REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING AND
DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2971

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

D E C I S I O N

The single question presented is whether the petitioner is entitled to the partial refund of the 25% of specific taxes collected and paid on the fuel oils consumption of a mining entity as provided in Section 5 of RA No. 1435, otherwise known as An Act to Provide Means for Increasing the Highway Special Fund.

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

Period		Specific Taxes Paid	25%
October - December	1976	₱ 1,288,619.75	₱ 322,154.94
January - December	1977	7,277,865.88	1,819,466.47
January - April	1978	1,877,566.70	469,391.67
TOTAL		₱10,444,052.33	₱2,611,013.08

On September 13, 1978, petitioner filed with the respondent a written claim for tax credit of the specified amount of ₱2,611,013.08 representing 25% of the specific taxes paid on the said fuel oils pursuant to Section 5 of RA No. 1435, infra, in relation with Sections 142 and 145 of the Tax Code. Likewise, filed the instant petition for review on September 18, 1978.

Republic Act No. 1435, insofar as applicable, provides:

> 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 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 <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 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 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./

WHEREFORE, finding the petition to be well taken, the same is granted, and the tax credit of the amount sought is hereby ordered. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 31, 1986.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge