REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING
& DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3967

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 14 1994

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DECISION

This case involves petitioner's claim for refund of specific taxes paid on fuels and oils used in its mining operations pursuant to the provision of Section 5 of Republic Act No. 1435 [An Act To Provide Means For Increasing The Highway Special Fund].

The facts are stated as follows:

Petitioner is a mining corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is engaged in the business of mining copper from its mining concessions in Toledo City, Cebu. For the period covering July 1983 to June 30, 1985, petitioner purchased from Petrophil Corporation manufactured fuel oils and diesel fuel oils which were used in the operation of its mining concessions. The corresponding specific taxes imposed on the purchased fuels and oils, under Sections 153 and 156 (formerly 142 and 145) of the National Internal Revenue Code, were passed on and paid by petitioner to Petrophil Corporation.

On August 28, 1985, petitioner filed a claim for refund (Exh. A) with the respondent in the amount of P11,927,236.92, representing 25% of the total specific taxes paid on fuels and oils purchased from Petrophil Corporation for the period subject of this petition. Petitioner pointed that it had complied with the conditions provided in Section 5 in relation to Section 1 of R.A. 1435 in order to be entitled to the refund claimed. The affidavits of its President and that of the President of the Chamber of Mines of the Philippines, of which petitioner is a member, stating that petitioner paid the specific taxes on its purchases of oils and fuels and that the same were actually used in its mining operations, were attached to its claim for refund.

Respondent did not act on said claim for refund. Hence, this petition for review filed by petitioner, on August 25, 1985, praying for a tax credit in the total amount of P11,927,236.92.

Respondent's special and affirmative defenses alleged that the privilege granted under Section 5 of Republic Act No. 1435, providing for the refund of 25% of the specific taxes paid by miners or forest concessionaires on manufactured oils used in their operations was repealed with the enactment of the Local

Tax Code on July 1, 1974 by Presidential Decree No. 231 as amended by Presidential Decree No. 426 and its implementing regulation (Local Tax Regulations No. 1-74) issued by the Ministry of Finance on April 18, 1974. Respondent added that before the partial refund can be granted there must be a showing that petitioner paid the additional tax under a municipal or city ordinance as provided for under Section 4 in relation with Section 5 of Republic Act No. 1435. Without any ordinance imposing an additional tax on miners and forest concessionaires, petitioner could not avail of the refund privilege under Section 5 of R.A. 1435

Sections 4 and 5 of Republic Act No. 1435 provides:

> "**Section 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 hereinabove 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 municipality: *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.

> "**Section 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." (Emphasis supplied.)"

Furthermore, Presidential Decree No. 711 (effective July 1, 1975) abolished all existing special and fiduciary funds and transferred its funding to the General Fund Since R.A. 1435 refers to "An Act To Provide Means For Increasing The Highway Special Fund" it follows that R.A. 1435 was repealed by P.D. 711. Moreover, granting for the sake of argument that Section 5 still subsists, the partial refund of specific taxes paid would be limited only to specific taxes paid prior to August 28, 1983.

The issue is whether or not the privilege being claimed by petitioner under Republic Act No. 1435 has been repealed by Presidential Decree No. 231 (Local Tax Code), as amended by Presidential Decree No. 426, and Presidential Decree No. 711 (Abolishing All Existing Special And Fiduciary Funds And Transferring To The General Fund The Operations and Funding Of All Special And Fiduciary Funds).

On the contention of respondent that the partial refund privilege under Section 5 of R.A. 1435 can be availed only upon showing proof that the additional tax imposed by the municipality or city pursuant to a municipal ordinance has been paid in accordance with Section 4 of R.A. 1435, the Supreme Court in the case of **Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corporation and The Court of Tax Appeals, G.R. Nos. 83583-84, (202 SCRA 137),** has ruled:

> "x x x. We disagree. To our mind, the proviso in Section 5 standing alone is enough basis for the grant of refund. x x x. The statutory grant of a partial exemption from the imposed increased specific taxes is manifest from a reading of the proviso in Section 5, Republic Act 1435. As contended by Rio Tuba, there is nothing in that proviso which states that before a miner can be entitled to the 25% tax refund of specific tax paid on the oils it used in its operations, there must first be a municipal or city ordinance levying an additional tax not exceeding 25% of the rates fixed in Sections 142 and 145 of the Tax Code. In fact, the entire 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 respective territorial jurisdictions. 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. x x x."

With respect to the issue of whether or not P.D. 711 impliedly repealed Section 5 of R.A. 1435, the Supreme Court in a Resolution, dated March 25, 1992 (207 SCRA 549), modified its previous ruling in the Rio Tuba case where it stated that P.D. 711 impliedly repealed the refund privilege granted to miners and loggers under R.A. 1435. The High Court observed thus:

"This decision was premised on the assumption that the Highway Special Fund was one of those funds abolished and transferred to the General Fund by P.D. No. 711 which took effect on July 1, 1975.

Despite the mandate of P.D. No. 711, however, several special funds were still retained and the Highway Special Fund was one of them.

x x x x x x x x x.

The Internal Revenue Allotments annually prepared by the Bureau of Internal Revenue in accordance with the foregoing decree showed that the Highway Special Fund continued its existence up to 1985 and was channelled to the General Fund only in 1986.

It is not clear why the Highway Special Fund was maintained *for 10 years* after the effectivity of P.D. No. 711 or why it was abolished in 1986. The stark fact remains that it retained its status as a special fund up to 1985.

With the foregoing consideration, we cannot therefore state with definiteness that it was P.D. No. 711 which impliedly repealed Section 5 of R.A. No. 1435. We can however safely conclude that Section 5 of R.A. No. 1435 is now an anachronism because the Highway Special Fund, after 1985, no longer exists.

The rationale for the Court's decision denying the private respondent's twin claims for refund was that the specific taxes on these manufactured oils paid by the mining and lumber companies no longer accrued to the Highway Special Fund. But given the added circumstance that the Highway Special Fund which was financed by these specific taxes still continued up to 1985, it will be highly inequitable for the private respondent if we were to rule that no refund of specific taxes paid up to 1985 which actually accrued to the Highway Special Fund (not the General Fund) may be given. The private respondent still did not directly benefit from the projects supported by the Highway Special Fund.

We, therefore, modify our decision in this case and rule that mining and logging companies are entitled to the refund privilege granted by R.A. No. 1435 on specific taxes paid up to 1985 on manufactured and diesel fuel oils.

x x x x x x x x x.

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. 1435 but on the increased rates mandated under Sections 153 and 156 of the National Internal Revenuè 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* (103 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 privileges must be strictly construed against the taxpayer, the basis for the refund shall be the amounts deemed paid under Sections 1 and 2 of R.A. No. 1435."

Sections 1 and 2 of R.A. 1435 provide:

"**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."

In a more recent case involving the same parties and issue the Supreme Court ruled "that since Atlas's claims for refund cover specific taxes paid before 1985, it should be granted the refund based on the rates specified by Sections 1 and 2 of R.A. No. 1435 and not on the increased rates under Sections 153 and 156 of the Tax Code of 1977, provided the claims are not yet barred by prescription. The claim for refund on the specific tax paid prior to 21 July 1976 had already prescribed because claims for refund should be made within two years from the date of payment of the tax sought to be refunded and Atlas' judicial claim for refund was made only on 21 July 1978." **(Commissioner of Internal Revenue v. Hon. Court of Appeals and Atlas Consolidated Mining and Development Corporation, G.R. No. 106913, May 10, 1994)**

In view of the foregoing rulings laid down by the Supreme Court, the only thing left for us to do is to determine the amount of tax credit which petitioner is entitled to based on Sections 1 and 2 of R.A. No. 1435. However, the amount of tax credit shall be limited to 25% of the specific taxes paid by petitioner from August 28, 1983 because prior to said date the claim for tax credit had prescribed.

After evaluating the documentary evidence presented by petitioner, the Court arrived at the following computation on the amount of specific taxes creditable in favor of petitioner. (See Annex "A")

COMPUTATION OF THE 25% SPECIFIC TAX REFUNDABLE PURSUANT TO SECTION 5 IN RELATION WITH SECTIONS 1 AND 2 OF R.A. NO. 1435

Manufactured Oils	Quantity	Tax Rate	Specific Tax
Aviation Gas	144,660L	P 0.08/L	P 11,572.80
Extra Gasoline	1,341,987L	0.08/L	107,358.96
Oils & Lubricants	18,000L	0.07/L	1,260.00
Aviation Turbo	18,000L	0.08/L	1,440.00
Diesel	13,667MT	1.00/MT	13,667.00
Total Specific Taxes paid under Secs. 1 & 2 of R.A. No. 1435			P135,298.76
Refundable Tax Rate under Sec. 5 of R.A. No. 1435			x 25%
AMOUNT REFUNDABLE			P 33,824.69

WHEREFORE, the petition for review is hereby **GRANTED**. Respondent is hereby ordered to **refund** in favor of petitioner the amount of P33,824.69, representing 25% specific taxes paid on locally purchased manufactured fuels, oils and diesel pursuant to the provision of Section 5 of Republic Act No. 1435. No costs of suit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR :

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the 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

ANNEX "A"

Atlas Consolidated Mining and Development, Corp.
Purchases of Manufactured oils and fuels
in liters entitled to the 25% refund
under Sec. 1 & 2 of R.A. 1435

Date	AV Gas	Extra	Lubes	AV Turbo	Diesel
1983					
Aug.		10,000			
Sept.	6,000				
		102,000			
					2,329,378
Oct.	6,000				
		66,000			
Nov.	6,000				
				6,000	
		76,000			
Dec.	7,330				
		76,000			
1984					
Jan.	1,330				
		76,000			
Feb.	6,000				
				6,000	
		76,000			
					4,921,377
Mar.	6,000				
				6,000	
		76,000			
					2,202,642
Apr.	6,000				
		66,000			
May	6,000				
		26,000			
June	6,000				
		10,000			
		56,000			
July	6,000				
		56,000			
Aug.		20,000			
	6,000				
		46,000			
					640,920
Sept.	6,000				
		49,987			
					3,537,414

ANNEX "A"
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Atlas Consolidated Mining and Development, Corp.
Purchases of Manufactured oils and fuels
in liters entitled to the 25% refund
under Sec. 1 & 2 of R.A. 1435

Date	AV Gas	Extra	Lubes	AV Turbo	Diesel
Oct.	6,000				
		46,000			
		20,000			
					2,582,634
Nov.	10,000				
			6,000		
		40,000			
Dec.	12,000				
			6,000		
		66,000			
1985					
Jan.	6,000				
		46,000			
Feb.	6,000				
		50,000			
Mar.	12,000				
			6,000		
		50,000			
Apr.	6,000				
		50,000			
May	6,000				
		60,000			
June	6,000				
		26,000			
Total	144,660	1,341,987	18,000	18,000	16,214,365

Conversion of Liters of
Diesel into Metric Tons:

Formula:

$$\frac{(\text{Diesel in Lts. x Specific Gravity})}{1{,}000}$$

$$\frac{(16{,}214{,}365 \times 0.8429/\text{lt.})}{1{,}000}$$

13,667 MT of Diesel