REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEPANTO CONSOLIDATED MINING COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4172

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :
SEP 01 1994

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

# DECISION

This is a judicial claim for refund filed by petitioner seeking to recover 25% of the specific taxes paid on various manufactured oils and fuels pursuant to the provision of Sec. 5 of Republic Act No. 1435 in the amount of P1,056,316.90 covering the period of March 1985 to February 1987.

The facts of the case are not disputed. Respondent either admits or merely denies for lack of knowledge the material allegations in the petition and raises defenses that are legal in nature.

Petitioner is a domestic corporation duly organized and existing under the Philippine laws. It is a licensed mining firm with Mining Lease Contract Nos. MRD-353, 354, and 355 (Exhs. "A", "A-1", "A-2") duly entered into with the Ministry of Natural Resources.

In order to carry out its mining business, petitioner purchased petroleum products from various oil companies which were subjected to specific taxes under Secs. 153 and 156 (formerly 142 and 145) of the National Internal Revenue Code. These specific taxes were paid and passed on to the petitioner.

On June 15, 1987, petitioner filed a letter claim for a refund or tax credit (Exh. "I") with the Bureau of Internal Revenue asking for the recovery of 25% of the specific taxes paid on refined and manufactured mineral oils, motor fuels and diesel fuel oils during the period March 1985 to February 1987 in the amount of P1,056,316.90, computed as follows:

| | Volume (Liters) | ST Rate Per Liter | Specific Taxes Paid | Refundable 25% |
|---|---|---|---|---|
| Lepanto Mine Division | | | | |
| Diesel - Mar. to Dec. 1985 | 1,524,748.20 | No ST | | |
| Jan. to May 21, 1986 | 621,036.60 | No ST | | |
| May 22 to Dec. 1986 | 894,638.70 | P0.523 | P 467,896.04 | P 116,974.01 |
| Regular | | | | |
| Gasoline - Mar. to Dec. 1985 | 106,253.60 | 1.290 | 137,067.14 | |
| Jan. to May 21, 1986 | 54,923.00 | 1.575 | 86,503.73 | |
| May 22 to Dec. 1986 | 81,781.70 | 2.489 | 212,959.55 | |
| | 242,958.30 | | 436,530.42 | 109,132.61 |
| Extra | | | | |
| Gasoline - Mar. to Dec. 1985 | 12,457.60 | 1.185 | 14,762.26 | |
| Jan. to May 21, 1986 | 5,867.00 | 1.490 | 8,741.83 | |
| May 22 to Dec. 1986 | 9,856.70 | 2.489 | 24,533.33 | |
| | 28,181.30 | | 48,037.42 | 12,009.36 |
| Lube-oil - Mar. to Dec. 1985 | 285,349.00 | 4.50 | 1,284,070.50 | |

| | Volume (Liters) | ST Rate Per Liter | Specific Taxes Paid | Refundable 25% |
|---|---|---|---|---|
| Lepanto Mine Division | | | | |
| Jan. to May 21, 1986 | 120,931.00 | 4.50 | 544,189.50 | |
| May 22 to Dec. 1986 | 187,192.00 | 4.50 | 842,364.00 | |
| | 593,472.00 | | 2,670,624.00 | 667,656.00 |
| Bunker - Mar. to Dec. 1985 | 50,650.00 | 0.25 | 12,662.50 | |
| Jan. to May 21, 1986 | 126,212.00 | 0.443 | 55,911.92 | |
| May 22 to Dec. 1986 | 187,192.00 | 0.511 | 166,491.47 | |
| | 364,054.00 | | 235,065.89 | 58,766.47 |
| Aviation Turbo Jet Fuel - Mar. to Dec. 1985 | 911.00 | 1.20 | 1,093.20 | 273.30 |
| LPG - Mar. to Dec. 1985 | 46,311.8 K | 0.625/K | 28,944.88 | |
| Jan. to May 21, 1986 | 23,972.4 K | 0.029/K | 695.20 | |
| May 22 to Dec. 1986 | 45,994.3 K | 1.247/K | 57,354.89 | |
| | | | 86,994.97 | 21,748.74 |
| Aviation Department | | | | |
| Aviation Turbo Jet Fuel - Mar. to Dec. 1985 | 83,290.00 | 1.20 | 99,948.00 | |
| Jan. to May 21, 1986 | 43,782.00 | 1.509 | 66,067.04 | |
| May 22 to Dec. 1986 | 67,188.00 | 2.567 | 172,471.60 | |
| | 194,260.00 | | 338,486.64 | 69,756.41 |
| T O T A L | | | P4,225,267.58 | P1,056,316.90 |

(see Exh. "H")

This claim for refund was anchored on Sec. 5 of Republic Act No. 1435 and the Decision of the Supreme Court in the case of Insular Lumber Co. v. Court of Tax Appeals, G.R. No. L-31057, May 29, 1981. And was supported by Affidavits of its Senior Vice-President and four (4) disinterested persons (Exhs. "I-1" to "I-5") attesting to the fact that the petroleum products purchased from various oil companies were exclusively and actually used in the exploitation and operations of its mining claims.

Respondent has not acted on the claim filed by petitioner. Thus, in order to toll the running of the two-year prescriptive period under Sec. 230 (formerly 292) of the National Internal Revenue Code, petitioner filed the instant petition for review on July 1, 1987 praying for the refund of P1,056,316.90; a 20% interest per annum; and the cost of suit.

Respondent in his Answer, and by way of special and affirmative defenses, raises the following:

a. the refund privilege under Sec. 5 of Republic Act No. 1435 has either expired or is deemed superseded and/or repealed with the issuance and/or promulgation of any of P.D. No. 314; Local Tax Code of 1974; P.D. No. 426; P.D. No. 711; P.D. Nos. 1158 and 1158-A; and P.D. No. 1955;

b. the government cannot be made to pay interest on the amount to be refunded (**Atlas Fertilizer Corp. vs.** CIR, 100 SCRA 556; CIR vs. St. Paul's **Hospital of Iloilo,** 105 Phil. 1319);

c. it is incumbent upon petitioner to show that it has complied with the provisions of Secs. 243 and 246 (now 230) of the 1986 Tax Code; and

d. claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. CIR, 67 SCRA 357).

The only issue to be resolved by this Court is whether or not petitioner is still entitled under Sec. 5 of Republic Act No. 1435 to the refund of 25% of the specific taxes paid on petroleum products taxed under Secs. 153 and 156 (formerly Secs. 142 and 145) of the 1977 Tax Code.

Respondent maintains, in his Memorandum, that the refund privilege under Sec. 5 of RA No. 1435 was withdrawn by promulgation of RA No. 1955 which became effective on October 15, 1984.

We disagree with the respondent.

Sec. 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.

It is explicit from the above-quoted law that miners and forest concessionaires were given a refund privilege equivalent to 25% of the specific taxes paid on manufactured oils actually used in their operations. The rationale behind this grant was explained through a resolution by the Supreme Court in the case of **Commissioner of Internal Revenue v. Atlas Consolidated Mining and Development Corp., et al.,** G.R. No. 93601, Nov. 12, 1990:

> 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.

Further, in the case of **Commissioner of Internal Revenue v. 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: "(t)o our mind, the proviso in Section 5 standing alone is enough basis for the grant of refund. xxx."

Finding for the petitioner, the only thing left to be determined by this Court is the amount of specific taxes to be refunded by respondent Commissioner of Internal Revenue in favor of petitioner.

It should be made clear that petitioner asked for the refund of P1,056,316.90 covering purchases of manufactured oils from March 1985 to February 1987. However, since the Highway Special Fund (a fund on which the specific taxes on petroleum products accrued) continued its existence only up to 1985, petitioner can only be accorded a refund privilege on its purchases of refined and manufactured oils for the year 1985 (see **Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corporation**, G.R. Nos. 83583-84, *Resolution* dated March 25, 1992). It follows, therefore, that the partial refund of specific taxes paid on petroleum products by petitioner from January 1986 to February 1987 (Exhs. "B-176" to "B-468", "D-1" to "D-118", "F-14" to "F-27", "F-42" to "F-46", "G-233" to "G-515") is no longer covered by the refund privilege under Sec. 5 of RA 1435.

Further, this Court would like to emphasize that the judicial remedy for filing a claim for refund should be made within a two-year period from the date of payment of the tax pursuant to the provision of Sec. 230 (formerly Sec. 292) of the Tax Code.

In computing for the prescriptive period, We shall adopt our ruling in the case of **Aras-asan Timber Co., Inc. v. Commissioner of Internal Revenue,** CTA Case No. 3524, December 17, 1993, where We followed Section 135 of the Tax Code as a manner in paying for the specific tax. We quote:

> 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 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, except lubricating oil and grease shall be paid within fifteen (15) days from the date of removal thereof from the place of production.
>
> It is therefore evident that the manufacturer of petroleum product has up to 15 days from the date of its removal 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 on the date of its removal from the place of production.

Inasmuch as the petition for review was filed only on July 1, 1987, petitioner is then bound by prescriptive period. The 25% refund of specific taxes paid on lubricating oils purchased prior to July 1, 1985 (two years prior to the filing of the petition) have prescribed since the specific tax on lubricating oils and grease are deemed paid from the date of removal. All other purchases of manufactured petroleum products such as diesel, gasoline, bunker fuel and aviation gas, where the specific taxes are collected, are deemed paid on the 15th day following the date of its removal. Thus, petitioner's purchases of diesel, gasoline, bunker fuel and aviation gas prior to June 16, 1985 have prescribed (Exhs. "D-119" to "D-189" and "G-1" to "G-55") and those purchases of said oils on June 16, 1985 are deemed paid on July 1, 1985 which is still within the two-year period to claim for a refund.

From among the exhibits presented by petitioner, this Court excluded in the computation:

1. Exhs. "B-1" to "B-175" and Exhs. "F-3" to "F-41" in so far as the purchases pertain to diesel fuel oil since petitioner did not pay specific tax thereon (see Exh. "H");

2. Exhs. "D-156" to "D-192" for the reason that said documents were mere reproduction of Exhs. "D-119" to "D-155"; and

3. Exhs. "G-1" to "G-232" on the ground that petitioner failed to give the proper conversion rate of LPG in pounds to liters.

What can be granted to petitioner Lepanto are the following:

| Invoice No. | Date Shipped | Exh. | Gasoline | Oils and Lubricants | Bunker Fuel Oil | Aviation Gasoline |
|---|---|---|---|---|---|---|
| 32787 | 06-28-85 | B-1 | 3,000 | | | |
| 41029 | 07-09-85 | B-13 | 3,000 | | | |
| 41064 | 07-12-85 | B-21 | 3,000 | | | |
| 41120 | 07-19-85 | B-25 | 3,000 | | | |
| 41194 | 07-19-85 | B-28 | 3,000 | | | |
| 41198 | 07-19-85 | B-30 | 3,000 | | | |
| 41324 | 07-31-85 | B-41 | 3,000 | | | |
| 41354 | 08-02-85 | B-47 | 3,000 | | | |
| 44755 | 08-22-85 | B-54 | 3,000 | | | |
| 44763 | 08-22-85 | B-55 | 3,000 | | | |
| 44765 | 08-22-85 | B-56 | 3,000 | | | |
| 45034 | 09-12-85 | B-62 | 3,000 | | | |
| 46565 | 10-02-85 | B-83 | 3,000 | | | |
| 46604 | 10-04-85 | B-88 | 3,000 | | | |
| 46613 | 10-04-85 | B-89 | 2,987 | | | |
| 46619 | 10-05-85 | B-90 | 2,960 | | | |
| 46634 | 10-07-85 | B-93 | 2,970 | | | |
| 48607 | 10-15-85 | B-104 | 2,975 | | | |
| 48611 | 10-15-85 | B-105 | 3,953 | | | |
| 48666 | 10-18-85 | B-110 | | | 10,000 | |
| 48754 | 10-28-85 | B-116 | 3,000 | | | |
| 48752 | 10-28-85 | B-117 | 3,000 | | | |
| 48772 | 10-30-85 | B-118 | 2,985 | | | |
| 48795 | 11-02-85 | B-120 | 3,000 | | | |
| 48819 | 11-04-85 | B-125 | | | 10,000 | |
| 48878 | 11-07-85 | B-127 | | | 10,000 | |
| 48927 | 11-11-85 | B-131 | | | 10,000 | |
| 49006 | 11-15-85 | B-139 | 3,000 | | | |
| 49011 | 11-15-85 | B-140 | 4,000 | | | |
| 49502 | 11-19-85 | B-142 | 3,000 | | | |
| 49532 | 11-21-85 | B-145 | | | 10,000 | |
| 49605 | 11-25-85 | B-148 | 3,000 | | | |

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| Invoice No. | Date Shipped | Exh. | Gasoline | Oils and Lubricants | Bunker Fuel Oil | Aviation Gasoline |
|---|---|---|---|---|---|---|
| 49628 | 11-28-85 | B-150 | 3,000 | | | |
| 49627 | 11-28-85 | B-153 | 3,980 | | | |
| 49743 | 12-06-85 | B-159 | | | 9,000 | |
| 49806 | 12-10-85 | B-162 | 3,000 | | | |
| 49802 | 12-12-85 | B-164 | | | 9,000 | |
| 49895 | 12-16-85 | B-168 | | | 9,000 | |
| 18794 | 03-07-85 | D-119 | | | | 1,189.00 |
| 18796 | 03-07-85 | D-120 | | | | 994.00 |
| 18958 | 03-11-85 | D-122 | | | | 1,617.00 |
| 18964 | 03-13-85 | D-123 | | | | 1,018.70 |
| 18967 | 03-14-85 | D-124 | | | | 1,041.60 |
| 18968 | 03-16-85 | D-125 | | | | 1,115.70 |
| 18992 | 03-28-85 | D-126 | | | | 693.30 |
| 18993 | 03-28-85 | D-127 | | | | 1,299.00 |
| 17256 | 04-03-85 | D-128 | | | | 816.80 |
| 17258 | 04-03-85 | D-129 | | | | 813.40 |
| 17261 | 04-04-85 | D-130 | | | | 771.30 |
| 17262 | 04-04-85 | D-131 | | | | 381.70 |
| 17266 | 04-07-85 | D-132 | | | | 736.00 |
| 17282 | 04-13-85 | D-133 | | | | 629.30 |
| 17336 | 04-11-85 | D-134 | | | | 1,030.00 |
| 17292 | 04-18-85 | D-135 | | | | 781.00 |
| 17298 | 04-20-85 | D-136 | | | | 602.50 |
| 17462 | 04-26-85 | D-137 | | | | 914.40 |
| 17464 | 04-26-85 | D-138 | | | | 545.20 |
| 17479 | 05-01-85 | D-139 | | | | 958.20 |
| 17480 | 05-01-85 | D-140 | | | | 813.50 |
| 17487 | 05-07-85 | D-141 | | | | 400.00 |
| 17492 | 05-10-85 | D-142 | | | | 780.70 |
| 17494 | 05-10-85 | D-143 | | | | 1,466.00 |
| 17701 | 05-14-85 | D-144 | | | | 1,057.00 |
| 17709 | 05-16-85 | D-145 | | | | 1,166.50 |
| 17715 | 05-18-85 | D-146 | | | | 658.60 |
| 17733 | 05-27-85 | D-147 | | | | 960.40 |
| 17739 | 05-31-85 | D-148 | | | | 776.00 |
| 19001 | 06-11-85 | D-149 | | | | 799.90 |
| 19002 | 06-11-85 | D-150 | | | | 1,446.50 |
| 19007 | 06-14-85 | D-151 | | | | 351.50 |
| 19010 | 06-15-85 | D-152 | | | | 848.30 |
| 19014 | 06-19-85 | D-153 | | | | 784.50 |
| 19022 | 06-24-85 | D-154 | | | | 922.00 |
| 19028 | 06-26-85 | D-155 | | | | 929.50 |
| 19939 | 11-03-85 | D-193 | | | | 841.00 |
| 19962 | 11-05-85 | D-194 | | | | 1,335.90 |
| 20004 | 11-08-85 | D-195 | | | | 1,347.10 |
| 20011 | 11-11-85 | D-196 | | | | 1,422.00 |

| Invoice No. | Date Shipped | Exh. | Gasoline | Oils and Lubricants | Bunker Fuel Oil | Aviation Gasoline |
|---|---|---|---|---|---|---|
| 20016 | 11-14-85 | D-197 | | | | 1,015.90 |
| 20020 | 11-18-85 | D-198 | | | | 1,480.20 |
| 20029 | 11-25-85 | D-199 | | | | 747.00 |
| 20034 | 11-26-85 | D-200 | | | | 1,114.50 |
| 20040 | 11-29-85 | D-201 | | | | 1,046.90 |
| 19752 | 10-02-85 | D-202 | | | | 1,471.30 |
| 19708 | 10-04-85 | D-203 | | | | 805.80 |
| 19712 | 10-07-85 | D-204 | | | | 1,455.00 |
| 19721 | 10-16-85 | D-205 | | | | 1,145.50 |
| 19723 | 10-18-85 | D-206 | | | | 1,415.00 |
| 19724 | 10-19-85 | D-207 | | | | 713.30 |
| 19730 | 10-23-85 | D-208 | | | | 797.80 |
| 19738 | 10-28-85 | D-209 | | | | 1,376.40 |
| 19743 | 10-30-85 | D-210 | | | | 1,014.90 |
| 19745 | 10-31-85 | D-211 | | | | 790.10 |
| 19039 | 07-03-85 | D-212 | | | | 850.70 |
| 19040 | 07-06-85 | D-213 | | | | 740.00 |
| | 07-15-85 | D-214 | | | | 1,235.60 |
| 19203 | 07-19-85 | D-215 | | | | 1,066.00 |
| 19212 | 07-24-85 | D-216 | | | | 1,284.10 |
| 19225 | 08-01-85 | D-217 | | | | 961.50 |
| 19248 | 08-16-85 | D-218 | | | | 1,033.20 |
| 19240 | 08-09-85 | D-219 | | | | 1,173.50 |
| 19249 | 08-17-85 | D-220 | | | | 1,774.10 |
| 19435 | 08-20-85 | D-221 | | | | 654.00 |
| 19461 | 09-02-85 | D-223 | | | | 1,242.00 |
| 19463 | 09-03-85 | D-224 | | | | 1,692.80 |
| 19493 | 09-16-85 | D-225 | | | | 847.90 |
| 19496 | 09-19-85 | D-226 | | | | 799.00 |
| 19704 | 09-24-85 | D-227 | | | | 380.00 |
| 19706 | 09-27-85 | D-228 | | | | 1,036.30 |
| 20044 | 12-03-85 | D-229 | | | | 1,398.70 |
| 20049 | 12-07-85 | D-230 | | | | 872.00 |
| 20353 | 12-11-85 | D-231 | | | | 1,805.00 |
| 20357 | 12-12-85 | D-232 | | | | 719.00 |
| 20365 | 12-17-85 | D-233 | | | | 1,423.70 |
| 20367 | 12-18-85 | D-234 | | | | 1,010.60 |
| 20369 | 12-21-85 | D-235 | | | | 870.00 |
| 20389 | 12-29-85 | D-236 | | | | 840.10 |
| 20390 | 12-29-85 | D-237 | | | | 841.00 |
| 20384 | 12-26-85 | D-238 | | | | 680.60 |
| 20499 | 12-27-85 | D-239 | | | | 986.00 |
| 28562 | 08-16-85 | F-2 | | 630 | | |
| 19073 | 08-06-85 | F-4 | | 1,260 | | |
| 28915 | 11-05-85 | F-11 | | 630 | | |
| 49551 | 12-14-85 | F-12 | | 1,260 | | |

| Invoice No. | Date Shipped | Exh. | Gasoline | Oils and Lubricants | Bunker Fuel Oil | Aviation Gasoline |
|---|---|---|---|---|---|---|
| 14503 | 03-15-85 | F-28 | | 210 | | |
| 03896 | 03-08-85 | F-30 | | 210 | | |
| 14541 | 04-23-85 | F-34 | | 210 | | |
| 14553 | 05-07-85 | F-35 | | 210 | | |
| 14549 | 05-03-85 | F-36 | | 420 | | |
| | T O T A L | | 92,810 | 5,040 | 77,000 | 81,662.00 |

COMPUTATION OF PARTIAL REFUND
Based on Secs. 1, 2 and 5 of RA 1435

| Manufactured Oils | Quantity | Specific Tax Rate | Specific Tax |
|---|---|---|---|
| Gasoline | 92,810.00 L | 0.08/L | P 7,424.80 |
| Oils and lubricants | 5,040.00 L | 0.07/L | 352.80 |
| Bunker fuel oil (77,000 x 0.9439 ÷ 1,000) | 72.68 MT | 1.00/MT | 72.68 |
| Aviation gasoline | 81,662.00 L | 0.08/L | 6,532.96 |
| Total specific taxes paid under Secs. 1 & 2 | | | P14,383.24 |
| Multiply by percentage refundable under Sec. 5 | | | x 25% |
| AMOUNT REFUNDABLE | | | P 3,592.81 |

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 v. Prieto, 112 Phil 907; Commissioner v. Asturias Sugar Central, 2 SCRA 1140; Commissioner of Internal Revenue v. American Rubber Co., 18 SCRA 842; Atlas Fertilizer Corporation v. Commissioner of Internal Revenue, 100 SCRA 556; Shell Philippines, Inc. v. 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 v. Añover**, 08473-AP, **August** 23, 1979). Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions (**Victorias Milling Co., Inc. v. 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, supra).

In the same manner, petitioner's prayer for the cost of suit cannot be awarded. It is an elementary rule that the government shall not be liable for the costs of suits unless otherwise provided by law (**Sec. 1 Rule 142, Revised Rules of Court**; Collector of **Internal Revenue v. Convention of Philippine Baptist Churches and the Court of Tax Appeals**, 2 SCRA 10).

WHEREFORE, the petition for review is hereby GRANTED. Respondent is hereby ordered to REFUND in favor of petitioner the amount of P3,592.81 representing 25% specific taxes paid on locally purchased gasoline, oils and lubricants, bunker fuel oils and aviation gasoline pursuant to the provision of Section 5 of Republic Act No. 1435.

No pronouncement as to costs.

SO ORDERED.

ERNESTO A. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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 VII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals