REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BAGANGA BAY FOREST WORKING UNIT,
Petitioner,

- versus - C.T.A. CASE NO. 2036

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

4/20/92

D E C I S I O N

This is a claim for refund by petitioner of the amount of P14,730.76 representing 25% of the specific tax paid on manufactured oils and other fuels (petroleum products) in its logging operations during the period from June 1967 to March 1969, inclusive.

Petitioner is a registered general co-partnership organized and existing under and by virtue of the laws of the Philippines, with principal office at the 3rd floor of CMS Building, Pasong Tamo Extension, Makati, Metro Manila, and a duly licensed forest concessionaire.

On August 29, 1969 petitioner filed with the respondent a written claim for the refund of the sum of P14,730.76, representing 25% of the specific taxes paid on the said fuel oils and other fuels used in the logging operations during the period from June, 1967 to March 1, 1969, pursuant to Section 5 of R.A. No. 1435. Likewise, petitioner filed the instant petition for review on August 29, 1969.

The case at bar has been submitted for decision based on the pleadings and records of the case, sans the memorandum of the parties.

The sole issue posed in this appeal is whether or not the 25% specific tax exemption on petroleum products used in its logging operations is limited to a period of five (5) years from the effectivity of R.A. No. 1435.

The case at bar pursuant to the resolution of this Court dated May 30, 1989 has been archived considering that the issue involved is similar to that of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA CASE NO. 2971 pending before the Supreme Court in G.R. No. 93631.

The Supreme Court later on sustained the ruling of this court in G.R. No. 3631, Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, in its decision dated November 12, 1990. We quote the decision of the Court of Tax Appeals in C.T.A. Case No. 2971, which was sustained by the Supreme Court in G.R. No. 3631 to wit:

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 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 petitioners' claim holds on to the view earlier invoked in a case of the same mold that, "The privilege of a partial refund granted by Section 5 of RA 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."

Resolving the question squarely in the Insular Lumber Case 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 specifc 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 in mining 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 the 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. x x x 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 miner/forest concessionaires (Sec. 5, RA 1435) vis-a-vis agriculature 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 cutailment 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."

This decision conforms with the resolution of the Supreme Court in the case of Commissioner of Internal Revenue versus Rio Tuba Nickel Mining Corporation and the CTA, G.R. Nos. 83583-84, dated March 25, 1992, which ruled that "xxx mining and logging companies are entitled to the refund privilege granted by R.A. No. 1435 on specific taxes paid up to 1985 on manufactured and diesel fuel oils." (Underlining ours.) Said the Supreme Court:

> "The Court ruled in the decision that Section 5 of Republic Act (R.A.) No. 1435, which granted to lumber and mining

companies the privilege of refund of twenty five (25%) percent of specific taxes paid by them when such oils are used in their operations, was impliedly repealed by Presidential Decree (P.D.) No. 711 which abolished all special and fiduciary funds.

Under R.A. No. 1435, the specific taxes on manufactured oils and diesel fuel oil accrued to the Highway Special Fund. The Court stated that miners and lumbermen were accorded refund privileges under R.A. No. 1435 because they seldom use the national highways since they have their own roads and it was unfair to subject them to the increased tax rates and in effect make them subsidize the construction of highways from which they did not directly benefit. According to the Court, since by virtue of P.D. No. 711, all funds that have accrued from the various special funds are channeled to the so-called General Fund, there is, therefore, no need nor justification for the continued special treatment of these miners and loggers. Thus, reasoned the Court, since under P.D. No. 711 any government project can be the beneficiary of such funds as long as it is for the general welfare of the masses and it is inevitable that sooner or later the miners and loggers will stand to benefit from these government benefits, then the refund privilege in R.A. No. 1435 has become an anachronism. The Court ruled that the refund privilege granted to miner and loggers under R.A. 1435 was impliedly repealed by P.D. No. 711.

This decision was premised on the assumption that the highway Special Fund was one of those funds abolished and transferred to the General Fund by P.D. No. 711 which took effect on July 1, 1975.

Despite the mandate of P.D. No. 711, however, several special funds were still retained and the Highway Special Fund was one of them.

Proof that some of these special and fiduciary funds were retained may be extracted from the provisions of P.D. No. 1741 dated October 31, 1980 which governs the computation of national internal revenue allotments to local government units. Section 2 of said decree provides:

> "SEC. 2. **Magnitude of Assistance** - A maximum of twenty per cent (20%) of national internal revenue taxes shall be available for national assistance to local government units. Provided, That the national revenue used as basis in computation shall **exclude receipts accruing to Special or Fiduciary Funds** and to Special Accounts in the General Fund, amounts authorized by law to be used by the collecting agency, and amounts recorded as income of the General Fund but which are charged to appropriations in the General or other Appropriations Laws." (Underlining supplied)

The Internal Revenue Allotments annually prepared by the Bureau of Internal Revenue in accordance with the foregoing decree showed that the Highway Special Fund continued its existence up to 1985 and was channeled to the General Fund only in 1986.

It is not clear why the Highways Special Fund was maintained **for 10 years** after the effectivity of P.D. No. 711 or why it was abolished in 1986. The stark fact remains that it retained its status as a special fund up to 1985.

With the foregoing consideration, we cannot therefore state with definiteness that it was P.D. No. 711 which impliedly repealed Section 5 of R.A. No. 1435. We can however safely conclude that Section 5 of R.A. No. 1435 is now an anachronism because the Highway Special Fund, after 1985, no longer exists.

The rationale for the Court's decision denying the private respondent's twin claims for refund was that the specific taxes on these manufactured oils paid by the mining and lumber companies no longer accrued to the Highway Special Fund. But given the added circumstance that the Highway Special Fund which was financed by these specific taxes still continued up to 1985, it will be highly inequitable for the private respondent if we were to rule that no fefund of specific taxes paid up to 1985 which actually accrued to the Highway Special Fund (not the General Fund) may be given. The private respondent still did not directly benefit from the projects supported by the Highway Special Fund.

We, therefore, modify our decision in this case and rule that mining and logging companies are entitled to the refund privilege granted by R.A. No. 1435 on specific taxes paid up to 1985 on manufactured and diesel fuel oils. (Underscoring ours.)

Since the private respondent's claim for refund covers specific taxes paid from 1980 to July 1983 then we find that the private respondent is entitled to a refund. It should be made clear, however, that Rio Tuba is not entitled to the whole amount it claims as refund."

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax refund to petitioner, Baganga Bay Forest Working Unit, the amount of P14,730.76 representing 25% of the specific taxes paid on petroleum products for the period from June, 1967 to March, 1969.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, April 20, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-PARRALES
Acting 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals