

## FIRST DIVISION

**[ G.R. No. 122161, February 01, 1999 ]**

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

**[G.R. NO. 120991. FEBRUARY 1, 1999]**

**SIRAWAI PLYWOOD & LUMBER CO., INC., PETITIONER, VS. COURT OF APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.**

### D E C I S I O N

**MARTINEZ, J.:**

The Court *motu proprio* consolidates G.R. Nos. 122161 and 120991 as the issues raised are similar.

The undisputed facts as found by the Court of Appeals (CA) are as follows:

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

On September 06, 1982, (private respondent) 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 (private respondent) 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, (private respondent) 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 (private respondent's) claim for refund.

After due trial, on August 09, 1994, the Court of Tax Appeals rendered a decision granting (private respondent's) claim for refund only in the amount of P38,461.86, without interest. The tax court ruled that (private respondent) 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."<sup>[1]</sup>

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 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."<sup>[2]</sup>

Private respondent filed a petition for review before the CA, which on November 9, 1994, rendered a decision modifying that of the CTA, to wit:<sup>[3]</sup>

"WHEREFORE, the Court MODIFIES the appealed decision of the Court of Tax Appeals, and orders the Commissioner of Internal Revenue to refund to petitioner (*private respondent*) 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."

Both parties filed their respective motions for reconsideration. When the CA denied both motions,<sup>[4]</sup> petitioner filed a petition for review on *certiorari*.

#### G.R. No. 120991

"This is a petition for review of the decision dated August 2, 1994 of the Court of Tax Appeals (CTA Case No. 3554) granting the claim for partial tax refund of petitioner Sirawai Plywood and Lumber Co., Inc., under the provisions of Section 5 of Republic Act No. 1435 but reducing the amount of specific taxes to be refunded by respondent Commissioner of Internal Revenue from Ninety Nine Thousand Two Hundred Twenty Six and 17/100 Pesos (P99,226.17) to One Thousand One Hundred One and 15/100 Pesos (P1,101.15), without interest.

"The petitioner alleges that it is a duly licensed forest concessionaire with a Timber License Agreement duly entered into with the Ministry of Natural Resources; that during the period beginning July 1, 1980 to May 31, 1981, 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; that the said oil companies paid and passed on to the petitioner the specific taxes imposed under Sections 153 and 156 (formerly Sections 142 and 145) of the 1977 NIRC on refined and manufactured mineral oils, motor fuels and

diesel fuel oils that said company sold to petitioner; that in accordance with the provisions of Republic Act No. 1435 and the decision of the Supreme Court in ***Insular Lumber Co. v. Court of Tax Appeals*** (G.R. No. L-31057, May 29, 1981), petitioner filed with the respondent Commissioner on November 8, 1982, a claim for refund in the amount of Ninety Nine Thousand Two Hundred Twenty Six and 17/100 Pesos (P99,226.17) representing twenty five percent (25%) of the specific taxes collected on the refined and manufactured mineral oils, motor fuels, and diesel fuel oils that petitioner utilized in its operations as forest concessionaire as computed. In support of the claim for refund, the petitioner submitted to respondent Commissioner the affidavits of petitioner and four disinterested persons attesting to the fact that the refined and manufactured minerals oils, motor fuels, and diesel fuel oils that the petitioner purchased from various oil companies were actually used by the petitioner in the exploitation and operation of its forest concession.

"On December 13, 1982, the petitioner filed with the respondent Court of Tax Appeals a Petition for Review of the decision dated December 1, 1982 entitled '*Sirawai Plywood and Lumber Co., Inc. v. Commissioner of Internal Revenue*,' docketed as CTA No. 3554 to prevent the lapse of the two (2) years prescriptive period."

On August 2, 1994, the respondent CTA rendered a decision, the dispositive portion of which follows:

"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."<sup>[5]</sup>

On appeal, the CA denied the same for lack of merit.<sup>[6]</sup> Hence, this petition for review on *certiorari*.

There is no dispute that the tax refund-claimants are indeed entitled to the 25% refund under Section 5 of R.A. 1435.<sup>[7]</sup> The only issue in both cases is whether the amount to be refunded should be based on the rates of specific tax under the 1939 Tax Code as amended by R.A. 1435 or should it be based on the higher rates under the 1977 Tax Code as amended by P.D. 1672 and E.O. 672. Stated differently, does the refund of "25% of the specific tax paid thereon" under Section 5 of R.A. 1435 refer to the rates mentioned in Sections 1 and 2 of R.A. 1435<sup>[8]</sup> as originally enacted and regardless of any amendments thereto or should it be based on the rate of tax deemed paid, thus, contemplating any subsequent amendments including the changes introduced under Sections 153 and 156 of the Tax Code.<sup>[9]</sup>

Sections 1 and 2 of R.A. 1435 amended Sections 142 and 145 of the 1939 Tax Code by changing the rates of tax for certain fuel and oil products. Section 5 of said Republic Act, which reads:

"The proceeds of the additional tax on the manufactured oils shall accrue to the road and bridges 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 Works and 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." (emphasis supplied).

allows a tax refund of "25% of the specific tax paid thereon", subject to certain conditions. In 1977, P.D. 1158 codified all existing tax laws wherein Sections 142 and 145 of the Tax Code, as amended by Sections 1 and 2 of R.A. 1435 were re-numbered to Sections 153 and 156. Later, the latter sections were amended by P.D. 1672 and subsequently by E.O. 672<sup>[10]</sup> wherein the tax rates for certain oil and fuel products were further increased.

A partial refund under Section 5, R.A. 1435 is in the nature of a tax exemption, and therefore, must be construed *strictissimi juris* against the grantee.<sup>[11]</sup> As correctly argued by the Commissioner, there is nothing in Section 5 of R.A. 1435 which authorizes a tax refund based on the higher rates under Sections 153 and 156 of the 1977 Tax Code. It should be noted that Sections 1 and 2 of R.A. 1435 simply amended Sections 142 and 145 of the Tax Code. Section 5 was not incorporated in the Tax Code. It is no different when Section 1 of P.D. 1672 amended the re-numbered Section 153 of the Tax Code.

The issue raised herein had already been settled by the Court *en banc's* ruling laid down in the recent case of *Davao Gulf Lumber Corporation v. CIR and CA*,<sup>[12]</sup> where the Court said that there is no " expression of a legislative will (in R.A. 1435) authorizing a refund based on the higher rates claimed by petitioner." Although that case was not cited by the parties, it being newly promulgated at the time of the submission of their respective memorandum,<sup>[13]</sup> yet a scrutiny of the relevant jurisprudence discussed therein and those cited by the parties in this case are the same. Said cases include: *Insular Lumber, Co. v. CTA*;<sup>[14]</sup> *CIR v. Rio Tuba Nickel Mining Corporation and CTA*<sup>[15]</sup> and the resolution modifying it;<sup>[16]</sup> the two *Atlas cases of CIR v. Atlas Consolidated Mining and Development Corp., et. al.*,<sup>[17]</sup> and *CIR v. CA and Atlas Consolidated Mining and Development Corp., et. al.*<sup>[18]</sup> Applicable herein is the pronouncement in said *Davao Gulf*, to wit:

"When the law itself does not explicitly provide that a refund under RA 1435 may be based on higher rates which were non-existent at the time of its enactment, this Court cannot presume otherwise, A legislative lacuna cannot be filled by judicial fiat."