Republic of the Philippines
COURT OF TAX APPEALS
Manila

PHILAM MINING, INC.,
Petitioner,

- versus -

C.T.A. CASES NOS. 937, 1138 and 1160

HON. MELECIO R. DOMINGO,
Commissioner, Bureau of Internal Revenue,
Respondent.

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D E C I S I O N

The above-entitled cases are appeals from the decisions of the respondent denying the claims for refund of the sales tax paid by the petitioner on its sales of crushed rocks. The three cases were jointly heard by agreement of the parties.

The petitioner is the lessee or concessionaire of the rock quarry belonging to the Talim Quarry Co., Inc. situated in Cardona, Rizal. It secures the rocks from the quarry by "light blasting and barring down with steel bars." The broken rocks are further broken into smaller pieces by manual labor for feeding into crushers to be washed, grounded and sized to specifications. It paid sales tax on its sales of such crushed rocks. Contending that crushed rocks are mineral products and therefore exempt from the sales tax under Section 188 (c) of the National Internal Revenue Code, it filed the corresponding claims for refund. The claims for refund having been denied, petitioner has appealed.

In C.T.A. No. 937, petitioner is seeking the refund of ₱17,067.10, representing sales tax on sales of

137

crushed rocks from February 11, 1959 to November 20, 1959. In this case, respondent claims that the appeal was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125, hence, the appeal should be dismissed for lack of jurisdiction. Respondent also alleges that of the amount sought to be refunded, the sum of ₱1,036.50 was paid not by petitioner but by the Luzon Stevedoring Corporation; it is not, therefore, the proper party to claim the refund of said amount.

In C.T.A. No. 1138, the amount sought to be refunded is ₱7,806.13, representing the sales tax paid from December 21, 1959 to June 20, 1960.

In C.T.A. No. 1160, the amount sought to be refunded is ₱19,250.72, representing sales tax paid from July 20, 1960 to July 21, 1961. In this case, respondent claims that certain payments allegedly made by petitioner do not correspond to those paid by petitioner.

The claims for refund involved in the above-entitled three cases were denied by respondent mainly on the ground that crushed rocks are not mineral products and the sales of which are not exempt from the sales tax under Section 188(c) of the Revenue Code. In the event that they are held to be mineral products, it is alleged that petitioner should be held liable for the mining tax of 1½% of the gross value of said products under Section 243 of the Revenue Code.

In connection with C.T.A. No. 937, respondent

134

alleges:

> Petitioner's claim for refund in this case was filed with the respondent on December 9, 1959, (Exh. 1, Respondent, BIR Rec., pp. 14-16, CTA 937.) Respondent denied this claim for refund in his letter to petitioner dated January 7, 1960. (Exh. 2, Respondent, BIR Rec. p. 21, C.T.A. No. 937.) As shown by the Registry Return Receipt (Exhs. 2-A and 2-B, Respondent, BIR Rec. p. 22, CTA 937), the aforesaid letter of denial was received by the petitioner on February 10, 1960. However, the petition for review in C.T.A. Case No. 937 was filed with this Court on August 29, 1960, or after the lapse of 199 days from petitioner's receipt of respondent's decision. True, petitioner asked for a reconsideration of respondent's decision but even that was filed after the lapse of 36 days from notice of the decision sought to be reconsidered. (Exhs. 3 & 3-A, Respondent, BIR Rec. pp. 23-24, CTA 937.)

The facts stated above are not disputed by petitioner. Therefore, we agree with respondent that the appeal in C.T.A. No. 937 must be dismissed for lack of jurisdiction.

The principal issue raised in the three cases is whether or not crushed rocks are mineral products. In the affirmative, the sales tax on the sales of such products were erroneously or illegally paid and petitioner is entitled to the refund thereof minus the corresponding mining tax. In the negative, the sales of such crushed rocks are subject to the sales tax and the claims for refund must be denied.

Section 188(c) of the Revenue Code exempts from the sales tax sales of minerals and mineral products if made by the lessee, concessionaire or owner of the mineral land from which removed. The word "minerals" means all inorganic substances found in nature whether in solid, liquid, gaseous, or any intermediate state. The term "mineral products" means 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. (Sec. 246, Rev. Code.) Section 7 of the Mining Act defines "minerals" as including "all inorganic substances found in nature in solid, liquid, gaseous or any intermediate state," but does not include "soil which supports organic life, . . . gravel, sand and stone which are used for building or construction purposes."

From the foregoing definitions of "minerals" and "mineral products" it appears clear that crushed rocks for use in building and construction purposes, such as those produced and sold by petitioner, are not "minerals" or "mineral products" within the meaning of Section 188(c) of the Revenue Code, because they are not minerals or mineral products under the Mining Act and are not subject to the mining tax. The records show that the quarry from which the rocks were obtained by petitioner was not registered with the Mining Recorder as a mining claim and no mining tax was paid on such rocks.

The minerals and mineral products which are exempt from the sales tax under Section 188(c) of the Revenue Code are those which are obtained from mineral lands and are subject to the mining tax provided in Title VII of the Revenue Code. The reason for the exemption is that the mining taxes "appear to be adequate as a means of taxing the mining industry."

> Under this section, it is proposed further to exempt from the sales tax, sales and consignments of minerals and mineral products by the lessee, concessionaire, or owner of the mineral lands from which removed, because the rates proposed under special mining taxation appear to be adequate as a means of taxing the mining industry. Minerals and mineral products extracted from mineral lands covered by lease are subject under another section to a royalty of 1½% of the actual market value of the gross output thereof, and those extracted from mineral lands not covered by lease are subject to an ad valorem tax of 1½% of the actual market value of the annual gross output of the minerals or mineral products extracted or produced from the mineral lands. x x x. In addition to the royalty above stated, the lessee of the mineral lands pays a rental of ₱1 per hectare or fraction of a hectare of the mineral lands leased. It seems fair and just, therefore, that sales and consignments of minerals and mineral products by the lessee, concessionaire, or owner of mineral lands should be exempt from the sales tax. (Vol. II, Report of the Tax Commission of the Phil. on National Internal Revenue Taxes, Feb., 1939, pp. 202-20 3.)

The crushed rocks produced and sold by petitioner during the period under review not being minerals or mineral products which are subject to the mining tax, the sales thereof are not exempt from the sales tax under Section 188(c) of the Revenue Code. Accordingly, we find it unnecessary to pass upon the other issues raised by respondent.

WHEREFORE, the appeal in C.T.A. No. 937 is hereby dismissed for lack of jurisdiction, and the decisions of respondent appealed from in C.T.A. Nos. 1138 and 1160 are hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, May 29, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

1/2