REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING
AND DEVELOPMENT CORPORATION,
Petitioner,

- versus - Aug. 15/68 CTA CASES NOS. 1638
and 1708

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

These two cases involve two separate actions for tax credit in the sums of ₱13,119.64 and ₱5,684.70, respectively, or an aggregate amount of ₱18,804.34, representing 25% of specific taxes paid on gasoline and oils used in its mining operations during the years 1962 to 1964. The two cases were tried and submitted jointly for decision.

Petitioner, a domestic corporation duly organized in accordance with law, is engaged in mining in the Philippines. From January 1 to December 31, 1962, it operated mainly in Lupotan, Toledo City and from July 1, 1962 to August 31, 1964, it also conducted mining operations in Mati, Davao (Exh. 6, pp. 349-356, Vol. I, BIR rec., CTA Case No. 1638).

During the period under review, petitioner purchased from Mobil Oil Inc. and Caltex (Phil.) Inc. fuel and lubricants on which specific taxes have been paid.

Citing Section 5 of Republic Act No. 1435, in relation to Section 142 of the Revenue Code, petitioner filed the following claims for refund and/or tax credit:

> (1) On February 3, 1965 the sum of ₱4,036.95, covering the period from January 1 to August 31, 1964 (Exh. 1, pp. 288 & 289, Vol. I, BIR rec., CTA Case No. 1638);
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> (2) On February 3, 1965, the sum of ₱7,268.36, covering the period from January 1 to December 31, 1963 (Exh. 8, pp. 846 & 847, Vol. II, BIR rec., CTA Case No. 1638);
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> (3) On December 8, 1964 the sum of ₱1,814.33, covering the period from July 1962 to July 1964 (Exh. II, p. 891, VOl. III, BIR rec., CTA Case No. 1638); and
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> (4) On October 14, 1965 the sum of ₱5,684.70, covering the period from January 1 to December 31, 1962 (Exh. 1, p. 257, BIR rec., CTA Case No. 1708).

All these claims for refund represent 25% of the specific taxes on fuel and lubricants used by petitioner in its mining operations. The claims were respectively denied by respondent in his letters, received by petitioner on the following dates: March 23, 1965, April 8, 1965, February 15, 1965 and November 2, 1965, on the theory 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.

Petitioner filed its requests for reconsideration of the decisions now litigated in CTA Case No. 1638 on March 26, 1965 (Exh. 3, pp. 292 & 293, Vol. I, BIR rec.) and April 12, 1965 (Exh. 10, pp. 851 & 852, BIR rec.). However, no request for reconsideration was filed with respect to the decision appealed in CTA Case No. 1708. On May 27, 1965 and November 5, 1965, petitioner filed these petitions.

Respondent contends 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. Petitioner, for his part, urges that partial refund granted by Section 5 of Republic Act No. 1435 is clear and unambiguous, and nothing therein suggests the view that it is limited to five years. We are inclined to agree with petitioner. A

The pertinent provisions of Republic Act No. 1435 read as follows:

> 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. <u>Specific Tax on manufactured oils and other fuels</u>.- On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:
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> (a) Kerosene or petroleum, per liter of volume capacity, two and one-half centavos;
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> (b) Lubricating oils, per liter of volume capacity, seven centavos;
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> (c) Naptha, gasoline, and all other similar products of distillation, per liter of volume capacity, eight centavos; and
>
> (d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo: <u>Provided</u>, That if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purpose of this subsection, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety <u>per centum</u> absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary.
>
> Whenever any of the oils mentioned above are, during the five years from June eighteen, nineteen hundred and fifty two, used in agriculture and aviation, fifty <u>per centum</u> of the specific tax paid thereon shall be refunded by the Collector

of Internal Revenue upon the submission of the following:

(1) A sworn affidavit of the producer and two disinterested persons proving that the said oils were actually used in agriculture, or in lieu thereof.

(2) Should the producer belong to any producers' association or federation, duly registered with the Securities and Exchange Commission, the affidavit of the president of the association or federation, attesting to the fact that the oils were actually used in agriculture.

(3) In the case of aviation oils, a sworn certificate satisfactory to the Collector proving that the said oils were actually used in aviation: Provided, That no such refunds shall be granted in respect to the oils used in aviation by citizens and corporations of foreign countries which do not grant equivalent refunds or exemptions in respect to similar oils used in aviation by citizens and corporations of the Philippines.

x x x x x

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 subparagraphs 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.

(It should be noted that Sections 1 and 2 thereof deal with provisions of the National Internal Revenue Code on specific taxes on oils, more particularly, they amend Sections 142 and 145 of said Code respectively, raising the rate of specific taxes on oils for fuel and lubrication provided therein. Sections 3, 4 and 5 of the Act on the other hand do not deal with provisions of the Revenue Code, nor are they intended to be incorporated thereto as additional provisions thereof. By and large, they refer to the disposition of the taxes from Sections 142 and 145 of the Revenue Code. /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.

The debates in Congress in connection with Republic Act 1435, the pertinent excerpt of which we are quoting hereunder, are elucidating:

> "Mr. Pajarillo. Thank you. Now, I have another question. Do I understand that the proceeds to be derived from the addition-

al taxes will be used for the Highway Special Fund?

"Mr. Fortich. Yes, that is correct.

"Mr. Pajarillo. That is one per cent.

"Mr. Fortich. One centavo for the gasoline, and so much for the other items.

"Mr. Pajarillo. Inasmuch as the lumber and mining companies are the greatest consumers of gasoline and oil in the Philippines, we have to consider the fact that these lumber and mining companies seldom use the national highways because they have their own roads, they have their own compounds. Like our mining companies, they use their own trucks within their compound in the hauling of the ores from the shops to the places around the compound, and in most cases their trucks are not even registered because under the law they are not even required to pay. So that if they are not entitled to the benefits of this law it will be unfair if they will be required to pay. Will the gentleman accept an amendment excluding them?

"Mr. Fortich. For the information of the gentleman, there is a separate bill which treats of that.

"Mr. Pajarillo. No, but we may just as well discuss that here.

"Mr. Fortich. That is not included in this bill.

"Mr. Pajarillo. Why is agriculture included here?

"Mr. Fortich. Because the policy of the government is to encourage farming.

"Mr. Pajarillo. But we should be reasonable, gentleman from Bukidnon, because these mining operators and lumber operators are using the gasoline right in their own compounds. They are even building their own roads. Why impose on them additional taxes when they are not using the highway?

"Mr. Fortich. Is the gentleman sure they are not using the highways?

"Mr. Pajarillo. Yes; most of the gasoline they purchase are consumed within their compounds." (Congressional Records, 3d Congress, 3d Regular Session, May 7, 1967, Vol. III, No. 67, pp. 2093-2107, 2102.)

Thus, we see from the foregoing excerpt that the reason for the refund of specific taxes paid when oil for fuel and lubrication is used in agriculture and aviation is different from that advanced for the grant of similar privileges to miners and forest concessionaires. With respect to the first the purpose is to foster agriculture and aviation for a limited period. As for the second the reason advanced is that the miners and forest concessionaires, from the very nature of their industries, which, parenthetically, is of permanent character, do not use public roads as often as other users and to place on them equal burden in the maintenance of roads and bridges transgresses on the sense of fairness of Congress.

Based on fundamentally different reasons as they are, it is not at all surprising that the privileges of one has different conditions from those of the other.

B

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. 1708, 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) wherein the 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.

WHEREFORE, the appealed decision in C.T.A. Case No. 1638 is hereby reversed, and the appealed decision in C.T.A. Case No. 1708 is hereby affirmed with costs against petitioner in C.T.A. Case No. 1708.

SO ORDERED.

Quezon City, August 15, 1968.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge