REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INSULAR LUMBER COMPANY,
Petitioner,

- versus -

C.T.A. CASE No. 1624

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - - - -x

July 31/69

D E C I S I O N

This case involves a claim for refund of the amount of ₱19,921.37 representing 25% of the specific tax paid on manufactured mineral oil and motor fuel utilized by petitioner in the operation of its forest concession in the year 1963.

Petitioner, a corporation organized and existing under the laws of New York, U.S.A., and duly authorized to do business in the Philippines, is a forest concessionaire and a licensed operator of a sawmill (pars. 1-2, petition for review; respondent's memo., p. 177, C.T.A. rec.).

In the year 1963, petitioner purchased manufactured oil and motor fuel which it used in the operation of its forest concession, sawmill, planing mills, power units, vehicles, dry kilns, water pumps, lawn mowers, and in furnishing free water and light to its employees, on which specific tax was paid.

In a letter dated December 22, 1964, petitioner claimed refund of 25%, or the amount of ₱19,921.37, of the specific tax paid on the manufactured mineral oil and motor fuel (Exh. A-1, pp. 114-115, B.I.R. rec.). In a letter dated February 11, 1965 and allegedly received by petitioner on March 31, 1965 (Exh. B, p. 67, C.T.A. rec.; t.s.n., pp. 14-16, July 5, 1966), respondent denied petitioner's claim for refund. On April 29, 1965, petitioner appealed to this Court.

The issues raised in this case are:

> (1) whether or not this Court has jurisdiction to entertain the instant appeal; and
>
> (2) whether or not petitioner is entitled to the refund of the aforesaid amount.

With respect to the issue of jurisdiction which was raised for the first time by respondent in his memorandum, we find no alternative but to resolve it since jurisdiction can be raised at any stage of the proceeding.

Respondent contends that this Court has no jurisdiction over the instant case for the reason that since respondent's decision dated February 11, 1965 was received by petitioner on March 11, 1965, and the petition for review was filed on April 29, 1965, the appeal was instituted beyond the thirty-day period provided by law.

We find respondent's contention unmeritorious. While it is alleged in the petition for review that the decision dated February 11, 1965 was received by petitioner on March 31, 1965, in the petitioner's memorandum submitted in support of its stand, it is averred that said decision was received on March 11, 1965. That the receipt took place on March 31, 1965 was testified to by Mr. Amando S. Maravilla, petitioner's Manila office manager, which testimony has not been disputed by respondent. Hence, we are constrained to believe that the allegation in petitioner's memorandum regarding March 11, 1965 as the date of receipt is merely a clerical error. In this circumstance, this Court has jurisdiction over the questioned appeal.

We come now to the second issue. It is alleged that petitioner is not entitled to the refund on the grounds (1) that Republic Act No. 1435 invoked by petitioner as a legal basis for the claim for refund is unconstitutional because the aforesaid law embraces more than one subject; (2) that the privilege of tax refund provided for in Section 5 of Republic Act No. 1435 is limited to a period of five (5) years from June 14, 1956, the date the aforesaid act took effect, and as the manufactured oil and fuel were purchased and consumed by petitioner in 1963, or more than five years beyond June 14, 1956, the petitioner's claim for refund cannot prosper; (3) that there is no sufficient evidence to show that the specific taxes on the said petroleum products were paid; and lastly, (4) that petitioner is not entitled to the refund of the entire amount claimed as only a portion of the mineral oil and motor fuel was used in its logging operations and the right to the recovery thereof has already prescribed.

The issue of the constitutionality of Republic Act No. 1435 was not set forth in respondent's answer to the petition for review. It was raised for the first time in the memorandum of counsel for respondent. It is argued that the refund proviso of Section 5 of Republic Act No. 1435 is absolutely incongruous with the subject expressed in said Act in violation of Article VI, Section 21, of the Constitution.

We do not find any incongruity as charged by respondent. The partial refund of specific tax under the conditions set forth in Section 5 of Republic Act No. 1435 is not a deviation from the main purpose of said law. This proviso, referring as it does to specific tax on oil and fuel as the main body of Republic Act No. 1435, is germane to the general subject of said Act.

With respect to the second ground, we find the same untenable. In a similar case decided by this Court, we held:

"x x x 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 specific 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 cannot 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." (Atlas Consolidated Mining & Development Corp. vs. Comm. of Int. Rev., C.T.A. Case Nos. 1638 & 1708, Aug. 15, 1968.)

The third objection to the claim for refund is equally unmeritorious. Exhibits H, H-1 to H-9, I, I-1 to I-13, J and J-1 evidence the payment of specific tax on the mineral oil and motor fuel in question.

As regards respondent's contention to the effect that, even granting that petitioner is entitled to a refund, the total amount of ₱19,921.37 is not refundable for the reason that some of the petroleum products purchased were utilized by petitioner in non-logging operations, we find this contention in accord with Section 5 of Republic Act No. 1435. Under this law, 25% of specific tax paid on oil used by miners or forest concessionaires in their operations is refundable. In other words, only 25% of such tax as was paid on oil used in the logging operations of forestry concessionaires is refundable. The authorized refund of taxes is in effect a tax exemption; and like a tax exemption provision, a grant of refund must be strictly construed. Since the operation of sawmills is distinct from the operation of a forestry concession, the refund provision of Section 5 of Republic Act No. 1435 cannot be extended to the operation of sawmills or other non-logging activities.

The records show that out of the ₱19,921.37 representing the 25% of specific tax paid, only the amount of ₱14,598.08 was paid on oil utilized in logging operations.

Lastly, we find that petitioner's right to claim the refund of a portion of specific tax paid on the mineral oil and motor fuel in question had already prescribed. In the case of Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, supra, we held:

> "With respect to the claim for tax credit for the sum of ₱5,684.70 which is the only amount involved in C.T.A. Case No. 1703, it appears the same represents 25% of the specific taxes paid on fuel and lubricating oils used from the period January 1 to December 31 of 1962. The claim for refund or tax credit for the said sum was filed with respondent on October 14, 1965 and the petition for review was filed on November 5, 1965, more than two years after the use of the oils, that is, after the petitioner's right thereto had prescribed in the light of the doctrine in the case of Commissioner of Internal Revenue v. Insular Lumber Company and Court of Tax Appeals (G.R. No. L-24221, December 11, 1967) x x x."

Following the doctrine laid down in the aforesaid case, the right to the refund of 25% of the specific tax paid on oil and fuel used prior to April 29, 1963, when the herein appeal was filed, had already prescribed. Consequently, the total amount refundable to the petitioner is ₱10,560.20, computed as follows:

A. GASOLINE:		Liters	
Total quantity used for logging operations		366,334	
Less quantity used for logging operations from Jan. 1, 1963 to April 28, 1963 (Exh. 5)		123,229	
Basis for refund		243,105	
Amount of specific tax paid on 243,105 liters at ₱0.08 per liter	₱19,448.40		
25% specific tax refundable			₱ 4,862.10

B. DIESEL FUEL:

	Liters	
Total quantity used for logging operations	2,388,876	
Less quantity used for logging operations from Jan. 1, 1963 to April 28, 1963	588,316	
Basis for refund	1,800,560	

(Conversion:

$$\frac{\text{Liters}}{1,170} = \text{M.T.}$$

$$\frac{1,800,560}{1,170} = 1,538.94 \text{ M.T.})$$

Amount of specific tax paid on 1,538.94 M.T. at ₱1.00 per M.T.	₱ 1,538.94	
25% specific tax refundable		₱ 384.73

C. LUBRICANTS:

Total quantity used for logging operations	385,064.58	
Less quantity used for logging operations from Jan. 1, 1963 to April 28, 1963 (21,854.54 gallons x 3.785 = 82,719.43 liters)	82,719.43	
Basis for refund	302,345.15	
Amount of specific tax paid on 302,345.15 liters at ₱0.07 per liter ......₱21,164.16		
25% specific tax refundable		5,291.04

D. KEROSENE:

25% specific tax refundable per investigation	22.33
Total specific tax refundable	₱10,560.20

WHEREFORE, finding petitioner entitled to the refund of ₱10,560.20, instead of ₱19,921.37, respondent is hereby ordered to refund the said sum of ₱10,560.20 to petitioner, without pronouncement as to costs.

SO ORDERED.

Quezon City, July 31, 1969.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge