REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ARAS-ASAN TIMBER CO., INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 3524**

COMMISSIONEROFINTERNAL REVENUE,
Respondent.

12/17/93

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DECISION

Petitioner seeks to recover 25% of the specific taxes paid on various oils and fuels actually used in its forest operations pursuant to the provision of Section 5 of Republic Act No. 1435 in relation to Sections 153 and 156 (formerly Sections 142 and 145, respectively) of the National Internal Revenue Code of 1977, as amended.

Petitioner is a domestic corporation duly licensed to operate a forest concession. It has the authority to cut, collect, remove and utilize timber of all groups, except prohibited species, in the public forest of Marihatag, Cagwait, Bayabas, Tago and

Tandag, Surigao del Sur by virtue of its Timber License Agreement No. 48-A [Exh. B].

In order to ably operate a forest concession, petitioner uses refined and manufactured mineral oils, motor fuels and diesel fuel oils in its forests operations. From July 1, 1980 to October 31, 1981, petitioner paid the corresponding specific taxes on its purchases of diesel fuel oils, regular gasoline fuel, industrial fuels and oils and lubricants from Mobil Oil Philippines, Inc. [Exh. QQ, p. 91, CTA record]. By virtue of the provision of Section 5 of Republic Act No. 1435 [An Act To Provide Means For Increasing The Highway Special Fund] and the decision of the Supreme Court in the case of ***Insular Lumber Co. v. Court of Tax Appeals, G.R. No. L-31057, May 29, 1981 (104 SCRA 710),*** petitioner invoked entitlement to the 25% partial refund on the specific taxes paid on manufactured mineral oils and fuels actually used in its forest operations.

A claim for refund [Exh. A], dated September 18, 1982, was filed on September 23, 1982 with the respondent's office in the total amount of P152,794.38, computed as follows: [Exhs. A-1-a, A-2-a, A-3-a, A-4-a and A-5-a]

ARAS-ASAN TIMBER CO., INC.
July 1980 - October 1981

	VOLUME (Liters)	PRODUCT COST	SPECIFIC TAX	25% REFUND
DIESEL	841,700	P2,279,345.00	P147,297.50	P 36,824.38
OIL & LUBRICANTS	471,850	1,258,222.00	377,480.00	94,370.00
GASOLINE REG.	96,000	453,417.00	86,400.00	21,600.00
		P3,990,984.00	P611,177.50	P152,794.38

To support its claim for refund, petitioner presented the affidavits of its President [Exh. A-1], Cost Accountant [Exh. A-2], Chief Accountant [Exh. A-3], and two other disinterest persons: two duly licensed forest concessionaires [Exhs. A-4 and A-5], all attesting that for the period July 1, 1980 to October 30, 1981 petitioner used in its forest operations refined and manufactured mineral oils, motor fuels and diesel fuel oil costing P3,990,984.00.

Without waiting for respondent's decision on the matter, petitioner filed a petition for review on October 8, 1982, in order to toll the running of the two-year prescriptive period within which to judicially claim a refund under Section 230 (formerly 292) of the National Internal Revenue Code. Petitioner prayed for an order requiring respondent to pay 20% interest per annum, in addition to its claim for refund, for his alleged arbitrary refusal to refund the instant claim. Petitioner likewise prayed for the costs of suit.

Section 5 of Republic Act No. 1435 provides:

> "**SEC. 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 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 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 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 Philippine Highway Act of 1953."

In the cases of ***Insular Lumber Company v. Court of Tax Appeals and Commissioner of Internal Revenue, G. R. No. L-31057, May 29, 1981 (supra.)*** and ***Commissioner of Internal Revenue v. Court of Tax Appeals and Insular Lumber Company, GR. No. L-31137, May 29, 1981 (104 SCRA 710),*** the Supreme Court held that the proviso of Section 5 of Republic Act No. 1435 is in effect a partial exemption from the imposed increased specific tax on manufactured oils. Furthermore, Section 5 does not deviate from the general subject of said law, that is, to increase the Highway Special Fund.

Petitioner relied on the above-mentioned decision of the Supreme Court as well as the particular provision of Section 5 of Republic Act No. 1435 as bases for claiming a refund.

After an answer has been filed, respondent rendered a decision, dated August 21, 1984, denying petitioner's claim for refund [Exh. QQ, p. 130, CTA record].

Petitioner presented and formally offered its evidence without any objections on the part respondent.

On August 16, 1985, respondent filed an amended answer with leave of Court. He contended that the law (R.A. 1435) relied upon by petitioner had been repealed by Presidential Decree No. 231, (otherwise known as the Local Tax Code) and Presidential

Decree No. 426 (amending P.D. 231), and its implementing regulation specifically Local Tax Regulations No. 1-74.

Respondent added that even before the repeal of Republic Act No. 1435 petitioner cannot avail the privilege under Section 5 thereof in the absence of any allegation regarding payment of the additional tax under a municipal or city ordinance as indicated in Section 4 of the same Act. He pointed that Section 4 must be read in relation to Section 5.

Section 4 of Republic Act No. 1435 insofar as pertinent provides:

> "**SEC. 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 Internal Revenue Code, as herein above 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 municipalities: 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."

Respondent asserts that Sections 4 and 5 of Republic Act No. 1435 have been repealed by Section 343 of the National Internal Revenue Code of 1977 (Presidential Decree Nos. 1158 and 1158-A), which provides in part:

> "**SEC. 343.** Granting provinces, cities and municipalities shares in the specific tax on certain petroleum products. - In addition to the internal

> revenue allotment under Section three hundred forty-four, provinces, cities and municipalities shall share in the specific taxes on the following petroleum products in such amounts as may be equivalent to the collections therefrom at the rates indicated hereunder:
>
> x x x x x x x x x.
>
> The additional allotment is in lieu of local taxes imposed on petroleum products and for this purpose, Section twenty-four of Presidential Decree numbered 231, otherwise known as the Local Tax Code, has been repealed by Presidential Decree numbered 436 on March 30, 1974.
>
> x x x x x x x x x."

Respondent further argued that petitioner's right to claim a partial refund of specific taxes paid prior to October 8, 1980 had already prescribed. Finally, he contended that the government cannot be made to pay interest in the absence of any statutory provision directing or authorizing such payment. ***[Collector of Internal Revenue v. St. Paul's Hospital of Iloilo, G.R. No. L-12127, May 25, 1959 (105 Phil. 1319); The Marine Trading Co., Inc. v. The Government of the Philippine Island, G.R. No. 13422, November 8, 1918 (39 Phil. 29); Gregorio Sarasola v. Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Island, G.R. No. L-14595, October 11, 1919 (40 Phil. 252)]***. Neither can the cost of suits be imposed on the government. ***[Section 1, Rule 142, Rules of Court; Collector of Internal Revenue v.***

Convention of Phil. Baptist Churches and the Court of Tax Appeals, G.R. No. L-11807, May 19, 1961 (2 SCRA 10)].

There being no dispute on the material facts, respondent did not present any evidence. Instead, he submitted the case for decision on a purely legal question.

The issues brought before this Court are:

1. Whether or not the privilege under Section 5 of Republic Act No. 1435 had been repealed by Presidential Decree No. 231 (Enactment of the Local Tax Code), as amended by Presidential Decree No. 426 and by Presidential Decree Nos. 1158 and 1158-A (Consolidating and Codifying all Internal Revenue Laws) particularly Section 342 of the National Internal Revenue Code of 1977; and

2. Granting arguendo that the privilege under Section 5 of Republic Act No. 1435 has not been repealed, whether or not petitioner is entitled to the refund claimed absent any allegation of payment of the additional tax imposed by the municipal boards or councils as prescribed by Section 4 of Republic Act No. 1435.

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.

We disagree with respondent.

In the case of ***Commissioner of Internal Revenue v. 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 rate of tax cannot in anyway negate the policy behind the grant of partial refund. The Court sees no inconsistency between the increase in 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."

With regard to the second issue, respondent maintains that petitioner is entitled to a refund only if the additional specific taxes imposed by the municipalities and cities concerned have been paid. He pointed that where there is no such ordinance imposing an additional specific tax to miners and forest concessionaires, no refund could be availed of as perceived from a reading of the provisions of Sections 4 and 5 of Republic Act 1435. Moreover,

We find fitting the following comments of the Supreme Court in the case of ***Commissioner of Internal Revenue v. Atlas Consolidated Mining and Development Corp., et. al., (supra.):***

"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 concessionaires relief, in the form of a 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.

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 paid to the national government, not the specific taxes paid to the local government."

And in the more recent case of ***Commissioner of Internal Revenue v. 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 proviso 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 whenever 'any oils mentioned above are used by miners or forest concessionaires in their operations and the procedure for refund is complied with."

Finding for the petitioner, the only thing left to be determined by this Court is the amount of specific taxes to be refunded by respondent Commissioner of Internal Revenue in favor of petitioner.

Petitioner claims that it is entitled to the 25% partial refund of specific taxes paid from its purchases of refined and manufactured fuel oils, diesel fuel oils and lubricating oils from July 1, 1980 to October 31, 1981 in the total amount of P152,794.38. However, in its Memorandum, petitioner included in its claim for refund purchases of fuels from November 1981 to January 1982. A Table showing purchases of Diesel, Regular Gasoline and Industrial Fuel from July 1980 to January 1982 was presented by petitioner. It was alleged that it paid a total of P545,063.38 specific taxes on said purchases. The amount now being claimed as 25% refund on specific taxes paid is P136,265.84 instead of the original P152,794.38.

It appears also that petitioner did not include in the Table its purchases of lubricating oils as the sales invoices, covering these purchases, indicated drums instead of liters. However, petitioner offered in evidence its working paper marked as Exhibits OO, OO-1, OO-2, OO-3 and OO-4 showing its Cash Receipts or Disbursement Vouchers with the oils and lubricants already converted into liters. A drum of oil is equivalent to 208.175 liters based on the working paper presented by petitioner. [See

Exhs. OO, OO-1 to OO-4, inclusive.] Respondent did not oppose petitioner's offer of evidence.

Respondent argued that specific taxes paid prior to October 8, 1980 had already prescribed the petition having been filed only on October 8, 1982.

The Tax Code provides for the judicial remedy of filing a claim for refund within a period of two (2) years from the date of payment of the tax pursuant to the provision of Section 230 (formerly Section 292).

Section 135 of the Tax Code insofar as pertinent provides "that specific taxes on locally manufactured petroleum products levied under Sections 153, 155 and 156 of this title, <u>except lubricating oil and grease</u>, shall be paid within fifteen (15) days from the date of removal thereof from the place of production."

It is therefore evident that the manufacturer of petroleum products has up to 15 days from the date of its removal within which to pay the specific taxes on locally manufactured petroleum products. As an exception, manufacturers of lubricating oils and grease have to pay the specific tax collected from the purchaser on the date of its removal from the place of production.

Petitioner purchased both manufactured petroleum products and lubricating oils and grease. Thus, with respect to its purchases of lubricating oils, the specific taxes paid thereon are deemed paid at the date of its removal. The claim for refund of the 25% specific taxes paid on oils and lubricants purchased and delivered prior to October 8, 1980 had indeed prescribed. Hence, the corresponding 25% partial refund of specific tax paid on 2,914.45 liters of oils [Exh. J-1] purchased from Mobil Oil Philippines, Inc., in September 4, 1980, Invoice No. 27221 F, had prescribed. [See also Exh. OO, p. 83, CTA record.]

All claims not included in the claim for refund filed in the administrative level (BIR) cannot be the subject of the present appeal. Thus, purchases of petroleum products and lubricants made after October 31, 1981, not being included in the claim for refund filed with the respondent's office, cannot be considered by this Court for the same was not included to form part of its claim for refund with the BIR nor of this petition for review. The petition calls for the refund of 25% of the specific taxes paid on petitioner's purchases of manufactured oils and fuels from July 1, 1980 to October 31, 1981 and not purchases of fuels from July 1, 1980 to January 31, 1982, as prayed for in the Memorandum.

Following the provision of Section 135 of the Tax Code, the specific taxes paid on the rest of the petroleum products purchased by petitioner falls due on the 15th day following the date of its removal. Therefore, all shipments of petroleum products, except oils and lubricants, paid by petitioner 15 days prior to October 8, 1980 or on September 23, 1980 are deemed paid on October 8, 1980 which is well within the two-year prescriptive period as prescribed under Section 230 of the National Internal Revenue Code.

The specific taxes collected from petitioner on its purchases of petroleum products other than oils on September 23, 1980 shall be paid within 15 days from the date of its removal or on

October 8, 1980. It follows that on October 8, 1980, all purchases of locally manufactured petroleum products, except oils, on September 23, 1980 are deemed paid. Thus, all purchases of fuels prior to September 23, 1980 have prescribed.

It should be noted that in the case of ***Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corporation and Court of Tax Appeals, supra.***, the Supreme Court's Third Division granted Rio Tuba's Motion for Reconsideration of its decision dated September 30, 1991. The Supreme Court in its Resolution, dated March 25, 1992, arrived at the following conclusion, to wit:

> "Since the private respondent's claim for refund covers specific taxes paid from 1980 to July 1983 then we find that the private respondent is entitled to a refund. It should be made clear, however, that Rio Tuba is not entitled to the whole amount it claims as refund.
>
> The specific taxes on oils which Rio Tuba paid for the aforesaid period were no longer based on the rates specified by Sections 1 and 2 of R.A. No. 1435 but on the increased rates mandated under Sections 153 and 156 of the National Internal Revenue Code of 1977. We note, however, that the latter law does not specifically provide for a refund to these mining and lumber companies of specific taxes paid on manufactured and diesel fuel oils.
>
> In Insular Lumber Co. v. Court of Tax Appeals, (104 SCRA 710 [1981]), the Court held that the authorized partial refund under section 5 of R.A. No. 1435 partakes of the nature of a tax exemption and therefore cannot be allowed unless granted in the most explicit and categorical

language. Since the grant of refund privilege must be strictly construed against the taxpayer, the basis for the refund shall be amounts deemed paid under Sections 1 and 2 of R.A. No. 1435.

ACCORDINGLY, the decision in G.R. Nos. 83583-84 is hereby MODIFIED. The private respondent's CLAIM for REFUND is GRANTED, computed on the basis of the amounts deemed paid under Sections 1 and 2 of R.A. No. 1435, without interest.

SO ORDERED."

The aforesaid ruling was further discussed by the High Court in response to Rio Tuba's Motion for Clarification which is actually a second Motion for Reconsideration. In its Resolution dated June 15, 1992, the following comments were elucidated:

"Rio Tuba's contention that the refund should be based on the rates effective at the time the specific tax was paid is without merit. Section 1 of RA 1435 amended Section 142 of the National Internal Revenue Code providing for increased rates on specific taxes. Section 142 of the NIRC incorporated the refund privilege on specific taxes paid on manufactured oils which are used in <u>agriculture</u> and <u>aviation</u>. Section 5 of RA 1435 provided for a refund privilege on specific taxes on manufactured oils paid by <u>miners</u> or <u>forest concessionaires</u>. There is a difference in the refund privileges of those engaged in agriculture and aviation on one hand, and miners or forest concessionaires on the other. Since the refund privilege of the former is incorporated in Section 142, then upon any amendment of Section 142 increasing the tax rates, the basis for the refund will accordingly be adjusted.

> Significantly, the refund privilege granted to miners or forest concessionaires is not incorporated in Section 142 but is found in Section 5 of RA 1435. There is thus an intent on the part of the legislature to use the specific tax rates provided in Section 1 as the sole basis for refund, notwithstanding future rate increases.
>
> All the sections of RA 1435 must be read as a whole. In the absence of any express provision of law, the refund privilege granted to miners and forest concessionaires in Section 5 must be construed as based on the specific tax rates provided in Section 1.
>
> Regarding the Commissioner of Internal Revenue's (CIR's) contention in his motion for reconsideration that RA 1435 had become an anachronism way back in 1973 when the legislature provided for increased specific tax rates on manufactured oils, said position that a partial refund would be inconsistent with the purpose of the subsequent laws increasing specific tax rates is without merit.
>
> The refund privilege is not inconsistent with the increase in specific tax rates since the refund is based only on the original rates provided in Section 1 of RA 1435. These subsequent laws did not, therefore, expressly or impliedly, repeal the refund privilege.
>
> x x x x x x x x x."

The Court, after examining the Invoices offered by petitioner as evidence, arrived at the following computation on the refundable 25% specific taxes paid on Diesel, Regular Gasoline, Industrial Fuels from September 23, 1980 to October 31, 1981, and Oils and Lubricants from October 8, 1980 to October 31, 1981, as follows:

		Date	Purchases of Fuels and Oil in Liters			
Exhs.	Invoice No.	Shipped	Diesel	Reg. Gas	Ind. Fuel	Lubricants
M-4	46170 E	09-25-80	10,000			
M-5	46159 E	09-23-80	8,000			
M-6	46164 E	09-24-80	4,000			
M-7	46176 E	09-27-80	4,000			
N-1	46195 E	10-06-80	10,000			
N-2	00011 F	10-13-80	4,000	2,000		
N-3	00022 F	10-20-80	10,000			
N-4	00025 F	10-20-80	10,000			
N-5	00029 F	10-23-80	8,000	2,000		
N-6	00034 F	10-24-80	10,000			
N-7	00038 F	10-27-80	4,000			
N-8	31693 F	11-03-80				2,081.75
N-9	00059 F	11-06-80	10,000			
O-1	00061 F	11-07-80	10,000			
O-2	00079 F	11-17-80	10,000			
O-3	00087 F	11-19-80	10,000			
P-1	00080 F	11-17-80	6,000	4,000		
P-2	00084 F	11-18-80	10,000			
P-3	00067 F	11-11-80	4,000			
P-4	48140 F	12-04-80			21,600	
P-5	48141 F	12-03-80				4,996.20
P-6	63605 F	07-13-80	4,000	2,000		
Q-1	48891 F	12-23-80				416.35
Q-2	00099 F	11-26-80	10,000			
Q-3	00103 F	11-26-80	10,000			
Q-4	00104 F	11-27-80	10,000			
Q-5	00105 F	11-28-80	6,000	4,000		
R-1	00106 F	11-28-80				1,040.88
R-2	00108 F	12-01-80	4,000			
R-3	00117 F	12-04-80	10,000			
R-4	00119 F	12-04-80	10,000			
R-5	00123 F	12-05-80	10,000			
R-6	00130 F	12-10-80	6,000	4,000		
S-1	00137 F	12-15-80	10,000			
S-2	00138 F	12-15-80				624.53
S-3	00139 F	12-15-80				832.70
S-4	00144 F	12-17-80	10,000			
S-5	00145 F	12-19-80	10,000			
S-6	00146 F	12-19-80	10,000			
T-1	00150 F	12-22-80	2,000	4,000		
T-2	49170 F	12-26-80			21,600	
T-3	49592 F	12-16-80				4,788.03
T-4	49431 F	01-05-81	10,800			
T-5	49432 F	01-05-81	10,800			
U-1	49433 F	01-06-80	10,800			
U-2	49434 F	01-06-81	10,800			
U-3	63607 F	07-14-81	6,000	4,000		
V-1	50960 F	01-19-81			21,600	

V-2	51016 F	01-20-81			21,600	
V-3	00054 F	11-05-80	10,000			
W-1	51435 F	01-29-81			21,600	
W-2	62564 F	02-11-81				4,788.03
W-3	63258 F	02-12-81			21,600	
W-4	51734 F	02-05-81			21,600	
X-1	62986 F	02-21-81				1,249.05
X-2	71944 F	03-05-81				3,330.80
X-3	63258 F	02-26-81			21,600	
Y-1	49521 F	01-07-81			21,600	
Z-1	49569 F	01-07-81				1,249.05
Z-2	51435 F	01-29-81			21,600	
Z-3	51016 F	01-20-81			21,600	
Z-4	00158 F	01-06-81	10,000			
AA-1	00160 F	01-19-81	6,000	4,000		
AA-2	00161 F	01-20-81	10,000			
AA-3	00164 F	01-23-81	10,000			
AA-4	00166 F	01-27-81	10,000			
AA-5	00167 F	01-29-81	10,000			
BB-1	00169 F	02-02-81	4,000			
BB-2	00190 F	02-12-81	6,000	4,000		
BB-3	00191 F	02-13-81	10,000			
BB-4	00193 F	02-16-81	10,000			
CC-1	63611 F	07-15-81	8,000			
DD-1	00197 F	02-17-81	4,000	4,000		
DD-2	00198 F	02-17-81	10,000			
DD-3	00200 F	02-18-81	10,000			
DD-4	45801 F	02-18-81	10,000			
DD-5	62564 F	02-12-81				4,788.03
DD-6	62618 F	02-12-81			21,600	
DD-7	93872 F	07-16-81				416.35
DD-8	63625 F	07-23-81	2,000			208.18
EE-1	62986 F	02-21-81				1,249.05
EE-2	63258 F	02-26-81			21,600	
EE-3	45813 F	03-09-81	4,000	6,000		
EE-4	45841 F	03-13-81	10,000			
EE-5	45845 F	03-17-81	6,000	4,000		
EE-6	45848 F	03-18-81	10,000			
FF-1	45849 F	03-19-81	10,000			
FF-2	45850 F	03-23-81	10,000			
GG-1	45852 F	03-25-81	10,000			
GG-2	45863 F	04-09-81	6,000	4,000		
GG-3	45865 F	04-10-81	4,000	2,000		
HH-1	77163 F	04-28-81				4,163.50
HH-2	45891 F	05-05-81	4,000	4,000		
HH-3	45897 F	05-12-81	10,000			
II-1	45898 F	05-13-81	10,000			
II-2	63511 F	05-19-81	10,000			
II-3	63517 F	05-20-81				2,289.93
II-4	63518 F	05-21-81				1,665.40
II-5	63524 F	05-25-81	8,000	2,000		
JJ-1	63531 F	05-27-81	8,000			
JJ-2	63532 F	05-27-81	2,000	4,000		
KK-1	45881 F	04-23-81				1,040.88
KK-2	71944 F	03-05-81				3,330.80

KK-3	45885 F	04-30-81	6,000	2,000		
KK-4	45886 F	04-30-81				416.35
KK-5	63538 F	06-01-81	2,000			
KK-6	63543 F	06-02-81	8,000	2,000		
LL-1	85746 F	06-19-81				3,330.80
MM-1	63562 F	06-17-81	6,000	4,000		
MM-1)						
NN-1)	93649 F	07-14-81				5,204.38
NN-2	93872 F	07-16-81				416.35
NN-3	06800 G	09-21-81				3,122.63
NN-4	06801 G	09-21-81				3,538.98
NN-5	07930 G	10-22-81				1,457.23
NN-7	63584 F	07-06-81	2,000			
NN-8	63477 F	07-03-81	6,000			
NN-9	63617 F	07-20-81	8,000			
NN-10	63595 F	07-09-81	500			
	TOTAL		613,700	72,000	280,800	62,036.21

The Resolution of the Supreme Court dated March 25, 1992 in the Rio Tuba case (supra.) stated that the claim for refund of specific taxes should be computed on the basis of the amounts deemed paid under Sections 1 and 2 of R.A. No. 1435, without interest.

Sections 1 and 2 of R.A. 1435 insofar as pertinent provides:

> "SECTION 1. Section one hundred and forty-two of the National Internal Revenue Code, as amended, is further amended to read as follows:
>
> > "SEC. 142. *Specific Tax on manufactured oils and other fuels.* - On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:
> >
> > (a) x x x x x x x x x.
> >
> > (b) Lubricating oils, per liter of volume capacity, seven centavos;

(c) Naptha, gasoline, and all other similar products of distillation, per liter of volume capacity, eight centavos; and

(d) x x x x x x x x x."

"SEC. 2. Section one hundred and forty-five of the National Internal Revenue Code, as amended, is further amended to read as follows:

SEC. 145. *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, there shall be collected, per metric ton, one peso."

With respect to the amount refundable on purchases of diesel and industrial fuel, both parties agreed and arrived at a formula, in converting liters of diesel and industrial fuel to metric tons. The base for computing the amount refundable for specific taxes paid on diesel and industrial fuel should be that as prescribed in Section 2 of Republic Act No. 1435. The formula to convert liters to metric tons of diesel and industrial fuel as agreed upon by the parties is:

$$\frac{\text{No. of liters x Specific Gravity}}{1{,}000} = \text{Metric Ton}$$

It was further agreed that the specific gravity of diesel is 0.8429. While the specific gravity of industrial fuel is 0.9493.

Thus, the total number of liters of diesel subject to refund is 613,700 equivalent to 517.28773 metric tons, computed as follows:

$$\frac{613{,}700 \text{ lts. of diesel} \times 0.8429}{1{,}000} = \underline{\underline{517.28773}} \text{ Metric tons of Diesel}$$

and the total number of liters of industrial fuel subject to refund is 280,800 equivalent to 266.56344 metric tons, computed as follows:

$$\frac{280{,}800 \text{ lts. of industrial fuel} \times 0.9493}{1{,}000} = \underline{\underline{266.56344}} \text{ Metric Tons of Ind. Fuel}$$

After having converted the liters of diesel and industrial fuel into metric tons, the Court can now compute the amount to which petitioner is entitled to be refunded on the specific taxes paid from the use of petroleum products purchased for the period covering September 23, 1980 to October 31, 1981. Petitioner is entitled to the amount of P2,721.63 computed by the Court, as follows:

Refundable Amount of 25% Specific Taxes Paid on
Regular Gasoline, Oils & Lubricants, Diesel and Industrial
Fuel Oil Purchased from Sept. 23, 1980 to Oct. 31, 1981
Per Court's Computation based on Secs. 1 and 2 of RA1435

	Specific Tax Rate	Amount Paid
Regular Gasoline	72,000 lts. x P0.08/lt. [Sec. 142 (c)]	P 5,760.00
Oils and Lubricants	62,036 lts. x P0.07/lt [Sec. 142(b)]	4,342.52
Diesel	517 mt. x P1.00/mt. [Sec. 145]	517.00
Industrial Fuel	267 mt. x P1.00/mt. [Sec. 145]	267.00
Total		P10,886.52
Percentage refundable under Sec. 5 of R.A. 1435		x 25%
AMOUNT REFUNDABLE		P 2,721.63

As regards the 20% interest per annum being claimed by petitioner, the rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. ***[Collector v. Prieto, 112 Phil. 907; Commissioner v. Asturias Sugar Central, 2 SCRA 1140; Commissioner of Internal Revenue v. American Rubber Co., 18 SCRA 842; Atlas Fertilizer Corporation v. Commissioner of Internal Revenue, 100 SCRA 556; Shell Philippines, Inc. v. Central Bank of the Philippines, 162 SCRA 628.]*** An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. ***[F.B. Moreno, Philippine Law Dictionary (3rd ed.), p. 69, citing Imperial Development Corporation v. Añover, 08473-AP, August 23, 1979.]*** Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. ***[Victorias Milling Co., Inc. v. Commissioner of Internal Revenue, et. al., 19 SCRA 430.]*** None of the exceptions are present in the case at bar. Respondent's decision denying petitioner's claim for refund was based on an honest interpretation of law. We, therefore, see no reason why petitioner should be entitled to the payment of interest.

Moreover, the Supreme Court held in the Rio Tuba case that no interest shall be charged in computing the 25% refund on specific taxes paid. [See Supreme Court Resolution dated March 25, 1992.]

In the same manner, petitioner's prayer for cost of suit cannot be awarded. It is an elementary rule that the government shall not be liable for costs of suits unless otherwise provided by law. ***[Section 1, Rule 142, Revised Rules of Court; Collector of Internal Revenue v. Convention of Philippine Baptist Churches and the Court of Tax Appeals, 2 SCRA 10.]***

WHEREFORE, the respondent, COMMISSIONER OF INTERNAL REVENUE is hereby ordered to **REFUND** in favor of petitioner, ARAS-ASAN TIMBER CO., INC., the sum of P2,721.63, without interest, equivalent to 25% partial refund of specific taxes paid on its purchases of regular gasoline, oils and lubricants, diesel and industrial fuels pursuant to the provision of Section 5 of Republic Act No. 1435, in relation to Section 142 (b) and (c) of the National Internal Revenue Code and Section 145 as prescribed under Sections 1 and 2 of R.A. 1435.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 17, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals