory or other article forming part of the finished product shall be credited against the sales tax due on the finished product: **Provided, however,** That in case the total tax paid on the raw material, part, accessory or other article exceeds the amount of the sales tax due on the finished product, the excess shall be credited against the sales tax liabilities of the manufacturer for the succeeding taxable quarter: **And Provided,** further, That the amount of the tax on the raw material, part, accessory, or other article shall be indicated as a separate item in the sales invoice.
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> xxx xxx xxx.
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> xxx xxx xxx.
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> (As amended by P.D. No. 1358)"

It seems apparent that respondent in his ruling of July, 1961 has this to say:

> "Sales Tax - Cost of raw materials, deductibility of. - The cost of locally purchased scrap iron used in the manufacture of steel bars and billets is deductible from the gross selling price of the latter, scrap iron and steel bars and billets being subject to the same rate of sales tax (7%)." (BIR Ruling No. 226, s. 1961. See also BIR Ruling No. 233, s. 1961.) [p. 4, Vol. VI IRB No. 7 (1961)]

Likewise, petitioner invokes another unnumbered BIR Ruling dated August 30, 1968, heretoforth quoted as follows:

> "August 30, 1968
>
> Mr. Lincoln T. Yabut
> Suite 309-3rd Floor
> Manhattan Building
> 413 Nueva St., Manila
>
> Sir:
>
> This refers to your letter dated August 23, 1968 stating that your client is a manufacturer of steel products; that in the manufacture of steel washers the subject taxpayer use steel plates, G.I. sheets and scrap iron as raw materials which it procures from certain suppliers, like the Rheem of the Philippines, Inc. and other factories having similar business of steel manufacturing.
>
> Under the foregoing facts, you now meant to be informed whether or not the cost of the raw materials which have been previously subject to the sales tax is deductible by your client for purposes of determining his sales tax.

> In reply thereto, I have the honor to inform you that under Section 186 of the Tax Code, where the articles subject to the tax under said section are manufactured out of materials likewise subject to tax under same section, the total cost of such materials, as duly established, is deductible from the gross selling price of the manufactured articles. Accordingly, the cost of steel plates, G.I. sheets and scrap iron used in the manufacture of steel washers is deductible from the gross selling price for sales tax purposes <u>provided that the cost is supported by the corresponding invoices and that the invoices indicate the rate of tax to which the raw materials have been subjected pursuant to Revenue Regulation No. 5-65.</u> (Emphasis Ours.)
>
> Very truly yours,
>
> (SGD.) MISAEL P. VERA
> Commissioner of Internal Revenue"

Growing out and on the basis of the foregoing BIR rulings, petitioner seeks to enforce its claim that it can deduct from its sales tax liability tax credit on its purchase of scrap irons used as raw materials in the production of steel bars. It was further alleged that respondent had previously allowed this practice of petitioner.

The controverted assessment had for its basis the revenue examiner's report of investigation relevantly summarized as follows: (1) for purposes of computing the sales tax, the net sales appearing in the books of petitioner was deemed to be the correct figure compared to the net sales appearing in the sales tax return; and (2) the tax credit on local purchases was reduced and adjusted as a result of the random sampling conducted on the purchase invoices which disclosed that most of the purchases consist of scrap metals or steel from which sales taxes were imputed. (p. 203, BIR rec.).

There is no question that petitioner can claim as a deduction from its sales tax liability sales taxes paid on raw materials forming part of the finished product. Subject only to the limitation provided under Section 199 and the above-cited rulings that the sales tax paid on the raw material purchases must be indicated as a separate item in the sales invoice.

The burden lies on the petitioner to show proof that sales taxes paid on its purchases of scrap irons were separately indicated in the invoices. Petitioner failed to present any evidence to support its claim. It is an elementary rule in procedural law that "each party must prove his own affirmative allegations". **(Wigmore on Evidence, 3rd Ed., sec. 2485, p. 271.)** Equally, in point is the maxim ei incumbit probatio qui dicit, non qui negat - the burden of proof is on him who avers, not on him who denies. **(U.S. v. De la Torre, 42 Phil. 65.)**

The best that petitioner could have done was to present as evidence the invoices of its purchases of scrap irons and other raw materials with sales taxes paid thereon. At this juncture, it may also be stated that petitioner's claim for tax credit of P1,929,151.76 should have been substantiated by proof. As computed by respondent only the amount of P742,045.88 was allowed as tax credit deduction. The least that petitioner could have done was to prove the remaining tax credit of P1,187,105.88 disallowed by respondent representing the tax credit on purchases of scrap irons used.

Petitioner has not proven by any affirmative evidence the irregularity or unlawful conduct of the examiner. Having waived its right to present evidence, petitioner failed to discharge its burden judicially. Thus, the presumption of regularity in the performance of official duties is in favor of the examiner. **(Rule 131, Sec. 3(m), Revised Rules** of Court, U.S. v. Escalante, 36 Phil. 743.) All presumptions are in favor of the correctness of the assessment made by the Commissioner of Internal Revenue, the taxpayer must prove the contrary. **(Commissioner of Internal Revenue v. Antonio Tuason, Inc., 173 SCRA 397; Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.).** The burden of justifying a deduction lies in the taxpayer. **(ESSO Standard Eastern, Inc. v. Commissioner of Internal Revenue, 175 SCRA 149; Commissioner of Internal Revenue v. Algue, Inc., 158 SCRA 9.)** In the case at bar, petitioner-purchaser has the burden of proof to show that all prescribed requisites for tax sale were complied with. **(see Francia v. Intermediate Appellate Court, 162 SCRA 753.)**

Again it may be necessary to repeat what the Supreme Court has said in the case of **Bonifacia Sy Po v. Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. L-81446, August 18, 1988**, that -

> Where the taxpayer is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability by a full and fair disclosure of all pertinent

> data in his possession. Otherwise, if, the taxpayer confines himself to proving that the assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession.

A careful scrutiny of the records of respondent shows that indeed the proper amount of net sales should be P56,914,483.90 as appearing in the books of petitioner instead of P57,219,291.37 per its 1982 sales tax return. Likewise, respondent properly deducted from petitioner's 10% sales tax liability of P5,691,448.39 payments for the second, third and fourth quarters of 1982 totalling to P2,937,340.38 which were supported by confirmation receipts (pp. 190, 180, 178, 174 BIR rec.). Petitioner's tax credit applications for the first and second quarter of 1982 totalling P855,437.00 were also properly allowed as a deduction from its sales tax liability as shown in the BIR records (see pp. 190, 182, 172 BIR rec.).

The Court is unable to find that petitioner has borne its burden of proof, and therefore finds respondent's decision to be well founded and the same is hereby affirmed.

WHEREFORE, the petition for review is hereby dismissed with costs against petitioner. Petitioner **MARCELO STEEL CORPORATION** is ordered to pay respondent **Commissioner of Internal Revenue** the amount of P2,714,636.04, representing its 1982 deficiency sales tax inclusive of deficiency surcharge and interest, plus 25% surcharge for late payment and 20% annual interest from October 5, 1988 until fully paid, pursuant to Sections 282 and 283 of the National Internal Revenue Code as amended by Presidential Decree No. 1994 which took effect on January 1, 1986.

SO ORDERED.

Quezon City, Metro Manila, October 29, 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