502 Phil. 511

SECOND DIVISION

[G.R. No. 122213, July 28, 2005]

CDCP MINING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND THE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

TINGA, J.:

This petition for review, concerning a claim for tax refund, assails a *Decision* rendered by the Court of Appeals Former First Division[1] dated 9 November 1994, which modified a *Decision*[2] dated 9 August 1994 of the Court of Tax Appeals (CTA). Significantly, the Court of Appeals' *Decision* was assailed in two separate petitions for review. The first, filed by Commissioner of Internal Revenue (Commissioner), was docketed as G.R. No. 122161, while the second, lodged by herein petitioner CDCP Mining Corporation (CDCP), was docketed as G.R. No. 122213.

In a *Decision*[3] dated 1 February 1999 in G.R. No. 122161 in consolidation with G.R. No. 120991,[4] the Court's First Division granted the Commissioner's petition in G.R. No. 122161, set aside the aforementioned Court of Appeals Decision, and reinstated the CTA's *Decision*. The judgment in G.R. No. 122161 thus affirmed the CTA's ruling that CDCP was entitled to a tax refund of Thirty Eight Thousand Four Hundred Sixty One Pesos and Eighty Six Centavos (P38,461.86). Said ruling, which had long become final, is wildly disparate from CDCP's present claim that it is entitled to a tax refund of Three Million Two Hundred Twenty Six Thousand Eight Hundred Nine Pesos and Fifteen Centavos (P3,226,809.15).

The parties have not filed any pleading since 1996, or one year before the promulgation of the *Decision* in G.R. No. 122161. Neither have they made the Court aware of any reason that the present petition is moot, though it takes no great stretch of imagination to assume their inaction was precisely due to the resolution of their conflicting claims by virtue of the *Decision* in G.R. No. 122161. Nonetheless, a brief ruling on the merits in this case would suffice, consistent with our *Decision* in G.R. No. 122161, which after all was but an affirmation of a long-standing doctrine applied by this Court in resolution of the legal question involved.

We can refer to the *Decision* in G.R. No. 122161 for a summation of the factual background of this case.

> "During the period from July 1, 1980 to June 30, 1982, [CDCP] purchased from Mobil Oil Philippines, Inc. and Caltex (Philippines), Inc. quantities of manufactured mineral oil, motor fuel, diesel and fuel oil, which [CDCP] used exclusively in the expoitation (sic) and operation of its mining concession.

On September 06, 1982, [CDCP] filed with the Commissioner of Internal Revenue, a claim for refund in the amount of P9,962,299.71, representing 25% of the specific taxes collected on refined and manufactured mineral oil, motor fuel and diesel fuel that [CDCP] utilized in its operations as mining concessionaire, totalling (sic) P39,849,198.47.

As there was no immediate action on the claim, to toll the prescriptive period, on October 08, 1982, [CDCP] filed with the Court of Tax Appeals (CTA), a petition for review of the presumed decision of the Commissioner denying such claim.

On January 2, 1984, the Commissioner of Internal Revenue actually denied [CDCP's] claim for refund.

After due trial, on August 09, 1994, the Court of Tax Appeals rendered a decision granting [CDCP's] claim for refund only in the amount of P38,461.86, without interest. The tax court ruled that [CDCP] is entitled to a refund of the specific taxes that it paid during the period September 23, 1980 to June 30, 1982, prior to which the claim had prescribed, but at the rates specified under Sections 1 and 2 of R.A. No. 1435, without interest."

The dispositive portion of the Court of Tax Appeals (CTA) decision reads:

> "WHEREFORE, the respondent Commissioner of Internal Revenue is hereby ordered to refund in favor of petitioner CDCP Mining Corporation, the sum of P38,461.86 without interest, equivalent to 25% partial refund of specific taxes paid on its purchases of gasoline, oils and lubricants, diesel, fuel oils, and kerosene 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 pronouncements as to costs."

[CDCP] filed a petition for review before the CA, which on November 9, 1994, rendered a decision modifying that of the CTA, to wit:

> "WHEREFORE, the Court MODIFIES the appealed decision of the Court of Tax Appeals, and orders the Commissioner of Internal Revenue to refund to petitioner . . . CDCP Mining Corporation the amount of P1,598,675.25, without interest, equivalent to 25% refund of specific taxes paid on its purchases during the period September 23, 1980 to June 30, 1982, of manufactured oil and other fuel and diesel fuel oil, pursuant to Section 5 of Republic Act No. 1435, in relation to Sections 153 and 156 of the Tax Code."[5]

A brief explanation of the statutory predicates is in order. Republic Act (R.A.) No. 1435,[6] particularly Sections 1 and 2 thereof, introduced amendments to the 1939 Tax Code on the rates of specific taxes on manufactured oils, fuels, and diesel fuel

oil.[7] At the same time, Section 5 of the same law, which was invoked by CDCP, provided that whenever miners or forest concessionaires used those manufactured oils, fuels and diesel fuel oils in their operations, they were entitled to a refund of twenty-five percent (25%) of the specific tax paid thereon upon submission of proof of actual use.[8]

Both the CTA and the Court of Appeals held that CDCP was entitled to such twenty-five percent (25%) refund on the specific taxes paid for the manufactured oils it had used for the period beginning 23 September 1980 until June 30, 1982. However, the variance between the decisions of both courts lies in whether the twenty-five percent (25%) refund should be computed based on the specific tax rates as prescribed in Sections 1 and 2 of R.A. No. 1435, or on the rates as prescribed under Sections 153 and 156 of the National Internal Revenue Code of 1977 (1977 NIRC), the law prevailing at the time of the actual use by CDCP of the manufactured oils. The CTA had based the computation of the refundable amount on the rates under Sections 1 and 2 of R.A. No. 1435, while the appellate court applied the provisions of the 1977 NIRC, thus accounting for the substantial disparity in the amounts ordered refunded by the two courts.

The *Decision* in G.R. No. 122161 does not narrate the exact arguments raised therein by the Commisisoner, but we can presume that they are similar to what he asserts in his *Comment* in the instant petition. Here, he argues that the increased rates of specific tax pursuant to the 1977 NIRC cannot apply to CDCP's claim for refund under R.A. No. 1435, as such would run contrary to the doctrine laid down by this Court in *CIR v. Rio Tuba Nickel Mining Corp.*[9] The Court ruled therein that the basis for the refund should be "the amount deemed paid under Sections 1 and 2 of R.A. No. 1435," or in effect, the rate as prescribed under the 1939 Tax Code.[10]

On the other hand, CDCP in this present petition assails the appellate court's *Decision* on a wholly different reason. CDCP proceeds from the premise that the Court of Appeals correctly applied the provisions of the 1977 NIRC in ascertaining the basis for the refund due to CDCP. However, it points out that the rates of specific tax on manufactured oils under the 1977 NIRC were increased effective 21 March 1981 by Executive Order (E.O.) No. 262 issued by then President Marcos. According to CDCP, the error of the Court of Appeals consists of its failure to take into account the amendatory E.O. No. 262, and applying only one set of rates for the period in question, 1 July 1980 to June 30, 1982. CDCP argues that while the Court of Appeals' computation was correct for the period 23 September 1980 up to 20 March 1981, it failed to utilize the new rates under E.O. No. 262 in computing the refund due for the manufactured oils purchased for the period of 21 March 1981 up to 30 June 1982.

The present petition's lack of merit owes to the mistaken notion that the 1977 NIRC applies at all to the computation of the refund under R.A. No. 1435.

Our *Decision* in G.R. No. 122161 rejected the proposition that the higher rates under the 1977 NIRC is applicable, and hinged this conclusion on settled jurisprudence. To grant the petition would entail reversing not only our *Decision* in G.R. No. 122161, but a judicial precedent long entrenched by *stare decisis*. We quote from our ruling in G.R. No. 122161: