ACOJE MINING CO., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASES NOS. 1557
1701 & 1712

5/18/77

x - - - - - - - - - - - - x

D E C I S I O N

These three cases involving as they do the same parties, similar facts and identical issues were consolidated with only one decision being rendered. In its separate petitions for review, petitioner Acoje Mining Co., Inc., appeals from decisions of respondent Commissioner of Internal Revenue denying its claims for refund of the following amounts:

1. <u>Under C.T.A. Case No. 1557</u>:-

   ₱8,750.06; ₱14,558.59; ₱15,643.94; and ₱8,460.55 - representing 25% of the specific tax paid on fuel and lubricating oils used in its mining operations during the periods July 1, 1961 to December 31, 1961; January 1, 1962 to December 31, 1962; January 1, 1963 to December 31, 1963; and January 1, 1964 to June 30, 1964, respectively.

2. <u>Under C.T.A. Case No. 1701</u>:-

   ₱38,327.78 - representing 25% of the specific tax paid on fuel and lubricating oils used in its mining operations during the period January 1, 1965 to June 30, 1965.

3. Under C.T.A. Case No. 1712:-

₱8,298.18 - representing 25% of the specific tax paid on fuel and lubricating oils used in petitioner's mining operations during the period July 1, 1964 to December 31, 1964.

These three cases were at first tried separately by the Court, later heard jointly after the litigants have manifested that they involved same parties, identical issues and similar facts, and eventually submitted for decision by respondent on the basis of the pleadings and the records after the parties have filed their partial stipulation of facts.

The following facts as stipulated by the parties are as follows:

> COME NOW the parties, thru their undersigned counsel, and to this Honorable Court respectfully submit the following partial stipulation of facts:
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> 1. That the petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at Marinduque Mines Bldg., 2283 Pasong Tamo Extension Makati, Rizal, while the respondent is the duly appointed and qualified Commissioner of Internal Revenue, with office address at the Department of Finance Bldg., Manila;
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> 2. That the petitioner is engaged in mining and in its operations, fuel oil is continually being used;

3. That the petitioner, invoking the provisions of Republic Act No. 1435, is seeking tax refunds of the following amounts:

(a) Under C.T.A. Case No. 1557

1. ₱8,750.06 - representing 25% of the specific tax paid in fuel oils used in petitioners mining operations during the period of from July 1, 1961 to December 31, 1961, inclusive;

2. ₱14,558.59 - representing 25% of the specific tax paid in fuel oils used in petitioner's mining operations during the period of from January 1, 1962 to December 31, 1962, inclusive;

3. ₱15,641.94 - representing 25% of the specific tax paid on fuel oils used in its mining operations during the period of from January 1, 1963 to December 31, 1963, inclusive;

4. ₱8,460.55 - representing 25% of the specific tax paid on fuel oils used in its mining operations during the period of January 1, 1964 to June 30, 1964, inclusive;

(b) Under C.T.A. Case No. 1701

1. ₱12,327.78 - representing 25% of the specific tax paid on fuel oils used in petitioner's mining operations during the period of from January 1, 1965 to June 30, 1965, and

(c) Under C.T.A. Case No. 1712

1. ₱6,298.18 - representing 25% of the specific tax paid on fuel oils used in petitioner's mining operations during the period of from July 1, 1964 to December 31, 1964, inclusive;

4. That the specific taxes on which the 25% is computed is based on the actual consumption of fuel oils used by the petitioner in its mining operations;

5. That the respondent Commissioner of Internal Revenue has denied the tax refunds for the following amounts with the corresponding date:

C.T.A. Case No. 1557 -

1. ₱8,750.06 - Letter dated August 17, 1964, denying claim for refund of the amount of ₱8,750.06 for the period of from July 1, 1961 to December 31, 1961;

2. ₱14,558.59 - Letter dated September 24, 1964, denying claim for refund of the amount of ₱14,558.59 for the period of from January 1, 1962 to December 31, 1962;

3. ₱15,643.94 - Letter dated November 2, 1964, denying claim for refund of the amount of ₱15,643.94 for the period of from January 1, 1963 to December 31, 1963;

4. ₱8,460.55 - Letter dated November 13, 1964, denying claim for refund of the amount of ₱8,460.55 for the period of from January 1, 1964 to June 30, 1964;

C.T.A. Case No. 1701 -

1. ₱38,327.78 - Letter denial dated September 20, 1965, denying claim for refund of the amount of ₱38,327.78 for the period of from January 1, 1964 to June 30, 1964;

C.T.A. Case No. 1712 -

1. ₱8,298.18 - Letter dated October 29, 1965, denying claim for refund of the amount of ₱8,298.18 for the period of from July 1, 1964 to December 31, 1964,

for the reason that "the privilege of partial tax refund granted by Section 5 of Republic Act No. 1435 to those using oils in their mining operations is, like the partial tax refund on oils used in agriculture and aviation granted by Republic Act No. 1435, limited to a period of five (5) years counted from June 14, 1956, the date said Republic Act No. 1435 took effect or until June 14, 1961;

6. That the parties confine the issue of this case on the proper interpretation and application of the provisions of Republic Act No. 1435 as to whether or not the petitioner is entitled to the refund being sought for; and

7. That the parties reserve their rights to present additional evidence.

After the parties have filed the above partial stipulation of facts, the Court set these cases for joint hearing on July 25, 1975. There being no appearance on the part of petitioner, the hearing was postponed to August 13, 1975; later to December 1 & 2, 1975; and eventually to January 14, 1976. During the hearing on January 14, 1976, respondent, in the absence of petitioner, moved to submit these cases for decision on the basis of the pleadings and the records, which motion was granted by the Court. Respondent was therefore giveh thirty days within which to file his memorandum, and likewise petitioner was granted thirty days from receipt of respondent's memorandum within which to reply thereto, after which the cases would be deemed submitted for decision. These cases were however considered submitted for decision by the Court without petitioner's memorandum because of failure of the latter to file its rejoinder to respondent's memorandum.

The substantial question posed by these cases, as stated by respondent in his memorandum dated May 4, 1976, is whether or not the privilege of partial tax refund granted by Section 5 of Republic Act No. 1435 to those using motor fuels and lubricating oils in their mining operations, like the partial tax refund of specific tax paid on oils used in agriculture and aviation granted by Section 142 of the Tax Code, as amended by Republic Act No. 1435, is limited to a period of five years counted from June 14, 1956, the date said Republic Act No. 1435 took effect, or until June 14, 1961. Four square with the instant cases on this point, by reason of the exact similarity of the law involved and the question litigated, as well as the close identity of the parties, are the cases of Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 1638 and 1708, decided by this Court on August 15, 1968.

In those cases, petitioner therein, a mining corporation claimed for refund, by way of tax credit, the aggregate amount of ₱18,304.34, representing 25% of the specific tax paid on fuels and oils purchased and used by it in connection with its mining operations for the years 1962 to 1964.

This Court, in allowing the tax credit, held that since the 25% partial tax refund granted by Section 5 of Republic Act No. 1435 is clear and unambiguous and that nothing therein suggests the view that it is limited to five years, the five year period of limitation as provided for in Section 142 of the National Internal Revenue Code relating to the 50% partial tax refund of specific tax granted to those using fuels and oils in agriculture and aviation is not applicable in respect to the partial tax refund of specific tax granted by Section 5 of Republic Act No. 1435 to those using fuels and oils in their mining and logging operations.

Because of its controlling effects on the instant cases, will quote at length from the decision.

> Respondent contends that the five-year limitation period for partial refund of taxes paid for fuel and lubricating used in agriculture and aviation provided in Section 1 of Republic Act No. 1435 is also applicable to oils used by miners or forest concessionaries 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 the petitioner.
>
> 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:

(a) Kerosene or petroleum, per liter of volume capacity, two and one-half centavos;

(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) 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 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 agricultrue and aviation into the provision on the refund to miners and forest concessionaries. 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 concessionaries 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 concessionaries. Needless to say this express referenct to Section 142 of the Revenue Code cannot be expanded in tenor and scope to include things not stated therein, like the limitations 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. Fajarillo. Thank you. Now, I have another question. Do I understand that the proceeds to be derived from the additional taxes will be used for the Highway Special Fund?
>
> "Mr. Fortich. Yes, that is correct.
>
> "Mr. Fajarillo. That is one per cent.
>
> "Mr. Fortich. One centavo for the gasoline, and so much for the other items.
>
> "Mr. Fajarillo. 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, 3rd Regular session, May 7, 1957, 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.

Consequently, the five-year period of limitation as provided for in Section 142 of the National Internal Revenue Code relating to the 50% partial tax refund of specific tax granted to those using fuels and oils in agriculture and aviation is not applicable in respect to the 25% partial tax refund of specific tax granted by Section 5 of Republic Act No. 1435 to those using fuels and oils in their mining operations. The privilege of partial tax refund granted by Section 5 of Republic Act No. 1435 to those using oils in their mining operations, like petitioner herein, is not therefore limited to a period of five years counted from June 14, 1956, the date the said Republic Act No. 1435 took effect, or only until June 14, 1961.

The problem of prescription raised by respondent in connection with petitioner's claims for refund for the period July 1, 1961 to December 31, 1961 in the amount of ₱8,750.06 and for the period January 1, 1962 to December 31, 1962 in the sum of ₱14,508.59 covered partly in C.T.A. Case No. 1557 now comes in.

With respect to petitioner's claim for refund for the sum of ₱8,750.06, it appears that the said amount represents 25% of the specific tax on fuel and lubricating oils used for the period July 1, 1961 to December 31, 1961. The fuel and lubricating oils used during this period were also purchased during the same period July 1, 1961 to December 31, 1961. (Exh. "A-8", p. 433, BIR records of CTA Case No. 1557) While the claim for refund for said amount of ₱8,750.06 dated June 28, 1963 (Exh. "A-1", p. 416, BIR records of CTA Case No. 1557) was received by respondent on July 1, 1963, the petition for review for the reovery thereof was filed with this Court on December 21, 1964. Clearly, therefore, more than two years from the purchase and payment of the specific tax on the fuel and lubricating oils to the filing of the appeal with this Court has already elapsed. Since Section 306 of the National Internal Revenue Code requires that the taxpayer must file a written claim for refund with the Bureau of Internal Revenue within two years after payment and that the action for recovery must be instituted in court also within two years after payment, petitioner's right thereto has already prescribed.

Regarding petitioner's claim for refund for the sum of ₱14,508.59, this amount represents 25% of the specific tax on fuel and lubricating oils used during the period January 1, 1962 to December 31, 1962. The Bureau of Internal Revenue records pertaining to this claim (p. 730, CTA Case No. 1557) show that the fuel and lubricating oils used during this period were part of petitioner's stocks the specific tax of which was originally paid under the following official receipts:

OR No. 1227585 dated December 22, 1961

OR No. 1267222 dated January 24, 1962

OR No. 2090331 dated February 23, 1962.

While the claim for refund for the amount of ₱14,508.59 dated August 29, 1963 (Exh. "B-1", p. 721, BIR records of CTA Case No. 1557) was received by respondent on August 30, 1963, the petition for review for the recovery thereof was filed with this Court on December 21, 1964. Likewise, more than two years from the last payment of the specific tax on February 23, 1962 on the fuel and lubricating oils up to the filing of the instant appeal with this Court on December 21, 1964 has already elapsed. Consequently, under Section 306 of the National Internal Revenue Code, petitioner's right to claim for refund of the sum of ₱14,508.59 has already prescribed.

It is hardly necessary to add;

> "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." (Commissioner of Internal Revenue vs. Insular Lumber Company and Court of Tax Appeals, G.R. No. L-24221, December 11, 1967, 21 SCRA 1237.)

> "While it is true that all the claims for refund or tax credit involved herein were all filed by petitioner with respondent within two (2) years from either date of purchase or use of the manufactured oils, and that the petitions for review were filed with this Court within thirty days from receipt of the denials by respondent, still what is decisive is the date of the filing of the petitions for review with this Court, which must be within two years from the date of use of the oils and other fuels. Petitioner should not have waited for the decision of the respondent on its motion for reconsideration but should have appealed to this Court before the lapse of two years from the use of the oils. It was incumbent upon petitioner to beat the two-year period prescribed in Section 309 in order to protect its right." (CMS Logging,

Inc., vs. Commissioner of Internal Revenue, CTA Cases Nos. 1369, 1594 & 1604, August 30, 1969; Insular Lumber Co. vs. Commissioner of Internal Revenue, CTA Case No. 1624, July 31, 1969.)

It appearing that the petition for review (C.T.A. Case No. 1557) for the recovery of the amounts of ₱8,750.06 and ₱14,508.59, representing 25% of the specific tax paid on fuel and lubricating oils used in petitioner's mining operations during the periods July 1, 1961 to December 31, 1961 and January 1, 1962 to December 31, 1962 was filed in this Court beyond two years from the date of payment of the specific tax, the right of petitioner Acoje Mining Co. Inc., to claim refund thereof has already prescribed.

In the light of the above, petitioner is entitled to the refund of the following amounts:

1. Under CTA Case No. 1557:-

₱15,843.94 and ₱8,460.55, representing 25% of the specific tax paid on fuel and lubricating oils used in its mining operations during the periods January 1, 1963 to December 31, 1963 and January 1, 1964 to June 30, 1964, respectively;

2. Under CTA Case No. 1701:-

₱38,327.78, representing 25% of the specific tax paid on fuel and lubricating oils used in its mining operations during the period January 1, 1965 to June 30, 1965; and

3. Under CTA Case No. 1712:-

₱8,298.18, representing 25% of the specific tax paid on fuel and lubricating oils used in petitioner's mining operations during the period July 1, 1964 to December 3, 1964.

ACCORDINGLY, respondent Commissioner of Internal Revenue is hereby ordered to refund or grant a tax credit to petitioner Acoje Mining Co. Inc., the sums of ₱15,643.94, ₱8,460.55, ₱38,327.78 and ₱8,298.18 or a total of ₱70,730.45. Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 18, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge