REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING
& DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2840

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

ATLAS CONSOLIDATED MINING
& DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3091

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

12/24/91

ATLAS CONSOLIDATED MINING
& DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3426

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

ATLAS CONSOLIDATED MINING
& DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3696

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

D E C I S I O N

The above-captioned cases involve a claim for refund and/or tax credit by petitioner. These cases were consolidated for they involve the same taxpayer/claimant and same respondent, the same set of facts and circumstances, except for the period covered and the amount involved, the same kind or nature of evidence and the same issue.

Petitioner in these consolidated cases is a mining corporation duly organized and existing under and by virtue of the laws of the Philippines, and is engaged in the activity of mining in Toledo City.

It appears that petitioner purchased on various dates from Petrophil Corporation and Mobil Oil Phils. manufactured oils and fuels wherein specific taxes due thereon have been paid in the total amount of P27,662,185.23 *(see petitioner's Exhibits G, G-1 to G-11, H, H-1 to H-7, I, I-1 to I-33 in CTA Case No. 2840; Exhs. G, G-1 to G-101, G-1A to G-101A in CTA Case No. 3091; D, E and F, G, G-1 to G-76, G-(a), G-1(a) to G-74(a), H, H-1 to H-207, H-(a), H-1(a) to G-74(a), H, H-1 to H-207, H(a), H-1(a) to H-207(a) in CTA Case No. 3426;*

Exhs. D, D-1, F, F-1, B and C in CTA Case No. 3696).

On the basis of the aforesaid payments of specific taxes, petitioner believes it should be refunded 25% of taxes paid on those purchases pursuant to the provisions of Section 5 of Republic Act No. 1435 in relation to Sections 142 and 145 of the old Code (now Sections 153 and 156 of the 1977 Tax Code). Petitioner therefore, in these consolidated cases filed on various dates its claim for tax credit before the Commissioner of Internal Revenue *(see Exhs. A, B and C in Cta Case No. 2840; Exh. A in CTA Case No. 3091; Exh. A in CtA Case No. 3696).*

Petitioner without waiting for a decision of respondent Commissioner on its various claims for refund in the above-captioned consolidated cases, interposed its appeal to this Court.

The only issue in these cases is whether or not petitioner is entitled to a tax credit of 25% of the specific tax paid on petroleum products purchased and actually used and/or consumed in its mining operation at Toledo City pursuant to Section 5 of Republic Act No. 1435 in relation to Sections 153 and 156 of the 1977 Tax Code.

The only issue in these cases is purely legal and no longer of first impression. In one case, the decision of the Court of Tax Appeals in granting petitioner's claim for refund on the 25% specific taxes paid was affirmed by the Supreme Court, when it stated that there is no limit to the partial refund of specific taxes paid for oils used by miners and forest concessionaires, while there is a limit to the partial refund of specific taxes for oils used in agriculture and aviation to five years, and that Sec. 5 of Republic Act No. 1435 which makes reference to sub-paragraphs 1 and 2 of Section 1 is merely for the purpose of prescribing the procedure of refund. *(see* ***Insular Lumber Company vs. Court of Tax Appeals and Commissioner of Internal Revenue****, G.R. No. L-31057, May 29, 1981, and* ***Commissioner of Internal Revenue vs. Court of Tax Appeals and Insular Lumber Company****, G.R. No. L-31137, May 29, 1981, 104 SCRA 710).* In another case, the Supreme Court likewise affirmed again the decisions of the Court of Appeals and the Court of Tax Appeals when it stated that mining and lumber concessionaires were granted the partial refund because the gasoline and fuel they consumed are mostly used within their own compound and roads. Republic Act 1434 gave these concessionaires relief in the form of a tax refund *(see Resolution in the case of* ***Commissioner of Internal Revenue vs. Atlas Consolidated Mining and Development Corporation, et al.,*** *G.R. No. 93631, November 12, 1990).*

However, in the latest decision of the Supreme Court in the 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,* the decision of the Court of Tax Appeals applying R.A. 1435 and granting the refund for specific taxes paid on fuels and oils used was set aside. The High Court deemed that R.A. 1435 had outlived its usefulness. The Supreme Court held:

> Thus we find that the disputed proviso found in Section 5 of RA No. 1435 was drafted to favor a particular group of taxpayers - the miners and the lumbermen - because it was "unfair" to subject them to the increased rates and in effect make them subsidize the construction of highways from which they did not directly benefit. This is the raison d'etre for the grant of partial tax exemption under RA No. 1435. Now, if by virtue of PD No. 711, the funds that have accrued from the various special funds are channeled to the so-called General Fund, then there is no need or justification for the continued special treatment accorded to the miners. With PD No. 711, any government project can be

the beneficiary of such funds as long as it is for the general welfare of the masses. Given the present concept of the general fund its wide application, then the proviso in Section 5 of RA No. 1435 has truly become an anachronism. It is inevitable that, sooner or later, the miners will stand to benefit from any of the government endeavors and it will no longer be correct to asseverate that the imposition of the increased rates in specific taxes to augment the general fund for government undertakings is "unfair" to the miners because they are not directly convenienced.

While we generally do not favor repeal by implication, it cannot be denied that situations can and do arise wherein we are left with no other alternative but to concede the point that an earlier law has been impliedly repealed or revoked by a later law because of an obvious inconsistency.

Tax measures, in recent years, have proliferated to alarming proportions. More often than not, they serve to worsen the already growing confusion in the minds of our taxpayers. There is much to be said about the strong and persuasive arguments of both sides but we are compelled to abide by the maxim that all doubts must be resolved in favor of the taxing authority and that tax exemptions (or tax refunds for that matter) must be strictly construed and can only be given force when the grant is clear and categorical. We therefore hold that the tax refunds in the amounts of P695,216.36 and P859,076.90 in favor of private respondent Rio Tuba must be set aside."

On the basis of the above-quoted decision, this Court is therefore constrained to deny petitioner's claim for refund and/or tax credit.

WHEREFORE, petitioner's claim for refund in this consolidated cases is hereby DENIED.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1991.

ERNESTO D. ACOSTA
Associate Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Acting Presiding Judge
Court of Tax Appeals