REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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RIO TUBA NICKEL MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASES NOS. 3510 and 3899

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

2/11/88

D E C I S I O N

These are claims for partial tax refund in the sum of ₱974,978.50 and ₱424,203.33 as specific tax paid on oil products used in mining operations pursuant to the provisions of Section 5 of Republic Act No. 1435.

During the period from June 1, 1980 to May 31, 1982 and from May, 1982 to March, 1983 (Exhs. A to Z, AA to ZZ, AB to AC and their sub-exhibits) petitioner purchased from Petrophil Corporation and/or other oil companies manufactured mineral oils, motor fuels and diesel fuel oils which petitioner actually and exclusively used in connection with the exploitation and operation of its mining concessions. (Exhs. A-1 to A-9; TSN, 21 Feb. 1983, p. 10; 27 May 1985, p. 17;

26 August 1985, p. 10.) Petrophil Corporation and/or other oil companies paid and passed on to petitioner the specified 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 company sold to petitioner.

Petitioner under the provisions of Section 5 of Republic Act No. 1435 and the decision of the Supreme Court in Insular Lumber Co. v. Court of Tax Appeals (104 SCRA 718), filed with the respondent written claims for refund in the amount of ₱974,978.50 and ₱424,203.33, representing 25% of the specific taxes collected on the refined and manufactured mineral oils, motor fuels and diesel fuel oils that petitioner utilized in its operations as forest concessionaire. In support of the said claim for refund, petitioner submitted the affidavits of the president of petitioner and of at least two disinterested persons attesting to the fact that the refined and manufactured mineral oils, motor fuels and diesel fuel oils that petitioner purchased from Petrophil were actually and exclusively used in the exploitation and operation of its forest concession.

From the time the claims for refund were filed on July 7, 1982 and September 26, 1983 up to the time the present petitions for review were filed by petitioner, no action was taken by respondent.

Hence, petitioner filed the herein petitions for review. However, during the pendency of these petitions, respondent Commissioner of Internal Revenue denied the first claim for refund on the ground that in order to avail of the benefits of partial tax refund mentioned in R.A. 1435, there must be a municipal or city ordinance which imposes an additional tax of not exceeding twenty five percent (25%) of the regular specific tax levied under Section 142 and 145 of the Tax Code in the place of petitioners operations. The second claim for refund has not yet been acted upon.

These two cases were consolidated during the hearing.

The evidence adduced during the trial shows that petitioner is a domestic corporation engaged for many years in the business of mining with Mining Lease Contracts duly entered into with the Republic of the Philippines. (Exhs. EE, EE-1 to EE-17.) During the period pertinent to the present petitions, more particularly from June, 1980 through March, 1983, petitioner purchased from Petrophil Corporation various quantities of refined and manufactured mineral oils, motor fuels and diesel fuel oils (Exhs. A to Z, AA to ZZ, AB to AC and their sub-exhibits), which petitioner actually and exclusively used in connection with the exploitation and operation of its mining claims, (Exhs. A-1 to A-9; T.S.N., 21 February 1983, p. 10; 27 May 1985, p. 17; 26 August 1985, p. 10) to run the various items of machines, equipment and motor vehicles. (Exh. FF.)

The quantities in liters of diesel fuel oil, gasoline, bunker fuel oil, aviation gas, jet fuel oil and lubricating oil used or consumed by petitioner each month during the period June, 1980 to July, 1983 in the operations and exploitation of its mining claims, (Exhs. HH, GG and A-1) and the corresponding specific taxes therein at the rates mentioned are as follows:

RIO TUBA NICKEL MINING CORPORATION
SUMMARY OF FUEL, OIL AND LUBRICANTS CONSUMPTION (IN LITERS)
FOR THE PERIOD JUNE 1980 TO MAY 1982
AND JUNE 1982 TO JULY 1983

	DIESEL		GASOLINE		LUBE AND OIL	
	QUANTITY	SPECIFIC TAX	QUANTITY	SPECIFIC TAX	QUANTITY	SPECIFIC TAX
1980						
JUNE	242,563	42,448.53	1,793	1,631.63	10,643	8,514.40
JULY	248,679	43,518.83	1,578	1,435.98	11,788	9,430.40
AUGUST	257,180	45,006.50	2,158	1,963.78	9,518	7,614.40

SEPTEMBER	472,436	82,676.30	2,129	1,937.39	12,615	10,092.00
OCTOBER	290,128	50,772.40	2,504	2,278.64	10,746	8,596.80
NOVEMBER	276,859	48,450.33	1,681	1,529.71	8,645	6,916.00
DECEMBER	441,520	77,266.00	1,355	1,233.05	12,325	9,860.00
1981						
JANUARY	472,115	82,620.13	1,861	1,693.51	15,983	12,786.40
FEBRUARY	519,837	90,971.48	1,707	1,553.37	14,241	11,392.80
MARCH	522,620	91,458.50	1,812	1,648.92	21,820	17,456.00
APRIL	539,969	121,493.03	2,224	2,357.44	16,185	8,092.50
MAY	300,137	67,530.83	1,467	1,555.02	9,964.	4,982.00
JUNE	206,503	46,463.18	1,428	1,513.68	7,821	3,910.50
JULY	187,804	42,255.90	1,307	1,385.42	8,728	4,364.00
AUGUST	243,276	54,737.10	1,424	1,509.44	9,018	4,509.00
SEPTEMBER	257,925	5[illegible],033.13	1,197	1,268.82	11,016	5,508.00
OCTOBER	266,869	60,045.53	1,293	1,370.58	11,318	5,659.00
NOVEMBER	271,437	61,073.33	1,312	1,390.72	10,751	5,375.50
DECEMBER	438,463	98,654.18	1,400	1,484.00	11,745	5,872.50
1982						
JANUARY	429,709	96,684.53	1,388	1,471.28	16,211	8,105.50
FEBRUARY	418,203	94,095.68	992	1,051.52	16,853	8,426.50
MARCH	542,937	122,160.83	1,834	1,944.04	15,631	7,815.50
APRIL	482,211	108,497.48	1,025	1,086.50	16,561	8,280.50
MAY	387,759	87,245.78	1,425	1,510.50	13,084	6,542.00
TOTAL	8,717,139	1,774,159.51	38,294	37,804.94	303,210	190,102.20

In sum, the petitioner paid the following amounts of specific taxes for the various oil products it used during the periods in question:

	JUNE 1980 TO MAY 1982	JUNE 1982 TO JULY 1982
DIESEL	₱1,774,159.51	₱2,454,093.99
GASOLINE	37,804.94	55,994.62
LUBE & OIL	190,102.20	274,743.05
BUNKER	572,736.60	600,966.55
AVIATION GASOLINE	15,960.00	33,090.00
JET FUEL	190,102.20	17,419.40
TOTAL	₱2,780,865.45	₱3,436,307.61

Twenty-five percent (25%) of ₱2,780,865.45 is ₱695,216.36; while 25% of ₱3,436,307.61 is ₱859,076.90.

Respondent did not present any evidence against the actual specific taxes paid on diesel, gasoline, lubricating oil and other oils used by petitioner during the period in question.

The only issue to be resolved in this case is whether or not petitioner is entitled to the refund of 25% of the specific taxes collected and paid in the amounts of ₱695,216.36 and ₱859,076.90, on the diesel, gasoline, lubricating oil and other oils used by petitioner during the period in question.

Petitioner contends that it is entitled to the refund of twenty-five percent (25%) of the specific taxes it paid on the petroleum products it purchased and actually used in the exploitation and operations of its forest concession. It asserted that under the said Section 5, Republic Act No. 1435, it provides that -

> The proceeds of the additional tax on manufactured oils shall accrue to the road and bridge funds of the political subdivision for whose benefit the tax is collected: <u>Provided</u>, <u>however</u>, That whenever any <u>oils mentioned above</u> are used by miners or forest concessionaires in their operations, <u>twenty-five per centum</u>

> of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue upon submission of proof of actual use of oils and under similar condition enumerated in subparagraphs one and two of Section one hereof, amending section one hundred forty-two of the Internal Revenue Code: Provided, further, That no new road shall be constructed unless the routes or location thereof shall have been approved by the Commissioner of Public Highways after a determination that such road can be made part of an integral and articulated route in the Philippine Highway System, as required in section twenty-six of the Philippines Highway Act of 1953. (Underlining ours.)

The "oils mentioned above", referred to in the proviso of the foregoing provision, are those mentioned in Section 142 and 145 of the 1939 National Internal Revenue Code, and which were amended by Sections 1 and 2 of Republic Act No. 1435, respectively. At the time material to this case, said Sections 142 and 145 became Sections 153 and 156, respectively of the 1977 National Internal Revenue Code.

During the period involved in this case, the provisions of the aforesaid Sections 153 and 156 are as follows:

> SEC. 153. Specific tax on manufactured oils and other fuels. On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes which

shall attach to the articles hereunder enumerated as soon as they are in existence as such:

(a) Kerosene, per liter of volume capacity, seven centavos;
(b) Lubricating oils, per liter of volume capacity, eighty centavos;
(c) Naphtha, gasoline, and all other similar products of distillation, per liter of volume capacity, ninety-one centavos; Provided, That on premium and aviation gasoline, the tax shall be one peso per liter of volume capacity;

(d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo; Provided, That unless otherwise provided for by special laws, if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purposes of this subsection, the removal of denatured alcohol of not less than 180 degree proof (90%) absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary;
(e) Processed gas, per liter of volume capacity, three centavos;
(f) Thinners and solvents, per liter of volume capacity, fifty-seven centavos;
(g) Liquefied petroleum gas, per kilogram, fourteen centavos; Provided, That liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the specific tax on diesel fuel oil;
(h) Asphalts, per kilogram, eight centavos;
(i) Greases, waxes and petrolatum, per kilogram, fifty centavos;
(j) Aviation turbo jet fuel, per liter of volume capacity, fifty-five centavos.
(As amended by Sec. 1, P.D. No. 1672.)

> SEC. 156. Specific tax on diesel fuel oil.- On fuel oil, commercially known as diesel fuel oil, and on all similar fuel oils, having more or less the same generating power, per liter of volume capacity, seventeen and one-half centavos, which tax shall attach to this fuel oil as soon as it is in existence as such.

According to the law, said R.A. No. 1435, the refund shall be made out by the respondent upon submission of proof by the miners or forest concessionaires of the actual use of oils and under similar conditions prescribed in subparagraphs one and two of Section 1 thereof. These requirements are the following:

> (1) A sworn affidavit of the producer and two disinterested persons proving that the said oils were actually used in agriculture, or in lieu thereof.
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> (2) Should the producer belong to any producers association or federation, duly registered with the Securities and Exchange Commission, the affidavit of the president of the federation or association, attesting to the fact that the oils were actually used in agriculture.
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> (3) In the case of aviation oils, a sworn certificate satisfactory to the Collector proving that the said oils were actually used in aviation: Provided, That no such refunds shall be granted in respect to the oils used in aviation by citizens and corporations of foreign countries which do not grant equivalent refunds or exemptions in

respect to similar oils used in aviation by citizens and corporation of the Philippines.

In the present case, petitioner had complied with the pertinent requirements of Section 1 of Republic Act No. 1435. Petitioner had shown that it is a duly licensed forest concessionaire and that it actually purchased and used various oil and petroleum products during the period June 1, 1980 to March 1983 and petitioner had filed on July 7, 1982 and September 26, 1983 claims for refund of 25% of the specific taxes it paid for various petroleum products it purchased and actually used during that period. It supported its claim by the sworn statement of its President (Exh. A-1) and four disinterested persons (Exh. A-2 to A-9) all attesting to the fact that the oils were actually used in the operation of its mining claims. These facts were admitted by respondent. Consequently, with the compliance of the requirement of the law, the issue at bar is now ready for disposition and which is not without a precedent.

On the basis of the decision of the Supreme Court in the case of Insular Lumber Co. vs. Court of Tax Appeals, G.R. L-31057 and L-31137, promulgated on May 29, 1981, cited authoritatively in the decision of the Court of Tax Appeals in Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Cases Nos. 2964 and 2971, dated November 28, 1986 and March 31, 1986, respectively, and Zamboanga Wood Products, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3522, May 15, 1987, wherein we held, in effect, that petitioner therein is entitled to refund of the 25% of the specific tax on the oils used by it, which we quote:

> "This issue is not one of first impression. In the case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2971, dated March 31, 1986, involving the same parties, this Court ruled:
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> Resolving the question squarely in the Insular Lumber Case involving as it does Section 5 of RA No. 1435, the Supreme Court held:
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>> "Based on the aforequoted provisions, it is very apparent that the partial refund of specific tax paid for oils used in agriculture and aviation is limited to five years while there is no time limit for the partial refund of specific tax paid for oils used by miners and forest concessionaires. We find no basis in applying the limitation of the operative period provided for oils used in agriculture and aviation to

> the provision on the refund to miners and forest concessionaires. It should be noted that Section 5 makes reference to subparagraphs 1 and 2 only for the purpose of prescribing the procedure for refund. This express reference cannot be expanded in scope to include the limitation of the period of refund. If the limitation of the period of refund of specific taxes paid on oils used in aviation and agriculture is intended to cover similar taxes paid on oil used by miners and forest concessionaires, there would have been no need of dealing with oil used by miners and forest concessions separately and Section 5 should very well have been included in Section 1 of Republic Act No. 1435, notwithstanding the different rate of exemption." (Commissioner of Internal Revenue v. Court of Tax Appeals and Insular Lumber Co., No. L-31137, May 29, 1981; 104 SCRA 718).

Just so and aptly enough the ruling lends settling eloquence to the precise issue raised in the instant case. The apparent patina of cogency impressed nonetheless, the respondent Commissioner of Internal Revenue's amended answer urged new fillips towards faulting the petitioner's right to the claim by alleging that the partial tax refund privilege ceased upon the issuance of either any of the decrees, to wit:

1. PD 314 - Increasing the rates of specific taxes on fuel oils on October 20, 1973; or

2. PD 231 as amended - Enactment of the Local Tax Code on June 28, 1973; or

3. P[illegible] 711 - Abolishing the special and fiduciary funds on July 1, 1975; or

4. PD 1158 and PD 1158-A - Consolidating and codifying all internal revenue laws on June 3, 1977.

Again we are unable to give due assent to such riposte. Respondent would have substituted a quirk of alternative expediencies falling sharply at odds with the compelling rationale of the grant, "That these lumber and mining companies seldom use the national highways because they have their own roads, they have their own compounds. xxx So that if they are not entitled to the benefit of this law it will be unfair if they will be required to pay." (Congressional Records, 3d Congress, 3d Regular Session, May 7, 1967, Vol. III, No. 67 pp. 2093-2107). Far be it from a theoretical gobbledygook, the tax privilege extended the miners/forest concessionaires (Sec. 5, RA 1435) vis-a-vis agriculture and aviation (Sec. 1 ibid) could not have been intended for a very limited contingency and application.

Nowhere here nor there are such legal constraints of an express repeal much less effective curtailment of the operative effects of the proviso of Section 5. It certainly did not appear to matter whether the above-mentioned decrees, either, increased the rates of specific taxes; or withdrew the local governments' power to levy and collect additional specific taxes; or abolished the special and fiduciary funds; or consolidated and codified all the internal revenue laws. It does not make us wonder therefore that the import and force of Section 5 had been left precisely as was then contemplated to the extent that the partial tax refund accorded the miners and forest concessionaires remained obtaining.

Neither was there an attempt to undo with the terms and conditions of the tax concession upon which a claim for entitlement may be exercised subject to the compliance the statutory requisites, i.e., "submission of proof of actual use of oils and under similar conditions enumerated in subparagraphs one and two of Section one hereof." As had happened in the case at bar, the records make it clear that insofar as the same is brought to bear upon the circumstances, the evidence adduced justifiably asserts compliance therefor, viz.: 1) Sworn certification of supplier Petrophil Corporation as to the quantity of extra gasoline and diesel fuel purchased (Exhs. "A" and "A-1") upon which tacked the receipts of payment of specific taxes (Exhs. "D", "E", "F", "F-1" to "F-28", "G", "G-1" to "G-93", "H", "I", and "Bulk Invoices") and 2) Affidavits of the petitioner's Vice President duly confirmed by two disinterested persons (Exh. "C") and the Chamber of Mines of the Philippines' President (Exh. "B") attesting to the actual use of the fuel oils in the mining operation for the period from October, 1976 to April, 1978. So it appears and we so hold that the petitioner has fared consistent with the mandate of the law.

xxx xxx xxx

xxx, petitioner argues that the right to refund depends on the date of use by the purchaser, not on the date of payment by the importer (supplier), the Mobil Oil Philippines. Indeed, this position finds conformity in the Supreme Court's observation in the case of Commissioner of Internal Revenue vs. Court of Tax Appeals and Insular Lumber Co., G.R. Nos. L-31057 and L-31137, May 29, 1981; 104 SCRA 718, that there is no time limit for the partial refund of specific tax paid for oils used by miners and forest concessionaires.

We agree with the view of petitioner, although in the case of imported articles, such as fuels/oils used in the instant case, the tax accrues at the time of removal from customs custody (Sec. 134, Tax Code), and the importer (supplier) pays the specific tax upon removal of the same, the right to the refund of the 25% specific tax under Section 5 of Republic Act No. 1435, granted to miners and concessionaires, hinges on the date of payment made by the supplier (importer) of the specific tax. Thus, it is clearly stated in the law, Section 5 of Republic Act 1435, in its proviso, "That whenever any oils mentioned above are used by miners or forest concessionaires in their operations, <u>twenty-five per centum of the specific tax paid thereon shall be refunded by the Collector (now Commissioner) of Internal Revenue upon submission of proof of actual use of oils</u> and under conditions enumerated in subparagraphs one and two of section one hereof, amending section one hundred forty-two of the internal revenue code. xxx." (<u>underlining ours</u>.) This is so, because it is only from the time of use of the purchaser-miner, petitioner herein, of the oils on which the specific tax has been paid that petitioner-purchaser has clearly shown by proof that it had bought from the importer (supplier) oil products and that only then does the right to refund the 25% specific tax under Section 5 of

> Republic Act No. 1435 arises. The claim for refund by petitioner of the amount of ₱779,283.89 covered by Official Receipt No. 2950384 dated June 25, 1976 should be based on the date of the actual use of the oil purchases pursuant to Section 5 of Republic Act No. 1435, and, hence, has not prescribed.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Rio Tuba Nickel Mining Corporation the sums of ₱695,216.36 and ₱859,076.90 as specific tax paid, without interest.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 11, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this 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.

Amante Filler

AMANTE FILLER
Presiding Judge
Court of Tax Appeals