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CEPOC INDUSTRIES, INC.,
(Formerly Cebu Portland
Cement Company),
Petitioner,

versus

C.T.A. CASE NO. 2057

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

July 29/72

D E C I S I O N

This case is an offshoot of C.T.A. Case No. 1113 entitled Cebu Portland Cement Co. v. Commissioner of Internal Revenue, later appealed to the Supreme Court as G.R. No. L-22605. In that case the petitioner herein, formerly called Cebu Portland Cement Co., a government-owned and controlled corporation, was engaged in the making of APO portland cement. Admittedly, cement is at least 80% composed of limestone, silica and shale - raw materials which petitioner quarried from its own mineral lands.

For the period from July 1, 1959 to December 31, 1960, petitioner realized from its gross sales ₱13,924,415.80. The Commissioner of Internal Revenue then levied and collected from petitioner ₱190,115.24 as *ad valorem* tax under Section 243 of the Tax Code using as basis therefor the amount of gross sales minus ₱1,188,248.56, the cost of cement bags.

Petitioner paid the ₱190,115.24 assessment under protest and on May 8, 1961 sought refund of ₱174,032.85 on the theory that the *ad valorem* tax should be based on the cost of the raw materials, which was ₱1,072,159.28. On June 29, 1961, without waiting for the resolution of said claim for refund, petitioner sought its redress in this Court which denied the refund on February 8, 1964. Petitioner appealed to the Supreme Court which ruled against respondent Commissioner of Internal Revenue, however reducing the amount to be refunded.

On March 4, 1968, after the promulgation of the aforesaid decision of the Supreme Court, respondent assessed petitioner in the sum of ₱1,114,414.64 as deficiency sales tax and surcharge for the period from July 1, 1959 to December 31, 1960, computed as follows:

Sales from July 1, 1959 to December 31, 1960	₱13,924,415.80
Less: Cost of containers. .	1,188,248.56
	₱12,736,167.24
7% sales tax due thereon . .	891,531.71
25% surcharge thereon . . .	222,882.93
Deficiency sales tax and surcharge due and collectible	₱ 1,114,414.64

In a letter dated March 18, 1968, petitioner protested the assessment on the ground that its sale of cement during the aforesaid period is not subject to sales tax and that at any rate the assessment in question was made after the right to issue same had prescribed. This protest was denied by respondent on November 4, 1969. Hence, the present appeal.

The issues submitted to this Court for resolution are:

> 1. Whether petitioner's cement is a mineral product within the purview of the provisions of Section 246 of the Tax Code or a manufactured product subject to sales tax in accordance with the provisions of Section 186, in relation to Section 194(x) of the same Code; and
>
> 2. Whether or not respondent's right to issue the deficiency sales tax for the period in question has already prescribed.

The first issue presented in this appeal is not new. In the case of Philippine Pipes & Merchandising Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 1858, this Court in its Amended Decision, dated July 28, 1970, ruled that cement is a mineral product and, hence, not subject to sales tax. We reiterated this ruling in Republic Cement Corporation v. Commissioner of Internal Revenue, CTA Case No. 2020, Filipinas Cement Corporation v. Commissioner of Internal Revenue, CTA Case No. 2021, APO Cement Corporation v. Commissioner of Internal Revenue, CTA Case No. 2022, Bacnotan Cement Industries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 2023, Rizal Cement Company, Inc. v. Commissioner of Internal Revenue, CTA Case No. 2024 and Philippine Portland Cement Co., Inc. v. Commissioner of Internal Revenue, CTA Case No. 2027. We quote hereunder the pertinent portion of the decision in this group of cases since the same covers the arguments presented by the parties in the present appeal:

> The first issue involves interpretation of Section 246 of the National Internal Revenue Code as amended by Republic Act No. 1299 that took effect on June 16, 1955, and Section 188(c) of the same Code. The original text of Section 246 runs as follows:
>
> > SEC. 246. Definition of the term "gross output". — The term "gross output" shall be interpreted as the actual market value of minerals or mineral products, or of bullion from each mine or mineral lands operated as a separate entity without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses: Provided, however, that if the minerals or mineral products are sold or consigned abroad by the lessee or owner of the miner under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted. The output of any group of contiguous mining claims shall not be subdivided. All the royalties or ad valorem taxes herein provided shall accrue to the National Treasury.
>
> As amended by Republic Act No. 1299, Section 246 now reads as follows:
>
> > SEC. 246. Definitions of the terms "gross output," "minerals" and "mineral products" - Disposition of royalties and ad valorem taxes. - The term "gross output"

> shall be interpreted as the actual market value of minerals or mineral products, or of bullion from each mine or mineral lands operated as a separate entity without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses: Provided, however, That if the minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted. The output of any group of contiguous mining claims shall not be subdivided. The word "minerals" shall mean all inorganic substances found in nature whether in solid, liquid, gaseous, or any intermediate state. The term "mineral products" shall mean 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. Five per centum of the royalties and ad valorem taxes herein provided, shall accrue to the municipality where the mines are situated, and ninety-five per centum to the National Treasury.

Needless to say, while the original text does not define the word "minerals" and the term "mineral products" the amendment defines them.

Section 188(c), before same was amended by Republic Act No. 4888 which took effect on June 17, 1967, reads as follows:

SEC. 188. Transactions and persons not subject to percentage tax. - x x x

x x x x x

(c) Minerals and mineral products when sold, bartered or exchanged by the lessee, concessionaire, or owner of the mineral land from which removed.

The amendment made by Republic Act No. 4888 consisted in the insertion to the original provision of Section 188(c) of the phrase "whether in their original state or not" after the word "products."

Petitioners contend that since cement is admittedly composed of 80% minerals extracted by petitioners as lessees or concessionaires or owners of mineral lands, it is therefore a mineral product in accordance with the provisions of Section 246 of the National Internal Revenue Code and is thus exempt from the sales tax under the provisions of Section 188(c) of the same Code. In support of their position, petitioners cite Cebu Portland Cement Co. v. Commissioner of Internal Revenue, G.R. No. L-20563, October 29, 1968 (25 SCRA 789), and Philippine Pipes and Merchandising Corporation v. Commissioner of Internal Revenue, CTA Case No. 1858, July 28, 1970.

Respondent for his part, citing Cebu Portland Cement Co. v. Commissioner of Internal Revenue, G.R. No. L-18649, February 27, 1965 (13 SCRA 333), and Cebu Portland Cement Co. v. Commissioner of Internal Revenue, G.R. No. L-220605, January 17, 1968 (22 SCRA 56), urges that cement is not a mineral product in the contemplation of Section 246 aforesaid but is a distinct product, having substantially undergone a chemical transformation through a manufacturing process, hence is not exempt from the sales tax under the provision of Section 188(c) of the Revenue Code. In support of his contention, respondent quotes the following excerpts from G.R. No. L-18649 and G.R. No. L-22605:

> . . . The dispute here arose, however, from the construction given to the term mineral products, which was defined in Section 246 of the Tax Code as, "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." Respondent argues that since the portland cement produced by petitioner consists of 80% minerals quarried from its mines, such cement falls within the definition of a mineral product and the imposable *ad valorem* tax should be based on its selling price which is its actual market value.
>
> This line of argument suffers from two infirmities: First, 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 could not have been the state of "mineral products" that the law contemplates for purposes of imposing the *ad valorem* tax. . . (G.R. No. L-18649.)
>
> The parties here have assumed that cement is a mineral product

> within the purview of Sec. 243 of the Tax Code. Our view is otherwise. As we expressed it in Cebu Portland Cement Co. vs. Commissioner, L-18649, February 27, 1965, cement qua cement is no longer a mineral product in the condition envisaged by the Tax law. Very recently We reiterated and re-affirmed this stand thru Justice J.B.L. Reyes when We denied a plea to reconsider the original decision rendered therein.
>
> It results that Sec. 243 of the Tax Code cannot be applied directly to cement. What is taxable thereunder are the minerals constituting cement, i.e., limestone, silica and shale. Hence, the correct basis of the 1½% _ad valorem_ tax is the market value of the quarried raw materials. (G.R. No. L-22605.)

It is easier to grasp the legal implications of the foregoing excerpts if they are read in the context of the resolution of the Supreme Court in G.R. No. L-18649, December 29, 1967, the pertinent portion of which reads as follows:

> . . . And we sustained the position of the cement company, i.e. that the _ad valorem_ tax in question should be based on the actual market value of the _quarried minerals_ used in producing cement, reasoning that cement (as distinguished from the original minerals used to produce it) is the result of a process, and that the same "could not have been the _state_ of mineral products contemplated by the law" for the purpose of imposing the _ad valorem_ tax. The necessary corollary of this pronouncement is that the law intended to impose the _ad valorem_ tax upon the market value of the component mineral products in

their _original state_ before processing into cement. For it can not be overlooked that the law does not impose a tax on cement _qua cement_, but on mineral products, at least 80% of which must be minerals extracted by the lessee, concessionaire or owner of mineral lands. Both parties concede that cement is made up of 80% or more of minerals thus extracted.

The Court did not, and could not, rule that cement is a manufactured product subject to sales tax, for the reason that such liability had never been litigated by the parties. What it did declare is that, while cement is a mineral product, it is no longer in the state or condition contemplated by the law; hence the market value of the cement could not be the basis for computing the _ad valorem_ tax, since the _ad valorem_ tax is a severance tax, i.e., a charge upon the privilege of severing or extracting minerals from the earth, (Dec. p. 4) and is due and payable _upon removal_ of the mineral product from its bed or mine (Tax Code s. 245). So that the tax is to be computed on the basis of the market value of the mineral in its condition at the time of such removal and before its being substantially changed by chemical or manufacturing (as distinguished from purely physical) processing. Whatever mention was made in the decision of such process undergone by the component minerals of cement, was made solely and exclusively to emphasize the change in the condition of the minerals, from the primitive state contemplated by the taxing statute. This is clear from the text of the decision (pp. 4-5) where we stated:

"This (respondent's) line of argument suffers from two infirmities. First, 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 salable form, the minerals had already undergone a chemical change through manufacturing process. This could not have been the state of mineral products that the law contemplates for purposes of the ad valorem tax." (Emphasis supplied.)

It can be readily gathered from the foregoing excerpt that cement is a mineral product under Section 246 of the Revenue Code. Therein, the Court says "while cement is a mineral product. . ." Also, it says:

. . . For it can not be overlooked that the law does not impose a tax on cement qua cement, but on mineral products, at least 80% of which must be minerals extracted by the lessee, concessionaire or owner of mineral lands. Both parties concede that cement is made up of 80% or more of minerals thus extracted.

It should be noted that in the foregoing excerpt the resolution applies to cement the definition of mineral products found under Section 246 of the Revenue Code which reads as follows:

> SEC. 246. <u>Definitions of the terms "gross output", "minerals" and "mineral products"</u>. - x x x The term "mineral products" shall mean 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. x x

Whatever mention was made in the decisions in G.R. No. L-18649 and G.R. No. L-22605, of the manufacturing process undergone by the component minerals of cement was solely and exclusively to emphasize the change in the condition of the minerals from their primitive state, contemplated by the statute as the basis for computing the <u>ad valorem</u> tax which is a severance tax payable upon removal and, as such, should be based on the state of the minerals upon removal from the earth. The mention of the manufacturing process was not meant to have any other legal implication.

More directly in point, however, is G.R. No. L-20563 decided after G.R. Nos. L-18649 and L-22605. G.R. No. L-20563 involved refund of sales taxes paid from November 1, 1954 to March, 1955 and <u>ad valorem</u> taxes paid from April, 1955 to September 30, 1956. It was there urged that since the purpose of the amendment was merely to clarify the meaning of mineral products, Section 246 in question should be construed as if it had been originally passed in its amended form so that cement should be considered as "mineral product" even before the enactment of Republic Act 1299 and, therefore, exempt from the sales or percentage tax pursuant to the provisions of Section 188(c) of the National Internal Revenue Code. Respecting this contention, the Supreme Court said:

> Indeed, like other statutes, tax laws operate prospectively, whether they enact, amend or repeal, unless, as aforesaid, the purpose of the Legislature to give retrospective effect is expressly declared or may clearly be implied from the language used. It thus results that before the enactment of the amendment to section 246 of the Tax Code, when cement was not yet placed under the category of either "minerals" or "mineral products" it was not exempt from the percentage tax imposed by section 186 of said Code, and was, therefore, taxable as a manufactured product.

Needless to say, the clear implication of the foregoing language is that cement is now a mineral product under section 246 of the Internal Revenue Code by virtue of Republic Act No. 1299 which took effect on June 16, 1955, amending said section 246. Being now a mineral product it is exempt from sales taxes under section 188(c) of the Revenue Code.

This Court has previously passed upon this same question in Philippine Pipes and Merchandizing Corporation v. Commissioner of Internal Revenue, supra. On the strength of G.R. Nos. L-18649, L-22605 and L-20563, we there held in our amended decision of July 28, 1970, that cement is now mineral product under Section 246 of the Revenue Code and is thus exempt from sales taxes under Section 188(c) of the same Code. We see no valid reason for reversing said ruling on this point.

Respondent makes capital of the amendment to Section 188(c) effective June 17, 1967 consisting of the insertion of the phrase "whether in its original state or not" after the word "products". Respondent urges that the insertion of said clause indicates that before the amendment the exemption was not meant to cover mineral products that were no longer in their original state. We do not subscribe to this line of thought.

Sections 188(c) and 246 are complementary provisions and if by legislative fiat a product is declared a mineral product in the latter section, then it is also so in the first. It may not be amiss to say in this connection that G.R. No. L-20563, which ruled that Republic Act No. 1299 placed cement in the category of mineral product, involved cement produced before the passage of Republic Act No. 4888 inserting the clause "whether in its original form or not" after the word "products".

The cases of American Rubber Company v. The Commissioner of Internal Revenue, G.R. Nos. L-20772 and 20892, May 31, 1971, 39 SCRA 163, and Philippine Packing Corporation v. Collector of Internal Revenue, G.R. No. L-9040, December 26, 1956, 100 Phil. 545, cited by respondent are not in point. Said cases involve the tax exemption for agricultural products provided in Section 188(b) of the Revenue Code which has no complementary provision like Section 188(c) and so, the exemption should be determined only from the language of the provision itself. Respondent has not shown to us any provision in the Tax Code defining agricultural products to establish an analogy with Section 188(c)

Having reached the foregoing conclusion, it becomes unnecessary to discuss the issue of prescription.

WHEREFORE, the decision appealed from, dated

DECISION -
CTA CASE NO. 2057

March 4, 1968, is hereby reversed. No costs.

SO ORDERED.

Quezon City, July 29, 1972.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge