REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SIRAWAI PLYWOOD AND LUMBER, CO., INC.,
Petitioner,

- versus - C.T.A. Case No. 3554

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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8/2/94

DECISION

This is a claim for refund in the total amount of P99,226.17 allegedly representing 25% of the specific taxes paid on the oils and fuels actually used by Petitioner in its operations as a duly licensed forest concessionaire.

During the period from July 1, 1980 to May 31, 1982, Petitioner purchased from various oil companies refined and manufactured mineral oils, motor fuels and diesel fuel oils which petitioner actually and exclusively used in connection with the exploitation and operation of its forest concession. The said oil companies paid and passed on to the Petitioner the specific taxes imposed on said oils sold to Petitioner under Sections 153 and 156 (formerly Sections 142 and 145) of the 1977 Tax Code.

On November 8, 1982 Petitioner filed a written claim for refund in the amount of P99,226.17 computed as follows:

SIRAWAI PLYWOOD LUMBER CO., INC.
(formerly Misamis Lumber)
July 1980 - May 1982

	VOLUME (Liters)	PRODUCT COST	SPECIFIC TAX	25% REFUND
DIESEL	1,390,426	P3,986,229.00	P243,324.55	P60,831.14
GASOLINE REG.	74,203	349,675.00	66,782.70	16,695.68
GASOLINE EXTRA	4,726	22,124.00	4,726.00	1,181.50
OILS & LUBRICANTS	93,318	754,961.00	74,654.40	18,663.60
AV GAS	7,417	59,087.00	7,417.00	1,854.25
		P5,172,076.00	P396,904.65	P99,226.17

representing twenty-five percent (25%) of the specific taxes collected on the oils used by the Petitioner in its operations as a forest concessionaire. Such claim for refund was never acted upon by the Respondent.

Hence, this appeal.

In its appeal, Petitioner, prayed for an order requiring Respondent to pay 20% interest per annum, in addition to its claim for refund, for her alleged arbitrary refusal to refund the instant claim. Petitioner likewise prayed for the costs of suit.

In support to its claim for refund, Petitioner relied on the case of Insular Lumber Company vs. Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. L-31057, May 29, 1981 in which 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. 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."

Respondent, however, asserted that the above-quoted Section of R.A. 1435 has already been repealed by Section 343 of the 1977 Tax Code (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.

xxx xxx xxx

> 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.
>
> xxx xxx xxx"

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 concessionaires on fuel oil, commercially known as diesel fuel oil, and other similar oils having more or less the same generating power, and hence, according to the Respondent, Petitioner is not entitled to a refund of 25% on the specific tax it paid on gasoline, kerosene, avgas (aviation gas) or petroleum and lubricating oils. Respondent also contended that Petitioner's right to file a judicial action for refund of all taxes paid before December 13, 1980 has already prescribed.

Is the Petitioner entitled to the refund claimed representing 25% of the specific taxes paid on the oils and fuels actually used by Petitioner in its operations as a forest concessionaire? If entitled to the refund claimed, were they filed within the prescriptive period of two years? These are the issues involved.

We find for the Petitioner.

In the case of **Commissioner of Internal Revenue vs. 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."

Moreover, we find fitting the following comments of the Supreme Court in the case of **Commissioner of Internal Revenue vs. 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 vs. 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: "to 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." (see also Aras-Asan Timber Co., Inc., CTA Case No. 3524, Dec. 17, 1993)

Finding for the Petitioner, this Court after examining the Invoices offered by Petitioner as evidence arrived at the following computation on the refundable 25% specific taxes paid on Diesel, Lubricating oils, Gasoline and Av Gas from December 2, 1980 to May 28, 1982 based on the formula submitted by the Petitioner without any comment from the Respondent on September 28, 1993 (see Compliance, p. 126 CTA Records):

Invoice No.	Date Shipped	Exh.	QUANTITY IN LITERS Diesel	Oil and Lubricants	Regular Gasoline	AV GAS
E0092	12-02-80	E-85	6,000		3,000	
E0098	12-05-80	E-86	9,000			
E9008	12-10-80	E-89	9,000			
E9014	12-12-80	E-90	9,000			
E9084	01-20-81	E-92	9,000			
E9060	01-08-81	E-93	9,000			
M6307	01-08-81	E-95		2,010		
E9068	01-12-81	E-96	6,000		3,000	
E9075	01-16-81	E-97	6,000			
E9091	01-23-81	E-98	9,000			
M6332	01-28-81	E-99		1,890		
E9100	01-28-81	E-101	9,000			
F3005	02-02-81	E-102	9,000			
10036S	02-12-81	E-103				72
M6343	02-06-81	E-104		1,260		
F3011	02-06-81	E-105	9,000			
F3016	02-10-81	E-106	9,000			
F3029	02-18-81	E-107	9,000			
M6278	02-18-81	E-108		420		
F3040	02-20-81	E-109	9,000			
M6281	02-20-81	E-110		1,050		
M6286	02-26-81	E-111		80		
F3047	02-26-81	E-113	9,000			
F3055	03-02-81	E-114	9,000			
F3064	03-05-81	E-115	9,000			
M6295	03-05-81	E-116		1,890		
F3084	03-13-81	E-119	9,000			
F3097	03-17-81	E-120	9,000			
F3108	03-23-81	E-121	6,000			
F3110	03-26-81	E-122	9,000			
F3115	03-30-81	E-123	9,000			
F3120	04-03-81	E-124	9,000			
10258S	04-13-81	E-125				38
F3128	04-08-81	E-126	9,000			
Q1834	04-10-81	E-127		630		
F3132	04-10-81	E-129	9,000			
F3138	04-14-81	E-130	9,000			
F3145	04-21-81	E-131	9,000			
Q1843	04-21-81	E-132		2,310		
48269D	04-24-81	E-133	9,000			
G4257	04-29-81	E-134	3,000			
G4262	05-01-81	E-135	9,000			

G4266	05-04-81	E-136	9,000		
Q1868	05-08-81	E-137		1,340	
G4274	05-08-81	E-138	9,000		
G4284	05-13-81	E-139	9,000		
Q1873	05-20-81	E-141		840	
G4295	05-21-81	E-142	9,000		
G4304	05-23-81	E-143	6,000		
Q1877	05-27-81	E-144		1,540	
G4309	05-27-81	E-145	9,000		
G4313	06-01-81	E-146	6,000		
Q1900	06-30-81	E-147		80	
G4374	06-30-81	E-148	9,000		
G4328	05-06-81	E-149	9,000		
G4334	06-09-81	E-150	9,000		
G4338	06-11-81	E-151	9,000		
G4348	06-17-81	E-152	9,000		
G4356	06-19-81	E-153	9,000		
Q1898	06-20-81	E-154		420	
G4365	06-25-81	E-155	9,000		
Q1899	06-26-81	E-156		1,260	
G4381	07-03-81	E-157	9,000		
R3520	07-30-81	E-158		620	
R3507	07-06-81	E-159		420	
G4388	07-08-81	E-160	9,000		
R3511	07-10-81	E-162		1,680	
G4393	07-10-81	E-163	9,000		
G5251	07-15-81	E-164	9,000		
10552S	07-20-81	E-165			121
H5260	07-21-81	E-166	9,000		
H5265	07-23-81	E-167	9,000		
H5273	07-27-81	E-168	9,000		
H5278	07-30-81	E-169	9,000		
H5285	08-04-81	E-170	9,000		
R3528	08-06-81	E-171		1,130	
H5293	08-07-81	E-172	9,000		
10584S	08-08-81	E-173			49
H5300	08-10-81	E-174	9,000		
R3534	08-12-81	E-175		1,050	
H5306	08-13-81	E-176	9,000		
10598S	08-17-81	E-177			106
H5317	08-19-81	E-178	9,000		
R3539	08-19-81	E-179		840	
10610S	08-21-81	E-180			655
H5331	08-27-81	E-181	9,000		
H5325	08-24-81	E-182	9,000		
10631S	09-01-81	E-183			98
H5340	09-01-81	E-184	9,000		
H5349	09-04-81	E-185	9,000		
10639S	09-04-81	E-186			30
10641S	09-05-81	E-187			30
R3551	09-07-81	E-188		2,810	
H5356	09-09-81	E-190	9,000		

10651S	09-11-81	E-191			72
H5362	09-12-81	E-192	9,000		
H5366	09-15-81	E-193	9,000		
10675S	09-21-81	E-194			53
R3554	09-22-81	E-196		2,810	
H5379	09-23-81	E-197	9,000		
H5392	10-01-81	E-198	9,000		
H5399	10-06-81	E-199	9,000		
H5408	10-09-81	E-200	9,000		
10905S	10-05-81	E-201			45
H5416	10-14-81	E-202	9,000		
H5426	10-20-81	E-204	9,000		
H5430	10-22-81	E-205	9,000		
10957S	10-22-81	E-206			30
R3558	10-22-81	E-207		1,680	
10966S	10-26-81	E-208			49
H5437	10-28-81	E-209	9,000		
H5451	11-04-81	E-210	9,000		
10985S	11-06-81	E-211			53
H5459	11-07-81	E-212	6,000		
10994S	11-09-81	E-213			38
H5463	11-10-81	E-214	9,000		
H5473	11-16-81	E-215	9,000		
22013S	11-16-81	E-216			76
H5480	11-18-81	E-217	9,000		
R3567	11-18-81	E-218		650	
R3561	11-09-81	E-219		420	
R3569	11-23-81	E-220		420	
22027S	11-21-81	E-221			76
H5494	11-23-81	E-222	9,000		
H5499	11-25-81	E-223	6,000		
B0009	12-01-81	E-224	9,000		
R3571	12-04-81	E-225		420	
B0024	12-08-81	E-226	9,000		
22084S	12-10-81	E-227			38
B0031	12-14-81	E-228	9,000		
R3573	12-14-81	E-229		1,050	
22090S	12-14-81	E-230			68
04310A	12-15-81	E-231		250	
22097S	12-16-81	E-232			114
48370D	12-17-81	E-233	9,000		
22211S	12-21-81	E-234			38
B0039	12-22-81	E-235	9,000		
B0046	12-28-81	E-236	9,000		
B1939	01-20-82	E-237	9,000		
B1901	01-04-82	E-238	9,000		
22229S	01-04-82	E-239			38
R3584	01-06-82	E-240		880	
B1910	01-06-82	E-241	9,000		
B1920	01-11-82	E-242	9,000		
22241S	01-11-82	E-243			79
B1926	01-12-82	E-244	9,000		

R3591	01-13-82	E-245		880	
B1929	01-13-82	E-246	6,000		
22254S	01-15-82	E-247			87
22270S	01-21-82	E-248			140
22272S	01-22-82	E-249			132
22277S	01-25-82	E-250			38
J1755	01-25-82	E-251		840	
B1952	01-25-82	E-252	9,000		
22283S	01-26-82	E-253			129
22300S	02-01-82	E-254			155
22302S	02-02-82	E-255			79
B1975	02-02-82	E-256	6,000		
B1985	02-11-82	E-257	9,000		
J1770	02-11-82	E-258		420	
22321S	02-11-82	E-259			79
22325S	02-13-82	E-260			87
22334S	02-16-82	E-260			34
J1777	02-19-82	E-262		420	
22345S	02-20-82	E-263			102
22346S	02-20-82	E-264			98
22355S	02-25-82	E-265			76
22363S	02-27-82	E-266			114
22367S	03-01-82	E-267			79
22374S	03-03-82	E-268			79
22383S	03-05-82	E-269			72
22388S	03-08-82	E-270			110
22502S	03-12-82	E-271			91
28159G	03-15-82	E-272	10,000		
28161G	03-15-82	E-273	8,000		
22513S	03-16-82	E-274			98
22521S	03-20-82	E-275			57
22526S	03-22-82	E-276			76
28287G	03-24-82	E-277	6,000		
22532S	03-25-82	E-278			178
22544S	03-29-82	E-279			212
22552S	04-01-82	E-280			170
28349G	04-01-82	E-281	10,000		
28336G	03-29-82	E-282	8,000		
28335G	03-29-82	E-283	10,000		
28334G	03-29-82	E-284	10,000		
22563S	04-06-82	E-285			167
22567S	04-08-82	E-286			159
22570S	04-12-82	E-287			159
22573S	04-14-82	E-288			76
22578S	04-15-82	E-289			132
22581S	04-16-82	E-290			45
22583S	04-17-82	E-291			95
22585S	04-19-82	E-292			132
22613S	05-01-82	E-293			129
22617S	05-01-82	E-294			102
22618S	05-02-82	E-295			76
22620S	05-03-82	E-296			132

22703S	05-04-82	E-297				121
22711S	05-07-82	E-298				125
22719S	05-10-82	E-299				333
22720S	05-10-82	E-300				45
22722S	05-11-82	E-301				144
22729S	05-13-82	E-302				76
22737S	05-17-82	E-303				159
22750S	05-24-82	E-304				83
22752S	05-24-82	E-305				136
C4808	05-24-82	E-306	6,000			
22753S	05-26-82	E-307				121
22758S	05-27-82	E-308				125
22759S	05-28-82	E-309				76
	T O T A L		887,000	36,710	6,000	7,586

COMPUTATION OF 25% SPECIFIC TAX REFUND
UNDER RA NO. 1435

MANUFACTURED OILS	QUANTITY	SPECIFIC TAX RATE	SPECIFIC TAX
DIESEL [(887,000 x 0.8429) ÷ 1,000]	748 MT	P1.00/T	748.00
LUBRICATING OILS	36,710 L	0.07/L	2,569.70
GASOLINE	6,000 L	0.08/L	480.00
AV GAS	7,586 L	0.08/L	606.88
TOTAL			4,404.58
MULTIPLY BY SPECIFIC TAX REFUND RATE			25%
SPECIFIC TAX REFUND UNDER RA 1435			1,101.15

Exhibits E, E-1, E-2, E-4 to E-84, E-87 and E-91 were not included in the computation as they are already beyond the prescriptive period.

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, shall be paid within fifteen (15) days from the date of removal thereof from the place of production."</u> Emphasis supplied)

It is therefore evident that the manufacturer of petroleum products has <u>up to 15 days from the date of its removal</u> 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 <u>on the date of its removal</u> 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 November 28, 1980 had indeed prescribed.

Let us elaborate.

Exhibits "E", "E-1" to "E-39" were purchases made on January 5, 1980 to June 27, 1980 but were not included in the original claim as Petitioner claimed only purchases from July 1, 1980 to May 31, 1982 (see Petition for Review p.2). But even granting arguendo that they are included in the claim, the same have already prescribed as they were purchases made prior to November 28, 1980.

The same reason is also true to Exhibits "E-40" to "E-82", since they were purchases made on July 7, 1980 to November 26, 1980, again prior to the November 28, 1980 prescriptive deadline.

Exhibits "E-87" and "E-91" were lubricants purchased on December 9, 1980 and December 12, 1980, hence, the claim for lubricants was filed beyond the prescriptive deadline of December 13, 1980 - the date this instant Petition was filed.

Exhibits "E-83", "E-88", "E-94", "E-100", E-112, "E-117", "E-128", "E-140", "E-161", "E-189", "E-195" and "E-203" were invoices covering purchases of brake fluid which is neither classified as fuel oil nor lubricating oil. Hence, not included in the computation.

Lastly, Exhibits "E-118" and "E-261" are not found on the record.

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 vs. Prieto, 112 Phil. 907; Commissioner vs. Asturias Sugar Central, 2 SCRA 1140; Commissioner of Internal Revenue vs. American Rubber Co., 18 SCRA 842; Atlas Fertilizer Corporation vs. Commissioner of Internal Revenue, 100 SCRA 556; Shell Philippines, Inc. vs. 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 vs. Añover, 08473-AP, August 23, 1979.)** Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. **(Victorias Milling Co., Inc. vs. 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 vs. Convention of Philippine Baptist Churches and the Court of Tax appeals, 2 SCRA 10.)**

WHEREFORE, in all the foregoing, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** the sum of P1,101.15 in favor of the herein petitioner which is equivalent to 25% partial refund of specific taxes paid on its purchases of fuel oils and lubricants 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, 2 August 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

This is to certify that the above 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