REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CMS LOGGING, INC.,
Petitioner,

- versus -

C.T.A. CASES NOS. 1874 and 1895

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

5/12/89

D E C I S I O N

CMS Logging, Inc., petitioner in these two cases, is a domestic corporation duly organized and existing under Philippine laws and licensed to operate a forest concession of about 13,000 hectares beginning 1957.

On two occasions petitioner wrote the Commissioner of Internal Revenue, respondent herein, seeking for the refund or tax credit the amounts of P3,358.20 and P14,876.56 or an aggregate amount of P18,234.76, representing 25% of the specific taxes paid on petroleum products purchased by petitioner from Caltex (Philippines), Inc. and used in its logging operations for the period covering September 1, 1965 to December 31, 1965 and January 1, 1966 to May 31, 1967, respectively, which are now the subject matter of C.T.A. Cases Nos. 1874 and 1895, in the order given.

However, all these claims for refund are expected to be denied by the respondent in view of his previous decision denying similar claims of petitioner in C.T.A. Cases Nos. 1569, 1674 and 1804 which were decided by this Court on August 30, 1969, now pending in the Supreme Court in G.R. No. L-31140-42.

Hence, these instant petitions for review.

The only question posed is whether or not the 25% specific tax exemption on petroleum products used by forest concessionaires in their logging operations is limited to a period of five years from the effectivity of Republic Act No. 1435 on June 14, 1956 or until June 14, 1961.

Petitioner alleged in its petitions for review that the claims for refund or tax credits are premised on the grant accorded to it by law under Section 5 of Republic Act No. 1435.

Respondent on the other hand, contends that the privilege of partial tax refund granted by Republic Act No. 1435, Section 5 thereof, to those using oils in their logging operations, like the partial tax refund of specific taxes paid on oils used in agriculture and aviation, is limited to a period of five years, the same to be counted from June 14, 1956, the date the aforesaid Act took effect. Consequently, fuel oils used in such concessions after June 14, 1961 are subject to the full specific tax prescribed in Section 142 of the Tax Code. Since petitioners' purchases and consumption of petroleum products were made from September 1 to December 31, 1965 (CTA Case No. 1874) and from January 1, 1966 to May 31, 1967 (CTA Case No. 1895) then they are not covered by the privilege granted under Section 5 of Republic Act No. 1435.

On the basis of the pleadings and the CTA records the parties agreed to submit these cases for decision.

The law made to be applicable in these cases is Republic Act No. 1435 involving Sections 1 and 5 of the said Act which We quote hereunder:

> SECTION 1. Section one hundred and forty-two of the National Internal Revenue Code, as amended, is further amended to read as follows:
>
> "SEC. 142. Specific Tax on manufactured oils and other fuels. - On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:
>
> "(a) Kerosene or petroleum, per liter of volume capacity, two and one-half centavos;
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> "(b) Lubricating oils, per liter of volume capacity, seven centavos;
>
> "(c) Naptha, gasoline, and all other similar products of distillation, per liter of volume capacity, eight centavos; and
>
> "(d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo: Provided, That 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 purpose of this subsection, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety per centum absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary.
>
> "Whenever any of the oils mentioned above are, during the five years from June 18, nineteen hundred and fifty two, used in agriculture and aviation, fifty

per centum of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue upon the submission of 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.

"(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 association or federation, attesting to the fact that the oils were actually used in agriculture.

"(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 corporations of the Philippines."

SEC. 5. 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: Provided, however, That whenever any oils mentioned above are used by miners and forest concessionaires in their operations, twenty-five per centum 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 conditions enumerated in sub-paragraphs 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 Philippine Highway Act of 1953. (emphasis ours)

We reiterate our previous ruling in the cases of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 1638 and 1708, decided on August 15, 1968 and CMS Logging, Inc. vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 1569, 1674 and 1804, decided on August 30, 1969, where We said:

> "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:

xxx xxx xxx

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 a viation 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."

In view of the foregoing, We therefore see no valid and compelling reason to deviate from said ruling.

WHEREFORE, the instant petitions for review filed by petitioner are hereby GRANTED. Respondent is hereby ordered to refund or grant a tax credit in favor of petitioner the sums of P3,358.20, corresponding to the period from September 1, 1965 to December 31, 1965 in C.T.A. Case No. 1874; and P14,876.56, corresponding to the period from January 1, 1966 to May 31, 1967 in C.T.A. Case No. 1895, representing specific taxes paid on the purchases of petroleum products used in its forest operations.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 12, 1989.

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
Presiding Judge
Court of Tax Appeals