REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING
AND DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2964

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

11/28/86

D E C I S I O N

This is a claim for refund and/or tax credit of the amount of ₱910,394.76, representing 25% of specific taxes paid on oil products used in mining operations pursuant to Section 5 of Republic Act No. 1435 for the period from July 1976 to May 1978.

It appears that petitioner mining corporation, organized and existing under and by virtue of the laws of the Philippines, operates a concession in Toledo City, Cebu. It actually used and/or consumed tax paid extra gasoline and diesel fuel for the mining operation purchased on various dates from Mobil Oil Philippines, detailed as follows:

Period	Specific Taxes	25%
July-December, 1976	₱1,008,648.15	₱252,162.04
January-December, 1977	1,834,357.27	458,589.32
January-May, 1978	798,573.60	199,643.40
	₱3,641,579.02	₱910,394.76

On July 19, 1978, (pp. 9-10, CTA rec.) petitioner filed with the respondent a written claim for tax credit of the total amount of ₱910,394.76 representing 25% of the specific taxes paid on said fuel oils pursuant to Section 5 of Republic Act No. 1435, infra, in relation to Sections 142 and 145 of the Tax Code.

There being no action taken on its claim for refund, on July 21, 1978, petitioner filed the instant judicial claim for refund.

The issue to be resolved is whether or not petitioner is entitled to the refund of the 25% specific taxes collected and paid on fuel oil consumption as a mining entity as provided in Section 5 of Republic Act 1435, otherwise known as An Act to Provide Means for Increasing Highway Special Fund.

Sections 1 and 5 of Republic Act 1435, applicable in this case provides as follows:

> 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. - x x x
>
> "Whenever any of the oils mentioned above are, during the five years from June eighteen, 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 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.

x x x x."

Sec. 3. x x x

Sec. 4. x x x

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 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.

Respondent, in rejecting petitioner's claims for refund and/or tax credit, holds on to the view which was earlier invoked in a similar case of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2971, promulgated on March 31, 1986, that "'The privilege of a partial refund granted by Section 5 of R.A. No. 1435 to those using oils in their mining operations, like the partial refund of specific tax paid on oils used in agriculture and aviation granted by Sections 142 and 145 of the old Tax Code, as amended by Republic Act No. 1435, is limited to a period of five (5) years counted from June 14, 1956, the date the said Republic Act No. 1435 took effect, or only until June 14, 1961'". "More specifically, 'the petitioner is not entitled to a partial refund of specific taxes because the fuel oils allegedly used by it in its mining operations were used after June 14, 1961, or after the exemption under Republic Act No. 1435 had already expired'".

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:

Resolving the question squarely in the <u>Insular Lumber Case</u> involving as it does Section 5 of RA No. 1435, the Supreme Court held:

> "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 thé 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. PD 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. 111, No. 67 pp. 2093-2107). Far be it from a theoretical gobbledygook, the tax privilege extended the miners/forest concessionaries (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.

Respondent argues also that the right to claim for refund of petitioner with respect to taxes paid prior to July 21, 1976 has prescribed because when the petition for review was filed with this Court on July 21, 1978, more than two (2) years have elapsed from the date of payment of the aforesaid taxes in accordance with Section 292 of the Tax Code. In other words, it is his stand that, with respect to Official Receipt No. 2950384 (Exh. "E-1"), dated June 25, 1976, for the amount of ₱779,283.89 which is outside the July-December 1976 period, petitioner could no longer file a claim for its refund.

Petitioner, on the other hand, maintains the opposite view. Petitioner pointed out the fact that fuels/oils imported by the supplier on a certain date, say June 25, 1976, are not sold immediately on that precise date. The importation still has to be stored by the supplier so that a buyer on that date gets supplies not from the day's importation but from supplies that arrived earlier and are already in storage. Petitioner further states that since the questioned importation was paid on June 25, 1976, it is reasonable to believe that it was sold thereafter, well within the period of use by the purchaser considering that only five days intervened before the period such use began. In other words, 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. No. 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 "actual use of oils" by the purchaser, and not 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, 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 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." (underlining ours.) 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, finding the judicial claim for refund by petitioner well-taken, it is hereby GRANTED.

The Commissioner of Internal Revenue is hereby ordered to refund and/or credit petitioner in the amount of ₱910,394.76.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 28, 1986.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge