Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

WEST BASILAN TIMBER, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3581

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

1/6/94

D E C I S I O N

Petitioner seeks refund from respondent of the amount of ₱138,617.70 allegedly representing 25% of the specific taxes collected on various oils and fuels which it purchased from Caltex (Philippines) during the period from November 1980 to September 1982 and which it actually and exclusively used in connection with the exploitation and operation of its forest concession.

Petitioner is a domestic corporation duly licensed to operate a forest concession with a Timber License Agreement duly entered into with the Ministry of Natural Resources. It has authority to cut, collect, remove and utilize timber of all groups, except prohibited species in the public forest of Siocon, Bungiao and Tictapul Zamboanga

City and Sibuco, province of Zamboanga del Norte by virtue of its Timber License Agreement No. 164-A [Exhibit A & A-1]

Inorder to ably operate a forest concession, petitioner uses refined and manufactured mineral oils, motor fuels and diesel fuel oils in its forest operations. From November 1980 to September 1982, petitioner paid the corresponding specific taxes on its purchases of refined and manufactured mineral oils, motor fuels and diesel fuel oils from oil companies. 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. D], dated January 14, 1983, was filed on January 19, 1983 with the respondent's office in the total amount of ₱138,617.70, computed as follows: [Exhs. D-1-a, D-3-a, D-5-a]

WEST BASILAN TIMBER
November 1980 - September 1982

	Volume Liters & Kilos	Product Cost	Specific Tax	25% Refund
Diesel	815,600	₱ 2,388,818.46	₱ 142,730.00	₱ 35,682.00
Reg. Gasoline	380,800	1,838,191.78	342,720.00	85,680.00
Oil & Lubricants	85,506	866,207.43	68,404.80	17,101.00
Grease (Kilos)	1,227	10,992.94	613.50	153.37
T O T A L :		**₱ 5,104,210.61**	**₱ 554,468.30**	**₱ 138,617.07**

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.

To support its claim for refund, petitioner presented the affidavits of its Vice-President [Exh. D-1], Accountant [D-3], and two other disinterested persons: [Exh. D-2, D-5] all attesting that for the period November 1980 to September 1982 petitioner used in its forest operations refined and manufactured mineral oils, motor fuels and diesel fuel oil costing ₱5,104,210.61.

Respondent admits that petitioner filed a written claim for refund of the amount of ₱138,617.70 on January 19, 1983 and the affidavits in support of the claim but denied the contents thereof as well as the competence of the persons who executed the affidavits. As special and affirmative defenses, respondents contends that petitioner is not entitled to the refund of 25% of specific tax paid on manufactured oils used in forest concessions previously available under Republic Act No. 1435 because Section 5 of said Act was repealed upon promulgation of Presidential Decrees 1158 and 1158-A, approved on June 5, 1977; even assuming that Section 5 of Republic Act No. 1435 is still in effect, partial tax refund thereunder refers to specific taxes paid by miners and forest concessionaires on fuel oil, and other similar oils having more or less the same generating power but not on gasoline, kerosene, gas or petroleum and lubricating oils; that petitioner's right to file a judicial action for refund of taxes paid before 8 February 1981 has already prescribed; taxes are presumed to have been paid in accordance with law and regulations; claims for refund are construed strictly; the government cannot be made to pay interest; and costs of suit cannot be imposed on the government.

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 Nos. 1158 and 1158-A (Consolidating and Codifying All Internal Revenue Laws) particularly Section 342 of the National Internal Revenue Code of 1977; and
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> 2.) Whether or not petitioner is entitled to the refund claimed.
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> 3.) Whether the claim prescribed.

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 Systems, 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***, G.R. 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 oil. Furthermore, Section 5 does not deviate from the general subject of said law, that is, to increase the Highway Special Fund.

The Supreme Court, in the case of ***Commissioner of Internal Revenue vs. Atlas Consolidated Mining and Development Corporation et. al.*** [G.R. No. 93631, Nov. 12, 1990] also held that:

"A reading of the legislative proceedings leading to the enactment of R.A. 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. R.A. 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 *provides* that in any oils used by miners and forest concessionaires in their operations 25% of the specific tax paid in the purchase thereof 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."

Section 5 of the said Act was repealed upon promulgation of Presidential Decrees 1158 and 1158-A, approved on June 5, 1977. Sections 142 and 145 of the Old National Internal Revenue Code became Sections 153 and 156 of the National Internal Revenue Code of 1977. Furthermore, Section 5 of Republic Act 1435 was not re-enacted in the 1977 Tax Code and its repealing clause, Section 346 provides:

> **SEC. 346.** ***In general.*** - All acts, laws, decrees, executive orders, rules and regulations, or part thereof, which are contrary to or inconsistent with this code are hereby repealed, amended or modified accordingly."

In the case of Rio Tuba Nickel Mining Corporation vs. Commissioner of Internal Revenue; G.R. Nos. 83583-84, March 25, 1992, the Court held that miners and lumbermen were accorded refund priveleges under R.A. No. 1435 but with the passage of P.D. No. 711 the special treatment accorded to them were withheld. In effect the refund privelege granted to miners and loggers under R.A. 1435 was impliedly repealed by P.D. No. 711.

Mainly the reason was that, the Highway Special Fund had been abolished and transferred to the General Fund by P.D. No. 711 which took effect on July 1, 1975. Inspite of the issuance of P.D. No. 711, the Highway Special Fund was retained, its existence continued up to 1985 and was channeled to the General Fund only in 1986.

Thus in Rio Tuba case, the High Court modified its decision and ruled that mining and logging companies are entitled to the refund privelege granted by R.A. No. 1435 on specific taxes paid up to 1985 on manufactured and diesel fuel oils, the same to be computed on the basis of the rates specified by Sections 1 and 2 of R.A. No. 1435.

petitioners ~~Respondent's~~ claim for refund for specific taxes paid from 1980 to July 1983 then falls within the period set by the High Court.

However, the Court notes that Exhibits E, E-1 to E-15, F, F-1 to F-680, G and G-1 to G-5 were not admitted per Resolution dated April 14, 1993, because the same were not forwarded nor brought before the Court at the time petitioner filed its formal offer of exhibits on January 28, 1993.

In the absence of these vital documents which are material to the determination of the exact quantities of the various refined and manufactured mineral oils, motor fuels and diesel fuel oils actually used by the petitioner in its logging operations; this Court has no basis of verifying and computing the exact amount due if any, to the petitioner.

Rule is settled that laws granting exemptions from tax are construed strictissimi juris against the taxpayer and liberally construed in favor of the taxing power (***Mitsubishi Motor Corp. vs. CIR,*** **181 SCRA 214).**

WHEREFORE, in view of all the foregoing, the Court resolves to deny the petition for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, 06 January 1994.

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 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