REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISLAND MINING &
INDUSTRIAL CORPORATION,
Petitioner,

versus

March 19, 1971

CTA CASE NO. 1927

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

On May 8, 1968, petitioner filed a petition for review seeking the refund of the amount of ₱6,043.21 as alleged overpaid ad valorem taxes on copper ores mined from its mining location at Bicobian, Isabela, and exported to Japan on January 4, 1967.

Petitioner, a mining corporation duly organized and existing under and by virtue of the laws of the Philippines, operates a mine at Bicobian, Isabela, Philippines. On May 31, 1966 and December 21, 1966, petitioner paid to respondent the respective sums of ₱12,007.13 and ₱7,822.70, or a total of ₱19,829.93, as ad valorem taxes on 2,288.50 dry metric tons of copper ores, at the unit price of $152.49 per dry metric ton, which it exported to Japan on January 4, 1967 on board the vessel M/S "Sourthern Star", Voyage No. 9-N, under Bill of

Lading No. BIUJ-3-1/67 and Export License No. 14661. The *ad valorem* taxes paid were based on a *pro forma* invoice submitted by petitioner to respondent, the amount of which was arrived at as follows:

2,288.50	Dry metric ton
x $152.49	Unit price per DMT C & I Uno, Japan
$348,973.37	
- 1,081.72	Less insurance
$347,891.65	
x ₱3.80	Conversion dollar to peso
₱1,321,988.27	
x .015	1½% ad valorem tax on the gross
₱19,829.83	*Ad valorem* tax
	(p. 47, CTA rec.)

Later, however, respondent ascertained from the bill of lading of the vessel M/S "Southern Star" that the total weight of copper ores actually loaded was only 1,843.63 dry metric tons, at the unit price of $155.01 per dry metric ton, and subject to the *ad valorem* tax of only ₱16,653.56, computed as follows:

1,843.63	Dry metric ton
x $155.01	Unit price per DMT CIF Uno, Japan
$285,781.09	
- 885.64	Less insurance
$284,895.45	
x ₱3.897	Conversion dollar to peso
₱1,110,237.57	
x .015	*Ad valorem* tax of 1½%
₱16,653.56	*Ad valorem* tax
	(p. 47, CTA rec.)

Consequently, respondent, on February 25, 1969, refunded to petitioner the amount of ₱3,176.27, which is the difference between the amount already paid (₱19,829.83) and the amount he determined to be actually due from petitioner (₱16,653.56).

When the shipment reached Japan, the copper ores were again weighed. The report thereof showed that there were only 1,668.936 dry metric tons and the unit price was $141.85 per dry metric ton (Exh. A-6, p. 32, BIR rec.). Because of the disparity in the weight of the copper ores (a difference of 174.694 dry metric tons) and in the unit prices per dry metric ton (a difference of $13.16 per dry metric ton), petitioner submitted to respondent Finalization Invoice No. 2-f (Exh. A-5, p. 33, BIR rec.), and claimed that it was only liable for the sum of ₱13,786.62, computed as follows:

1,668.936	Dry metric ton
x $141.85	Unit price per DMT
$236,738.57	
- 888.41	Less insurance premium
$235,850.16	Gross output
x ₱3.897	Conversion dollar to peso
₱919,108.07	
x .015	1½% *ad valorem* tax
₱13,786.62	*Ad valorem* tax

(p. 47, CTA rec.)

Inasmuch as it had been previously granted a refund of only ₱3,176.27, petitioner now claims an additional sum of ₱2,866.94, which is the difference between the total amount sought to be refunded (₱6,043.21) and the amount already refunded (₱3,176.27).

We are called upon to resolve the issue as to whether the *ad valorem* tax imposed by Section 243 of the Revenue Code is based on the "actual market value" of the copper ores at the time of their extraction or removal from the mineral lands as contended by respondent or on the "gross receipts" or total peso value of the copper ores paid to petitioner by its Japanese buyer after the ores had been received by said buyer in Japan.

For a clearer understanding of the law involved, we are reproducing below the pertinent provisions of the Revenue Code, to wit:

> SEC. 243. Ad valorem taxes on output of mineral lands not covered by lease. - There shall be assessed and collected on the actual market value of the annual gross output of the minerals or mineral products extracted or produced from all mineral lands, not covered by lease, an ad valorem tax, payable to the Commissioner of Internal Revenue, in the amount of one and one-half per centum of the value of said output.
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> Before the minerals or mineral products are removed from the mines the Commissioner of Internal Revenue or his representatives shall first be notified of such removal on a form prescribed for the purpose. (As amended by sec. 2, Republic Act No. 909.)
>
> SEC. 245. Time and manner of payment of royalties or ad valorem taxes. - The royalties or ad valorem taxes, as the case may be, shall be due and payable upon the removal of the mineral products from the locality where mined. However, the output of the mine may be removed from such locality without the prepayment of such royalties or ad valorem taxes if the lessee, owner,

> or operator shall file a bond in the form and amount and with such sureties as the Commissioner of Internal Revenue may require, conditioned upon the payment of such royalties or *ad valorem* taxes, in which case it shall be the duty of every lessee, owner, or operator of a mine to make a true and complete return in duplicate under oath setting forth the quantity and the actual market value of the output of his mine removed during each calendar quarter and pay the royalties or *ad valorem* taxes due thereon within twenty days after the close of said quarter.
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> x x x x x
> (Underlining supplied.)

As may be seen from the foregoing, Section 243 of the Revenue Code explicitly provides that the *ad valorem* tax on mineral products "shall be collected and assessed on actual market value of the annual gross output of the minerals or mineral products extracted or produced from all mineral lands." Section 245 of the Revenue Code, on the other hand, provides that the *ad valorem* tax "shall be due and payable *upon the removal of the mineral products from the locality where mined*." From a mere reading of these provisions, the conclusion is inescapable that the tax is based on the actual market value or price of the copper ores *at the time of their extraction from the mineral lands* because it is as of that day that the tax liability accrues, and not the "gross receipts" or "gross proceeds" of the sale made subsequently.

> . . . It will be observed from the aforecited Section 243 that the tax is "assessed and collected on . . . minerals or mineral products <u>extracted or produced</u>. . ." Hence, the <u>tax liability accrues from the moment the minerals are extracted or produced</u>. Although it is true that under Section 245, the tax is "due and payable upon the removal of the mineral products from the locality where mined" or in a case where a bond is filed within twenty days after the close of the quarter, such time is fixed solely to determine delinquency of the taxpayer but not the time when the liability arises.
>
> Moreover, it should be important to note that the minerals in question had been already removed from the mines or locality where they were mined and therefore Surigao Co. was already liable for the taxes thereon. <u>The mere fact that they were subsequently lost in transit does not by such occurrence abate the tax or exempt plaintiff from liability therefor, for nowhere in the Tax Code is the same authorized</u>. . . (Surigao Consolidated Mining Co., Inc. v. Coll. of Int. Rev., Manila Civil Case No. 4770, July 16, 1958, aff'd in G.R. No. L-14878, December 26, 1963; underlining supplied.)

As to what is meant by "actual market value" of the minerals or mineral products for purposes of computing the <u>ad valorem</u> tax, hereunder is the rule laid down by the Supreme Court:

> Pursuant to this provision, the <u>ad valorem</u> tax is computed on the "actual market value of the minerals or mineral products extracted or produced from all mineral lands." In other words, the assessment shall be based, not upon the cost of production or extraction of said minerals or mineral products, but on the <u>price</u> which the

> same - before or without undergoing a process of manufacture - <u>would command in the ordinary course of business, that is to say, when offered for sale by one willing to sell, but not under compulsion to sell, and purchased by another who is willing to buy, but under no obligation to purchase</u>. (Republic Cement Corp. v. Comm. of Int. Rev., G.R. No. L-20660, July 13, 1968; underlining supplied.)

In this connection one should note that the rule makes no reference to the "gross proceeds" or "gross receipts."

In this case, it is a fact admitted by petitioner's chief accountant, Mr. Jaime Torres, that the price of the copper ores in question at the time of shipment was 52.155¢ per pound based on the weekly averages from December 25 to December 30, 1966 (pp. 26-27, t.s.n.). Respondent computed petitioner's tax liability for <u>ad valorem</u> tax on the basis of this price quotation and the weight of the copper ores at the time of shipment. This is the correct determination of the actual market value of the copper ores because it was the price which the copper ores would command in the ordinary course of business when offered for sale at the time of their extraction from petitioner's mining location.

One last word. If the <u>ad valorem</u> tax in question were to be based on petitioner's gross receipts, or on the amount it received from foreign buyers the

Philippine Government would, insofar as the collection of this tax is concerned, be placed at the mercy of the foreign buyers and the mining operators. This is particularly true if the computation is based on the weight of the ores upon delivery in foreign land at the price of that date. The Philippine Government has practically no way of checking the weight of the ores as well as the price paid by the buyer reported by the operator. And what is there to prevent unscrupulous exporters of mineral products from reporting only portion of their shipment and channelling the rest to other buyers thereby defrauding our government of its lawful revenues?

WHEREFORE, petitioner's claim for refund is hereby denied for lack of merit. With costs against petitioner.

SO ORDERED.

Quezon City, March 19, 1971.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge