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[G.R. Nos. L-35668-72 & L-35683. May 7, 1987]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs.* **REPUBLIC CEMENT CORPORATION, FILIPINAS CEMENT CORPORATION, APO CEMENT CORPORATION, BACNOTAN CONSOLIDATED INDUSTRIES, INC., RIZAL CEMENT COMPANY, INC., PHILIPPINE PORTLAND CEMENT CO., INC., and THE COURT OF TAX APPEALS**, *respondents*.

[G.R. No. L-35677. May 7, 1987]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs.* **CEPOC INDUSTRIES, INC. and THE COURT OF TAX APPEALS**, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; MUST RAISE POINTS WHICH ARE CONTRARY TO LAW AND EVIDENCE.** — By its nature, a motion for reconsideration must, of necessity, dwell upon the issues discussed in the decision and point out the specific portions thereof which may be contrary to law or to the evidence, and therefore, may be reconsidered.

2. **TAXATION; NATIONAL INTERNAL REVENUE CODE; BENEFITS OF FIVE YEAR PRESCRIPTIVE PERIOD; WHEN AVAILABLE.** — In order to avail itself of the benefits of the five-year prescriptive period under Sec. 331 of the Tax Code, the taxpayer should have filed the required return for the tax involved, that is, a sales tax return.

3. **ID.; ID.; FILING OF AN INCOME TAX RETURN, NOT A SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT OF FILING SALES TAX RETURNS.** — 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

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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.

4. ID.; ID.; SALES TAX; PRESCRIBES IN TEN YEARS IN CASE OF FRAUD, FALSITY OR OMMISSION OF THE RETURN. — 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) years from the discovery of the fraud, falsity or omission.

APPEARANCES OF COUNSEL

Lope E. Adriano for respondents Apo Cement Corporation and Philippine Portland Cement Co., Inc.

Angara Concepcion Regala & Cruz for respondents Filipinas Cement Corp., Republic Cement Corp., Bacnotan Consolidated Ind. Inc. and Rizal Cement Corp.

R E S O L U T I O N

CORTES, *J.*:

This Court's decision promulgated on August 10, 1983 ruled that cement not being a "mineral product" but a "manufactured product," its sale is not exempt from the sales tax imposed by the Tax Code.[1] As a consequence of that ruling the Court ordered the private respondents to pay the sales tax, thus:

WHEREFORE, the joint decision of the Court of Tax Appeals in G.R. Nos. L-35668-72 and L-35683 and its separate decision in G.R. No. 35677 are hereby reversed and set aside; and it is hereby ordered that private respondents pay the 7% sales tax on cement, the same to be computed on the basis of the gross selling price, less appropriate deductions corresponding to the costs of raw materials used in the manufacture of cement, conformably with the aforequoted Section

[1] National Internal Revenue Code [Commonwealth Act No. 466, as amended, Sec. 186. 188 (c)].

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186 of the Tax Code, and without the imposition of 25% surcharge. No costs.

SO ORDERED.[2]

Three separate Motions for Reconsideration[3] of the decision are now before Us, each anchored upon a different ground.

1. The Motion for Reconsideration filed by the private respondents Republic Cement *et al.* re-echoes their stand that cement is a "mineral product" which is exempt from sales tax under Sec. 186(c) of the Tax Code. The movants have merely recast the arguments set forth in their brief. They failed to convince the Court then, they are no more persuasive now.

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.[4] 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.[5] 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

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[2] Dispositive Portion, Decision of August 10, 1983, 124 SCRA 46, 63.

[3] (a) Motion for Reconsideration of Republic Cement, *et al.*

(b) Motion for Reconsideration of APO Cement, *et al.*

(c) Motion for Reconsideration of CEPOC Industries, Inc.

[4] *CEPOC v. CIR*, G.R. No. L-18649, February 27, 1965 (Motion for Reconsideration denied on December 29, 1967); *CEPOC v. CIR*, G.R. No. L-22605, January 17, 1968; *Republic Cement Corp. v. CIR*, G.R. No. L-20660, June 30, 1968.

[5] 124 SCRA 46, 59-60.

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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,[6] now subject of these motions for reconsideration.

2. The ground invoked in the Motion for Reconsideration of APO Cement Corporation and Philippine Portland Cement is the non-retroactivity of new interpretations made by this Court. Movants attempt to escape liability for sales tax by arguing that the ruling sought to be reconsidered cannot be applied retroactively to their sales of cement during the periods covered by the subject assessments. This issue was never touched upon by the movants in their pleadings, hence the decision does not discuss it. We cannot now be taken to task for the movants' oversight. By its nature, a motion for reconsideration must, of necessity, dwell upon the issues discussed in the decision and point out the specific portions thereof which may be contrary to law or to the evidence, and therefore, may be reconsidered.[7] However, to remove any uncertainty on this point, We shall briefly dispose of the issue.

Ironically, the Motion itself cites the jurisprudence which impeach the plausibility of the movants' arguments. In *Senarillos v. Hermosisima, et al.* (100 Phil. 501, 504), it was held that the interpretation of a statute made by the Court constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Thus, the Court's interpretation in this case, as in the CEPOC decisions already cited, that cement is not a "mineral product" within the purview of Sec. 246, as amended by Republic Act

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[6] 124 SCRA 46, 59.

[7] *Siy v. Court of Appeals*, G.R. No. L-39778, September 13, 1985, 138 SCRA 536, 544, [citing *Guerra Enterprises Co., Inc. v. CFI*, 32 SCRA 317 (1970).]

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No. 1299, constitutes part of the law as of the date of its amendment on June 16, 1955. Therefore, the cement sales of private respondents *on that date and thereafter* are subject to sales tax. This closes the gap left by the overruled CEPOC case (L-20563) which held that *prior to the effectivity of Republic Act No. 1299*, cement was subject to sales tax, without ruling on the taxability of cement after that date.

The same Motion cites the ruling in *People v. Jabinal*, L-36001, February 27, 1974,[8] to wit:

> * * * when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine * * *.

Reliance on the aforequoted case is misplaced. The decision of August 10, 1983 does not adopt a different view from that expressed in the previous decisions cited. In fact, it is a reiteration of the prevailing doctrine. What was overruled by the Court was the inconsistency of the CEPOC case of October 29, 1968 with the original interpretation that cement was a "manufactured product" and not a "mineral product" exempt from sales tax. The imposition of sales tax on the basis of this same interpretation as adopted by the decision cannot be foreclosed by the non-retroactivity rule.

3. Finally, the Motion for Reconsideration filed by private respondent CEPOC raises anew the issue of prescription of the government's right to make the subject assessment in the light of Sec. 331 of the Tax Code. Unlike the non-retroactivity issue, prescription has been ventilated by the movant even during the pendency of the case in the Court of Tax Appeals,[9] and in its pleadings filed with this Court.[10] Both the Court of Tax Appeals

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[8] 55 SCRA 607, 612; cited in the Motion for Reconsideration, p. 3.

[9] Petition for Review in *CEPOC v. CIR*, CTA Case No. 2057; p. 14, *Rollo*.

[10] CEPIC's Answer to the Petition for Review, G.R. No. L-35677; Brief for Respondent CEPOC.

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decision and the decision sought to be reconsidered are, however, silent on that point. We clarify.

Considering that the decision on the tax liability of private respondents, as in fact, the dispositive portion thereof ordered them to pay the 7% sales tax, the prescription issue with regard to the movant CEPOC merits clarification. Left unresolved, it will only serve to nurture the lingering doubt which CEPOC continues to harbor insofar as its tax liability is concerned. Besides, the issue was squarely raised at the proper time and in the proper forum. We elect to discuss the issue, but as already said, only as a clarification of the decision which needs no reconsideration on its merits.

In order to avail itself of the benefits of the five-year prescription period under Sec. 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 period. Both parties admit that returns were made for the *ad valorem* mining tax.[11] CEPOC argues that said returns contain the information necessary for the assessment of the sales tax.[12] The Commissioner does not consider such returns as compliance with the requirements for the filing of tax returns so as to start the running of the five-year prescriptive period.[13]

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*

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[11] CEPOC's Motion for Reconsideration, p. 2; Comment of the Solicitor General, p. 2.

[12] CEPOC's Motion for Reconsideration, p. 4.

[13] Comment of the Solicitor General, p. 2.

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Transportation Co., Inc. v. Collector, 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) years 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?

It may be recalled that prior to the interpretation made by the Court in the first CEPOC case in 1965[14] on the nature and taxability of cement, the Commissioner of Internal Revenue was of the opinion that sales tax was not due on cement.[15] Consequently, said private respondent did not file the required sales tax returns on its gross sales of cement for the period from July 1, 1959 to December 31, 1960. However, it was only in 1968, and by reason of said interpretation, that the Commissioner changed his opinion and assessed sales tax against the private respondents, including the movant CEPOC.[16]

The Commissioner contends that his duty to assess the sales tax in question arose only after the Court ruled in the first CEPOC case (G.R. No. L-18649, February 27, 1965) that cement was subject to the tax. Thus, according to him, the statute of limitations began to run only in 1967, when the Motion to Reconsider said decision was denied.[17] The net effect of this argument is that the prescription period for the assessment of the sales tax was suspended during the time that the Commissioner held the opinion that cement was not liable to tax. For its part,

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[14] G.R. No. L-18649.

[15] B.I.R. Ruling of October 18, 1955 cited in the Solicitor General's Answer, CTA Case No. 2057.

[16] Admitted in the Answer, CTA Case No. 2057.

[17] Brief for the Petitioner, pp. 43-44.

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CEPOC maintains that the statute of limitations cannot be suspended because of the Commissioner's erroneous interpretation of the Tax Code which is not among the grounds for suspension under Section 333. Following this line of argument, the omission of CEPOC would be deemed "discovered" by the government as early as *1960*, after the filing of CEPOC's *ad valorem* returns.

Whether We consider the discovery of CEPOC's omission to file a sales tax return to have taken place *in 1960*, immediately after the filing of its returns for *ad valorem* tax, or in 1967, when the Commissioner changed his erroneous ruling, We will arrive at the same result. Since the subject assessment was made in 1968, the same still falls within the ten-year prescriptive period either from 1960 or from 1967.

WHEREFORE, all the Motions for Reconsideration filed in this case are DENIED for lack of merit. The decision of August 10, 1983 stands. The tax liability of the movant CEPOC is hereby affirmed and clarified. All the private respondents, including movant CEPOC, are ordered to pay the 7% sales tax on the gross sales of cement sold during the periods covered by the assessments made by the Commissioner of Internal Revenue in accordance with the dispositive portion of the decision.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and *Sarmiento, JJ.*, concur.