REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CMS LOGGING, INC.,
Petitioner,

versus

CTA CASES NOS. 1569, 1674, 1804

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

August 30/69

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

DECISION

These three cases refer to petitioner's three separate actions for refund or tax credit of the total amount of ₱44,740.40, representing 25% of specific taxes paid on manufactured oils and other fuels used in petitioner's logging operations during the period from July 1, 1961 to August 31, 1965. These three cases involve a common issue and were tried and submitted jointly for decision.

Petitioner, a domestic corporation organized in accordance with law, is a duly licensed forest concessionaire operating a forest concession in Bangaga, Davao.

In the operation of its forest concession, petitioner used specific tax-paid manufactured oils and other fuels which it purchased from Caltex (Philippines), Inc., among which were those involved in these consolidated cases covering the period from July 1, 1961 to August 31, 1965, inclusive.

Petitioner filed with respondent claims for refund and/or tax credit representing 25% of the specific taxes on fuel and lubricants used by it in its logging operations pursuant to Section 5 of Republic Act No. 1435, enumerated as follows:

1. On June 21, 1962 the sum of ₱4,894.63, covering the period from July 1 to December 31, 1961.

2. On November 5, 1962, the sum of ₱6,294.26 covering the period from January 1 to June 30, 1962.

3. On August 6, 1963, the sum of ₱5,998.46, covering the period from July 1 to December 31, 1962.

4. On January 20, 1964, the sum of ₱4,918.00, covering the period from January 1 to June 30, 1963.

5. On September 25, 1964 the sum of ₱4,932.96, covering the period from July 1 to December 31, 1963.

6. On May 31, 1965 the sum of ₱5,859.84, covering the period from January 1 to July 31, 1964.

7. On June 16, 1965, the sum of ₱5,707.01, covering the period from August 1, 1964 to February 28, 1965.

8. On September 27, 1966 the sum of ₱6,135.24, covering the period from March 1 to August 31, 1965.

The first five claims and the seventh claim were respectively denied by respondent in his letters received by petitioner on the following dates: October 1, 1964, October 17, 1964, November 16, 1964, November 27, 1964, October 21, 1964 and July 27, 1965. No letters of denial were however made by respondent on the sixth and eighth claims.

The above-mentioned claims for refund from Nos. 1 to 5 represent the first to the fifth causes of action, respectively, in CTA Case No. 1569, while Nos. 6 and 7 of said claims constitute the first and second causes of action, respectively, in CTA Case No. 1674. On the other hand, No. 8 of the claim is the only cause of action of the petitioner in CTA Case No. 1804.

Petitioner filed with respondent its request for reconsideration of the denials of the first five claims correspondingly on October 8, 1964, October 24, 1964, November 19, 1964, December 2, 1964 and October 23, 1964. The letters for reconsideration filed on October 21, 1964 and October 23, 1964 were respectively denied by respondent in his letters received by petitioner on January 27, 1965 and February 12, 1965. CTA Cases Nos. 1569, 1674 and 1804 were filed by petitioner with this Court on February 8, 1965, August 5, 1965 and October 6, 1966, respectively.

Respondent's denials were based on the theory that the 25% partial tax refund granted by Section 5 of Republic Act No. 1435 to those using oils in their logging operations is limited to a period of five (5) years counted from June 14, 1956, the date the aforesaid Republic Act No. 1435 took effect, like the partial tax refund of specific tax paid on oils used in agriculture and aviation granted by Section 142 of the Tax Code, as amended by Republic Act No. 1435.

The issues presented to this Court for resolution are the following:

> 1. Whether the 25% specific tax exemption granted by law on manufactured oils and other fuels used by forest concessionaires in their operations is limited to a period of five (5) years from the effectivity of Republic Act No. 1435 on June 14, 1956;
>
> 2. Whether judicial action for the refund or recovery of said 25% specific fuel tax exemption provided under Section 5 of Republic Act No. 1435 prescribes in two (2) years from the date of purchase or use of such tax-paid manufactured oils and other fuels;
>
> 3. Whether the principle of estoppel applies against the government as to preclude the respondent Commissioner of Internal Revenue from raising the defense of prescription against the First, Second, Third and part of the Fourth Causes of Action in CTA Case No. 1569; and
>
> 4. Whether the respondent Commissioner of Internal Revenue can be made to pay legal interest on the amounts to be refunded to the petitioner in these cases.

First Issue

The first issue herein is no longer of first impression having been decided by this Court in a recent case with identical issue. In Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, CTA Cases Nos. 1638 and 1708, decided on August 15, 1968, this Court in discussing Republic Act No. 1435 said:

> "It should be noted that Sections 1 and 2 thereof deal with provisions of the National Internal Revenue Code on specific taxes on oils, more particularly, they amend Sections 142 and 145 of said Code respectively, raising the rate of specific taxes on oils for fuel and lubrication provided therein. Sections 3, 4 and 5 of the Act on the other hand do not deal with provisions of the Revenue Code, nor are they intended to be incorporated thereto as additional provisions thereof. By and large, they refer to the disposition of the taxes from Sections 142 and 145 of the Revenue Code. The partial refund of specific taxes paid for oils used in agriculture and aviation, during a limited period, appears in Section 142 of the Revenue Code while the partial refund of specific tax paid for oils used by miners and forest concessionaires, without limitation as to time, is in Section 5 of the Act. To judge from their placement and their tenor, they are clearly disparate provisions. We cannot find any plausible reason for reading the limitation of the operative period provided for oils used in agriculture and aviation into the provision on the refund to miners and forest concessionaires. Note that Section 5 of the Act has to provide expressly that the procedure for refund provided in subparagraphs 1 and 2 of Section 142 of the Revenue Code are applicable to refunds to

> miners and forest concessionaires otherwise it would be deficient on this point since the provisions in Section 142 of the Revenue Code are not supposed to supplement the deficiencies in the provision granting partial refund to miners and forest concessionaires. Needless to say this express reference to Section 142 of the Revenue Code cannot be expanded in tenor and scope to include things not stated therein, like the limitation as to the operative period of the refund.
>
> The debates in Congress in connection with Republic Act 1435, the pertinent excerpt of which we are quoting hereunder, are elucidating:
>
> x x x x x
>
> Thus, we see from the foregoing excerpt that the reason for the refund of specific taxes paid when oil for fuel and lubrication is used in agriculture and aviation is different from that advanced for the grant of similar privileges to miners and forest concessionaires. With respect to the first the purpose is to foster agriculture and aviation for a limited period. As for the second the reason advanced is that the miners and forest concessionaires, from the very nature of their industries, which, parenthetically, is of permanent character, do not use public roads as often as other users and to place on them equal burden in the maintenance of roads and bridges transgresses on the sense of fairness of Congress. Based on fundamentally different reasons as they are, it is not at all surprising that the privileges of one has different conditions from those of the other. //

We see no compelling reason to deviate from said ruling.

Second Issue

Anent the second issue of prescription, this

Court, quoting the decision of the Supreme Court in the case of Commissioner of Internal Revenue v. Insular Lumber Company and Court of Tax Appeals (G.R. No. L-24221, December 13, 1967), ruled in the above-cited case of Atlas Consolidated Mining that the claim for refund with the Commissioner of Internal Revenue and with this Court must both be filed within two years from the use of such oils, otherwise such action would prescribe. While it is true that all the claims for refund or tax credit involved herein were all filed by petitioner with respondent within two (2) years from either date of purchase or use of the manufactured oils, and that the petitions for review were filed with this Court within thirty days from receipt of the denials by respondent, still what is decisive is the date of the filing of the petitions for review with this Court, which must be within two years from the date of use of the oils and other fuels. Petitioner should not have waited for the decision of the respondent on its motion for reconsideration but should have appealed to this Court before the lapse of two years from the use of the oils. It was incumbent upon petitioner to beat the two-year period prescribed in Section 309 in order to protect its right. (Gibbs v. Coll. of Int. Rev., G.R. No. L-13453, Feb. 20, 1960, citing College of Oral and Dental Surgery v. Court of Tax Appeals, 102 Phil. 912.)

Petitioner contends however that the decision of the Supreme Court in the Muller and Phipps (Manila) Ltd. v. Collector of Internal Revenue, 103 Phil. 145, should apply to the cases at bar and not the more recent decision in the Insular Lumber case because, allegedly the settled rule is that a new decision of a court of last resort abandoning or overruling an earlier decision has prospective and not retrospective effect. In support of its stand, petitioner cites a portion of the Supreme Court resolution of February 21, 1967 in the Gan Tsitung v. Republic of the Philippines case (G.R. L-20819) which we quote hereunder:

> "After mature deliberation, * * * the Court holds that the [new] doctrine laid down in the Ong Son Cui case [which requires publication three times in the Official Gazette of the notice of filing of a petition for naturalization instead of only once as held in previous cases] shall apply and affect the validity of certificates of naturalization issued after, not on or before, May 29, 1957 [when said new doctrine was adopted]. * * * Moreover, the Ong Son Cui doctrine became part of the jurisprudence and, hence, of the law of the land, since May 29, 1957. * * * (Petitioner's Memorandum, p. 117, CTA rec.)

A perusal of the resolution of the Supreme Court in the Gan Tsitung case, supra, readily reveals that petitioner failed to quote a very pertinent portion of said Resolution, to wit:

> "In this connection, we find that there can be no plausible issue on the applicability of the Ong Son Cui doctrine to cases pending decisions on May 29, 1957, when said doctrine was adopted, even if the corresponding notices may have been published prior thereto. No right is vested before the rendition of judgment, and, hence, could be affected thereby."

The above dictum of the Supreme Court squarely covers the cases at bar which were still without any judgment when the Insular Lumber case was promulgated. We here reiterate what we have said in our Resolution dated October 14, 1968 in the case of Compañia General de Tabacos de Filipinas (Tabacalera) v. Commissioner of Internal Revenue, CTA Case No. 1814:

> "As to the argument that the Villa decision is not controlling because this appeal was instituted before the promulgation of the former, we find the same untenable. The acts and proceedings of this Court, or any other court for that matter, are governed or controlled by the applicable laws and pertinent decisions of the Supreme Court prevailing at the time said acts or proceedings are rendered (see In the Matter of the Pet. of Gan Tsitung vs. Republic, L-20819, Feb. 21, 1967; Barreto vs. Republic, 87 Phil. 731; Delgado vs. Republic, L-2546, Jan. 28, 1950), and not by those prevailing at the time the case was filed. Since the decision in the Villa case was promulgated during the pendency of the proceedings herein, the doctrine laid

down therein is applicable to the case at bar. . ."

leaving no doubt as to the applicability of new decisions of the Supreme Court to cases pending determination before a court.

In the light of the doctrine laid down in the Insular Lumber case which was reiterated in the more recent case of Commissioner of Internal Revenue v. Victorias Milling Co., Inc., and the Court of Tax Appeals (G.R. No. L-24108, January 3, 1968) involving the same material facts as the present cases, petitioner's right to claim for a refund of the first, second, third and part of the fourth causes of action in CTA Case No. 1569 covering the period from July 1, 1961 to February 8, 1963 had already prescribed for the court action for refund was filed with this Court only on February 8, 1965, after more than two years had elapsed from the time of use of such manufactured oils and other fuels. As to the fifth cause of action in CTA Case No. 1569, petitioner failed to present proof that such manufactured oils and other fuels were actually used in petitioner's logging operation, and hence, this Court cannot consider such claim for refund. What may be refunded are:

(a) ₱3,893.44 covering the period from February 8 to June 30, 1963, as part of the 4th cause of action in CTA Case No. 1569;

(b) ₱5,859.84 covering the period from January 1 to July 31, 1964 involved in the 1st cause of action and, ₱5,707.01 covering the period from August 1, 1964 to February 28, 1965, involved in the 2nd cause of action in CTA Case No. 1674; and

(c) ₱6,135.24 covering the period from March 1 to August 31, 1965 in CTA Case No. 1804.

Third Issue

Petitioner presented evidence that respondent granted some of its claims for refund even after the lapse of two (2) years from the filing of the claims because of the doctrine of the Supreme Court in the Muller and Phipps case and contends that respondent should be estopped from raising the defense of prescription on the ground that estoppel applies to government and public officers in the exercise of the state of its proprietary rights, and that the cases at bar are concerned only with the proprietary rights of the government over specific fuel taxes already collected by it. We find this contention of petitioner not entirely correct, for while it is true that estoppel may be invoked against the government and public officers in the exercise by the state of its proprietary rights, still the power of taxation is not proprietary in nature but a governmental one and hence, the argument of petitioner loses ground.

> "The power of taxation is inherent in sovereignty as an incident or attribute thereof, being essential to the existence of independent government. . ." (51 Am. Jur. 69.)

Fourth Issue

It is contended by petitioner that respondent should be made to pay legal interest on the amount to be refunded to it in CTA Case No. 1804, citing several cases in support of its stand. In the said cases, it should be noted, the Supreme Court based the interest on acts of respondent or his agent that were arbitrary, while the denial in these cases of the refund in question is not arbitrary but rather based on an honest difference of opinion.

IN VIEW OF THE FOREGOING, the petition for review filed by petitioner in CTA Case No. 1569 is dismissed with regard to the 1st, 2nd, 3rd, 5th and part of the 4th causes of action. Respondent is hereby ordered to refund or grant a tax credit to petitioner the sums of ₱3,893.44, corresponding to the period from February 8 to June 30, 1963 in CTA Case No. 1569; ₱11,566.85 in CTA Case No. 1674; and ₱6,135.25 in CTA Case No. 1804, representing 25% of the specific taxes paid on manufactured oils and other fuels. Without pronouncement as to costs.

SO ORDERED.

Quezon City, August 30, 1969.

RAMON L. AVANCEÑA
Associate Judge

I CONCUR:

ROMAN M. UMALI
Presiding Judge