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WHEREFORE, the decision appealed from is reversed and the petition for naturalization is dismissed. No pronouncement as to costs.

Concepcion C.J., Reyes, J.B.L., Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, Villamor, and *Makasiar, JJ.*, concur.

Barredo, J., did not take part.

[G.R. No. L-23188. August 31, 1970]

PHILAM MINING, INC., *petitioner-appellant, vs.* COURT OF TAX APPEALS, ET AL., *respondent-appellee.*

SYLLABUS

1. **TAXATION; REPUBLIC ACT 1125; COURT OF TAX APPEALS; PROCEDURE; MOTION FOR RECONSIDERATION; EFFECT OF LATE FILING.**— The Court of Tax Appeals had correctly found that the petitioner had filed its motion for reconsideration of the denial by the Commisioner of Internal Revenue of its petition for refund more than 30 days after receipt of said denial - or at a time when the decision of the Commissioner was already final. When the appeal from the decision of the Commissioner of Internal Revenue was filed with the Court of Tax Appeals the decision of the Commissioner was already final, too. The appeal was not filed in accordance with the provision of Section 11 of Republic Act 1125, so that the Court of Tax Appeals did not acquire jurisdiction to entertain the appeal in CTA Case No. 937.

2. **MINING LAW; MINERALS, DEFINED.**— The Mining Law (Commonwealth Act 137), gives the definition of "minerals," as follows: "With the exception of the soil which supports organic life and of *ordinary earth, gravel, sand, and stones which are used for building or construction purposes,* the disposition of which is governed by Act Numbered Three thousand seventy-

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seven, as amended by Act Numbered Three thousand eight hundred and fifty-two of the Philippine Legislature, all inorganic substances found in nature in solid, liquid, gaseous or any intermediate state are minerals within the purview of this Act.

3. **ID.; ID.; CRUSHED ROCKS NOT MINERALS; INSTANT CASE.—** The evidence shows that the crushed rocks sold by petitioner were "used for road foundation and cement aggregates." It is clear therefore, that the crushed rocks in question fall within the category of "stone....used for building and construction purposes," referred to in Section 7 of the Mining Law.

4. **TAXATION; SALES TAX; CRUSHED ROCKS; LIABILITY TO TAX; INSTANT CASE.—** The crushed rocks produced and sold by petitioner during the period under review not being minerals or mineral products which are subject to the mining tax, the sales thereof are not exempt from the sales tax under Section 188 (c) of the Revenue Code.

APPEARANCES OF COUNSEL

H. San Luis and *L. V. Simbulan* for petitioner-appellant.

Solicitor General Arturo A. Alafriz, Assistant Solicitor General Antonio Ibarra and *Solicitor Alejandro B. Afurong* for respondent-appellee.

DECISION

ZALDIVAR, *J.*:

A petition by Philam Mining Co. — hereinafter referred to simply as petitioner — for review of the decision rendered by the Court of Tax Appeals, dated May 29, 1964, in the consolidated cases docketed before the said court as CTA Cases Nos. 937, 1138 and 1160, affirming the decision of the Commissioner of Internal Revenue which denied petitioner's claims for refund of sales taxes paid by it to said Commissioner. The dispositive portion of the decision of the Court of Tax Appeals reads as follows:

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"WHEREFORE, the appeal in C.T.A. No. 937 is hereby dismissed for lack of jurisdiction, and the decisions of respondent appealed from in C.T.A. Nos. 1138 and 1160 are hereby affirmed, with costs against petitioner."

Petitioner is the concessionaire/lessee and operator of the rock quarry owned by the Talim Quarry Co., Inc. situated at Barrio Ticolio, Cardona, Rizal, covered by Transfer Certificate of Title No. 18480 issued by the Register of Deeds of the province of Rizal. From October, 1958 to sometime in 1961 petitioner, as lessee/concessionaire or the above-mentioned quarry, was engaged in the production and sale of crushed rock which was extracted from the quarry by light blasting and barring down with steel bars. The broken rocks produced or extracted by this process or method of operation were further broken into smaller pieces by manual labor for feeding into crushers to be washed, ground and sized to specifications. These crushed stones, which are used for building and construction purposes, were then sold directly by petitioner to its numerous customers.

On the sales of the crushed stones by petitioner, during the period from January to November 20, 1959, the Commisioner of Internal Revenue assessed and collected from petitioner the sum of P17,067.10, as sales tax, representing seven (7%) percent of the gross value of such sales. In a letter, dated December 8, 1959, petitioner filed with the Commissioner a claim for refund of the aforementioned sum of P17,067.10, claiming that under the provisions of paragraph (c) of Section 188 of the National Internal Revenue Code no sales tax is imposed on the sales of mineral and mineral products, whether in their original state or not, when sold, bartered or exchanged by the lessee, concessionaire, or owner of the mineral land from which the same were removed. The Commissioner of Internal Revenue, however, in a letter dated January 7, 1960, denied petitioner's claim for refund, stating that "crushed stone is nothing more than gravel" and that, therefore, producers of crushed stones, like producers of gravel and sand, "are subject to the fixed and percentage taxes imposed under Section 182 (A)-(1), and Section 186 of the Tax Code, as amended. Petitioner received notice of this denial on

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February 10, 1960. On March 16, 1970 petitioner sought a reconsideration of the Commissioner's decision denying the refund. On August 27, 1960, petitioner received a letter from the Commissioner, dated July 7, 1960, denying the request for reconsideration, upon the ground that the crushed stones produced and sold by petitioner are not minerals within the purview of Section 188 (c) of the National Internal Revenue Code. On August 29, 1960, petitioner filed with the Court of Tax Appeals an appeal from the ruling of the Commissioner of Internal Revenue. Said appeal was docketed as CTA Case No. 937.

Likewise, on petitioner's sales of crushed stones extracted from the same quarry for the period from July 21, 1959 to June 20, 1960 the Commissioner of Internal Revenue collected from petitioner the sum of P7,805.13, also as sales tax, representing seven (7) percent tax on the gross value of the sales, A claim for refund was also filed by petitioner with respondent Commissioner for the said amount of P7,806.13, based on the same grounds availed of in the claim for refund of the previous amount of P17,067.10. The claim for refund was denied by the Commissioner of Internal Revenue, also for the reason that the crushed stones sold by the petitioner are not minerals. On October 17, 1961, petitioner filed with the Court of Tax Appeals an appeal from the ruling of the Commissioner of Internal Revenue. The said appeal was docketed as CTA Case No. 1138.

Meanwhile, petitioner continued selling its crushed stones to its customers, and on such sales for the period from July 20, 1960 to July 21, 1961, the Commissioner of Internal Revenue again collected from petitioner the sum of P19,250.72, as sales tax on the gross value of the sales. On July 26, 1961, petitioner filed with respondent Commissioner a claim for the refund of the aforementioned sum of P19,250.72, invoking once again the provisions of the National Internal Revenue Code relied upon by it in its previous claims for refund. As in the two previous cases, the Commissioner of Internal Revenue denied petitioner's claim for refund of the last named amount, stating, in his letter of denial, dated October 18, 1961, that "the crushed stones you (petitioner) mine are not minerals and hence subject to the sales tax." Again

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petitioner appealed to the Court of Tax Appeals from the denial by the Commissioner of Internal Revenue of its third claim for refund. Said appeal, filed on January 9, 1962, was docketed as CTA Case No. 1160.

By agreement of the parties, the three cases, CTA Nos. 937, 1138 and 1160, were jointly heard by the Court of Tax Appeals on February 27, 1963.

After the joint hearing, under date of May 29, 1964, the Court of Tax Appeals rendered a decision, dismissing CTA Case No. 937 upon the ground of lack of jurisdiction because the petition for review was filed out of time, and affirming the decisions of respondent Commissioner of Internal Revenue in CTA Case Nos. 1138 and 1160, with costs against petitioner.

1. The first error assigned by petitioner, as having been committed by the Court of Tax Appeals, is that of having dismissed CTA Case No. 937 upon the ground of lack of jurisdiction. We find that the Court of Tax Appeals had correctly found that the petitioner had filed its motion for reconsideration of the denial by the Commissioner of Internal Revenue of its petition for refund more than 30 days after receipt of said denial — or at a time when the decision of the Commissioner was already final. When the appeal from the decision of the Commissioner of Internal Revenue was filed with the Court of Tax Appeals the decision of the Commissioner was already final, too. The appeal was not filed in accordance with the provisions of Section 11 of Republic Act 1125, so that the Court of Tax Appeals did not acquire jurisdiction to entertain the appeal in CTA Case No. 937.

2. However, the principal issue in the present appeal — which involves the three cases, including CTA Case No. 937 — is whether or not the crushed rocks sold by petitioner are considered minerals or mineral products for the purposes of the imposition of the sales tax. If resolved in the affirmative, then the crushed rock sold by petitioner is exempt from payment of sales tax under Section 188(c) of the National Internal Revenue

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Code, and petitioner is entitled to the refund of the sales tax that it paid, minus whatever mining taxes may be due; but if resolved in the negative, the sales of the crushed rocks are subject to sales tax under Section 186 of the National Internal Revenue Code and, therefore, the decision of the Court of Tax Appeals should be affirmed.

The Mining Law (Commonwealth Act 137), gives the definition of "minerals," as follows:

"With the exception of the soil which supports organic life and of *ordinary earth, gravel, sand, and stone which are used for building or construction* purposes, the disposition of which is governed by Act Numbered Three thousand seventy-seven, as amended by Act Numbered Three thousand eight hundred and fifty-two of the Philippine Legislature, all inorganic substances found in nature in solid, liquid, gaseous, or any intermediate state are minerals within the purview of this Act." (italics supplied).

The evidence shows that the crushed rocks sold by petitioner were "used for road foundation and cement aggregated."[1] It is clear therefore, that the crushed rocks in questions fall within the category of "stone...used for building and construction purposes," referred to in Section 7 of the Mining Law.

We quote with approval the decisive portion of the decision of the Court of Tax Appeals, penned by Associate Judge Roman M. Umali, and concurred in by Presiding Judge Mariano Nable and Associate Judge Augusto M. Luciano, as follows:

"Section 188(c) of the Revenue Code exempts from the *sales tax* sales of minerals and mineral products if made by the lessee, concessionaire or owner of the mineral land from which removed. The word 'mineral' means all inorganic substances found in nature whether in solid, liquid, gaseous, or any intermediate state. The term 'mineral products' means things produced by the lessee, concessionaire or owner of mineral lands, at least eight per cent of which things must be minerals extracted by such lessee, concessionaire, or owner of mineral lands. (Sec. 246, Rev. Code). Section 7 of the Mining Act

[1]Exhibit "H", p. 28, BIR Record - CTA 937, 1138 and 1160.

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defines 'minerals' as including ' 'all inorganic substances found in nature in solid, liquid, gaseous or any intermediate state,' *but does not include* 'soil which supports organic life,...*gravel, sand and stone which are used for building or construction purposes.*'

"From the foregoing definitions of 'minerals' and 'mineral products' it appears clear that crushed rocks for use in building and construction purposes, such as those produced and sold by petitioner, are not 'minerals' or 'mineral products' within the meaning of Section 188(c) of the Revenue Code, because they are not minerals or mineral products under the Mining Act and are not subject to the mining tax. The records show that the quarry from which the rocks were obtained by petitioner was not registered with the Mining Recorder as a mining claim and *no mining tax was paid on such rocks.*

"The minerals and mineral products which are exempt from the sales tax under Section 188(c) of the Revenue Code are those which are obtained from mineral lands and are subject to the mining tax provided in Title VII of the Revenue Code. The reason for the exemption is that the mining taxes 'appear to be adequate as means of taxing the mining industry.'

> 'Under this section, it is proposed further to exempt from the sales tax, sales and consignments of minerals and mineral products by the lessee, concessionaire, or owner of the mineral lands from which removed, because the rate proposed under special mining taxation appear to be adequate as a means of taxing the mining industry. Minerals and mineral products extracted from mineral lands covered by lease are subject under another section to a royalty of 1-1/2% of the actual market value of the gross output thereof, and those extracted from mineral lands not covered by lease are subject to an ad valorem tax of 1-1/2% of the actual market value of the annual gross output of the minerals or mineral products extracted or produced from the mineral lands.x x x. In addition to the royalty above stated, the lessee of the mineral lands pays a rental of P1 per hectare or fraction of a hectare of the mineral lands leased. It seems fair and just, therefore, that sales and consignments of minerals and mineral products by the lessee, concessionaire, or owner of mineral lands should be exempt from the sales tax. (Vol. II, Report of the Tax Commission of the Phil. on National Internal Revenue Taxes, Feb. 1939, pp. 202-203.)

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"The crushed rocks produced and sold by petitioner during the period under review not being minerals or mineral products which are subject to the mining tax, the sales thereof are not exempt from the sales tax under Section 188(c) of the Revenue Code. Accordingly, we find it unnecessary to pass upon the other issues raised by respondent."

WHEREFORE, the decision appealed from is affirmed, with costs against petitioner-appellant Philam Mining, Inc.

IT IS SO ORDERED.

Concepcion C.J., Reyes, J.B.L., Dizon, Makalintal, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor and *Makasiar, JJ.*, concur.

[G.R. No. L-23290. August 31, 1970]

PHILIPPINE LONG DISTANCE COMPANY, *petitioner, vs.* **FREE TELEPHONE WORKERS' UNION (PAFLU) and COURT OF INDUSTRIAL RELATIONS,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; COURT OF INDUSTRIAL RELATIONS; JURISDICTION OVER LABOR DISPUTE; CERTIFICATION BY THE PRESIDENT.**— On the issue of jurisdiction, it will be noted that the labor dispute was certified by the President to the CIR, and, as found by the said court, the termination of the services of Badillo and Lim was "one of the causes of the labor dispute in question, resulting in its certification by the President of the Philippines." We find no reason to disturb the CIR's assumption of jurisdiction over this aspect of labor dispute. The Court was in a better position to determine, after due investigation, whether in fact the reinstatement demand of the Union formed an important part of the labor dispute so that such demand plus the other issues occasioned and precipitated the strike.