REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BACOLOD-MURCIA MILLING
CO., INC.,
Petitioner,

-versus- C.T.A. Case No. 981

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

D E C I S I O N

This case involves the petitioner's claim for refund of the amount of ₱6,633.07 representing alleged excess payment of the percentage tax imposed under Section 189 of the National Internal Revenue Code on molasses produced by it during the agricultural year 1958-1959.

Petitioner, a corporation duly organized and existing under the laws of the Philippines, is a producer of molasses, a by-product of sugar cane. On the molasses it produced during the agricultural year 1958-1959 and which was either sold to Vistranco or delivered to the Talisay-Bacolod Distilling Company for manufacture or exchange into alcohol for its own use, it paid percentage tax in the total sum of ₱14,300.58. In view of the lack of information on the actual sales price from its Manila office and in order to avoid paying delinquency penalties, petitioner computed the various amounts it paid as percentage tax on the basis of ₱45.00 per long ton, the price of molasses during the preceding year (1957-1958). (See Exhs. "B" to "B-10," pp. 14-24, BIR rec.; Exh. "D," p. 20, CTA rec.; t.s.n., pp. 17-20). However, upon being furnished by its Manila office with journal entries, petitioner's accountant determined therefrom that the actual selling price of the molasses during the agricultural year 1958-1959 was only ₱23.00 per long ton. (See Exh. "1," pp. 25-26, BIR rec.; Exh. "E," p. 21, CTA rec.; Exhs. "C" and "C-1," pp. 17-19, CTA rec.; t.s.n., pp. 23-31). Since the amount of ₱14,300.58 paid as percentage tax on the molasses was based on ₱45.00 per long ton, petitioner, therefore, requested for the refund of the difference in the sum of ₱6,633.07, computed as follows:

(a)	2% tax paid on 2,984,816 gallons sold to Vistranco	₱14,028.63
	Add: 2% tax paid on 57,863 gallons delivered to Talisay-Bacolod Distilling Co.	271.95
	Total taxes paid (X)	₱14,300.58
(b)	Sales value of above molasses:	
	2% tax due on 2,984,798 gallons sold to Vistranco at ₱.126 per gallon or ₱376,084.55	₱ 7,521.69
	2% tax due on 57,863 gallons delivered to TBD at ₱.126 per gallon or ₱7,290.74	145.82
(c)	Total tax due	₱ 7,667.51
	Total tax paid	₱14,300.58
	Excess amount paid	(₱ 6,633.07)

This claim for refund was denied by the Commissioner of Internal Revenue on November 15, 1960. Hence,

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the present appeal which was filed on December 3, 1960.

The only issue before us is the determination of the proper basis of the 2% tax imposed by Section 189 of the Tax Code, the pertinent provisions of which read:

> "Sec. 189. Percentage tax upon proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories.- Proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories shall pay a tax equivalent to two per centum of the gross value in money of all the rope, sugar, rice, coconut oil, ground or milled corn, and desiccated coconut manufactured or milled by them, including the by-products of the raw materials from which the said articles are produced or manufactured, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: x x x ."

From the evidence of record, we find uncontradicted the fact that in view of the absence of information from its Manila office relative to the actual selling price of the molasses in question, petitioner computed the ₱14,300.58, it paid as percentage tax, on the basis of ₱45.00 per long ton which was the price obtaining during the preceding agricultural year of 1957-1958. Upon receipt of the journal entries from the Manila office, petitioner determined therefrom that the price of the molasses during the agricultural year in question was only ₱23.00 per long ton. This price is also attested to by the accountant of the molasses department of Luzon Stevedoring Co. which purchased molasses from different centrals in the Philippines for export. On the other hand, respondent Commissioner merely relied upon the report of his agents (Exhibit 1) and has not presented evidence sustaining his allegation relative to the price of molasses. Consequently, we hold that the actual selling price of the molasses at the time it left petitioner's warehouse was ₱23.00 per long ton. And the percentage tax on the molasses sold to Vistranco during the agricultural year in question should therefore be computed on the basis of ₱23.00 per long ton.

Anent the molasses which petitioner delivered to Talisay-Bacolod Distilling Co. for exchange or manufacture into alcohol for its (former's) own use, it should be taxed on the basis of its market value at the time it left petitioner's warehouse. But since there is no

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proof regarding the market value of the molasses delivered to the Talisay-Bacolod Distilling Co., we are constrained to hold as a valid basis of computing the percentage tax on the molasses so delivered, the sum of ₱23.00 per long ton which, we believe, approximates, if not equals, its market value at the time it left the warehouse of petitioner.

WHEREFORE, respondent is hereby ordered to refund to petitioner Bacolod-Murcia Milling Co., Inc. the sum of ₱6,633.07, without pronouncement as to costs.

SO ORDERED.

Manila, December 3, 1962.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI concurs in a separate opinion.

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BACOLOD-MURCIA MILLING
CO., INC.,
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- versus -

C.T.A.
CASE NO. 981

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

CONCURRING OPINION

I concur.

Under Section 189 of the National Internal Revenue Code, sugar centrals are subject to the tax of 2% of the gross value in money of the sugar (including the by-products, such as molasses) produced or manufactured by them. The tax is based on the actual selling price or market value of the articles at the time they leave the factory or mill warehouse. The tax accrues upon removal of the articles from the mill or mill warehouse whether or not there is a sale upon such removal. Therefore, if the articles are sold on the date of removal from the mill or mill warehouse, the tax is based on the actual selling price. If they are not sold, the fair market value on the date of removal is the basis of the tax. (See B.I.R. General Circular No. 470, Oct. 7, 1940.)

This case involves the taxability of molasses removed from the sugar central of petitioner during the crop year 1958-1959. Part of the molasses was sold to Luzon Stevedoring Company for ₱23.00 per ton

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and part was delivered to Talisay-Bacolod Distilling Company for processing into alcohol for petitioner. There is no evidence that molasses had a fair market value during the said crop year above the price for which it was sold to Luzon Stevedoring Company. There is also no evidence to show that the sale of molasses to Luzon Stevedoring Company was not made in good faith. Clearly, the theory of respondent that the tax should be based on the fair market value of molasses during the previous crop year has no legal basis.

R. M. Umali
ROMAN M. UMALI
Associate Judge