Supreme Court E-Library



petitioner Corporation's shop superintendent, no compelling reason has been shown by the petitioner Corporation why we should overturn such finding of fact.

**WHEREFORE**, the Petition for *Certiorari* is DISMISSED. The decision of the public respondent National Labor Relations Commission dated 4 February 1987 is hereby AFFIRMED. Costs against the petitioner.

**SO ORDERED.**

*Fernan (Chairman), Gutierrez, Jr., Bidin,* and *Cortes, JJ.*, concur.

---

**FIRST DIVISION**

[G.R. No. L-29059. December 15, 1987]

**COMMISSIONER OF INTERNAL REVENUE,** *petitioner*, *vs.* **CEBU PORTLAND CEMENT COMPANY and COURT OF TAX APPEALS,** *respondents*.

**SYLLABUS**

1. **TAXATION; SALES TAX; PROPERLY IMPOSED ON CEMENT SINCE IT IS CONSIDERED AS MANUFACTURED PRODUCT.**— Our ruling is that the sales tax was properly imposed upon the private respondent for the reason that cement has always been considered a manufactured product and not a mineral product.

2. **ID.; ID.; THE FIVE-YEAR REGLEMETARY PERIOD FOR ASSESSMENT OF SALES TAX STARTS FROM FILING OF SALES RETURNS; CASE AT BAR.**— On the question of prescription, the private respondent claims that the five-year reglementary period for the assessment of its tax liability started from the time it filed its gross sales returns on June 30, 1962.

Supreme Court E-Library



Hence, the assessment for sales taxes made on January 16, 1968 and March 4, 1968, were already out of time. We disagree. This contention must fail for what CEPOC filed was not the sales returns required in Section 183(n) but the *ad valorem* tax returns required under Section 245 of the Tax Code.

3. **ID.; ID.; PAYMENT OF TAXES CANNOT BE POSTPONED BY SIMPLY QUESTIONING THE VALIDITY OF AN ASSESSMENT.**— The argument that the assessment cannot as yet be enforced because it is still being contested loses sight of the urgency of the need to collect taxes as "the lifeblood of the government." If the payment of taxes could be postponed by simply questioning their validity, the machinery of the state would grind to a halt and all government functions would be paralyzed. That is the reason why, save for the exception already noted, the Tax Code provides: "Sec. 291. *Injunction not available to restrain collection of tax.* — No court shall have authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code." It goes without saying that this injunction is available not only when the assessment is already being questioned in a court of justice but more so if, as in the instant case, the challenge to the assessment is still — and only — on the administrative level. There is all the more reason to apply the rule here because it appears that even after crediting of the refund against the tax deficiency, a balance of more than ₱4 million is still due from the private respondent.

## DECISION

**CRUZ, *J.*:**

By virtue of a decision of the Court of Tax Appeals rendered on June 21, 1961, as modified on appeal by the Supreme Court on February 27, 1965, the Commissioner of Internal Revenue was ordered to refund to the Cebu Portland Cement Company the amount of ₱359,408.98, representing overpayments of *ad valorem* taxes on cement produced and sold by it after October 1957.[1]

---

[1] *Rollo*, pp. 34-37.

Supreme Court E-Library



On March 28, 1968, following denial of motions for reconsideration filed by both the petitioner and the private respondent, the latter moved for a writ of execution to enforce the said judgment.[2]

The motion was opposed by the petitioner on the ground that the private respondent had an outstanding sales tax liability to which the judgment debt had already been credited. In fact, it was stressed, there was still a balance owing on the sales taxes in the amount of ₱4,789,279.85 plus 28% surcharge.[3]

On April 22, 1968, the Court of Tax Appeals* granted the motion, holding that the alleged sales tax liability of the private respondent was still being questioned and therefore could not be set-off against the refund.[4]

In his petition to review the said resolution, the Commissioner of Internal Revenue claims that the refund should be charged against the tax deficiency of the private respondent on the sales of cement under Section 186 of the Tax Code. His position is that cement is a manufactured and not a mineral product and therefore not exempt from sales taxes. He adds that enforcement of the said tax deficiency was properly effected through his power of distraint of personal property under Sections 316 and 318[5] of the said Code and, moreover, the collection of any national internal revenue tax may not be enjoined under Section 305,[6] subject only to the exception prescribed in Rep. Act No. 1125.[7] This is not applicable to the instant case. The petitioner

---

[2] *Ibid.*, p. 67.

[3] *Id.*, pp. 69-70.

* Judges Roman L. Umali, presiding, Ramon L. Avancena and Estanislao R. Alvarez.

[4] *Id.*, pp. 69-71.

[5] Now Secs. 302 & 304, National Internal Revenue Code.

[6] Now Sec. 291, National Internal Revenue Code.

[7] "Sec. 11. x x x

"No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend

Supreme Court E-Library



also denies that the sales tax assessments have already prescribed because the prescriptive period should be counted from the filing of the sales tax returns, which had not yet been done by the private respondent.

For its part, the private respondent disclaims liability for the sales taxes, on the ground that cement is not a manufactured product but a mineral product.[8] As such, it was exempted from sales taxes under Section 188 of the Tax Code after the effectivity of Rep. Act No. 1299 on June 16, 1955, in accordance with *Cebu Portland Cement Co. v. Collector of Internal Revenue*,[9] decided in 1968. Here Justice Eugenio Angeles declared that "before the effectivity of Rep. Act No. 1299, amending Section 246 of the National Internal Revenue Code, cement was taxable as a manufactured product under Section 186, in connection with Section 194(4) of the said Code," thereby implying that it was not considered a manufactured product afterwards. Also, the alleged sales tax deficiency could not as yet be enforced against it because the tax assessment was not yet final, the same being still under protest and still to be definitely resolved on the merits. Besides, the assessment had already prescribed, not having been made within the reglementary five-year period from the filing of the tax returns.[10]

Our ruling is that the sales tax was properly imposed upon the private respondent for the reason that cement has always been considered a manufactured product and not a mineral product. This matter was extensively discussed and categorically

---

the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however*, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court."

[8] *Rollo*, pp. 77-78.

[9] 25 SCRA 789.

[10] *Rollo*, p. 78.

Supreme Court E-Library



resolved in *Commissioner of Internal Revenue v. Republic Cement Corporation*,[11] decided on August 10, 1983, where Justice Efren L. Plana, after an exhaustive review of the pertinent cases, declared for a unanimous Court:

"From all the foregoing cases, it is clear that cement *qua* cement was never considered as a mineral product within the meaning of Section 246 of the Tax Code, notwithstanding that at least 80% of its components are minerals, for the simple reason that cement is the product of a *manufacturing* process and is no longer the 'mineral product' contemplated in the Tax Code (*i.e.*, minerals subjected to simple treatments) for the purpose of imposing the *ad valorem* tax.

"What has apparently encouraged the herein respondents to maintain their present posture is the case of *Cebu Portland Cement Co. v. Collector of Internal Revenue*, L-20563, Oct. 29, 1968 (28 SCRA 789) penned by Justice Eugenio Angeles. For some portions of that decision give the impression that Republic Act No. 1299, which amended Section 246, reclassified cement as a mineral product that was not subject to sales tax. . . .

"x x x x x x x x x

"After a careful study of the foregoing, we conclude that reliance on the decision penned by Justice Angeles is misplaced. The said decision is no authority for the proposition that *after* the enactment of Republic Act No. 1299 in 1955 (defining mineral product as things with at least 80% mineral content), cement became a 'mineral product,' as distinguished from a 'manufactured product,' and therefore ceased to be subject to sales tax. It was not necessary for the Court to so rule. It was enough for the Court to say in effect that even assuming Republic Act No. 1299 had re-classified cement was a mineral product, the reclassification could not be given retrospective application (so as to justify the refund of sales taxes paid before Republic Act 1299 was adopted) because laws operate prospectively only, unless the legislative intent to the contrary is manifest, which was not so in the case of Republic Act 1266. [The situation would have been different if the Court instead had ruled in favor of refund, in which case it would have been absolutely necessary (1) to make an unconditional ruling that Republic Act 1299 re-classified cement as a mineral product (not subject to sales tax), and (2) to declare the

[11] 142 SCRA 46.

Supreme Court E-Library



law retroactive, as a basis for granting refund of sales tax paid before Republic Act 1299.]

"In any event, we overrule the CEPOC decision of October 29, 1968 (G.R. No. L-20563) insofar as its pronouncements or any implication therefrom conflict with the instant decision."

The above views were reiterated in the resolution[12] denying reconsideration of the said decision, thus:

"The nature of cement as a 'manufactured product' (rather than a 'mineral product') is well-settled. The issue has repeatedly presented itself as a threshold question for determining the basis for computing the *ad valorem* mining tax to be paid by cement companies. No pronouncement was made in these cases that as a 'manufactured product' cement is subject to sales tax because this was not at issue.

"The decision sought to be reconsidered here referred to the legislative history of Republic Act No. 1299 which introduced a definition of the terms 'mineral' and 'mineral products' in Sec. 246 of the Tax Code. Given the legislative intent, the holding in the CEPOC case (G.R. No. L-20563) that cement was subject to sales tax prior to the effectivity of Republic Act No. 1299 cannot be construed to mean that, after the law took effect, cement ceased to be so subject to the tax. To erase any and all misconceptions that may have been spawned by reliance on the case of *Cebu Portland Cement Co. v. Collector of Internal Revenue*, L-20563, October 29, 1968 (28 SCRA 789) penned by Justice Eugenio Angeles, the Court has expressly overruled it insofar as it may conflict with the decision of August 10, 1983, now subject of these motions for reconsideration."

On the question of prescription, the private respondent claims that the five-year reglementary period for the assessment of its tax liability started from the time it filed its gross sales returns on June 30, 1962. Hence, the assessment for sales taxes made on January 16, 1968 and March 4, 1968, were already out of time. We disagree. This contention must fail for what CEPOC filed was not the sales returns required in Section 183(n) but the *ad valorem* tax returns required under Section 245 of the

---

[12] *Commissioner of Internal Revenue v. Republic Cement Corp., et al.*, G.R. Nos. L-35668-72 & L-35683, May 7, 1987; *Commissioner of Internal Revenue v. CEPOC Industries, Inc., et al.*, G.R. No. L-35677, May 7, 1987.

Supreme Court E-Library



Tax Code. As Justice Irene R. Cortes emphasized in the aforestated resolution:

"In order to avail itself of the benefits of the five-year prescription period under Section 331 of the Tax Code, the taxpayer should have filed the required return for the tax involved, that is, a sales tax return. (*Butuan Sawmill, Inc. v. CTA, et al.*, G.R. No. L-21516, April 29, 1966, 16 SCRA 277). Thus CEPOC should have filed sales tax returns of its gross sales for the subject periods. Both parties admit that returns were made for the *ad valorem* mining tax. CEPOC argues that said returns contain the information necessary for the assessment of the sales tax. The Commissioner does not consider such returns as compliance with the requirement for the filing of tax returns so as to start the running of the five-year prescriptive period.

"We agree with the Commissioner. It has been held in *Butuan Sawmill, Inc. v. CTA, supra*, that the filing of an income tax return cannot be considered as substantial compliance with the requirement of filing sales tax returns, in the same way that an income tax return cannot be considered as a return for compensating tax for the purpose of computing the period of prescription under Sec. 331. (*Citing Bisaya Land Transportation Co., Inc. v. Collector of Internal Revenue*, G.R. Nos. L-12100 and L-11812, May 29, 1959). There being no sales tax returns filed by CEPOC, the statute of limitations in Sec. 331 did not begin to run against the government. The assessment made by the Commissioner in 1968 on CEPOC's cement sales during the period from July 1, 1959 to December 31, 1960 is not barred by the five-year prescriptive period. Absent a return, or when the return is false or fraudulent, the applicable period is ten (10) days from the discovery of the fraud, falsity or omission. The question in this case is: When was CEPOC's omission to file the return deemed discovered by the government, so as to start the running of said period?"[13]

The argument that the assessment cannot as yet be enforced because it is still being contested loses sight of the urgency of the need to collect taxes as "the lifeblood of the government." If the payment of taxes could be postponed by simply questioning their validity, the machinery of the state would grind to a halt and all government functions would be paralyzed. That is the

[13] *Ibid.*

Supreme Court E-Library



reason why, save for the exception already noted, the Tax Code provides:

"Sec. 291. *Injunction not available to restrain collection of tax.* — No court shall have authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code."

It goes without saying that this injunction is available not only when the assessment is already being questioned in a court of justice but more so if, as in the instant case, the challenge to the assessment is still — and only — on the administrative level. There is all the more reason to apply the rule here because it appears that even after crediting of the refund against the tax deficiency, a balance of more than ₱4 million is still due from the private respondent.

To require the petitioner to actually refund to the private respondent the amount of the judgment debt, which he will later have the right to distrain for payment of its sales tax liability is in our view an idle ritual. We hold that the respondent Court of Tax Appeals erred in ordering such a charade.

**WHEREFORE**, the petition is GRANTED. The resolution dated April 22, 1968, in CTA Case No. 786 is SET ASIDE, without any pronouncement as to costs.

**SO ORDERED.**

*Teehankee, C.J., Narvasa, Paras,* and *Gancayco, JJ.*, concur.