REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VALDERAMA LUMBER MANUFACTURERS CO., INC.,
Petitioner,

- versus - C.T.A. Case No. 3886

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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1/31/99

DECISION

This case is a claim for refund of the amount of P276,507.06 representing 25% of the specific taxes paid on the oils and fuels actually used by petitioner in its operations as a forest concessionaire.

Petitioner is a domestic corporation duly licensed to operate a forest concession. It is the holder of Timber License Agreement No. 96 covering an area located in the province of Davao del Norte (Exhibit A, p. 91 C.T.A. records).

During the period April 1981 through September 1982, petitioner purchased from various oil companies/stations refined and manufactured mineral oils, motor fuels and diesel fuel oils which petitioner actually and exclusively used in connection with the exploitation and operations of its forest concession. The said oil companies/stations paid and passed on to petitioner the specific taxes imposed under Sections 153 and 156 (formerly Sections 142 and 145) of the National Internal Revenue Code of 1977 on refined and manufactured mineral oils, motor fuels and diesel fuel oils that said oil companies sold to petitioner.

Pursuant to Republic Act No 1435 (An Act To Provide Means For Increasing The Highway Special Fund) and the decision of the Supreme Court in the case of **Insular Lumber Co. vs. Court of Tax Appeals**, G.R. No L-31057 May 29 1981 (104 SCRA 710), petitioner invoked entitlement to the 25% partial refund on the specific taxes paid on the refined and manufactured mineral oils, motor fuels, and diesel fuel oils that petitioner utilized in the operations of its forest concession.

On May 16 1983, petitioner filed with the BIR Appellate Division a written claim for refund of the amount of P276,507.06, computed as follows:

VALDERAMA LUMBER MANUFACTURERS CO., INC.
April 1981 - September 1982

	VOLUME (Liters)	PRODUCT COST	SPECIFIC TAX	25% REFUND
Diesel	3,372,630	P 9,973,063.00	P 590,210.25	P147,552.56
Regular Gasoline	572,000	2,809,924.00	514,800.00	128,700.00
Oil and lubricants	1,260	11,369.00	1,008.00	252.00
Grease	20	170.40	10.00	2.50
TOTAL		P12,794,526.40	P1,106,028.25	P276,507.06

To support its claim for refund petitioner submitted to respondent affidavits of its Vice-President for Corporate Planning and Management Services (Exhibit "C-1"), Finance Manager (Exhibit C-2), Accountant (Exhibit C-3) and two other disinterested persons (Exhibits C-4 and C-5), all attesting that for the period April 1981 to September 1982 petitioner actually used in its operations refined and manufactured mineral oils, motor fuels and fuel oils valued at P12,794,526.40.

On September 4, 1984 petitioner's counsel received respondent's letter dated July 30, 1984 denying the claim for refund of the whole amount of P276,507.06. It is respondent's view that in order to avail of the benefits of partial tax refund mentioned under Section 5 of Republic Act No. 1435, there must also be a municipal or city ordinance which imposes an additional tax of not exceeding 25% of the regular specific tax levied under Sections 142 and 145 of the Tax Code. In other words, refund will arise only after the enactment of the required ordinance levying the additional tax and subsequent payment thereof. With the issuance however, of the Presidential Decree Nos. 231 (otherwise known as the Local Tax Code) and Presidential Decree No. 426 (amending P.D. 231) and its implementing regulation specifically Local Tax Regulations No. 1-74, cities and municipalities can no longer levy any additional tax on articles subject to specific tax. Consequently, partial refund of specific tax payments on the petroleum products used in logging or mining can no longer be authorized (Exhibit xxx).

On January 14, 1985, the instant petition for review was filed with this Court. Petitioner prayed for an order requiring respondent to pay 20% interest per annum, in addition to its claim for refund, for alleged arbitrary refusal to refund the said claim. Petitioner likewise prayed for cost of suit.

There are no disputes as to the material facts of the case and respondent interposed no objection to the admission of petitioner's written offer of documentary evidence.

The issue for this Court to resolve is whether or not petitioner is entitled to claim a partial refund of the specific tax paid on oils and fuels used in the operation of its forest concession.

A suit for the recovery of tax erroneously or illegally collected must be filed in this Court within the periods prescribed by Section 11 of Republic Act No. 1125 (An Act Creating The Court of Tax Appeals) and Section 306 (now Section 230) of the National Internal Revenue Code (NIRC).

The pertinent portions of the foregoing provisions of law are quoted hereunder:

> "**SEC. 11 (R.A. 1125).** *Who may appeal; effect of appeal.* - Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, xxxxxx may file an appeal in the Court of Tax Appeal within thirty days after the receipt of such decision or ruling." (Underscoring supplied.)

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> **SEC. 306** (now **SEC. 230**) NIRC. *Recovery of tax erroneously or illegally collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereinafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made such payment appears clearly to have been erroneously paid."

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In the case of **Commissioner of Internal Revenue vs. National Power Corporation**, G.R. No. L-18874, January 30 1970 (31 SCRA 112), the Supreme Court took note of the case of **Gibbs vs. Collector of Internal Revenue**, G.R. No. L-13453, February 29, 1969; (107 Phil. 232). This (Supreme) Court, construing the provisions of Section 306 (now section 230) of the National Internal Revenue Code together with Section 11 of Republic Act No. 1125 held:

> "In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 (now 230) of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the collector. This is so because of the positive requirement of Section 306 (now 230) and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute."[1]

Section 135 of the Tax Code insofar as pertinent provided "that specific taxes on locally manufactured petroleum products levied under Sections 153, 155 and 156

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[1] See also: **P.J. Kiener and Co., Ltd. vs. David**, 92 Phil. 945; **Johnston Lumber Co., Inc. vs. Court of Tax Appeals**, 101 Phil. 654; **College of Oral and Dental Surgery vs. Court of Tax Appeals**, 102 Phil. 912; **Gonzales vs. Court of Tax Appeals**, G.R. Nos. L-14532 and L-14533, May 26, 1965.

of this Title, except lubricating oil and grease, shall be paid within fifteen (15) days from the date of removal thereof from the place of production."

It is therefore evident that the manufacturer of petroleum products has up to 15 days from the date of its removal within which to pay the specific taxes on locally manufactured petroleum products. As an exception, manufacturers of lubricating oils and grease have to pay the specific tax collected from the purchaser on the date of its removal from the place of production (**Aras-asan Timber Co., Inc vs. Commissioner of Internal Revenue**, C.T.A. Case No. 3524, December 17, 1993).

In the case at bar, petitioner purchased the oils and fuels during the period April 1981 to September 1982. Thus, the specific taxes thereon were deemed paid at the date of its removal or on the 15th day following the date of its removal depending on whether it is lubricating oil and grease or manufactured petroleum products. The claim for refund was filed with BIR on May 16, 1983 and respondent's denial thereof was received by petitioner on September 4, 1984. The instant petition for review was filed with this Court only on January 14, 1985. From the date of receipt by petitioner of respondent's denial of the claim for refund up to the filing of the petition for review, four(4) months have lapsed. This is way beyond the 30 days period prescribed by Section 11 of R.A. No. 1125. From the date of payment of the specific taxes sought to be refunded up to the date the petition for review was filed, a period of not less than three years have passed. This is again over the two year period provided under Section 306 (now Section 230) of the Tax Code. Verily, respondent's right to claim a partial refund of the specific taxes paid on purchases of oils and fuels for the period April 1981 to September 1982 had already prescribed.

WHEREFORE, the instant claim for refund is hereby denied for being filed beyond the reglementary period prescribed by Section 306 (section 230) of the National Internal Revenue Code and Section 11 of Republic Act No. 1125.

SO ORDERED.

Quezon City, Metro Manila, January 31, 1994.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals