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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DAVAO GULF LUMBER CORPUPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3574

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
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6/21/94

DECISION

Petitioner herein seeks for a partial refund of the specific taxes imposed on oils and fuels that were actually used in connection with the exploitation and operation of its forest concession.

Petitioner is a duly licensed forest concessionaire with a timber license agreement with the then Ministry of National Resources. From July 1, 1980 to January 31, 1982, the petitioner purchased from various oil companies refined and manufactured oils and fuel on which said companies paid specific taxes pursuant Sec. 153 and 156 (formerly 142 and 145) of the 1977 National Internal Revenue Code (NIRC).

Relying on the provisions of Republic Act 1435 (RA 1435) and the decision of the Supreme Court in the case of **Insular Lumber Co. vs. Court of Tax Appeals**, (G.R. No.

L-31057, May 29, 1981) the petitioner filed with the respondent a claim for refund of the amount of P120,825.11 representing 25% of the specific taxes imposed on the oils and fuel used by the petitioner in its business operations. However, without any response from the respondent and in order to toll the running of the two year prescriptive period, the petitioner filed the instant petition.

Sec. 4 and 5 of RA 1435 provide:

> "**SECTION 4.** Municipal Boards or councils may, notwithstanding the provisions of sections one hundred and forty-two and one hundred and forty-five of the National Revenue Code, as hereinabove amended, levy an additional tax of not exceeding twenty-five per cent of the rates fixed in said sections, on manufactured oils sold or distributed within the limits of the city or municipality: Provided, That municipal taxes heretofore levied by cities through city ordinances on gasoline, airplane fuel, lubricating oil and other fuels, are hereby ratified and declared valid. The method of collecting said additional tax shall be prescribed by the municipal board or council concerned.
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> **SECTION 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 the 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 locations 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 articulate route in the Philippines Highway System, as required in section twenty-six of the Philippine Highway Act of 1953."

It is submitted by respondent that the subsequent enactment of various Presidential Decrees and Executive Orders increasing the rate of specific taxes impliedly repealed the partial refund privilege under Sec 5 of RA 1435 considering that the legislative purpose of the said increases is to generate additional revenue for the construction and improvement of roads, bridges and other infrastructures. According to the respondent, the grant of the partial refund is inconsistent with amendatory laws.

He likewise submits that Sec 4 of RA 1435 in conjunction with Sec. 5 thereof requires that in order to be entitled to the partial refund of the specific taxes on oils, there must also be an additional imposition of tax by the local political unit concerned.

We disagree with the respondent.

The issues in the case at bar are not of first impression. The Court, in the case of **Aras-Asan Timber**

Co., Inc. vs. Commissioner of Internal Revenue, (C.T.A. Case No. 3524, December 17, 1993), held.:

> "Anent the first issue, respondent stressed that the subsequent enactment of various Presidential Decrees and Executive Orders, increasing the rate of specific taxes under the National Internal Revenue Code, impliedly revoked the partial refund privilege under Section 5 of Republic Act No. 1435. He stressed that the very purpose why the government increased the rates of specific taxes is to provide additional revenues to accelerate economic development in the country. The grant of partial refund would therefore run counter to the very purpose for which the specific tax rates were increased.
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> We disagree with respondent.
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> 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 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.
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> 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.):
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> > '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 concessionary relief, in the form of 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.
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> 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 due 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: "(t)o our mind, the provision 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 whether 'any oils mentioned above are used by miners or forest concessionaires in their operations and the procedure for refund is complied with"

Finally, the respondent claims that assuming *arguendo* that the privilege of the partial tax refund under RA 1435 still subsists, the right to file a judicial action for refund of specific taxes paid before January 20, 1981 or 2 years prior to the filing of the instant petition has already prescribed.

In this connection Sec. 135 of the NIRC provides "that specific taxes on locally manufactured petroleum products levied under Section 153, 155 and 156 of the title, except lubricating oil and grease, shall be paid within fifteen(15) days from the date of removal thereof from the place of production."

Clearly therefore, manufacturers are given 15 days from the date of the removal of their petroleum products to pay the specific taxes due thereon, except lubricating oils and grease whose specific taxes are to be paid on the very date of their removal from their place of production.

Thus, with respect to lubricating oils and grease whose specific taxes were deemed paid on the date of their removal, the petitioner's claim for partial refund on oils and lubricants purchased delivered prior to January 20, 1981 had indeed prescribed.

However, With respect to the other purchases of petroleum products whose, specific taxes were deemed paid on the 15th day following their removal, only those which were purchased from January 5, 1981 or 15 days prior to

January 20, 1981, may be considered in the petitioner's claim for partial refund.

Furthermore, only those item which were included as claims in the administrative level may be given due course by this Court. Those purchases which were never brought to the attention of the respondent and are being claimed for the first time in this appeal may not be considered in the present claim for refund.

Prescinding from the foregoing discussion, this Court finds the herein petitioner entitled to a partial refund of specific taxes only in the amount of P2,923.15 computed as follows:

RECKONING PERIODS:

Original period of
claim for refund : July 1, 1980 to January 31, 1982
Case filed with C.T.A: January 20, 1983
Period claim by Pet.
in Memorandum : January 1, 1980 to June 30, 1982

RECOMMENDATION:

1. Period to be considered are:

   a. In case of lubricating oils : January 20, 1981 to January 31, 1982

   b. Manufactured oils other than lubricants : January 5, 1981 to January 31, 1982

2. Period prescribed

   a. Lubricating oils : purchases from July 1, 1980 to January 19, 1981

b. Manufactured oils other than lube : purchases from July 1, 1980 to January 4, 1981
(Exhs. I-1 to I-8, J-2 to J-9, L-1 to L-18, M-4 to M-12, M-14 to M-25 and RR-1)

3. Purchases of manufactured oils not on the original period of claim for refund should not be included in the computation. These are purchases of manufactured oils from January 1, 1980 to June 30, 1980 (Exhs. J-1, K-1 to K-19, M-1 to M-3, M-13, & N-1 to N-29) and from February 1, 1982 to June 30, 1982 (Exhs. AB-1 to AB-7, AC-1 to AC-12, AD-1 to AD-13, AE-1, AF-1 to AF-11, & AG-1 to AG-11).

SUPPLIER : PETROPHIL CORPORATION (Exh. "P")

			QUANTITY IN LITERS		
Invoice No.	Date Shipped	Exh.	Diesel	Oil and Lubricants	Regular Gasoline
95027	01-08-81	P-1	8,000		4,000
12700	02-11-81	P-2	12,000		
27827	02-26-81	P-3	12,000		
27828	02-26-81	P-4	12,000		
28515	04-20-81	P-5	12,000		
55135	06-19-81	P-6	12,000		
72384	07-09-81	P-7	12,000		
34222	01-28-81	P-8		840	
34522	03-10-81	P-9		210	
T O T A L			80,000	1,050	4,000

NOTE:

In the computation made by petitioner in its Memorandum, purchases of manufactured oils in pails and in cans are not considered. Thus, the same are excluded in my computation for failure of petitioner to give proper conversion rate.

a. Petrophil - Exhs P-10 to P-12, and XX

b. Pilipinas - Exhs S-13, T-1, AA-3, BB-1, BB-5, MM-1, PP-1, VV-1, VV-3, and ZZ-1

SUPPLIER : PILIPINAS SHELL PETROLEUM CORP. (Exhs. Q, U, CC, RR & WW)

Invoice No.	Date Shipped	Exh.	QUANTITY IN LITERS Diesel	Oil and Lubricants	Regular Gasoline
83355	10-16-81	Q-2	9,000		
83332	10-09-81	Q-3	6,000		3,000
83269	10-03-81	Q-4	6,000		
83254	10-02-81	Q-5	10,000		
83255	10-02-81	Q-6	10,000		
83457	10-22-81	Q-7	8,000		2,000
83496	10-27-81	Q-8	8,000		
87068	11-03-81	R-1	9,000		3,000
87102	11-05-81	R-2	8,000		2,000
87166	11-09-81	R-3	6,000		
87251	11-15-81	R-4	6,000		3,000
87321	11-23-81	R-5	10,000		
87518	12-08-81	S-1	9,000		3,000
03711	12-10-81	S-2	10,000		
87519	12-09-81	S-3	10,000		
87403	12-01-81	S-4	9,000		
87620	12-14-81	S-5	8,000		2,000
87691	12-18-81	S-6	9,000		
87692	12-18-81	S-7			3,000
87693	12-18-81	S-8	10,000		
92573	12-28-81	S-9	10,000		
92574	12-28-81	S-10	10,000		
00764	10-03-81	S-11		420	
00765	10-03-81	S-12		1,680	
01455	10-27-81	S-14		420	
01716	11-23-81	S-15		1,260	
01718	11-23-81	S-16		420	
01719	11-23-81	S-17		420	
01555	11-04-81	S-18		1,470	
01566	11-04-81	S-19		1,050	
02642	12-11-81	T-2		1,260	
02643	12-11-81	T-3		1,680	
02644	12-11-81	T-4		1,680	
74604	07-06-81	U-2	6,000		3,000
74684	07-14-81	V-1	9,000		
74796	07-28-81	W-1	9,000		
74711	07-18-81	W-2	10,000		
74729	07-20-81	W-3	10,000		
74771	07-24-81	W-4	6,000		3,000
74839	08-03-81	X-1-a	9,000		
74878	08-05-81	X-1	8,000		2,000
74892	08-06-81	X-2	8,000		2,000

			QUANTITY IN LITERS		
Invoice No.	Date Shipped	Exh.	Diesel	Oil and Lubricants	Regular Gasoline
74977	08-14-81	X-3	6,000		3,000
77258	08-19-81	X-4	8,000		2,000
77259	08-19-81	X-5	10,000		
77287	08-24-81	X-6	6,000		3,000
81518	09-17-81	Y-1	6,000		3,000
03708	09-24-81	Y-2	3,000		
81580	09-24-81	Y-3	3,000		
81578	09-24-81	Z-1	8,000		2,000
81519	09-17-81	Z-2	6,000		3,000
77397	09-04-81	Z-3	10,000		
77396	09-04-81	Z-4	10,000		
77424	09-07-81	Z-5	9,000		
96217	06-30-81	AA-1		840	
96218	06-30-81	AA-2		1,680	
96753	08-26-81	AA-4		1,260	
96931	09-23-81	BB-2		420	
96828	09-07-81	BB-3		1,680	
96829	09-07-81	BB-4		1,680	
62370	04-02-81	CC-2	6,000		3,000
62426	04-08-81	DD-1	10,000		
62427	04-08-81	DD-2	10,000		
62578	04-28-81	EE-1	8,000		2,000
62477	04-15-81	FF-1	6,000		3,000
62550	04-24-81	GG-1	10,000		
62678	05-11-81	HH-1	10,000		
62679	05-11-81	HH-2	10,000		
62689	05-12-81	HH-3	6,000		
62694	05-12-81	HH-4	4,000		6,000
62745	05-18-81	II-1	10,000		
62746	05-18-81	II-2	10,000		
68018	05-21-81	II-3	6,000		3,000
73606	06-05-81	JJ-1	4,000		
73629	06-19-81	KKK-1	8,000		2,000
73696	06-17-81	LL-1	9,000		
73733	06-22-81	LL-2	9,000		
92214	04-09-81	NN-1		1,260	
92240	04-22-81	OO-1		1,680	
92269	04-15-81	OO-2		1,680	
92432	05-18-81	OO-3		840	
94720	06-11-81	OO-4		1,680	
92486	06-01-81	OO-5		1,260	
94719	06-11-81	OO-6		1,260	

Invoice No.	Date Shipped	Exh.	QUANTITY IN LITERS Diesel	Oil and Lubricants	Regular Gasoline
96146	06-22-81	OO-7		840	
96145	06-22-81	OO-8		1,260	
96112	06-17-81	OO-9		1,680	
96113	06-17-81	OO-10		420	
96114	06-17-81	QQ-1		210	
9215	01-06-81	RR-2	8,000		
9244	01-08-81	RR-3	10,000		
9323	01-14-81	RR-4	6,000		3,000
9446	01-26-81	RR-5	6,000		
9485	01-28-81	RR-6	8,000		
5818	02-02-81	RR-7	6,000		3,000
5924	02-11-81	RR-8	6,000		4,000
5929	02-12-81	RR-9	6,000		
5980	02-17-81	RR-10	6,000		3,000
6077	02-23-81	RR-11	6,000		
6170	03-02-81	RR-12	6,000		4,000
59169	03-06-81	SS-1	6,000		
6152	02-28-81	SS-2	6,000		3,000
62270	03-19-81	TT-1	10,000		
62271	03-19-81	TT-2	8,000		2,000
62261	03-18-81	TT-3	6,000		
62323	03-25-81	UU-1	6,000		
0366	01-15-81	UU-2		210	
0359	01-15-81	UU-3		1,050	
0416	02-03-81	UU-4		1,050	
0412	02-02-81	UU-5		1,890	
0421	02-04-81	VV-2		630	
2705	02-24-81	VV-4		1,470	
2733	03-03-81	VV-5		1,470	
91425	03-10-81	VV-6		420	
91418	03-10-81	VV-7		840	
92043	03-19-81	VV-8		630	
92088	03-23-81	VV-9		420	
92627	01-04-82	YY-1	9,000		3,000
83742	01-18-82	YY-2	7,000		3,000
86502	01-19-82	YY-3	10,000		
02942	01-18-82	YY-4		1,470	
02943	01-18-82	YY-5		630	
	T O T A L		619,000	45,570	94,000
G R A N D	T O T A L		699,000	46,620	98,000

COMPUTATION OF 25% SPECIFIC TAX REFUND
UNDER RA 1435

Manufactured Oils	Quantity	Specific Tax Rate	Specific Tax
Diesel			
(699,000 x .8429 ÷ 1000)	589.19 MT	P1.00/MT	P 589.19
Oils and lubricants	46,620 L	0.07/L	3,263.40
Regular gasoline	98,000 L	0.08/L	7,840.00
Total specific tax paid under RA 1435			P11,692.59
Multiply by refundable percentage			25%
Refundable specific tax under RA 1435			P 2,923.15

WHEREFORE, judgment is hereby rendered ordering the respondent to refund to the petitioner the amount of P2,923.15 representing the partial refund of speciific taxes paid on manufactured oils and fuels.

SO ORDERED

Quezon City, Metro Manila, June 21, 1994.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O DE VEYRA
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