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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN GRACE MINING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2901

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/17/79

D E C I S I O N

Disputed by petitioner San Grace Mining Corporation is the right of respondent Commissioner of Internal Revenue to impose the 25% surcharge, in the amount of ₱5,266.80, for late payment of the ad valorem tax on chromite ore removed from petitioner's mine site.

There is no dispute as to the facts of the case. As borne out by the pleadings and records, it appears that petitioner is a mining corporation duly organized and existing under the laws of the Philippines with principal office and address at Carmen, Cagayan de Oro City. On October 22, 1976, it paid to the municipal treasurer of Alubijid, Misamis Oriental, the amount of ₱21,067.20 representing the ad valorem tax on 1,500 tons of chromite ore it removed from its mine site located in the same municipality. Official Receipt No. 5386787 U (Provincial/City Treasurer's General

Receipt) dated October 22, 1976, evidencing payment of the tax, was duly issued by Municipal Treasurer Lucio L. Jampit as deputy of the provincial treasurer of Misamis Oriental. (p. 11, BIR Records.)

The amount of ₱21,067.20 was actually received on February 25, 1977 by the collection agent of the Bureau of Internal Revenue of Alubijid, Misamis Oriental, when Municipal Treasurer Lucio L. Jampit remitted the tax to him under a municipal voucher also dated February 25, 1977. In remitting the said amount, the municipal voucher states: (p. 10, BIR Records)

> To remittance of Ad valorem Tax which was inadvertently paid in the Office of the Municipal Treasurer under OR No. 5386787 dated Oct. 22, 1977 which amount should have been to the BIR Collection Agent, hence this remittance - - - - - - - - - - - ₱21,067.20

Because of petitioner's failure to pay the ad valorem tax of ₱21,067.20 within the period prescribed by the provision of the then Section 245 (now Section 256) of the National Internal Revenue Code, respondent in a letter dated August 18, 1977, which was received by petitioner on August 23, 1977, demanded from San Grace Mining Corporation the sum of ₱5,266.80 representing 25% surcharge for late payment, details of which are as follows:

Gross Sales of 1,500 tons Chromite Ore	₱1,053,360.00
Multiplied by the ad valorem tax rate	.02
Ad valorem taxes due	₱ 21,067.20
Add: 25% surcharge for late payment	5,266.80
Total ad valorem taxes due	₱ 26,334.00
Less: Amount paid under O.R. No. 5652519 dated Feb. 25, 1977	21,067.00
BALANCE OF AD VALOREM TAXES DUE AND COLLECTIBLE	₱ 5,266.80
	vvvvvvvvvvvvv

On August 24, 1977, petitioner requested respondent, thru the Regional Director of Revenue Region No. 10-A, for reconsideration of the assessment of ₱5,266.80, alleging that it was not late in paying the ad valorem tax due the Government. Petitioner's request for reconsideration was, however, denied by respondent on August 26, 1977. Hence this appeal.

After respondent has asked for the dismissal of this case for lack of interest on the part of petitioner to prosecute its appeal, because of failure of its counsel or representative to appear in any of the scheduled hearings, petitioner on June 18, 1979 filed a written manifestation submitting the case for decision without trial as follows: (pp. 43-44, CTA Records.)

> That, as the main issue in the above-entitled case is purely a question of law, to wit, whether Petitioner, who, instead of paying with the Office of the Revenue Collector of the Bureau of Internal Revenue, the Ad-Valorem Tax for its mineral pays to the Office of the Municipal Treasurer,

> should be penalized with a surcharge of 25% of the Ad-Valorem Tax, in view of the late remittance by the Office of the Municipal Treasurer of the amount it has collected from Petitioner to the Office of the Bureau of Internal Revenue Collector, it is therefore submitting the case to the Honorable Court for its resolution and/or decision on said question of law without anymore going to trial.

Petitioner admits at least that it paid its ad valorem tax to the wrong office or government official. Oddly, however, it blames the Office of the Municipal Treasurer, to whom payment was wrongfully made by it, as the cause of its failure to pay its ad valorem tax within the period prescribed by law. And averring that it should not be penalized with the surcharge of 25% "in view of the late remittance by the Office of the Municipal Treasurer of the amount it has collected from Petitioner," inferentially, it would seem that the municipal treasurer should be held liable for being remissed in not transmitting the tax on time to the collection agent of respondent.

As aptly stated by respondent in paragraph 7 of his answer, the Bureau of Internal Revenue is the sole agency of the Government incharge of collecting and receiving payments of all internal revenue taxes, fees or charges, including ad valorem tax. Section 3 of the then National Internal Revenue Code, which was in effect at the time the 25% surcharge in question was assessed and demanded, expressly provides:

> SEC. 3. Powers and duties of Bureau. - The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws.

While under the old provision of Section 6 of the National Internal Revenue Code, provincial and city treasurers, and their deputies (municipal treasurers are deputies of provincial treasurers) were the deputies of the Commissioner of Internal Revenue for the collection of national internal revenue and the enforcement of all laws falling within the jurisdiction of the Bureau of Internal Revenue, Republic Act No. 2655, approved on June 18, 1960, deleted this provision of the law and created in the Bureau of Internal Revenue positions of collection agents for different cities and municipalities of the Philippines. Section 5 of said Republic Act No. 2655 provides:

> SEC. 5. Any and all references in the National Internal Revenue Code to the provincial and city treasurers and their deputies, their functions and duties in connection with internal revenue shall from the approval of this Act be deemed to refer to the collection agents of the Bureau of Internal Revenue.

Since provincial and city treasurers, and their deputies, are no longer deputies of the Commissioner of Internal Revenue for the collection of national internal revenue taxes, fees and charges and the enforcement of all laws falling within the jurisdiction of the Bureau of Internal Revenue, payment of the *ad valorem* tax in question in the Office of the Municipal Treasurer is not payment to the Bureau of Internal Revenue as contemplated under the provision of Section 245 of the then National Internal Revenue Code. Accordingly, the imposition on petitioner of the amount of ₱5,266.80 representing surcharge for late payment of its *ad valorem* tax on the 1,500 tons of chromite ore is in accordance with law.

And the contention of petitioner that it acted in good faith in paying its *ad valorem* tax to the municipal treasurer of Alubijid, Misamis Oriental, is of no moment. It is already settled that bad faith is not essential for the imposition of the 25% surcharge prescribed for late payment of the *ad valorem* tax under the then Section 245 (now Section 256) of the National Internal Revenue Code. Section 245 does not merely vest in the Commissioner of Internal Revenue the authority or discretion to impose the 25% surcharge. The same is imposed by law itself. In this respect it is analogous to the 25% surcharge prescribed for failure to pay the "percentage tax on any business" within the time fixed by law (Section 183[a] of the then National Internal Revenue Code), the collection of which has been held to be mandatory and on which the Commissioner of Internal Revenue has no discretion. (Republic Cement Corporation vs. Commissioner of Internal Revenue, L-20660, June 13, 1968, 23 SCRA 967, citing Lim Co Chu vs. Posadas, 47 Phil. 460; Koppel (Phil.), Inc. vs. Collector of Internal Revenue, 87 Phil. 348; Republic vs. Luzon Industrial Corporation 102 Phil. 189, 193.) Consequently, even if petitioner acted in good faith in paying to the municipal treasurer of Alubijid, it is still liable to pay respondent Commissioner of Internal Revenue the amount of P5,266.80 as surcharge for late payment of its ad valorem tax on 1,500 tons of chromite ore.

WHEREFORE, the decision appealed from is affirmed and petitioner San Grace Mining Corporation is ordered to pay respondent the sum of P5,266.80 within thirty (30) days after finality of this judgment. With costs.

SO ORDERED.

Quezon City, Metro Manila, September 17, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge