Lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE IRON MINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1655

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

10/1/75

D E C I S I O N

This is an appeal from the decision of respondent denying petitioner's claim for refund of 25% of the specific tax paid on manufactured mineral oils and motor fuels used by it in its mining operations from July 1, 1961 to December 31, 1962.

Petitioner is a corporation engaged in mining operations at Larap, Jose Pañganiban, Camarines Norte. During the periods from July 1 to December 31, 1961, January 1 to June 30, 1962 and July 1 to December 31, 1962, petitioner purchased from several oil companies manufactured mineral oils and motor fuels which it used during the same periods in its mining operations. The specific tax on the said oils and fuels was paid by the oil companies which they in turn passed on to petitioner in the sale of said articles.

Petitioner filed with respondent written claims[1] for refund of the sums of ₱15,514.77,

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[1] Letters dated April 9, 1962, October 22, 1962 & April 30, 1963, respectively.

₱17,073.00 and ₱17,249.28, representing 25% of the specific tax paid on said articles, pursuant to Section 5 of Republic Act No. 1435, which states:

> "x x x Provided, however, That whenever any oils mentioned above are used by miners or 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 subparagraphs one and two of section one hereof, amending section one hundred forty-two of the Internal Revenue Code: x x x."

On May 27, 1965, petitioner received a letter from respondent dated April 13, 1965, denying its claims for refund on the ground that the privilege granted by Section 5 of Republic Act No. 1435 to those using oils in the operation of forest and mining concessions is limited to a period of five (5) years from June 14, 1956, the date the said Act took effect. On June 26, 1965, petitioner interposed its appeal to this Court by registered mail.

Two issues have been raised in this case, to wit:

> (1) Whether or not the right of petitioner to claim for refund of the tax in question has already prescribed; and

> (2) Whether or not the right to a refund of 25% of the specific tax paid on the mineral oils and motor fuels granted by Republic Act No. 1435 to mining concessionaires, such as petitioner, is limited

to a period of five (5) years from June 14, 1956, the date the said Act took effect.

On the question of prescription, respondent contends that petitioner's right to recover the tax in question has already prescribed because its petition for review was filed in this Court only on June 26, 1965, after the lapse of more than two years from the dates (July 1, 1961 to December 31, 1962) petitioner became entitled to the refund, citing the cases of Commissioner vs. Insular Lumber Co., G.R. No. L-24221, Dec. 11, 1967, 21 SCRA 1237; and Commissioner vs. Victorias Milling Co., Inc. G.R. No. L-24108, Jan. 3, 1968, 22 SCRA 12. Petitioner has made no attempt to argue against respondent's defense of prescription.

It is well settled that where a tax has been erroneously paid or illegally collected, the taxpayer seeking to recover the tax must file a claim for refund with the Commissioner of Internal Revenue within two years after payment thereof, and the action for recovery must also be filed within the said two-year period. (Sec. 306, Revenue Code.) However, where the tax sought to be refunded was not erroneously or illegally collected, the two-year period provided in Section 306[1] started to

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1 Before its amendment by Pres. Decree No. 69, eff. Jan. 1, 1973.

run not from the date of payment but from the happening of the supervening cause which entitled the taxpayer to the refund. In this case, petitioner became entitled to the refund of the specific tax when the fuel oils were actually used in its mining operations. Consequently, the claim for refund must be filed with the Commissioner of Internal Revenue within the said two-year period and the subsequent appeal to this Court must be instituted within thirty days from the date of receipt of the decision denying the claim for refund, <u>but in no case beyond the said two-year period</u>. (Collector v. Sweeney, 106 Phil. 59; Gibbs v. Collector, 107 Phil. 232; Commissioner v. National Power Corporation, G.R. No. L-18874, Jan. 30, 1970, 31 SCRA 112.)

In the case at bar, the facts of which are similar to the Insular Lumber case, petitioner should have interposed its appeal to this Court within two years from the dates when it actually used the mineral oils and motor fuels in its mining operations, the latest of which was December 31, 1962. However, its appeal was filed only on June 26, 1965 after more than two years from December 31, 1962. Clearly, petitioner's right to recover the tax in question has already prescribed.

Having resolved the issue of prescription against petitioner, we deem it unnecessary to pass upon the other issue.

DECISION -
CTA CASE NO. 1655

WHEREFORE, the herein appeal is hereby dismissed.

SO ORDERED.

Quezon City, October 1, 1975.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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