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one at issue should not, as much as possible, reach this Court, clog its docket, demand precious judicial time and waste valuable taxpayers' money, if they can be settled below without prejudice to any party or to the ends of justice.

WHEREFORE, the instant petition is hereby DISMISSED with costs against petitioner.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Mendoza, and *Kapunan, JJ.*, concur.

Davide, Jr., J., in the result.

SECOND DIVISION

[G.R. No. 104151. March 10, 1995]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* COURT OF APPEALS, ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION and COURT OF TAX APPEALS, *respondents.*

[G.R. No. 105563. March 10, 1995]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, *petitioner, vs.* COURT OF APPEALS, COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, *respondents.*

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SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; *AD VALOREM* TAX; 2% TAX ON ACTUAL MARKET VALUE OF ANNUAL GROSS OUTPUT OF MINERALS AND MINERAL PRODUCTS; "GROSS OUTPUT"; CONSTRUED.**— Under Section 243 of the National Internal Revenue Code, the *ad valorem* tax of 2% is imposed 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. In computing the tax, the term "gross output" shall be 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 for mining, milling, refining, transporting, handling, marketing or any other expenses. 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. 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 price which the same — before or without undergoing process of manufacture — would command in the ordinary course of business.

2. **ID.; ID.; ID.; ID.; DEDUCTION FOR SMELTING AND REFINING ASSESSED ON THE BASIS OF ACTUAL MARKET OF MANUFACTURED COPPER, NOT PROHIBITED.**— In the instant case, the allowance by the tax court of smelting and refining charges as deductions is not contrary to the above-mentioned provisions of the tax code which ostensibly prohibit any form of deduction except freight and insurance charges. A review of the record will show that it was the London Metal Exchange price on wire bar which was used as tax base by ACMDC for purposes of the 2% *ad valorem* tax on copper concentrates since there was no available market price quotation in the commodity exchange or markets of the world for copper concentrates nor was there any market quotation locally obtainable. Hence,

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the charges for smelting and refining were assessed not on the basis of the price of the copper extracted at the mine site which is prohibited by law, but on the basis of the actual market value of the manufactured copper which in this case is the price quoted for copper wire bar by the London Metal Exchange.

3. **ID.; ID.; ID.; SHOULD BE BASED ON THE VALUE UPON EXTRACTION OF RAW MATERIALS OR MINERALS USED IN THE MANUFACTURED OF SAID FINISHED PRODUCTS.**— The issue of whether the *ad valorem* tax should be based upon the value of the finished product, or the value upon extraction of the raw materials or minerals used in the manufacture of said finished products, has been passed upon by us in several cases wherein we held that the *ad valorem* 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 it undergoes a chemical change through manufacturing process, as distinguished from a purely physical process which does not necessarily involve the change or transformation of the raw material into a composite distinct product. Therefore, the imposable *ad valorem* tax should be based on the selling price of the quarried minerals, which is its actual market value, and not on the price of the manufactured product. If the market value chosen for the reckoning is the value of the manufactured or finished product, as in the case at bar, then all expenses of processing or manufacturing should be deducted in order to approximate as closely as is humanly possible the actual market value of the raw mineral at the mine site.

4. **ID.; ID.; ID.; ID.; COPPER WIRE BAR, A MANUFACTURED COPPER.**— The copper wire bar is the manufactured copper. It is not the mineral extracted from the mine site nor can it be considered a mineral product since it has undergone a manufacturing process, to wit: Significantly, the finding that copper wire bar is a product of a manufacturing process finds support in the definition of a "manufacturer" in Section 194 (x) of the aforesaid tax code. Moreover, it is also worth noting at this point that the decision of the tax court

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was based on its previous ruling in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, dated January 23, 1981.

5. **REMEDIAL LAW; COURTS; COURT OF TAX APPEALS; REGULAR COURT VESTED WITH EXCLUSIVE JURISDICTION OVER CASES ARISING UNDER THE NATIONAL INTERNAL REVENUE CODE; TARIFF AND CUSTOMS CODE AND THE ASSESSMENT LAW; DECISIONS THEREON BIND THE COMMISSIONER OF INTERNAL REVENUE.**— The Commissioner of Internal Revenue argues that the ruling in the case above stated is not binding, considering that the incumbent Commissioner of Internal Revenue is not bound by decisions or rulings of his predecessor when he finds that a different construction of the law should be adopted, invoking therefor the doctrine enunciated in *Hilado vs. Collector of Internal Revenue, et al.* This trenches on specious reasoning. What was involved in the *Hilado* case was a previous ruling of a former Commissioner of Internal Revenue. In the case at bar, the Commissioner based his findings on a previous decision rendered by the Court of Tax Appeals itself. The Court of Tax Appeals is not a mere superior administrative agency or tribunal but is a part of the judicial system of the Philippines. It was created by Congress pursuant to Republic Act No. 1125, effective June 16, 1954, as a centralized court specializing in tax cases. It is a regular court vested with exclusive appellate jurisdiction over cases arising under the National Internal Revenue Code, the Tariff and Customs Code, and the Assessment Law.

6. **ID.; ID., DECISIONS OF SUBORDINATE COURTS HAVE PERSUASIVE EFFECT AND MAY SERVE AS JUDICIAL GUIDE.**— Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides. It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the

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Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.

7. **ID.; EVIDENCE; CONCLUSIONS OF THE COURT OF TAX APPEALS GENERALLY UPHELD ON APPEAL.**— As a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part.

8. **TAXATION; NATIONAL INTERNAL REVENUE CODE; *AD VALOREM* TAX; 25% SURCHARGE ON LATE PAYMENT; BAD FAITH, NOT ESSENTIAL.**— Prefatorily, it must not be lost sight of that bad faith is not essential for the imposition of the 25% surcharge for late payment of the *ad valorem* tax. Hence, the justification given is not sufficient to relieve ACMDC of its liability to pay the 25% surcharge for late payment. Also, the 25% surcharge prescribed in Section 245 for late payment of royalties and *ad valorem* tax, when contrasted with the 50% surcharge imposed "where a false or fraudulent return is made," strongly suggests that bad faith is not essential for the imposition of the 25% surcharge.

9. **ID.; ID.; ID.; ID.; PAYMENT THEREOF IS MANDATORY AND CANNOT BE WAIVED BY THE COMMISSIONER OF INTERNAL REVENUE.**— The law requiring the payment of the 25% surcharge in case the *ad valorem* tax is not seasonably paid is mandatory. It provides a plan which works out automatically. The Commissioner of Internal Revenue is not vested with any authority to waive or dispense with the collection thereof.

10. **REMEDIAL LAW; ACTIONS; ESTOPPEL; A PARTY IS ESTOPPED FROM RAISING THE ISSUE OF PAYMENT OF THE *AD VALOREM* TAX BY CLAIMING THAT THERE WAS NO REMOVAL OF PYRITE FROM THE MINE SITE WHERE IT HAD**

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PAID THE SAME FOR THE TAX YEAR.— The other allegation of ACMDC is that there was no removal of pyrite from the mine site because the pyrite was delivered to its sister company, Atlas Fertilizer Corporation, whose plant is located inside the mineral concession of ACMDC in Sangi, Toledo City. ACMDC, however, is already barred by estoppel *in pais* from putting that matter in issue. An *ad valorem* tax on pyrite for the same tax year was already declared and paid by ACMDC. In fact, that payment was used as the basis for computing the 25% surcharge. It was only when ACMDC was assessed for the 25% surcharge that said issue was raised by it. Also, the evidence shows that deliveries of pyrite were not exclusively made to its sister company, Atlas Fertilizer Corporation. There were shipments of pyrite to other companies located outside of its mine site, in addition to those delivered to its aforesaid sister company.

11. **TAXATION; NATIONAL INTERNAL REVENUE CODE; PRIVILEGE TAXES ESSENTIALLY EXCISE TAXES.**— Sections 186 (Percentage tax on sales of other articles) and 191 (Contractor's tax) fall under Title V of the tax code, entitled "Privilege Taxes on Business and Occupation." These "privilege taxes on business" are taxes imposed upon the privilege of engaging in business. They are essentially excise taxes. To be held liable for the payment of a privilege tax, the person or entity must be engaged in business, as shown by the fact that the drafters of the tax code had purposely grouped said provisions under the general heading adverted to above.

12. **ID.; ID.; ID.; "TO ENGAGE" IN BUSINESS; DEFINED.**— "To engage" is to embark on a business or to employ oneself therein. The word "engaged" connotes more than a single act or a single transaction; it involves some continuity of action. "To engage in business" is uniformly construed as signifying an employment or occupation which occupies one's time, attention, and labor for the purpose of a livelihood or profit. The expressions "engage in business," "carrying on business" or "doing business" do not have different meanings, but separately or connectedly convey the idea of progression,

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continuity, or sustained activity. "Engaged in business" means occupied or employed in business; "carrying on business" does not mean the performance of a single disconnected act, but means conducting, prosecuting, and continuing business by performing progressively all the acts normally incident thereto; while "doing business" conveys the idea of business being done, not from time to time, but all the time.

13. **ID.; ID.; ID.; WHEN ONE ACT MAY BE SUFFICIENT TO CONSTITUTE CARRYING ON A BUSINESS.**— The foregoing notwithstanding, it has likewise been ruled that one act may be sufficient to constitute carrying on a business according to the intent with which the act is done. A single sale of liquor by one who intends to continue selling is sufficient to render him liable for "engaging in or carrying on" the business of a liquor dealer.

14. **ID.; ID.; ID.; ID.; THERE MAY BE A BUSINESS WITHOUT ANY SEQUENCE OF ACTS; REQUISITE.**— There may be a business without any sequence of acts, for if an isolated transaction, which if repeated would be a transaction in a business, is proved to have been undertaken with the intent that it should be the first of several transactions, that is, with the intent of carrying on a business, then it is a first transaction in an existing business.

15. **ID.; ID.; ID.; ID.; RESTRICTED TO ACTIVITIES OR AFFAIRS WHERE PROFIT IS A PURPOSE OR LIVELIHOOD IN THE MOTIVE.**— Thus, where the end sought is to make a profit, the act constitutes "doing business." This is not without basis. The term "business," as used in the law imposing a license tax on business, trades, and so forth, ordinarily means business in the trade or commercial sense only, carried on with a view to profit or livelihood. It is thus restricted to activities or affairs where profit is the purpose, or livelihood is the motive. Since the term "business" is being used without any qualification in our aforecited tax code, it should therefore be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood.

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16. ID.; ID.; ID.; CORPORATION NOT ENGAGED IN BUSINESS OF SELLING GRINDING STEEL BALL, NOT LIABLE TO PAYMENT OF MANUFACTURER'S TAX; CASE AT BAR.— In the case at bar, ACMDC claims exemptions from the payment of manufacturer's tax. It asserts that it is not engaged in the business of selling grinding steel balls, but it only produces grinding steel balls solely for its own use or consumption. However, it admits having lent its grinding steel balls to other entities but only in very isolated cases. After a careful review of the records and on the basis of the legal concept of "engaging in business" hereinbefore discussed, we are inclined to agree with ACMDC that it should not and cannot be held liable for the payment of the manufacturer's tax. It cannot be legally asserted, for purposes of this particular assessment only, that ACMDC was engaged in the business of selling grinding steel balls on the basis of the isolated transaction entered into by it in 1975. There is no showing that said transaction was undertaken by ACMDC with a view to gaining profit therefrom and with the intent of carrying on a business therein. On the contrary, what is clear to us is that the sale was more of an accommodation to the other mining companies, and that ACMDC was subsequently replaced by other suppliers shortly thereafter. At most, whatever profit ACMDC may have realized from that single transaction was just incidental to its primordial purpose of accommodating other mining companies. Well-settled is the rule that anything done as a mere incident to, or as a necessary consequence of, the principal business is not ordinarily taxed as an independent business in itself. Where a person or corporation is engaged in a distinct business and, as a feature thereof, in an activity merely incidental which serves no other person or business, the incidental and restricted activity is not to be considered as intended to be separately taxed. In fine, on this particular aspect, we are consequently of the considered opinion and so hold that ACMDC was not a manufacturer subject to the percentage tax imposed by Section 186 of the tax code.

17. ID.; ID.; CONTRACTOR'S TAX; HABITUAL LEASING OF PERSONAL PROPERTIES.— The same conclusion

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however, cannot be made with respect to the contractor's tax being imposed on ACMDC. It cannot validly claim that the leasing out of its personal properties was merely an isolated transaction. Its book of accounts shows that several distinct payments were made for the use of its personal properties such as its plane, motor boat and dump truck. The series of transactions engaged in by ACMDC for the lease of its aforesaid properties could also be deduced from the fact that for the tax years 1975 and 1976 there were profits earned and reported therefor. It received a rental income of P630,171.56 for tax year 1975 and P2,450,218.62 for tax year 1976. Considering that there was a series of transactions involved, plus the fact that there was an apparent and protracted intention to profit from such activities, it can be safely concluded that ACMDC was habitually engaged in the leasing out of its plane, motor boat and dump truck, and is perforce subject to the contractor's tax.

18. **ID.; ID.; ASSESSMENT; PRESUMED CORRECT AND MADE IN GOOD FAITH; FAILURE TO PRESENT PROOF OF ERROR IN ASSESSMENT WILL JUSTIFY JUDICIAL AFFIRMANCE OF ASSESSMENT.**— Assessments are *prima facie* presumed correct and made in good faith. Contrary to the theory of ACMDC, it is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments. Verily, failure to present proof of error in the assessment will justify judicial affirmance of said assessment.

19. **STATUTORY CONSTRUCTION; TAX STATUTES; REASONABLY CONSTRUED WITH A VIEW OF CARRYING OUT THEIR PURPOSE AND INTENT.**— Finally, we deem it opportune to emphasize the oft-repeated rule that tax statutes are to receive a reasonable construction with a view to carrying out their purposes and intent. They should not be construed as to permit the taxpayer to easily evade the payment of the tax. On this note, and under the

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confluence of the weighty considerations and authorities earlier discussed, the challenged assessment against ACMDC for contractor's tax must be upheld.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

M.L. Gadioma Law Office for Atlas.

D E C I S I O N

REGALADO, *J.*:

Before us for joint adjudication are two petitions for review on certiorari separately filed by the Commissioner of Internal Revenue in G.R. No. 104151, and by Atlas Consolidated Mining and Development Corporation in G.R. No. 105563, which respectively seek the reversal and setting aside of the judgments of respondent Court of Appeals in CA-G.R. SP No. 25945 promulgated on February 12, 1992[1] and in CA-G.R. SP No. 26087 promulgated on May 22, 1992.[2]

Atlas Consolidated Mining and Development Corporation (herein also referred to as ACMDC) is a domestic corporation which owns and operates a mining concession at Toledo City, Cebu, the products of which are exported to Japan and other foreign countries. On April 9, 1980, the Commissioner of Internal Revenue (also Commissioner, for brevity), acting on the basis of the report of the examiners of the Bureau of Internal Revenue (BIR), caused the service of an assessment notice and demand for payment of the amount of

[1] Penned by Justice Luis C. Victor, with Justices Santiago M. Kapunan and Segundino G. Chua concurring (Third Division).

[2] Per Justice Nathanael P. de Pano, Jr., with the concurrence of Justices Jesus M. Elbinias and Angelina S. Gutierrez (Eleventh Division).

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P12,391,070.51 representing deficiency *ad valorem* percentage and fixed taxes, including increments, for the taxable year 1975 against ACMDC.[3]

Likewise, on the basis of the BIR examiner's report in another investigation separately conducted, the Commissioner had another assessment notice, with a demand for payment of the amount of P13,531,466.80 representing the 1976 deficiency *ad valorem* and business taxes with P5,000.00 compromise penalty, served on ACMDC on September 23, 1980.[4]

ACMDC protested both assessments but the same were denied, hence it filed two separate petitions for review in the Court of Tax Appeals (also, tax court) where they were docketed as C.T.A. Cases Nos. 3467 and 3825. These two cases, being substantially identical in most respects except for the taxable periods and the amounts involved, were eventually consolidated.

On May 31, 1991, the Court of Tax Appeals rendered a consolidated decision holding, *inter alia*, that ACMDC was not liable for deficiency *ad valorem* taxes on copper and silver for 1975 and 1976 in the respective amounts of P11,276,540.79 and P12,882,760.80, thereby effectively sustaining the theory of ACMDC that in computing the *ad valorem* tax on copper mineral, the refining and smelting charges should be deducted, in addition to freight and insurance charges, from the London Metal Exchange (LME) price of manufactured copper.

However, the tax court held ACMDC liable for the amount of P1,572,637.48, exclusive of interest, consisting of 25% surcharge for late payment of the *ad valorem* tax and late filing of notice of removal of silver, gold and pyrite extracted

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[3] Original Record, C.T.A. Case No. 3465, 21-22.

[4] *Id.*, C.T.A. Case No. 3828, 222.

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during certain periods, and for alleged deficiency manufacturer's sales tax and contractor's tax.

The particulars of the reduced amount of said tax obligation is enumerated in detail in the dispositive portion of the questioned judgment of the tax court, thus:

"WHEREFORE, petitioner should and is hereby ORDERED to pay the total amount of the following:

a) P297,900.39 as 25% surcharge on silver extracted during the period November 1, 1974 to December 31, 1975.

b) P161,027.53 as 25% surcharge on silver extracted for the taxable year 1976.

c) P315,027.30 as 25% surcharge on gold extracted during the period November 1, 1974 to December 31, 1975.

d) P260,180.55 as 25% surcharge on gold during the taxable year 1976.

e) P53,585.30 as 25% surcharge on pyrite extracted during the period November 1, 1974 to December 31, 1975.

f) P53,283.69 as 25% surcharge on pyrite extracted during the taxable year 1976.

g) P316,117.53 as deficiency manufacturer's sales tax and surcharge during the taxable year 1975; plus 14% interest from January 21, 1976 until fully paid as provided under Section 183 of P.D. No. 69.

h) P23,631.44 as deficiency contractor's tax and surcharge on the lease of personal property during the taxable year 1975; plus 14% interest from January 21, 1976 until fully paid as provided under Section 183 of P.D. 69.

i) P91,883.75 as deficiency contractor's tax and surcharge on the lease of personal property during the taxable year 1976; plus 14% interest from April 21, 1976 until fully paid as provided under Section 183 of P.D. No. 69.

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With costs against petitioner."[5]

As a consequence, both parties elevated their respective contentions to respondent Court of Appeals in two separate petitions for review. The petition filed by the Commissioner, which was docketed as CA-G.R. SP No. 25945, questioned the portion of the judgment of the tax court deleting the *ad valorem* tax on copper and silver, while the appeal filed by ACMDC and docketed as CA-G.R. SP No. 26087 assailed that part of the decision ordering it to pay P1,572,637.48 representing alleged deficiency assessment.

On February 12, 1992, judgment was rendered by respondent Court of Appeals in CA-G.R. SP No. 25945, dismissing the petition and affirming the tax court's decision on the manner of computing the *ad valorem* tax.[6] Hence, the Commissioner of Internal Revenue filed a petition before us in G.R. No. 104151, raising the sole issue of whether or not, in computing the *ad valorem* tax on copper, charges for smelting and refining should also be deducted, in addition to freight and insurance costs, from the price of copper concentrates.

On May 22, 1992, judgment was likewise rendered by the same respondent court in CA-G.R. SP No. 26087, modifying the judgment of the tax court and further reducing the tax liability of ACMDC by deleting therefrom the following items:

"(1) the award under paragraph (a) of P297,900.39 as 25% surcharge on silver extracted during the period November 1, 1974 to December 31, 1975;

(2) the award under paragraph (c) thereof of P315,027.30 as 25% surcharge on gold extracted during the period November 1, 1974 to December 31, 1975; and

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[5] *Rollo*, G.R. No. 105563, 80-82.

[6] *Id.*, G.R. No. 104151, 46-50.

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(3) the award under paragraph (e) thereof of P53,585.30 as 24% (sic, 25%) surcharge on pyrite extracted during the period November 1, 1974 to December 31, 1975."[7]

Still not satisfied with the said judgment which had reduced its tax liability to P906,124.49, as a final recourse ACMDC came to this Court on a petition for review on certiorari in G.R. No. 105563, claiming that it is not liable at all for any deficiency tax assessments for 1975 and 1976. In our resolution of September 1, 1993, G.R. No. 104151 was ordered consolidated with G.R. No. 105563.[8]

I. *G.R. No. 104151*

The Commissioner of Internal Revenue claims that the Court of Appeals and the tax court erred in allowing the deduction of refining and smelting charges from the price of copper concentrates. It is the contention of the Commissioner that the actual market value of the mineral products should be the gross sales realized from copper concentrates, deducting therefrom mining, milling, refining, transporting, handling, marketing or any other expenses. He submits that the phrase "or any other expenses" includes smelting and refining charges and that the law allows deductions for actual cost of ocean freight and insurance only in instances where the minerals or mineral products are sold or consigned abroad by the lessees or owner of the mine under C.I.F. terms, hence it is error to allow smelting and refining charges as deductions.

We are not persuaded by his postulation and find the arguments adduced in support thereof untenable.

The pertinent provisions of the National Internal Revenue Code (tax code, for facility) at the time material to this controversy, read as follows:

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[7] *Id.*, G.R. No. 105563, 57-58.

[8] *Id., Id.*, 163.

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"SEC. 243. *Ad valorem taxes on output of mineral lands not covered by lease.* - There is hereby imposed 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, and *ad valorem* tax in the amount of two *per centum* of the value of the output, except gold which shall pay one and one-half *per centum*.

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 Rep. Act No. 6110.*)

"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 claim 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. Ten *per centum* of the royalties and *ad valorem* taxes herein provided shall accrue to the municipality and ten *per centum* to the province where the mines are situated, and eighty *per centum* to the National Treasury. (*As amended by Rep. Acts Nos. 834, 1299, and by Rep. Act No. 1510, approved June 16, 1956*)."

To rephrase, under the aforequoted provisions, the *ad valorem* tax of 2% is imposed 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

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lease. In computing the tax, the term "gross output" shall be 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 for mining, milling, refining, transporting, handling, marketing or any other expenses. 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. 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 price which the same — before or without undergoing a process of manufacture — would command in the ordinary course of business.[9]

In the instant case, the allowance by the tax court of smelting and refining charges as deductions is not contrary to the above-mentioned provisions of the tax code which ostensibly prohibit any form of deduction except freight and insurance charges. A review of the records will show that it was the London Metal Exchange price on wire bar which was used as tax base by ACMDC for purposes of the 2% *ad valorem* tax on copper concentrates since there was no available market price quotation in the commodity exchange or markets of the world for copper concentrates nor was there any market quotation locally obtainable.[10] Hence, the charges for smelting and refining were assessed not on the basis of the price of the copper extracted at the mine site which is prohibited by law, but on the basis of the actual market value of the manufactured copper which in this case is the price quoted for copper wire bar by the London Metal Exchange.

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[9] Republic Cement Corporation *vs.* Commissioner of Internal Revenue, et al., L-20660, June 13, 1968, 23 SCRA 967.

[10] Memorandum dated April 11, 1978 of Renato L. Manalili, Supervising Revenue Examiner II; Original Record, C.T.A. No. 3467, Folder IV, 117-118.

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The issue of whether the *ad valorem* tax should be based upon the value of the finished product, or the value upon extraction of the raw materials or minerals used in the manufacture of said finished products, has been passed upon by us in several cases wherein we held that the *ad valorem* 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 it undergoes a chemical change through manufacturing process, as distinguished from a purely physical process which does not necessarily involve the change or transformation of the raw material into a composite distinct product.[11]

Thus, in the case of *Cebu Portland Cement Co. vs. Commissioner of Internal Revenue*,[12] this Court ruled:

"x x x *ad valorem* tax is a tax not on the minerals, but upon the privilege of severing or extracting the same from the earth, the government's right to exact the said impost springing from the Regalian theory of State ownership of its natural resources.

"x x x 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. x x x this tax is imposed on the privilege of extracting or severing the minerals from the mines. To our minds, therefore, the inclusion of the term mineral products is intended to comprehend cases where the mined or

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[11] See Cebu Portland Cement Co. *vs.* Commissioner of Internal Revenue (Resolution on Motion for Reconsideration), L-18649, December 29, 1967, 21 SCRA 1425; Republic Cement Corporation *vs.* Commissioner of Internal Revenue, *supra*, Fn. 9.

[12] L-18649, February 27, 1965, 13 SCRA 333.

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quarried elements may not be usable in its original state without application of simple treatments x x x which process does not necessarily involve the change or transformation of the raw materials into a composite, distinct product. x x x While the selling price of cement may reflect the actual market value of cement, said selling price cannot be taken as the market value also of the minerals composing the cement. And it was not the cement that was mined, only the minerals composing the finished product."

This view was subsequently affirmed in the resolution of the Court denying the motion for reconsideration of its aforesaid decision,[13] the pertinent part of which reiterated that —

"x x x the *ad valorem* tax in question should be based on the actual market value of the *quarried minerals* used in producing cement, x x x 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. x x x 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.

"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)."

Therefore, the imposable *ad valorem* tax should be based on the selling price of the quarried minerals, which is its actual market value, and not on the price of the manufactured product. If the market value chosen for the reckoning is the

[13] *Supra*, Fn. 11.

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'value of the manufactured or finished product, as in the case at bar, then all expenses of processing or manufacturing should be deducted in order to approximate as closely as is humanly possible the actual market value of the raw mineral at the mine site.

It was copper ore that was extracted by ACMDC from its mine site which, through a simple physical process of removing impurities therefrom, was converted into copper concentrate. In return, this copper concentrate underwent the process of smelting and refining, and the finished product is called copper cathode or copper wire bar.

The copper wire bar is the manufactured copper. It is not the mineral extracted from the mine site nor can it be considered a mineral product since it has undergone a manufacturing process, to wit:

"I. The physical processes involved in the production of copper concentrate are the following (p. 19, BIR records; Exh. 'H', p. 43, Folder I of Exhibits.)

A. Mining Process -

(1) Blasting - The ore body is broken up by blasting.

(2) Loading - The ore averaging about 1/2 percent copper is loaded into ore trucks by electric shovels.

(3) Hauling - The trucks of ore are hauled to the mill.

B. Milling Process -

(1) Crushing - The ore is crushed to pieces the size of peanuts.

(2) Grinding - The crushed ore is ground to powder form.

(3) Concentrating - The mineral bearing particles in the powdered ore are concentrated.

The ores or rocks, transported by conveyors, are crushed repeatedly by steel balls into size of peanuts, when they are ground and pulverized. The powder is fed into concentrators where it is mixed with water and other reagents. This is known in the industry as a

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flotation phase. The copper-bearing materials float while the non-copper materials in the rock sink. The material that floats is scooped and dried and piled. This is known as copper concentrate. The material at the bottom is waste, and is known in the industry as tailings. In Toledo City, tailings are disposed of through metal pipes from the flotation mills to the open sea. Copper concentrate of petitioner contains 28-31% copper. The concentrate is loaded in ocean vessels and shipped to Mitsubishi Metal Corporation mills in Japan, where the smelting, refining and fabricating processes are done. (Memorandum of petitioner, p. 71, CTA records.)

II. The chemical or manufacturing process in the production of wire bar is as follows: (Exh. 'H', p. 43, Folder I of exhibits.)

A. Smelting -

(1) Drying - The copper concentrates (averaging about 30 percent copper) are dried.

(2) Flash Furnace - The dried concentrate is smelted autogenously and a matte containing 65 percent is produced.

(3) Converter - The matte is converted into blister copper with a purity of about 99 per cent.

B. Refining -

(1) Casting Wheel - Blister copper is treated in an anode furnace where copper requiring further treatment is sent to the casting wheel to produce anode copper.

(2) Electrolytic Refining - Anode copper is further refined by electrolytic refining to produce cathode copper.

C. Fabricating -

(1) Rolling - Fire refined or electrolytic copper-and/or brass (a mixture of copper and zinc) is made into tubes, sheets, rods and wire.

(2) Extruding - Sheet, tubes, rods and wire are further fabricated into the copper articles in everyday use.

The records show that cathodes, with purity of 99.985% are cast or fabricated into various shapes, depending on their industrial

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destination. Cathodes are metal sheets of copper 1 meter x 1 meter x 16-16 millimeter thick and 160 kilograms in weight, although this thickness is not uniform for all the sheets. Cathodes sheets are not suitable for direct fabrication, hence, are further fabricated into the desired shape, like wire bar, billets and cakes. (p. 1, deposition, London,) Wire bars are rectangular pieces, 100 millimeter x 100 millimeter x 1.37 meters long and weigh some 125 kilos. They are suited for copper wires and copper rods. Billets are fabricated into tubes and heavy electric sections. Cakes are in the form of thick sheets and strips. (pp. 13, 18-21, deposition, Japan, Exhs. 'C' & 'G', Japan, pp. 1-2, deposition, London, see pp. 70-72, CTA records.)"[14]

Significantly, the finding that copper wire bar is a product of a manufacturing process finds support in the definition of a "manufacturer" in Section 194 (x) of the aforesaid tax code which provides:

"'Manufacturer' includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such a manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or different kinds and in such manner that the finished product of such process or manufacture can be put to a special use or uses to which such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption."

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[14] Decision, C.T.A. Case No. 2842, citing p. 19, BIR Records; Exh. 'H', p. 43, Folder I of Exhibits, Original Record, C.T.A. Case No. 3467, 99-102.

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Moreover, it is also worth noting at this point that the decision of the tax court was based on its previous ruling in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*,[15] dated January 23, 1981, which we quote with approval:

"x x x The controlling law is clear and specific; it should therefore be applied as worded. Since the mineral or mineral product removed from its bed or mine at Toledo City by petitioner is copper concentrate as admitted by respondent himself, not copper wire bar, the actual market value of such copper concentrate in its condition at the time of such removal without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses should be the basis of the 2% *ad valorem* tax.

"The conclusion reached is rendered clearer when it is taken into consideration that the *ad valorem* tax is a severance tax, i.e., a charge upon the privilege of severing or extracted minerals from the earth, and is due and payable upon removal of the mineral product from its bed or mine, the tax being 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. (Cebu Portland Cement Co. *vs.* Commissioner of Internal Revenue, *supra*.) Copper wire bars, as discussed above, have already undergone chemical or manufacturing processing in Japan, they are not extracted or produced from the earth by petitioner in its mine site at Toledo City. Since the *ad valorem* tax is computed on the basis of the actual market value of the mineral in its condition at the time of its removal from the earth, which in this case is copper concentrate, there is no basis therefore for an assertion that such tax should be measured on the basis of the London Metal Exchange price quotation of the manufactured wire bars without any deduction of smelting and refining charges.

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[15] C.T.A. Case No. 2842, *ante*.

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"In resume:

1. The mineral or mineral product of petitioner the extraction or severance from the soil of which the *ad valorem* tax is directed is copper concentrate.

2. The *ad valorem* tax is computed on the basis of the actual market value of the copper concentrate in its condition at the time of removal from the earth and before it is substantially changed by chemical or manufacturing process without any deduction from mining, milling, refining, transporting, handling, marketing, or any other expenses. However, since the copper concentrate is sold abroad by petitioner under C.I.F. terms, the actual cost of ocean freight and insurance is deductible.

3. There being no market price quotation of copper concentrate locally or in the commodity exchanges or markets of the world, the London Metal Exchange price quotation of copper wire bar, which is used by petitioner and Mitsubishi Metal Corporation as reference to determine the selling price of copper concentrate, may likewise be employed in this case as reference point in ascertaining the actual market value of copper concentrate for *ad valorem* tax purposes. By deducting from the London Metal Exchange price quotation of copper wire bar all charges and costs incurred after the copper concentrate has been shipped from Toledo City to the time the same has been manufactured into wire bar, namely, smelting, electrolytic refining and fabricating, the remainder represents to a reasonable degree the actual market value of the copper concentrate in its condition at the time of extraction or removal from its bed in Toledo City for the purposes of the *ad valorem* tax."

The Commissioner of Internal Revenue argues that the ruling in the case above stated is not binding, considering that the incumbent Commissioner of Internal Revenue is not bound by decisions or rulings of his predecessor when he finds that a different construction of the law should be adopted, invoking therefor the doctrine enunciated in *Hilado vs. Collector of Internal Revenue, et al.*[16] This trenches on

[16] 100 Phil. 288 (1956).

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specious reasoning. What was involved in the *Hilado* case was a previous ruling of a former Commissioner of Internal Revenue. In the case at bar, the Commissioner based his findings on a previous decision rendered by the Court of Tax Appeals itself.

The Court of Tax Appeals is not a mere superior administrative agency or tribunal but is a part of the judicial system of the Philippines.[17] It was created by Congress pursuant to Republic Act No. 1125, effective June 16, 1954, as a centralized court specializing in tax cases. It is a regular court vested with exclusive appellate jurisdiction over cases arising under the National Internal Revenue Code, the Tariff and Customs Code, and the Assessment Law.[18]

Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides. It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.[19]

Furthermore, as a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study

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[17] See Ursal, etc. *vs.* Court of Tax Appeals, et al., 101 Phil. 209 (1957).

[18] Collector of Internal Revenue *vs.* Yuseco, et al., L-12518, October 28, 1961, 3 SCRA 313; Auyong Hian *vs.* Court of Tax Appeals, et al., L-25181, January 11, 1967, 19 SCRA 10.

[19] Paras, E., Civil Code of the Philippines Annotated, Vol. 1, Twelfth Edition, 58-59, citing Vda. de Miranda, et al. *vs.* Imperial, et al., 77 Phil. 1066 (1947).

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and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part.[20]

II. *G.R. No. 105563*

The petition herein raises the following issues for resolution:

"A. Whether or not petitioner is liable for payment of the 25% surcharge for alleged late filing of notice of removal/late payment of the *ad valorem* tax on silver, gold and pyrite extracted during the taxable year 1976.

B. Whether or not petitioner is liable for payment of the manufacturer's sales tax and surcharge during the taxable year 1975, plus interest, on grinding steel balls borrowed by its competitor; and

C. Whether or not petitioner is liable for payment of the contractor's tax and surcharge on the alleged lease of personal property during the taxable years 1975 and 1976 plus interest."[21]

A. Surcharge on Silver, Gold and Pyrite

ACMDC argues that the Court of Appeals erred in holding it liable to pay 25% surcharge on silver, gold and pyrite extracted by it during tax year 1976.

Sec. 245 of the then tax code states:

"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 pre-payment 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,

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[20] Luzon Stevedoring Corporation *vs.* Court of Tax Appeals, et al., L-30232, July 29, 1988, 163 SCRA 647.

[21] *Rollo*, G.R. No. 105563, 16.

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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.

In case the royalties or *ad valorem* taxes are not paid within the period prescribed above, there shall be added thereto a surcharge of twenty-five *per centum*. Where a false or fraudulent return is made, there shall be added to the royalties or *ad valorem* taxes a surcharge of fifty *per centum* of their amount. The surcharge so added shall be collected in the same manner and as part of the royalties or *ad valorem* taxes, as the case may be."

Under the aforesaid provision, the payment of the *ad valorem* tax shall be made upon removal of the mineral products from the mine site or if payment cannot be made, by filing a bond in the form and amount to be approved by the Commissioner conditioned upon the payment of the said tax.

In the instant case, the records show that the payment of the *ad valorem* tax on gold, silver and pyrite was belatedly made. ACMDC, however, maintains that it should not be required to pay the 25% surcharge because the correct quantity of gold and silver could be determined only after the copper concentrates had gone through the process of smelting and refining in Japan, while the amount of pyrite cannot be determined until after the flotation process separating the copper mineral from the waste material was finished.

Prefatorily, it must not be lost sight of that bad faith is not essential for the imposition of the 25% surcharge for late payment of the *ad valorem* tax. Hence, the justification given is not sufficient to relieve ACMDC of its liability to pay the 25% surcharge for late payment. Also, the 25% surcharge prescribed in Section 245 for late payment of

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royalties and *ad valorem* tax, when contrasted with the 50% surcharge imposed "where a false or fraudulent return is made," strongly suggests that bad faith is not essential for the imposition of the 25% surcharge.[22]

The law requiring the payment of the 25% surcharge in case the *ad valorem* tax is not seasonably paid is mandatory. It provides a plan which works out automatically. The Commissioner of Internal Revenue is not vested with any authority to waive or dispense with the collection thereof.[23]

Furthermore, the claim of ACMDC that it is impossible to determine in the Philippines the quantity of silver and gold involved is belied by its own witness, Francisco Antonio, who testified:

"Q. Now, how do you test, let us say, there is a truck-load of copper concentrate. Now, for purposes of testing that truck-load, about how much quantity do you bring to the laboratory?

A. For each truck-load, we get about 40 to 50 kilos.

Q. Now, what do you do with the 40 to 50 kilos?

A. This 40 to 50 kilos is dried in the laboratory then reduced in size so that there is about 100 grams of copper concentrate that is being brought to the laboratory for analysis. Now, out of this 100 grams we take more or less about 50 grams where we analyze for gold, silver, and copper.

Q. Now, what do you do with the result of your analysis?

A. These are tabulated and then averaged out to represent one shipment.

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[22] Republic Cement Corporation *vs.* Commissioner of Internal Revenue, et al., *supra*, Fn. 9.

[23] Lim Co Chui *vs.* Posadas, Jr., etc., 47 Phil. 460 (1925); Republic *vs.* Luzon Industrial Corporation, et al., 102 Phil. 189 (1957); Republic Cement Corporation *vs.* Commissioner, et al., *supra*.

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Q. Will you tell this Honorable Court whether in that laboratory testing you physically separate the gold, you physically separate the silver and you physically separate the copper content of that 40 to 50 kilos?

A. No, no, we analyze this in one sample. This sample is analyzed for gold, silver, and copper, but there is no recovery made.

Q. You mean there is no physical separation?

A. No, no physical separation.

Q. So these three minerals — copper, gold and silver — are in that same powder that you have tested?

A. Yes, it is in the same powder.

Q. Now how you reflect the results of the testing?

A. You mean in analysis?

Q. In the analysis, yes.

A. Copper is reported in percent.

Q. Percentage?

A. Yes.

Q. How about gold?

A. Gold and silver part is represented as grams per dmt or parts per million.

Q. Based on the results of your data gathered in the laboratory?

A. Yes.

Q. Now where do you submit the results of the laboratory testing?

A. When a shipment is made we prepare a certificate of analysis signed by me and then which (sic) is sent to Manila.

Q. Now, as far as you know in connection with your duty do you know what Manila . . . what do you say, Manila, ACMDC?

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A. Makati.

Q. Makati. What does Makati ACMDC do with your assay report?

A. As far as I know it is used as the basis for the payment of *ad valorem* tax."[24]

The above-quoted testimony accordingly supports these findings of the tax court in its decision in this case:

"We see it (sic) that even if the silver and gold cannot as yet be physically separated from the copper concentrate until the process of smelting and refining was completed, the estimated commercial quantity of the silver and gold could have been determined in much the same way that petitioner is able to estimate the commercial quantity of copper during the assay. If, as stated by petitioner, it is able to estimate the grade of the copper ore, and it has determined the grade not only of the copper but also those of the gold and silver during the assay (Petitioner's Memorandum, p. 207, Record), ergo, the estimated commercial quantity of the silver and gold subject to *ad valorem* tax could have also been determined and provisionally paid as for copper."[25]

The other allegation of CMDC is that there was no removal of pyrite from the mine site because the pyrite was delivered to its sister company, Atlas Fertilizer Corporation, whose land is located inside the mineral concession of ACMDC in Sangi, Toledo City. ACMDC, however, is already barred by estoppel *in pais* from putting that matter in issue.

An *ad valorem* tax on pyrite for the same tax year was already declared and paid by ACMDC. In fact, that payment was used as the basis for computing the 25% surcharge. It was only when ACMDC was assessed for the 25% surcharge that said issue was raised by it. Also, the evidence shows that

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[24] TSN, November 26, 1985, Direct Examination of Francisco Antonio, 16-18.

[25] *Rollo*, G.R. No. 105563, 70.

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deliveries of pyrite were not exclusively made to its sister company, Atlas Fertilizer Corporation. There were shipments of pyrite to other companies located outside of its mine site, in addition to those delivered to its aforesaid sister company.[26]

B. Manufacturer's Tax and Contractor's Tax

The manufacturer's tax is imposed under Section 186 of the tax code then in force which provides:

"SEC. 186. *Percentage tax on sales of other articles.* - There shall be levied, assessed and collected once only on every original sale, barter, exchange, or similar transaction either for nominal or valuable consideration, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four-A, one hundred and eighty-five, one hundred and eighty-five-A, one hundred eighty-five-B, and one hundred eighty-six-B, a tax equivalent to seven *per centum* of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: *Provided*, That where the articles subject to tax under this section are manufactured out of materials likewise subject to tax under this section and section one hundred eighty-nine, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles. (*As amended by Rep. Act No. 6110 and by Pres. Decree No. 69.*)"

On the other hand, the contractor's tax is provided for under Section 191 of the same code, paragraph 17 of which declared that lessors of personal property shall be subject to a contractor's tax of 3% of the gross receipts.

Sections 186 and 191 fall under Title V of the tax code, entitled "Privilege Taxes on Business and Occupation." These "privilege taxes on business" are taxes imposed upon the privilege of engaging in business. They are essentially excise

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[26] Folder I, BIR Record, as cited in the decision in C.T.A. Cases Nos. 3467 and 3825, 14; *Rollo*, G.R. No. 105563, 73.

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taxes.[27] To be held liable for the payment of a privilege tax, the person or entity must be engaged in business, as shown by the fact that the drafters of the tax code had purposely grouped said provisions under the general heading adverted to above.

"To engage" is to embark on a business or to employ oneself therein. The word "engaged" connotes more than a single act or a single transaction; it involves some continuity of action. "To engage in business" is uniformly construed as signifying an employment or occupation which occupies one's time, attention, and labor for the purpose of a livelihood or profit. The expressions "engage in business," "carrying on business" or "doing business" do not have different meanings, but separately or connectedly convey the idea of progression, continuity, or sustained activity. "Engaged in business" means occupied or employed in business; "carrying on business" does not mean the performance of a single disconnected act, but means conducting, prosecuting, and continuing business by performing progressively all the acts normally incident thereto; while "doing business" conveys the idea of business being done, not from time to time, but all the time."[28]

The foregoing notwithstanding, it has likewise been ruled that one act may be sufficient to constitute carrying on a business according to the intent with which the act is done. A single sale of liquor by one who intends to continue selling is sufficient to render him liable for "engaging in or carrying on" the business of a liquor dealer.[29]

There may be a business without any sequence of acts, for if an isolated transaction, which if repeated would be a

[27] Matic, T., Taxation in the Philippines, 1973 ed., 332.

[28] Alejandro, J., The Law on Taxation, 1966, 489-490, citing Imperial *vs.* Collector of Internal Revenue, L-7924, September 30, 1955.

[29] Abel *vs.* State, 8 So. 760, 80 Ala. 631, 633.

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transaction in a business, is proved to have been undertaken with the intent that it should be the first of several transactions, that is, with the intent of carrying on a business, then it is a first transaction in an existing business.[30]

Thus, where the end sought is to make a profit, the act constitutes "doing business." This is not without basis. The term "business," as used in the law imposing a license tax on business, trades, and so forth, ordinarily means business in the trade or commercial sense only, carried on with a view to profit or livelihood.[31] It is thus restricted to activities or affairs where profit is the purpose, or livelihood is the motive. Since the term "business" is being used without any qualification in our aforecited tax code, it should therefore be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood.[32]

In the case at bar, ACMDC claims exemptions from the payment of manufacturer's tax. It asserts that it is not engaged in the business of selling grinding steel balls, but it only produces grinding steel balls solely for its own use or consumption. However, it admits having lent its grinding steel balls to other entities but only in very isolated cases.

After a careful review of the records and on the basis of the legal concept of "engaging in business" hereinbefore discussed, we are inclined to agree with ACMDC that it should not and cannot be held liable for the payment of the manufacturer's tax.

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[30] In re Griffin, 60 L.J.Q.B. 235, 237, cited in 9 C.J., Business, 1103.

[31] Cuzner *vs.* California Club, 155 Cal. 303.

[32] Collector of Internal Revenue *vs.* Manila Lodge No. 761 of the Benevolent and Protective Order of Elks, et al., 105 Phil. 983 (1959); Collector of Internal Revenue *vs.* Sweeney, et al., 106 Phil. 59 (1959); see also Collector of Internal Revenue *vs.* Club Filipino, Inc. de Cebu, L-12719, May 31, 1962, 5 SCRA 321, and cases cited therein.

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First, under the tax code then in force, the 7% manufacturer's sales tax is imposed on the manufacturer for every original sale, barter, exchange and other similar transaction intended to transfer ownership of articles. As hereinbefore quoted, and we repeat the same for facility of reference, the term "manufacturer" is defined in the tax code as including "every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished product of such process or manufacture can be put to a special use or uses to which such raw materials or manufactured or partially manufactured products in their original condition could not have been put, and who in addition alters such raw material or manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption."[33]

Thus, a manufacturer, in order to be subjected to the necessity of paying the percentage tax imposed by Section 186 of the tax code, must be 'engaged' in the sale, barter or exchange of personal property. Under a statute which imposes a tax on persons engaged in the sale, barter or exchange of merchandise, a person must be occupied or employed in the sale, barter or exchange of personal property. A person can

[33] Sec. 194 (x), National Internal Revenue Code.

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hardly be considered as occupied or employed in the sale, barter or exchange of personal property when he has made one purchase and sale only.[34]

Second, it cannot be legally asserted, for purposes of this particular assessment only, that ACMDC was engaged in the business of selling grinding steel balls on the basis of the isolated transaction entered into by it in 1975. There is no showing that said transaction was undertaken by ACMDC with a view to gaining profit therefrom and with the intent of carrying on a business therein. On the contrary, what is clear to us is that the sale was more of an accommodation to the other mining companies, and that ACMDC was subsequently replaced by other suppliers shortly thereafter.

This finding is strengthened by the investigation report, dated March 11, 1980, of the B.I.R. Investigation Team itself which found that —

"ACMDC has a foundry shop located at Sangi, Toledo City, and manufactures grinding steel balls for use in its ball mills in pulverizing the minerals before they go to the concentrators. For the grinding steel balls manufactured by ACMDC and used in its operation, we found it not subject to any business tax. But there were times in 1975 when other mining companies were short of grinding steel balls and ACMDC supplied them with these materials manufactured in its foundry shop. According to the informant, these were merely accommodations and they were replaced by the other suppliers."[35]

At most, whatever profit ACMDC may have realized from that single transaction was just incidental to its primordial purpose of accommodating other mining companies. Well-settled is the rule that anything done as a mere incident to,

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[34] Whitaker *vs.* Rafferty, etc., 38 Phil. 508 (1918); Boada *vs.* Posadas, etc., 58 Phil. 184 (1933); Imperial *vs.* Collector of Internal Revenue, 97 Phil. 992, 1002, unpub., (1955).

[35] BIR Records, Folder III, 306.

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or as a necessary consequence of, the principal business is not ordinarily taxed as an independent business in itself.[36] Where a person or corporation is engaged in a distinct business and, as a feature thereof, in an activity merely incidental which serves no other person or business, the incidental and restricted activity is not to be considered as intended to be separately taxed.[37]

In fine, on this particular aspect, we are consequently of the considered opinion and so hold that ACMDC was not a manufacturer subject to the percentage tax imposed by Section 186 of the tax code.

The same conclusion however, cannot be made with respect to the contractor's tax being imposed on ACMDC. It cannot validly claim that the leasing out of its personal properties was merely an isolated transaction. Its book of accounts shows that several distinct payments were made for the use of its personal properties such as its plane, motor boat and dump truck.[38] The series of transactions engaged in by ACMDC for the lease of its aforesaid properties could also be deduced from the fact that for the tax years 1975 and 1976 there were profits earned and reported therefor. It received a rental income of P630,171.56 for tax year 1975[39] and P2,450,218.62 for tax year 1976. [40]

Considering that there was a series of transactions involved, plus the fact that there was an apparent and protracted intention

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[36] Smith, Bell & Co. *vs.* Municipality of Zamboanga, et al., 55 Phil. 466 (1930); Standard-Vacuum Oil Co. *vs.* M.D. Antigua, etc., et al., 96 Phil. 909 (1955); City of Manila *vs.* Fortune Enterprises, Inc., 108 Phil. 1058 (1960).

[37] Standard-Vacuum Oil Company *vs.* M.D. Antigua, etc., et al., *supra*, citing Craig *vs.* Ballard & Ballard Co., 196 So. 238.

[38] BIR Records, Folder III, 295.

[39] BIR Records, Folder III, 306.

[40] Original Record, C.T.A. Case No. 3825, 213.

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to profit from such activities, it can be safely concluded that ACMDC was habitually engaged in the leasing out of its plane, motor boat and dump truck, and is perforce subject to the contractor's tax.

The allegation of ACMDC that it did not realize any profit from the leasing out of its said personal properties, since its income therefrom covered only the costs of operation such as salaries and fuel, is not supported by any documentary or substantial evidence. We are not, therefore, convinced by such disavowal.

Assessments are *prima facie* presumed correct and made in good faith. Contrary to the theory of ACMDC, it is the taxpayer and not the Bureau of Internal Revenue who has the duty of proving otherwise. It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of tax assessments.[41] Verily, failure to present proof of error in the assessment will justify judicial affirmance of said assessment.[42]

Finally, we deem it opportune to emphasize the oft-repeated rule that tax statutes are to receive a reasonable construction with a view to carrying out their purposes and intent.[43] They should not be construed as to permit the taxpayer to easily evade the payment of the tax.[44] On this note, and under the

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[41] Interprovincial Autobus Co., Inc. *vs.* Collector of Internal Revenue, 98 Phil. 290 (1956); Sy Po *vs.* Court of Tax Appeals, et al., G.R. No. 81446, August 18, 1988, 164 SCRA 524; Dayrit, et al. *vs.* Cruz, et al., L-39910, September 26, 1988, 165 SCRA 571.

[42] Aban, B., Law of Basic Taxation in the Philippines, 1994 ed., 109, citing Delta Motors Co. *vs.* Commissioner of Internal Revenue, C.T.A. Case No. 3782, May 21, 1986.

[43] 51 Am. Jur., Legislative Intention, 361.

[44] Carbon Steel Co. *vs.* Lewellyn, 251 U.S. 501.

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confluence of the weighty considerations and authorities earlier discussed, the challenged assessment against ACMDC for contractor's tax must be upheld.

WHEREFORE, the impugned judgment of respondent Court of Appeals in CA-G.R. SP No. 25945, subject of the present petition in G.R. No. 104151, is hereby AFFIRMED; and its assailed judgment in CA-G.R. SP No. 26087 is hereby MODIFIED by exempting Atlas Consolidated Mining and Development Corporation, petitioner in G.R. No. 105563 of this Court, from the payment of manufacturer's sales tax, surcharge and interest during the taxable year 1975.

SO ORDERED.

Narvasa, C.J. (Chairman), Bidin, Puno, and *Mendoza, JJ.*, concur.

EN BANC

[A.M. No. P-94-1061. March 13, 1995]

MARCOS V. PRIETO, *complainant, vs.* GODOFREDO R. CARIAGA, *respondent.*

SYLLABUS

1. **ADMINISTRATIVE LAW; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (RA 6713); HAVING FINANCIAL INTEREST IN ANY TRANSACTION IN ONE'S OFFICE, FORBIDDEN; ALSO PENALIZED UNDER THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019).**— Among the norms of personal conduct of public officials and employees provided under R.A. 6713 otherwise known as the *Code of Conduct and Ethical Standards*