VALDERRAMA LUMBER MANUFAC-
TURER COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1546

COMMISSIONER OF INTERNAL
REVENUE,
Respondent. 1/16/70

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DECISION

Petitioner appealed from the decision of respondent denying the former's claim for refund or tax credit in the sum of ₱5,711.56, representing 25% of the specific taxes paid on the gasoline, oils, diesel fuel and kerosene used in their logging operations from July 1 to December 31, 1962.

Petitioner, a domestic corporation organized in accordance with law, is a duly licensed forest concessionaire operating a logging concession at Ngan, Compostela, Davao.

During the period under review, petitioner and T. H. Valderrama and Sons, Inc. purchased from Caltex (Phil.) Inc. fuel and lubricants on which specific taxes were paid.

Pursuant to Section 5 of Republic Act No. 1435 in relation to Section 142 of the Revenue Code, petitioner and T. H. Valderrama and Sons, Inc. filed with respondent on April 24, 1963 a claim for refund or tax credit in the amount of ₱5,711.56 representing 25% of the specific taxes it paid on the abovestated petroleum denied by respondent in his letter-decision of September 7, 1964, which was received by petitioner on October 17, 1964.

From said decision, petitioner sent by registered mail on November 16, 1964 its petition for review to this Court.

The issues before us for resolution are:

1. Whether or not petitioner is the real party in interest legally entitled to the refund or tax credit;

2. Whether or not the privilege of partial tax exemption granted by Section 5 of Republic Act No. 1435 to those using oils and fuels in the operation of forest concession is limited to a period of five years from June 14, 1956, the date the said Act took effect; and

3. Whether or not petitioner's action for refund had already prescribed.

Anent the first issue, respondent contends that petitioner is not the real party in interest legally entitled to the refund or tax credit of the 25% of the specific taxes paid on the petroleum products since: (1) the purchases of said petroleum products from Caltex (Phil.) Inc. were made by T. H. Valderrama and Sons, Inc. and not by petitioner; (2) that the claim for refund was filed with respondent by petitioner and T. H. Valderrama and Sons, Inc.; (3) that respondent's letter of denial was addressed to both petitioner and T. H. Valderrama and Sons, Inc.; and (4) that it was only petitioner which filed the present petition for review. On the other hand, petitioner claims that it is the real party in interest legally entitled to the refund or tax credit as the records show that it was really the one which paid the aforesaid petroleum products.

It appears from the evidence on record that although the invoices covering the purchases of the petroleum products in question were in the name of T. H. Valderrama and Sons, Inc., the findings in the investigation conducted by Santiago L. Fernandez, Chief of the Alcohol and Tobacco Tax Branch of the Bureau of Internal Revenue, disclose that the purchases of petroleum products which were used and consumed by petitioner were all entered and recorded in the books of accounts of petitioner; that the Board of Directors of petitioner passed a resolution dated October 22, 1962 authorizing Caltex (Phil.) Inc. to transfer the bills charged to T. H. Valderrama and Sons, Inc. to petitioner's account; and that on March 29, 1963 Caltex (Phil.) Inc. issued to petitioner a certified statement of its purchases for the period July to December 31, 1962 togethor with a certified schedule of specific tax payments.

To our mind, petitioner has been able to show by clear and convincing evidence that it was actually the one which purchased and used said petroleum products and paid the corresponding specific taxes thereon. We, therefore, hold that petitioner is the real party in interest entitled to claim for refund.

The second issue herein is not new to us. We have squarely decided this question in the two cases of Atlas Consolidated Mining and Development Corporation vs. Comm. of Int. Rev., CTA Cases Nos. 1638 and 1708, August 15, 1968, and CMS Logging, Inc., vs. Comm. of Int. Rev., CTA Cases Nos. 1569, 1674 and 1804, August 30, 1969 wherein we held:

> It should be noted that Sections 1 and 2 thereof deal with provisions of the National Internal Revenue Code on specific taxes on oils, more particularly, they amend Sections 142 and 145 of said Code, respectively, raising the rate of specific taxes on oils for fuel and lubrication provided therein. Sections 3, 4 and 5 of the Act on the other hand do not deal with provisions of the Revenue Code, nor are they intended to be incorporated thereto as additional provisions thereof. By and large, they refer to the disposition of the taxes from Sections 142 and 145 of the Revenue Code. The partial refund of specific taxes paid for oils used in agriculture and aviation, during a limited period, appears in Section 142 of the Revenue Code while the partial refund of spe-

cific tax paid for oils used by miners and forest concessionaires, without limitation as to time, is in Section 5 of the Act. To judge from their placement and their tenor, they are clearly disparate provisions. We can not find any plausible reason for reading the limitation of the operative period provided for oils used in agriculture and aviation into the provision on the refund to miners and forest concessionaires. Note that Section 5 of the Act has to provide expressly that the procedure for refund provided in subparagraphs 1 and 2 of Section 142 of the Revenue Code are applicable to refunds to miners and forest concessionaires otherwise it would be deficient on this point since the provisions in Section 142 of the Revenue Code are not supposed to supplement the deficiencies in the provision granting partial refund to miners and forest concessionaires. Needless to say this express reference to Section 142 of the Revenue Code cannot be expanded in tenor and scope to include things not stated therein, like the limitation as to the operative period of the refund.

The debates in Congress in connection with Republic Act 1435, the pertinent excerpt of which we are quoting hereunder, are elucidating:

x x x x x

Thus, we see from the foregoing excerpt that the reason for the refund of specific taxes paid when oil for fuel and lubrication is used in agriculture and aviation is different from that advanced for the grant of similar privileges to miners and forest concessionaires. With respect to the first the purpose is to foster agriculture and aviation for

> a limited period. As for the second the reason advanced is that the miners and forest concessionaires, from the very nature of their industries, which, parenthetically, is of permanent character, do not use public roads as often as other users and to place on them equal burden in the maintenance of roads and bridges transgresses on the sense of fairness of Congress. Based on fundamentally different reasons as they are, it is not at all surprising that the privileges of one has different conditions from those of the other.

Finding no justifiable reason to deviate from the above rulings, we still adhere to the same.

Finally, on the issue of prescription, respondent claims that granting arguendo that Section 5 of Republic Act No. 1435 is without limit as to time, still petitioner is not entitled to the refund of the entire amount of ₱5,711.56 since its court action for refund of said amount corresponding to the period from July 1 to November 16, 1962 was filed beyond the two-year statutory period.

We agree with respondent in this respect. We have consistently held, following the doctrines laid down by the Supreme Court in the cases of Comm. of Int. Rev. vs. Insular Lumber Co. and Court of Tax Appeals, G. R. No. L-24221, Dec. 13, 1967 and Comm. of Int. Rev. vs. Victorias Milling Co., Inc. and Court of Tax Appeals, G. R. No. L-24108, Jan. 3, 1968, that the claim for refund with the Commissioner of Internal Revenue and with this

Court must both be filed <u>within two years from the date of use</u> of such oils and other fuels, otherwise such action would prescribe.) The petition for review in the instant case was filed by petitioner on November 16, 1964 while the petroleum products were purchased and used by it in July to December 31, 1962. Going over the records of this case, we find that petitioner did not specifically state the exact dates when these petroleum products were used by it but merely stated in general terms that said petroleum products were used and consumed for the period July 1 to December 31, 1962. However, perusing over the delivery receipts and invoices issued by Caltex (Phil.) Inc. to petitioner, we see that the purchases of said petroleum products were made almost every two or three days. We can, therefore, assume that such petroleum products were used almost immediately after their purchase. Considering all these, we hold that petitioner's claim for refund of the 25% of the specific taxes paid on said petroleum products used from July 1 to November 16, 1962, had already prescribed.

We shall now proceed to determine how much of the specific taxes paid for the period November 17 to December 31, 1962 is refundable. The records show that for the above-mentioned period, petitioner used 71,000 liters of gasoline, 68,000 liters of diesel oil and 3,122.53 liters of lubricants. However, for said period, respondent disallowed 308 liters of gasoline and 29.5 liters of lubricants (p. 172, BIR rec.) on the ground that said petroleum products were used by private service stations, private persons and by vehicles used by the management for inspection and supervision (p. 300, BIR rec.). Petitioner failed to adduce any evidence to disprove the correctness of respondent's disallowance. The determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayer to rebut such presumption. (Tan Guan vs. CTA, et al., G.R. No. L-23676, April 27, 1967.) Hence, after computation, we find that petitioner should be refunded the amount of ₱1,482.14 broken down as follows:

Total purchases of petroleum products from November 17 to December 31, 1962 -

Product	Quantity (Liters)	Rate of Sp. Tax	Amount of Sp. Tax
Gasoline	71,000		
Less; Total disallowances for same period	308		
Total purchases subject to tax refund	70,692	₱0.08/lts.	₱5,655.36
Diesel fuel	68,000 or 56.66/M.T.	1.00/M.T.	56.66
Lubricants	3,122.53		
Less: Total disallowances for same period	29.25		
Total purchases subject to tax refund	3,093.28	0.07/lts.	216.53
Total amount of specific tax			₱5,928.55
			x .25
25% REFUNDABLE OR CREDITABLE TAX			₱1,482.14

WHEREFORE, respondent is hereby ordered to refund or grant a tax credit to petitioner' the amount of ₱1,482.14 representing 25% of the specific taxes paid for the period from November 17 to December 31, 1962. Without costs.

SO ORDERED.

Quezon City, January 16, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge