REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGGAT INDUSTRIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3548

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :
MAY 25 1995

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# DECISION

This is a claim for refund in the total amount of P334,710.75 allegedly representing 25% of the specific taxes paid on the oils and fuels actually used by Petitioner in its operations as a duly licensed forest concessionaire.

The facts of this case remain undisputed.

During the period beginning July 1, 1980 to December 31, 1981, Petitioner purchased from Caltex (Philippines), Inc. and Pilipinas Shell Petroleum Corp., refined and manufactured mineral oils, motor fuels and diesel fuel oils which Petitioner actually and exclusively used in connection with the exploitation and operations of its forest concession. The said oil companies paid and passed on to Petitioner the specific taxes imposed on the above-mentioned oils sold to Petitioner under Sections

153 and 156 (formerly Sections 142 and 145) of the 1977 Tax Code.

On October 6, 1982, Petitioner filed a written claim for refund in the amount of P334,710.75 computed as follows:

July 1980 - December 1981

| | VOLUME (Liters) | PRODUCT COST | SPECIFIC TAX | 25% REFUND |
|---|---|---|---|---|
| DIESEL | 3,254,225 | P10,334,044.40 | P 569,489.38 | P142,372.35 |
| GASOLINE REGULAR | 493,000 | 2,397,712.90 | 443,700.00 | 110,925.00 |
| OILS & LUBRICANTS | 403,003.26 | 2,340,525.86 | 322,402.61 | 80,600.65 |
| GREASE | 6,502 | 76,998.32 | 3,251.00 | 812.75 |
| | | P15,149,281.48 | P1,338,842.99 | P334,710.75 |

representing twenty-five percent (25%) of the specific taxes collected on the oils used by the Petitioner in its operations as a forest concessionaire. Such claim for refund was never acted upon by the Respondent.

Hence, this appeal.

In its appeal, Petitioner, prayed for an order requiring Respondent to pay 20% interest per annum, in addition to its claim for refund, for her alleged arbitrary refusal to refund the instant claim. Petitioner likewise prayed for the costs of suit.

In support to its claim for refund, Petitioner relied on the case of **Insular Lumber Company vs. Court of Tax Appeals and Commissioner of Internal Revenue**, G.R. No. L-31057, May 29, 1981 in which the Supreme Court held that the proviso of Section 5 of Republic Act No. 1435 is in effect a partial exemption from the imposed increased specific tax on manufactured oils. Section 5 of Republic Act No. 1435 provides:

> "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 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."

Respondent, however, asserted that the above-quoted Section of R.A. 1435 has already been repealed by Section 343 of the 1977 Tax Code (Presidential Decree Nos. 1158 and 1158-A) which provides in part:

> "SEC. 343. Granting provinces, cities and municipalities shares in the specific tax on certain petroleum products. - In addition to the internal revenue allotment under Section three hundred forty-four, provinces, cities and municipalities shall share in the specific taxes on the following petroleum products in such amounts as may be equivalent to the

> collections therefrom at the rates indicated hereunder.
>
> xxx xxx xxx
>
> The additional allotment is in lieu of local taxes imposed on petroleum products and for this purpose, Section twenty-four of Presidential Decree numbered 231, otherwise known as the Local Tax Code, has been repealed by Presidential Decree numbered 436 on March 30, 1974.
>
> xxx xxx xxx"

Even assuming that Section 5 of Republic Act No. 1435 is still in effect, partial tax refund thereunder refers to specific taxes paid by miners and concessionaires on fuel oil, commercially known as diesel fuel oil, and other similar oils having more or less the same generating power, and hence, according to the Respondent, Petitioner is not entitled to a refund of 25% on the specific tax it paid on gasoline, kerosene, avgas (aviation gas) or petroleum and lubricating oils. Respondent also contended that Petitioner's right to file a judicial action for refund of all taxes paid before November 16, 1980 has already prescribed.

Is the Petitioner entitled to the refund claimed representing 25% of the specific taxes paid on the oils and fuels actually used by Petitioner in its operations as a forest concessionaire? If entitled to the refund claimed, were they filed within the prescriptive period of two years? These are the issues involved.

We find for the Petitioner.

In the case of **Commissioner of Internal Revenue vs. Atlas Consolidated Mining and Development Corporation, et al.,** G.R. No. 93631, November 12, 1990, the Supreme Court, in a Resolution by the Third Division, had the occasion to rule that "the purpose for the increase in the rate of tax cannot in anyway negate the policy behind the grant of partial refund. The Court sees no inconsistency between the increase in specific tax rates and the retention of the refund privilege. In fact, with the increased specific tax rates, the grant of partial refund to mining and lumber concessionaires is made more imperative considering that they seldom use the highways, the construction of which are financed by specific taxes."

Moreover, We find fitting the following comments of the Supreme Court in the case of **Commissioner of Internal Revenue vs. Atlas Consolidated Mining and Development Corp., et al.,**(supra).:

> "A reading of the legislative proceedings leading to the enactment of RA 1435 shows that mining and lumber concessionaires were granted partial refund of specific taxes because the gasoline and fuel they consume is mostly used within their own compounds and roads. RA 1435 gave these concessionaires relief, in the form of a tax refund, since their trucks and vehicles seldom ply the national highways, the construction of which is funded by the specific tax collected by the national government.

> There is therefore no rationale in conditioning the grant of refund on the payment of these mining or lumber concessionaires of any additional local tax.
>
> Moreover, Section 5 states 'that the 25% specific tax shall be refunded by the Collector of Internal Revenue. Since it is the latter who collects the specific taxes due to the national government, then it follows that the refund refers to a refund of the specific taxes paid to the national government, not the specific taxes paid to the local government."

And in the more recent case of **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and Court of Tax Appeals,** G.R. Nos. 83583-84, September 30, 1991 (202 SCRA 137), the Supreme Court Third Division held: "to our mind, the proviso in Section 5 standing alone is enough basis for the grant of refund. x x x.In fact, the entire proviso of Section 5 does not even make any reference to Section 4 which empowers municipalities and cities to impose the additional tax on oils sold or distributed within their territorial jurisdiction. What is clear therein is that the Revenue Commissioner shall refund 25% of the specific tax whenever 'any oils mentioned above are used by miners or forest concessionaires in their operations and the procedure for refund is complied with." (see also Aras-Asan Timber Co., Inc., CTA Case No. 3524, Dec. 17, 1993; **Curuan Timber Corp.,** vs. **CIR,** CTA Case No. 3582, Sept. 20, 1994).

Finding for the Petitioner, this Court examining carefully the invoices offered by Petitioner as evidence, considered only the following:

| Invoice No. | Date Shipped | Exh. | QUANTITY IN LITERS Diesel | Oils and Lubricants | Regular Gasoline |
|---|---|---|---|---|---|
| 38334 | 11/03/80 | A-79 | | | 12,000 |
| 38350 | 11/04/80 | A-80 | 10,000 | | |
| 38390 | 11/08/80 | A-81 | 9,000 | | |
| 38410 | 11/07/80 | A-82 | 10,000 | | |
| 38409 | 11/07/80 | A-83 | 12,000 | | |
| 38469 | 11/12/80 | A-84 | 10,000 | | |
| 38472 | 11/11/80 | A-85 | 9,000 | | |
| 38474 | 11/11/80 | A-86 | 12,000 | | |
| 38539 | 11/14/80 | A-87 | 9,000 | | |
| 38540 | 11/14/80 | A-88 | 10,000 | | |
| 38541 | 11/14/80 | A-89 | 6,000 | | 6,000 |
| 38567 | 11/14/80 | A-90 | 10,000 | | |
| 38586 | 11/17/80 | A-91 | 10,000 | | |
| 38630 | 11/18/80 | A-92 | 12,000 | | |
| 38631 | 11/18/80 | A-93 | 10,000 | | |
| 38649 | 11/10/80 | A-94 | 9,000 | | |
| 38673 | 11/21/80 | A-95 | 10,000 | | |
| 38706 | 11/27/80 | A-96 | 9,000 | | |
| 38735 | 11/28/80 | A-97 | 10,000 | | |
| 38736 | 11/28/80 | A-98 | 10,000 | | |
| 38737 | 11/28/80 | A-99 | 10,000 | | |
| 38746 | 12/01/80 | A-100 | 6,000 | | 6,000 |
| 39030 | 12/12/80 | A-101 | 12,000 | | |
| 39032 | 12/12/80 | A-102 | 10,000 | | |
| 39038 | 12/15/80 | A-103 | 6,000 | | 6,000 |
| 39039 | 12/15/80 | A-104 | 9,000 | | |
| 39103 | 12/19/80 | A-105 | 12,000 | | |
| 39131 | 12/23/80 | A-106 | 12,000 | | |
| 39291 | 01/05/81 | A-107 | 6,000 | | 6,000 |
| 39368 | 01/09/81 | A-108 | 12,000 | | |
| 39373 | 01/09/81 | A-109 | 9,000 | | |
| 39374 | 01/09/81 | A-110 | 10,000 | | |
| 39383 | 01/09/81 | A-111 | 12,000 | | |
| 39390 | 01/12/81 | A-112 | 10,000 | | |
| 39471 | 01/14/81 | A-113 | 9,000 | | |
| 39498 | 01/16/81 | A-114 | 12,000 | | |
| 39505 | 01/16/81 | A-115 | 9,000 | | |
| 39510 | 01/16/81 | A-116 | 12,000 | | |
| 39512 | 01/16/81 | A-117 | 9,000 | | |

| Invoice No. | Date Shipped | Exh. | QUANTITY IN LITERS Diesel | Oils and Lubricants | Regular Gasoline |
|---|---|---|---|---|---|
| 39554 | 01/21/81 | A-118 | 10,000 | | |
| 39589 | 01/23/81 | A-119 | 10,000 | | |
| 39632 | 01/26/81 | A-120 | 10,000 | | |
| 39635 | 01/26/81 | A-121 | 6,000 | | 6,000 |
| 39645 | 01/26/81 | A-122 | 9,000 | | |
| 39688 | 01/28/81 | A-123 | 12,000 | | |
| 55752 | 01/30/81 | A-124 | 10,000 | | |
| 55753 | 01/30/81 | A-125 | 10,000 | | |
| 55751 | 02/02/81 | A-126 | 12,000 | | |
| 55759 | 02/02/81 | A-127 | 9,000 | | |
| 55777 | 02/02/81 | A-128 | 10,000 | | |
| 55852 | 02/05/81 | A-129 | 9,000 | | |
| 55874 | 02/05/81 | A-130 | 10,000 | | |
| 55879 | 02/06/81 | A-131 | 12,000 | | |
| 55884 | 02/06/81 | A-132 | 10,000 | | |
| 55891 | 02/09/81 | A-133 | 12,000 | | |
| 25284 | 02/24/81 | A-134 | 10,000 | | |
| 25285 | 02/25/81 | A-135 | 10,000 | | |
| 25287 | 02/25/81 | A-136 | 10,000 | | |
| 25288 | 02/27/81 | A-137 | 10,000 | | |
| 25291 | 03/03/81 | A-138 | 10,000 | | |
| 25292 | 03/03/81 | A-139 | 10,000 | | |
| 25293 | 03/04/81 | A-140 | 10,000 | | |
| 25294 | 03/04/81 | A-141 | 10,000 | | |
| 25296 | 03/11/81 | A-142 | 10,000 | | |
| 25298 | 03/11/81 | A-143 | 10,000 | | |
| 25306 | 03/18/81 | A-144 | 10,000 | | |
| 25307 | 03/18/81 | A-145 | 10,000 | | |
| 25318 | 03/18/81 | A-146 | 10,000 | | |
| 25319 | 03/18/81 | A-147 | 10,000 | | |
| 25320 | 03/19/81 | A-148 | 10,000 | | |
| 25322 | 03/21/81 | A-149 | 10,000 | | |
| 25323 | 03/21/81 | A-150 | 10,000 | | |
| 25325 | 03/23/81 | A-151 | 10,000 | | |
| 25326 | 03/23/81 | A-152 | | 10,000 | |
| 25327 | 03/23/81 | A-153 | 10,000 | | |
| 25328 | 03/24/81 | A-154 | 10,000 | | |
| 25334 | 03/25/81 | A-155 | 10,000 | | |
| 25335 | 03/25/81 | A-156 | 10,000 | | |
| 25336 | 03/25/81 | A-157 | 10,000 | | |
| 25342 | 03/31/81 | A-158 | 9,000 | | |
| 25344 | 04/01/81 | A-159 | 10,000 | | |
| 25345 | 04/01/81 | A-160 | 10,000 | | |
| 25346 | 04/01/81 | A-161 | 9,000 | | |
| 25347 | 04/02/81 | A-162 | 10,000 | | |
| 25348 | 04/02/81 | A-163 | 10,000 | | |

| Invoice No. | Date Shipped | Exh. | QUANTITY IN LITERS Diesel | Oils and Lubricants | Regular Gasoline |
|---|---|---|---|---|---|
| 25353 | 04/03/81 | A-164 | 10,000 | | |
| 25357 | 04/06/81 | A-165 | 10,000 | | |
| 25358 | 04/06/81 | A-166 | 10,000 | | |
| 25359 | 04/06/81 | A-167 | 10,000 | | |
| 25362 | 04/06/81 | A-168 | 9,000 | | |
| 25363 | 04/08/81 | A-169 | 10,000 | | |
| 25367 | 04/09/81 | A-170 | 10,000 | | |
| 25369 | 04/09/81 | A-171 | 10,000 | | |
| 25370 | 04/09/81 | A-172 | 10,000 | | |
| 25371 | 04/09/81 | A-173 | 9,000 | | |
| 25375 | 04/10/81 | A-174 | 10,000 | | |
| 25376 | 04/13/81 | A-175 | 10,000 | | |
| 25377 | 04/13/81 | A-176 | 9,000 | | |
| 25379 | 04/13/81 | A-177 | 10,000 | | |
| 25382 | 04/20/81 | A-178 | 10,000 | | |
| 25383 | 04/21/81 | A-179 | 10,000 | | |
| 25388 | 04/22/81 | A-180 | 10,000 | | |
| 25389 | 04/22/81 | A-181 | 9,000 | | |
| 25392 | 04/27/81 | A-182 | 10,000 | | |
| 25394 | 04/29/81 | A-183 | 10,000 | | |
| 25395 | 04/30/81 | A-184 | 9,000 | | |
| 25397 | 05/05/81 | A-185 | 10,000 | | |
| 25398 | 05/05/81 | A-186 | 9,000 | | |
| 68051 | 05/06/81 | A-187 | 10,000 | | |
| 68053 | 05/06/81 | A-188 | 2,000 | | 8,000 |
| 68054 | 05/07/81 | A-189 | 9,000 | | |
| 68055 | 05/07/81 | A-190 | 10,000 | | |
| 68060 | 05/08/81 | A-191 | 9,000 | | |
| 68066 | 05/12/81 | A-192 | 10,000 | | |
| 68067 | 05/12/81 | A-193 | 10,000 | | |
| 68070 | 05/13/81 | A-194 | 8,000 | | 2,000 |
| 68072 | 05/13/81 | A-195 | 10,000 | | |
| 68076 | 05/15/81 | A-196 | 10,000 | | |
| 68079 | 05/19/81 | A-197 | 10,000 | | |
| 68082 | 05/25/81 | A-198 | 10,000 | | |
| 68083 | 05/27/81 | A-199 | 10,000 | | |
| 68084 | 05/28/81 | A-200 | 10,000 | | |
| 68092 | 05/28/81 | A-201 | 10,000 | | |
| 68098 | 06/02/81 | A-202 | 10,000 | | |
| 68099 | 06/03/81 | A-203 | 10,000 | | |
| 68101 | 05/19/81 | A-204 | 10,000 | | |
| 68105 | 06/04/81 | A-205 | 10,000 | | |
| 68106 | 06/04/81 | A-206 | 10,000 | | |
| 68108 | 06/04/81 | A-207 | 9,000 | | |
| 68112 | 06/04/81 | A-208 | 10,000 | | |
| 68115 | 06/08/81 | A-209 | 10,000 | | |

| Invoice No. | Date Shipped | Exh. | QUANTITY IN LITERS Diesel | Oils and Lubricants | Regular Gasoline |
|---|---|---|---|---|---|
| 68116 | 06/08/81 | A-210 | 10,000 | | |
| 68120 | 06/08/81 | A-211 | 10,000 | | |
| 68126 | 06/10/81 | A-212 | 9,000 | | |
| 68130 | 06/12/81 | A-213 | 10,000 | | |
| 68131 | 06/12/81 | A-214 | 10,000 | | |
| 68134 | 06/15/81 | A-215 | 10,000 | | |
| 68152 | 06/26/81 | A-216 | 10,000 | | |
| 68153 | 06/26/81 | A-217 | 10,000 | | |
| 68154 | 06/26/81 | A-218 | 10,000 | | |
| 68156 | 06/29/81 | A-219 | 10,000 | | |
| 68157 | 06/29/81 | A-220 | 10,000 | | |
| 68171 | 07/08/81 | A-221 | 10,000 | | |
| 68172 | 07/08/81 | A-222 | 10,000 | | |
| 68173 | 07/08/81 | A-223 | 10,000 | | |
| 68174 | 07/09/81 | A-224 | 4,000 | | 6,000 |
| 68177 | 07/09/81 | A-225 | 9,000 | | |
| 68181 | 07/09/81 | A-226 | 10,000 | | |
| 68182 | 07/10/81 | A-227 | 10,000 | | |
| 68183 | 07/10/81 | A-228 | 10,000 | | |
| 68194 | 07/13/81 | A-229 | 10,000 | | |
| 68195 | 07/13/81 | A-230 | 10,000 | | |
| 68198 | 07/14/81 | A-231 | 6,000 | | 3,000 |
| 68205 | 07/21/81 | A-232 | 10,000 | | |
| 68206 | 07/21/81 | A-233 | 10,000 | | |
| 68207 | 07/21/81 | A-234 | 10,000 | | |
| 68208 | 07/21/81 | A-235 | 10,000 | | |
| 68211 | 07/22/81 | A-236 | 9,000 | | |
| 68224 | 07/30/81 | A-237 | 10,000 | | |
| 68226 | 07/30/81 | A-238 | 10,000 | | |
| 68227 | 07/30/81 | A-239 | 10,000 | | |
| 68230 | 07/31/81 | A-240 | 10,000 | | |
| 68232 | 07/31/81 | A-241 | 10,000 | | |
| 68239 | 08/03/81 | A-242 | 4,000 | | 6,000 |
| 68241 | 08/03/81 | A-243 | 6,000 | | 4,000 |
| 68248 | 08/05/81 | A-244 | 9,000 | | |
| 81001 | 08/06/81 | A-245 | 9,000 | | |
| 81002 | 08/07/81 | A-246 | 10,000 | | |
| 81003 | 08/07/81 | A-247 | 10,000 | | |
| 81004 | 08/07/81 | A-248 | 10,000 | | |
| 81006 | 08/10/81 | A-249 | 10,000 | | |
| 81015 | 08/12/81 | A-250 | 10,000 | | |
| 81016 | 08/13/81 | A-251 | 10,000 | | |
| 81017 | 08/13/81 | A-252 | 9,000 | | |
| 81023 | 08/14/81 | A-253 | 10,000 | | |
| 81024 | 08/14/81 | A-254 | 10,000 | | |
| 81026 | 08/17/81 | A-255 | 10,000 | | |

| Invoice No. | Date Shipped | Exh. | QUANTITY IN LITERS Diesel | Oils and Lubricants | Regular Gasoline |
|---|---|---|---|---|---|
| 81030 | 08/20/81 | A-256 | 10,000 | | |
| 81031 | 08/20/81 | A-257 | 10,000 | | |
| 81032 | 08/20/81 | A-258 | 10,000 | | |
| 81035 | 08/21/81 | A-259 | 9,000 | | |
| 81037 | 08/21/81 | A-260 | 10,000 | | |
| 81038 | 08/21/81 | A-261 | 10,000 | | |
| 81057 | 08/28/81 | A-262 | 10,000 | | |
| 81058 | 08/28/81 | A-263 | 10,000 | | |
| 81059 | 08/28/81 | A-264 | 10,000 | | |
| 81060 | 08/31/81 | A-265 | 10,000 | | |
| 81061 | 08/31/81 | A-266 | 10,000 | | |
| 81080 | 09/04/81 | A-267 | 9,000 | | |
| 81082 | 09/04/81 | A-268 | 10,000 | | |
| 81089 | 09/08/81 | A-269 | 10,000 | | |
| 81097 | 09/10/81 | A-270 | 9,000 | | |
| 81099 | 09/10/81 | A-271 | 10,000 | | |
| 81100 | 09/10/81 | A-272 | 10,000 | | |
| 81101 | 09/10/81 | A-273 | 10,000 | | |
| 81104 | 09/11/81 | A-274 | 9,000 | | |
| 81106 | 09/11/81 | A-275 | 10,000 | | |
| 81107 | 09/14/81 | A-276 | 10,000 | | |
| 81108 | 09/14/81 | A-277 | 10,000 | | |
| 81109 | 09/14/81 | A-278 | 10,000 | | |
| 81110 | 09/15/81 | A-279 | 10,000 | | |
| 81111 | 09/15/81 | A-280 | 10,000 | | |
| 81112 | 09/15/81 | A-281 | 10,000 | | |
| 81113 | 09/15/81 | A-282 | 9,000 | | |
| 81114 | 09/18/81 | A-283 | 10,000 | | |
| 81115 | 09/18/81 | A-284 | 10,000 | | |
| 81116 | 09/18/81 | A-285 | 8,000 | | 1,000 |
| 81131 | 09/17/81 | A-286 | 4,000 | | 6,000 |
| 81157 | 09/20/81 | A-287 | 10,000 | | |
| 81158 | 09/29/81 | A-288 | 10,000 | | |
| 81159 | 09/28/81 | A-289 | 10,000 | | |
| 81160 | 09/20/81 | A-290 | 10,000 | | |
| 81161 | 09/30/81 | A-291 | 10,000 | | |
| 81164 | 10/01/81 | A-292 | 10,000 | | |
| 81167 | 10/02/81 | A-293 | 10,000 | | |
| 81168 | 10/02/81 | A-294 | 10,000 | | |
| 81169 | 10/02/81 | A-295 | 10,000 | | |
| 81174 | 10/05/81 | A-296 | 10,000 | | |
| 81184 | 10/07/81 | A-297 | 10,000 | | |
| 81185 | 10/07/81 | A-298 | 10,000 | | |
| 81214 | 10/20/81 | A-299 | 8,000 | | |
| 81215 | 10/20/81 | A-300 | 10,000 | | |
| 81216 | 10/20/81 | A-301 | 10,000 | | |

| Invoice No. | Date Shipped | Exh. | QUANTITY IN LITERS Diesel | Oils and Lubricants | Regular Gasoline |
|---|---|---|---|---|---|
| 81219 | 10/21/81 | A-302 | 9,000 | | |
| 81217 | 10/20/81 | A-303 | 10,000 | | |
| 81221 | 10/21/81 | A-304 | 10,000 | | |
| 81231 | 10/26/81 | A-305 | 2,000 | | |
| 81239 | 10/30/81 | A-306 | 10,000 | | |
| 81240 | 10/30/81 | A-307 | 10,000 | | |
| 81241 | 10/30/81 | A-308 | 10,000 | | |
| 81243 | 10/30/81 | A-309 | 10,000 | | |
| 81242 | 10/30/81 | A-310 | 10,000 | | |
| 81245 | 11/02/81 | A-311 | 10,000 | | |
| 91007 | 11/05/81 | A-312 | 1,000 | | 7,000 |
| 91023 | 11/17/81 | A-313 | 10,000 | | |
| 91024 | 11/17/81 | A-314 | 10,000 | | |
| 91025 | 11/17/81 | A-315 | 10,000 | | |
| 91026 | 11/17/81 | A-316 | 10,000 | | |
| 91028 | 11/18/81 | A-317 | 10,000 | | |
| 91040 | 11/20/81 | A-318 | 8,000 | | |
| 91045 | 11/20/81 | A-319 | 10,000 | | |
| 91046 | 11/26/81 | A-320 | 10,000 | | |
| 91048 | 11/26/81 | A-321 | 8,000 | | |
| 91051 | 11/27/81 | A-322 | 4,000 | | |
| 91063 | 12/04/81 | A-323 | 10,000 | | |
| 91064 | 12/04/81 | A-324 | 6,000 | | 2,000 |
| 91069 | 12/07/81 | A-325 | 8,000 | | |
| 91074 | 12/09/81 | A-326 | 6,000 | | 2,000 |
| 91082 | 12/11/81 | A-327 | 8,000 | | 2,000 |
| 91084 | 12/11/81 | A-328 | 2,000 | | 4,000 |
| 91094 | 12/16/81 | A-329 | 10,000 | | |
| 91095 | 12/16/81 | A-330 | 10,000 | | |
| 91096 | 12/16/81 | A-331 | 10,000 | | |
| 91098 | 12/18/81 | A-332 | 8,000 | | |
| 91103 | 12/18/81 | A-333 | 10,000 | | |
| 91104 | 12/18/81 | A-334 | 10,000 | | |
| 91105 | 12/18/81 | A-335 | 10,000 | | |
| 91106 | 12/18/81 | A-336 | 10,000 | | |
| 91116 | 12/22/81 | A-337 | 10,000 | | |
| 91119 | 12/23/81 | A-338 | 10,000 | | |
| 91120 | 12/23/81 | A-339 | 10,000 | | |
| 91121 | 12/23/81 | A-340 | 10,000 | | |
| 08561 | 11/19/80 | A-362 | | 6,954 | |
| 08562 | 11/19/80 | A-363 | | 5,655 | |
| 08563 | 11/19/80 | A-364 | | 400 | |
| 63405 | 12/08/80 | A-365 | | | |
| 10468 | 12/08/80 | A-366 | | 4,190 | |
| 39428 | 01/14/81 | A-367 | | | 12,000 |
| 13237 | 01/08/81 | A-368 | | 2,940 | |

| Invoice No. | Date Shipped | Exh. | QUANTITY IN LITERS Diesel | Oils and Lubricants | Regular Gasoline |
|---|---|---|---|---|---|
| 12009 | 12/23/80 | A-369 | | 4,660 | |
| 25286 | 02/25/81 | A-370 | | | 10,000 |
| 55829 | 02/04/81 | A-371 | | | 12,000 |
| 15787 | 02/03/81 | A-372 | | 2,340 | |
| 15788 | 02/03/81 | A-373 | | 3,190 | |
| 15889 | 02/03/81 | A-374 | | 9,000 | |
| 25295 | 03/10/81 | A-375 | | | 10,000 |
| 25321 | 03/19/81 | A-376 | | | 10,000 |
| 25332 | 03/24/81 | A-377 | | | 10,000 |
| 25333 | 03/24/81 | A-378 | | | 9,000 |
| 25324 | 03/23/81 | A-379 | | | 10,000 |
| 22248 | 04/03/81 | A-380 | | 11,740 | |
| 25368 | 04/09/81 | A-381 | | | 10,000 |
| 25380 | 04/14/81 | A-382 | | | 10,000 |
| 25381 | 04/14/81 | A-383 | | | 10,000 |
| 25390 | 04/24/81 | A-384 | | | 10,000 |
| 24346 | 04/30/81 | A-385 | | 2,940 | |
| 24875 | 05/07/81 | A-386 | | 10,000 | |
| 24879 | 05/09/81 | A-387 | | 4,200 | |
| 25597 | 05/15/81 | A-388 | | | |
| 68102 | 05/18/81 | A-389 | | | 9,000 |
| 68068 | 05/12/81 | A-390 | | | 9,000 |
| 68077 | 05/15/81 | A-391 | | | 10,000 |
| 68139 | 06/18/81 | A-392 | | | 10,000 |
| 68140 | 06/18/81 | A-393 | | | 10,000 |
| 68158 | 06/28/81 | A-394 | | | 10,000 |
| 68159 | 06/29/81 | A-395 | | | 9,000 |
| 68225 | 07/30/81 | A-396 | | | 9,000 |
| 30086 | 07/07/81 | A-397 | | 7,350 | |
| 30192 | 07/08/81 | A-398 | | | |
| 30210 | 07/08/81 | A-399 | | 5,225 | |
| 30535 | 07/11/81 | A-400 | | 6,300 | |
| 32369 | 08/05/81 | A-401 | | 3,570 | |
| 32370 | 08/05/81 | A-402 | | 200 | |
| 32927 | 08/10/81 | A-403 | | 7,390 | |
| 68238 | 08/03/81 | A-404 | | | 10,000 |
| 35505 | 09/14/81 | A-405 | | 9,495 | |
| 35507 | 09/14/81 | A-407 | | 13,020 | |
| 36217 | 09/23/81 | A-408 | | 384 | |
| 63879 | 05/28/81 | A-409 | | | |
| 81062 | 08/31/81 | A-410 | | | 10,000 |
| 81063 | 08/31/81 | A-411 | | | 10,000 |
| 81065 | 08/31/81 | A-412 | | | 10,000 |
| 81098 | 09/10/81 | A-413 | | | 10,000 |
| 81130 | 09/16/81 | A-414 | | | 8,000 |
| 81162 | 09/30/81 | A-415 | | | 9,000 |

| Invoice No. | Date Shipped | Exh. | Diesel | Oils and Lubricants | Regular Gasoline |
|---|---|---|---|---|---|
| | | | QUANTITY IN LITERS | | |
| 81175 | 10/05/81 | A-416 | | | 9,000 |
| 81189 | 10/12/81 | A-417 | | | 10,000 |
| 81196 | 10/12/81 | A-418 | | | 6,000 |
| 37871 | 10/12/81 | A-419 | | 6,290 | |
| 37872 | 10/12/81 | A-420 | | 8,220 | |
| 43702 | 12/21/81 | A-421 | | 5,690 | |
| 43703 | 12/21/81 | A-422 | | 2,310 | |
| 91117 | 12/22/81 | A-423 | | | 10,000 |
| 71966 | 11/19/81 | A-567 | | 6,300 | |
| 71967 | 11/19/81 | A-568 | | 7,524 | |
| 34650 | 10/28/81 | A-569 | | 13,018 | |
| 33713 | 09/01/81 | A-570 | | 8,400 | |
| 33714 | 09/06/81 | A-571 | | 1,460 | |
| 33288 | 08/21/81 | A-572 | | 3,150 | |
| 31900 | 07/22/81 | A-573 | | 208 | |
| 21529 | 05/14/81 | A-575 | | 3,990 | |
| 21530 | 05/15/81 | A-576 | | 8,430 | |
| 19222 | 03/20/81 | A-577 | | 2,844 | |
| 19223 | 03/20/81 | A-578 | | 5,200 | |
| 18106 | 02/20/81 | A-579 | | 10,920 | |
| 43611 | 01/14/81 | A-580 | | 2,100 | |
| 19088 | 03/06/81 | A-581 | | 2,310 | |
| 20998 | 03/20/81 | A-582 | | 9,000 | |
| 63499 | 03/06/81 | A-583 | | | |
| | T O T A L | | 2,483,000 | 238,507 | 396,000 |

The other invoices, namely, Exhs. "A-1" to "A-78", "A-341" to "A-361", and "A-424" to "A-566", are not being considered because they are already beyond the two-year prescriptive period. The Tax Code provides for the judicial remedy of filing a claim for refund within a period of two (2) years from the date of payment of the tax pursuant to the provision of Section 230 (formerly Section 292).

Section 135 of the Tax Code insofar as pertinent provides "that specific taxes on locally manufactured petroleum products levied under Sections 153, 155 and 156 of this title, <u>except lubricating oil and grease, shall be paid within fifteen (15) days from the date of removal thereof from the place of production."</u> (Emphasis supplied)

It is therefore evident that the manufacturer of petroleum products has <u>up to 15 days from the date of its removal</u> within which to pay the specific taxes on locally manufactured petroleum products. As an exception, manufacturers of lubricating oils and grease have to pay the specific tax collected from the purchaser <u>on the date of its removal</u> from the place of production.

Petitioner purchased both manufactured petroleum products and lubricating oils and grease. Thus, with respect to its purchases of lubricating oils, the specific taxes paid thereon are deemed paid at the date of its removal. The claim for refund of the 25% specific taxes paid on oils and lubricants purchased and delivered prior to November 16, 1980 had indeed prescribed. The purchases of oils other than lube have prescribed on October 31, 1980 because the specific taxes of said purchases were deemed paid on November 15, 1980 which is already more than two years from the filing of this Petition for Review on November 16, 1982. Thus, purchases made on or before October 31, 1980 are no longer considered in the computation. Exhibits "B", "B-1" to "B-211", "C", "C-1" to "C-191", "D", "D-1" to "D-75", "E" "E-1" to "E-187" are also not being considered since these are purchases of petroleum products which do not form part of the original period -- these are purchases for the years 1982 and 1983 which probably have been inadvertently included by the Petitioner.

Thus, following the formula of conversion already used by this Court in the other cases of this nature, We arrived at this computation of the 25% specific tax refund under Sec. 5 of R.A. No. 1435, to wit:

RECOMPUTATION OF 25% SPECIFIC TAX REFUND
UNDER SEC. 5 OF REPUBLIC ACT NO. 1435

| Manufactured Oils | Quantity | Specific Tax Rate | Specific Tax |
|---|---|---|---|
| Diesel (2,483,000 x .8429 ÷ 1,000) | 2,092.92 MT | P1.00/T | P 2,092.92 |
| Oils and lubricants | 238,507.00 L | 0.07/L | 16,695.49 |
| Regular Gasoline | 396,000.00 L | 0.08/L | 31,680.00 |
| Total specific taxes | | | P50,468.41 |
| Multiply by specific tax refund rate | | | 25% |
| 25% specific tax refund under RA 1435 | | | P12,617.10 |

As regards the 20% interest per annum being claimed by Petitioner, the rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. (Collector vs. Prieto, 112 Phil. 907; Commissioner vs. Asturias Sugar Central, 2 SCRA 1140; Commissioner of Internal Revenue vs. American Rubber Co., 18 SCRA 842;

Atlas Fertilizer Corporation vs. Commissioner of Internal Revenue, 100 SCRA 556; Shell Philippines, Inc. vs. Central Bank of the Philippines, 162 SCRA 628.) An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. (F.B. Moreno, Philippine Law Dictionary (3rd ed.), p. 69, citing Imperial Development Corporation vs. Añover, 08473-AP, August 23, 1979.) Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. (Victorias Milling Co., Inc. vs. Commissioner of Internal Revenue, et al., 19 SCRA 430.) None of the exceptions are present in the case at bar. Respondent's decision denying Petitioner's claim for refund was based on an honest interpretation of law. We, therefore, see no reason why Petitioner should be entitled to the payment of interest.

Moreover, the Supreme Court held in the Rio Tuba case that no interest shall be charged in computing the 25% refund on specific taxes paid. (See Supreme Court Resolution dated March 25, 1992.)

In the same manner, Petitioner's prayer for cost of suit cannot be awarded. It is an elementary rule that the government shall not be liable for costs of suits unless otherwise provided by law. (Section 1, Rule 142, Revised Rules of Court; Collector of Internal Revenue vs. Convention of Philippine Baptist Churches and the Court of Tax appeals, 2 SCRA 10).

**WHEREFORE,** in all the foregoing, Respondent is hereby **ORDERED** to **REFUND** Petitioner the sum of P12,617.10 without interest representing 25% refund of specific taxes paid on its purchases of oils and fuels actually used by Petitioner in its operations as a duly licensed forest concessionaire pursuant to Sec. 5 of R.A. 1435.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**MANUEL K. GRUBA**
Associate Judge

## CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals