REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ZAMBOANGA WOOD PRODUCTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3522

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/15/87

x---x

D E C I S I O N

This is a claim for partial tax refund in the sum of ₱832,909.18 as specific tax paid on oil products used in mining operations pursuant to the provisions of Section 5 of Republic Act No. 1435.

During the period from July 1, 1980 to May 31, 1982, petitioner purchased from Mobil Oil Philippines Inc. (hereinafter referred to as MOBIL for brevity) refined and manufactured mineral oils, motor fuels and diesel fuel oils which petitioner had actually and exclusively used in connection with the exploitation and operations of its forest concession. MOBIL paid and passed on to petitioner the said specific tax it paid, and which was imposed under Sections 153 and 156 (formerly Sections 142 and 145) of the Tax Code of 1977, on the refined and manufactured mineral oils, motor fuel and diesel fuel oils which it sold to petitioner.

That in accordance with the provisions of Section 5 of Republic Act No. 1435 and the decision of the Supreme Court in Insular Lumber Co. v. Court of Tax Appeals (104 SCRA 718), petitioner filed with the respondent on September 23, 1982 a written claim for refund of the amount of ₱832,900.10 (Exh. A), representing twenty-five percent (25%) of the specific taxes collected on the refined and manufactured mineral oils, motor fuels, and diesel fuel that petitioner utilized in its operations as forest concessionaire during the last two years from July, 1980 to May, 1982. In support of said claim for refund, petitioner had submitted to respondent the affidavits of the President Roberto Reyes of the Philippine Wood Products Association, Inc., and of four disinterested persons, namely, Romeo C. Yango, Manolo de Asis, Romela C. Mosqueda and Dominador S.P. Lopez, attesting to the fact that the refined and manufactured mineral oils, motor fuels, and diesel fuel oils that petitioner purchased from Mobil Oil Philippines, Inc. were actually and exclusively used in the exploitation and operation of its forest concession. (Exhs. A, A-1, to A-5).

From the time the claim for refund was filed on September 23, 1982, up to the time the present petition for review was filed by petitioner on October 8, 1982, no action was taken by respondent Commissioner of Internal Revenue until over a year after the filing of the petition for review, or on January 30, 1984 (Exh. GA) when the claim for refund was denied by said respondent Commissioner of Internal Revenue. Said letter of denial is quoted hereunder in full for a more concise appreciation of the basis for rejection of petitioner's claim for refund.

January 30, 1984

Carpio, Villaraza, Barza,
Cruz & Rosell
LTA Building, 118 Perea Street
Legaspi Village
Makati, Metro Manila

Gentlemen:

With reference to the claim filed by you for and in behalf of your client, ZAMBOANGA WOOD PRODUCTS, INC., for refund of ₱832,900.10 as alleged overpaid specific tax on the petroleum products used and/or consumed in its logging operations during the period from July, 1980 to May, 1982, I regret to inform you that after a careful study, this Office finds no cogent, much less justifiable reason to favorably consider the same.

It appears that your claim is principally anchored on the provisions of Section 5, Republic Act No. 1435 which authorize the refund and/or the credit of 25% of the specific tax paid on the petroleum products used in logging or mining operations. Said provision should however, be read in conjunction with the provision of Section 4 of that law. It is our view that in order to avail of the benefits of partial tax refund mentioned in said Act, there must also be a municipal or city ordinance which imposes an additional tax of not exceeding 25% of the regular specific tax levied under Sections 142 and 145 of the Tax Code, in the place of your operations. In other words, refund will arise only after the enactment of the municipal or city ordinance levying the additional tax and the subsequent payment of the tax in question. In fine, it is no longer the national tax that is being refunded but only the 25% local additional tax.

With the issuance however, of Presidential Decree Nos. 231 and 426 dated June 28, 1973 and March 30, 1974, respectively, cities and municipalities can no longer levy any additional tax on articles subject to the specific tax. Consequently, and as the refund sought entirely depends on the exercise of such powers, partial refund of specific tax payments on the fuel oils used in logging or mining can no longer be authorized. The enactment of Presidential Decree No. 711 which took effect on July 1, 1975 further bolstered our stand on the matter because that Decree abolished all special and fiduciary funds. Since R.A. No. 1435 was precisely passed by Congress to provide the means of increasing the Highway Special Fund, said Decree has in effect repealed said R.A. No. 1435 hence, the same can no longer be invoked as the basis for instituting claims for refund of alleged overpaid specific tax.

In view thereof, the claim of your client, for refund of the said sum of ₱832,900.18 should be as it is, hereby denied. This constitute the final decision of this Office on the matter.

Very truly yours,

RUBEN B. ANCHETA
Acting Commissioner

On October 8, 1982 aforesaid, petitioner filed its petition for review alleging the foregoing facts, which material allegations were admitted by respondent in his answer and were supported by evidence presented during the hearing.

The evidence adduced during the trial of this case shows that petitioner, formerly the Associated Investments Co., Inc. (Exh. D, Affidavit of filing amended articles of incorporation), is a domestic corporation engaged for several years in the business of logging and duly licensed to cut, collect and remove timber from its forest concession area located in Ipil, Zamboanga del Sur. (Exhs. B to B-9, C and D.) During the period from July 1980 through May 1982, petitioner purchased from MOBIL various quantities of refined and manufactured mineral oils, motor fuels and diesel fuel oils (Exhs. E to Z, AA to ZZ, AB to AZ, BA to BZ, CA to CZ, DA to DZ, EA to EZ, FA to FB-8-a and their sub-exhibits), which it actually and exclusively used in connection with the exploitation and operations of its forest concession (Exhs. A-1 to A-5; TSN, February 28, 1983, p. 5) and to run its various machineries, equipments, motor vehicles (Exh. GD).

For the various oil products purchased by petitioner, MOBIL paid the specific taxes imposed under Sections 142 and 145 of the 1939 National Internal Revenue Code (Secs. 153 and 156 of the 1977 Tax Code) and passed on the same to petitioner which were made part of the purchase price (Exh. GC). The monthly summary of purchases (Exh. GB) and the tax payments for diesel fuel oil and gasoline[1] are as follows:

	DIESEL		GASOLINE	
	LITERS	SPECIFIC TAX PAID	LITERS	SPECIFIC TAX PAID
1980				
JUNE	512,400	₱ 35,868	50,000	₱ 8,750
JULY	528,400	36,988	50,000	8,750

[1]The specific tax rates during the period in question was ₱0.70/liter for diesel and ₱0.175/liter for gasoline.

	DIESEL		GASOLINE	
	LITERS	SPECIFIC TAX PAID	LITERS	SPECIFIC TAX PAID
AUGUST	614,000	₱ 42,980	50,000	₱ 8,750
SEPTEMBER	630,000	44,100	50,000	8,750
OCTOBER	550,000	38,500	50,000	8,750
NOVEMBER	230,000	16,100	30,000	5,250
DECEMBER	410,000	28,700	40,000	7,000
TOTAL	3,474,800	₱243,236	320,000	₱56,000
1981				
JANUARY	500,000	₱ 35,000	50,000	₱ 8,750
FEBRUARY	480,000	33,600	30,000	5,250
MARCH	502,000	35,140	48,000	8,400
APRIL	599,000	41,930	60,000	10,500
MAY	535,000	37,450	52,000	9,170
JUNE	464,400	32,508	58,600	10,255
JULY	599,600	41,927	42,400	7,420
AUGUST	321,200	22,484	28,800	5,040
SEPTEMBER	477,000	33,390	39,000	6,825
OCTOBER	280,000	19,600	20,000	3,500
NOVEMBER	490,000	34,300	40,000	7,000
DECEMBER	441,000	30,870	30,000	5,250
TOTAL	5,689,200	₱398,244	499,200	₱87,360
1982				
JANUARY	280,000	₱ 19,600	30,000	₱ 5,250
FEBRUARY	446,000	31,220	34,000	5,950
MARCH	750,000	52,500	50,000	8,750
APRIL	290,000	20,300	40,000	7,000
MAY	340,000	23,800	40,000	7,000
TOTAL	2,106,000	₱147,420	194,000	₱33,950
GRAND TOTAL	11,270,000	₱788,900	1,013,200	₱177,310

On the other hand, the total number of liters of lubricating oils purchased and used during the period was 751,648 liters, for which the amount of specific tax paid at the applicable rate of ₱0.80/liter was ₱601,318.40. In other words, the grand total of specific taxes paid during the period was ₱1,567,528.40, 25% of which is now sought by petitioner to be refunded aforesaid in the sum of ₱832,900.10, under Section 5 of Republic Act No. 1435, known as an Act to Provide Means for Increasing the Highway Special Fund.

Respondent did not present any evidence against the accuracy of the actual specific taxes paid on the diesel, gasoline, lubricating oil and other oils used by petitioner during the period in question.

The only issue to be resolved in this case is whether or not petitioner is entitled to the refund of the 25% of the specific taxes collected and paid on fuel oil consumption as a forest concessionaire as provided in the aforesaid Section 5 of Republic Act 1435 in the amount of ₱832,900.10.

Petitioner contends that it is entitled to the refund of twenty-five percent (25%) of the specific taxes it paid on the petroleum products it purchased and actually used in the exploitation and operations of its forest concession. It asserted that under the said Section 5, Republic Act No. 1435, it provides that -

> 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 condition enumerated in subparagraphs 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 Philippines Highway Act of 1953. (Underlining ours.)

The "oils mentioned above," referred to in the proviso of the foregoing provision, are those mentioned in Sections 142 and 145 of the 1939 National Internal Revenue Code, and which were amended by Sections 1 and

2 of Republic Act No. 1435, respectively. At the time material to this case, said Sections 142 and 145 became Sections 153 and 156, respectively, of the 1977 National Internal Revenue Code.

During the period involved in this case, the provisions of aforesaid Sections 153 and 156 are as follows:

> SEC. 153. Specific tax on manufactured oils and other fuels. On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes which shall attach to the articles hereunder enumerated as soon as they are in existence as such:
>
> (a) Kerosene, per liter of volume capacity, seven centavos;
> (b) Lubricating oils, per liter of volume capacity, eighty centavos;
> (c) Naphtha, gasoline, and all other similar products of distillation, per liter of volume capacity, ninety-one centavos; Provided, That on premium and aviation gasoline, the tax shall be one peso per liter of volume capacity;
> (d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo; Provided, That unless otherwise provided for by special laws, if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purposes of this subsection, the removal of denatured alcohol of not less than 180 degrees proof (90%) absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary;
> (e) Processed gas, per liter of volume capacity, three centavos;
> (f) Thinners and solvents, per liter of volume capacity, fifty-seven centavos;
> (g) Liquefied petroleum gas, per kilogram, fourteen centavos; Provided, That liquefied petroleum gas used for motive power

> shall be taxed at the equivalent rate as the specific tax on diesel fuel oil;
>
> (h) Asphalts, per kilogram, eight centavos;
>
> (i) Greases, waxes and petrolatum, per kilogram, fifty centavos;
>
> (f) Aviation turbo jet fuel, per liter of volume capacity, fifty-five centavos. (As amended by Sec. 1, P.D. No. 1672.)
>
> SEC. 156. Specific tax on diesel fuel oil. - On fuel oil, commercially known as diesel fuel oil, and on all similar fuel oils, having more or less the same generating power, per liter of volume capacity, seventeen and one-half centavos, which tax shall attach to to this fuel oil as soon as it is in existence as such.

According to the law, said R.A. No. 1435, the refund shall be made out by the respondent upon submission of proof by the miners or forest concessionaires of the actual use of oils and under similar conditions prescribed in subparagraphs one and two of Section 1 thereof. These requirements are 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 federation or association, attesting to the fact that the oils were actually used in agriculture.

> (3) In the case of aviation oils, a sworn certificate satisfactory to the Collector proving that the said oils were actually used in aviation: Provided, That no such refunds shall be granted in respect to the oils used in aviation by citizens and corporations of foreign countries which do not grant equivalent refunds or exemptions in respect to similar oils used in aviation by citizens and corporation of the Philippines.

In the present case, petitioner had complied with the pertinent requirements of Section 1 of R.A. No. 1435. Petitioner had shown, and it is not disputed, that it is a duly licensed forest concessionaire and that it actually purchased and used various oil and petroleum products during the period July, 1980 through May, 1982. And petitioner had filed on September 23, 1982 its claim for refund of 25% of the specific taxes it paid for various petroleum products it purchased and actually used during that period. (Exh. A). It supported its claim by the sworn statements of its President (Exh. A-2 to A-5) and of the President of the Wood Products Association of which it is a member, which prove without doubt that the oils were actually used in the operation of its forest concession, and which were admitted by respondent. Consequently, with the compliance of the requirement of law, the issue at bar is ripe for disposition and which is not without a precedent. On the basis of the decision of the Supreme Court in case of Insular Lumber Co., vs. Court of Tax Appeals, G.R. L-31057 and L-31137, promulgated on May 29, 1981, cited authoritatively in the decisions of the Court of Tax Appeals in Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 2964 and 2971, dated November 28, 1986 and March 31, 1986, respectively, we held, in effect, in the former that petitioner therein is entitled to refund of the 25% of the specific tax on the oils used by it, which we quote:

> "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 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 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. Coutt 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. 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. III, 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 g 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.

xxx xxx xxx

xxx, 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. Nos. L-31057 and 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 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.

Respondent, however, insists that petitioner is not entitled to refund because the benefits of partial refund expired on July 1, 1974, with the enactment of P.D. 231, known as the Local Tax Code.

Despite, however, the clear mandate of the law, respondent makes a denial of petitioner's claim because it is his view that in order to avail of the benefits of partial tax refund mentioned in said Act (R.A. No. 1435), there must be a municipal or city ordinance which imposes an additional tax of not exceeding twenty-five percent (25%) of the regular specific tax levied under Sections 142 and 145 of the Tax Code in the place of petitioner's operations.

This is without merit. It must be noted that this contention of respondent was rephrased in his Amended Answer to the petition which stated that the privilege of a twenty five percent (25%) refund of specific taxes paid under Section 5 of R.A. 1435 to mine and forest concessionaire-users of oil products, mentioned in

Sections 142 and 145 (now Sections 153 and 156) of the Tax Code, expired on July 1, 1974, with the enactment of P.D. No. 231 (June 28, 1973), otherwise known as the Local Tax Code and of P.D. No. 426 (March 30, 1974), amending P.D. No. 231, and with the issuance of Local Tax Regulations No. 1-74 (April 11, 1974) by the Ministry of Finance implementing the Local Tax Code as amended. There is no law cited by respondent in this case which repealed or abrogated Section 5 of R.A. No. 1435, whether express or implied. And respondent has not, in this case, alleged or pointed to any such particular repealing law. None of the laws in fact cited by respondent in his memorandum repeals R.A. 1435. (Italics ours.) We are, therefore in full agreement with petitioner when it pointed out that Section 5 of R.A. No. 1435 was never repealed. In this regard, we quote petitioner's statement on pages 14 to 17 of its memorandum, to which we fully agree and consider as part of our own.

> Section 5 of R.A. No. 1435 is clear and unambiguious. In fact, this is the characterization of the Supreme Court of said section. Specifically referring to said Section 5, the Supreme Court said:

"Where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction" (Insular Lumber Co. v. Court of Tax Appeals, L-31057, 29 May 1981, 104 SCRA 710, citing Acting Commissioner of Customs v. Manila Electric Co., 77 SCRA 473).

It should be noted that there is nothing in Section 5 that requires that before a miner or a forest concessionaire may be entitled to a specific tax refund of twenty five percent (25%), there must be a municipal or city ordinance levying additional tax that respondent wants to read into it. In fact, said section does not even make any reference to Section 4 which authorized the municipal boards or councils the levying of additional tax. What is clear therein is that the Commissioner of Internal Revenue shall refund twenty-five per centum 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.

As mentioned above, the term "oils mentioned above" in the proviso of Section 5 of R.A. No. 1435 refers to the oils mentioned under Sections 142 and 145 (now 153 and 156) of the Tax Code. This is also the interpretation of respondent (1st three lines, p. 10, Amended Answer). It is not tied to the payment of additional tax that local government may impose. The term has the same meaning as the same term in the second paragraph of Section 142 of the Tax Code, as amended by Section 1 of R.A. No. 1435 has, except that the term "oils mentioned above" in Section 5 has broader coverage in that it includes not only those mentioned in Sec. 142, but also those mentioned in Sec. 145 of the Tax Code, as amended by Section 2 of R.A. No. 1435; and this is the reason why the refund allowed miners and forest concessionaires has to be provided under a separate section, that is, Section 5.

Moreover, as intimated above, the oils mentioned above cannot refer to oils on which additional tax is imposed by local governments because Section 4 does not of itself impose tax but only enables local governments to impose additional tax.

In view of what was shown above, that is, that Section 4 has no relation to Section 5, whatever changes affecting Section 4 do not affect the effectivity and application of Section 5. Hence, the fact that local governments may no longer impose additional tax on oils enumerated under Sections 142 and 145 (now 153 and 156) of the Tax Code, assuming this to be true, does not affect, much less terminate, the right of miners and forest concessionaires provided in Section 5 of R.A. No. 1435 to a refund equivalent to twenty five percent (25%) of the specific taxes paid.

xxx xxx xxx

Also, respondent says that even before the enactment of P.D. No. 231 and P.D. No. 426, the privilege of twenty-five percent (25%) refund of specific taxes may not be availed of in the absence of any showing or allegations that claimants paid additional tax under a municipal or city ordinance.

Again, this contention is without merit. As shown above, the authority of local governments to impose additional tax on articles subject to specific taxes is in no way related to the entitlement of the refund of twenty-five percent (25%) of specific taxes. On the other hand, Section 5 of R.A. No. 1435, as earlier mentioned, is very clear. What Section 5 only requires to be entitled to partial refund is the submission of proof of actual use of oils and under similar conditions enumerated on subparagraphs one and two of section one of R.A. No. 1435 which, as shown above, was complied with by petitioner. There is nothing in Section 1 or Section 5 of the law that requires a showing or allegations that claimants paid additional tax under a city or municipal ordinance. To read the contention of respondent into Section 5 of R.A. 1435 is to go against the well-settled rule that a clear and unambiguous law must be taken as it is, and to embark on a judicial addition (See Acting Commissioner of Customs v. Manila Electric Co., 77 SCRA 473). Obviously, such a manner of interpretation or application of law is not authorized."

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Zamboanga Wood Products, Inc. the sum of ₱832,900.10 as specific tax paid, without interest, as said amount refundable was not withheld arbitrarily by the Government.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 15, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge