REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARINDUQUE MINING & INDUSTRIAL
CORP.,
Petitioner,

- versus -

C.T.A. CASES NOS.
1633 & 1654

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

5/17/91

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D E C I S I O N

These cases involve two separate claims for refund in the sums of P1,916.54 and P9,224.34, respectively, or an aggregate amount of P11,140.88, representing 25% of specific taxes paid on manufactured oils used by petitioner in its mining operations during the year 1963. Said cases were consolidated and tried jointly.

As gleaned from the records and pleadings of the parties, it appears that petitioner, a corporation duly organized in accordance with law is engaged in mining in the Philippines.

From January to May 1963, it conducted mining operations at Bagacay, Hinabangan, Samar and from April to December 1963, in Bagacay, Samar and Sipalay, Negros Occidental.

During the period under review, petitioner purchased from Caltex (Phils.) Inc. and Esso Standard Eastern, Inc. manufactured oils on which specific taxes have been paid.

Invoking Sections 1 and 5 of Republic Act No. 1435, petitioner filed the following claims for refund:

> 1. On October 5, 1964, the amount representing 25% of the specific taxes paid on the manufactured oils used in the Bagacay Mine covering the period from January to May 1963 *(p. 401, BIR rec., CTA Case No. 1635)*; and
>
> 2. On April 23, 1965, the amount representing 25% of the specific taxes paid on the manufactured oils used in the Bagacay and Sipalay Mines covering the period from April to December 1963 *(p. 567, BIR rec., CTA Case No. 1654)*.

Said claims for refund were respectively denied by respondent in letters received by petitioner on December 1, 1964 and May 25, 1965, on the ground that the privilege of partial tax refund granted by Section 5 of Republic Act No. 1435 to those using oils in the operation of forest and mining concessions is limited to a period of five (5) years, the same to be counted from June 14, 1956, the date the aforesaid Act took effect.

On December 7, 1964, petitioner filed its request for reconsideration of the decision now litigated in C.T.A. Case No. 1635 *(pp. 405-406, BIR* *rec.)*. However, no request for reconsideration was filed with respect to the decision appealed in C.T.A. Case No. 1654. On May 18, 1965 and June 22, 1965, petitioner appealed to this Court.

Petitioner contends that partial refund granted by Section 5 of Republic Act No. 1435 is clear and unambiguous, and there is no express or implied proviso in the law limiting the partial tax refund privilege for miners and forest concessionaires to a five-year period only. Respondent on the other hand, maintains that the five-year limitation period for partial refund of taxes paid for fuel and lubricating oils used in agriculture and aviation provided in Section 1 of Republic Act No. 1435 is also applicable to oils used by miners or forest concessionaires in their operations.

Considering that the above-entitled cases involve similar facts and identical in issue with the cases brought on appeal to the Supreme Court, the parties during trial submitted the same for decision on the basis of the pleadings. And the issue now raised has since been adjudged in the cases of ***Insular Lumber Co. vs. Court of Tax Appeals, et al.* and *Commissioner of Internal Revenue vs. Court of Tax Appeals, et al.*,** *104 SCRA*

718. In disposing of the question in controversy, the Supreme Court *en banc* affirmed the decision appealed from and ruled that there is no basis in applying the limitation of the operative period provided for oils used in agriculture and aviation to the provision on the refund to miners and forest concessionaires.

Nevertheless, with respect to the claim for refund of the sum of P1,916.54 which is the amount litigated in C.T.A. Case No. 1635, it appears that the same represent 25% of the specific taxes paid on fuel and lubricating oils used from January to May 1963. The claim for refund for the said sum was filed with respondent on October 5, 1964 and the petition for review was filed on May 18, 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 laid down in the case of ***Commissioner of Internal Revenue vs. Insular Lumber Co. and the Court of Tax Appeals***, 21 SCRA 1237, wherein the Supreme Court said:

> In this case, it was the use in 1958 of the manufactured mineral oils and fuels in the operation of its forest concession which gave Insular Lumber Company the right to claim refund of 25% of the specific tax paid thereon. The claim for refund was filed with the Commissioner of Internal Revenue on

> February 23, 1961 and the petition for review was filed in the Court of Tax Appeals on February 17, 1962. Both the aforesaid dates are more than two years after 1958, the year the oils and fuels were actually used. Consequently, the right to claim refund of the tax in question has prescribed.

On the claim for refund of the sum of P9,224.34, the amount involved in C.T.A. Case No. 1654, it may be stated that this court has consistently adhered to the rule that claim for refund should be first filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must in no case be filed beyond the two-year period from the occurrence of the supervening cause which gave rise to the right of refund or payment of the tax as the case may be. *(See* ***Commissioner of Internal Revenue vs. Insular Lumber Co.****, supra;* ***Commissioner of Internal Revenue vs. Victorias Milling Company, Inc.****, 22 SCRA 12;* ***Collector vs. Court of Tax Appeals****, 1 SCRA 87;* ***Gibbs vs. Collector****, 107 Phil. 232;* ***College of Oral and Dental Surgery vs. Court of Tax Appeals****, 102 Phil. 912).*

In the present case, it will be noted that although the claim for refund was filed on April 23, 1965, the petition for review was filed only on June 22, 1965 praying for partial refund of specific taxes paid on oils used from April to December 1963. Following therefore the ruling in the aforecited cases, this court finds that only a portion of the amount claimed, *i.e.*, from April to June 21, 1963 has prescribed.

Consequently, petitioner is entitled to the partial refund of the amount corresponding to the specific taxes paid on oils used from June 22, 1963 to December 1963, pursuant to the provisions of Section 306 (now Sec. 292) of the Tax Code.

WHEREFORE, the appealed decision in C.T.A. Case No. 1635 is hereby affirmed with costs against petitioner, and the appealed decision in C.T.A. Case No. 1654 is modified as indicated above.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 17, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals