365 Phil. 572

SECOND DIVISION

[G.R. No. 120324, April 21, 1999]

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

D E C I S I O N

QUISUMBING, J.:

This petition for *certiorari* pursuant to Rule 45 of the Rules of Court seeks to set aside the May 18, 1995 Decision[1] of the Court of Appeals in CA-GR SP No. 34988, which affirmed the Decision of the Court of the Tax Appeals in CTA Case No. 3547. The Court of Tax Appeals disposed of the case as follows:

> "WHEREFORE, the respondent, COMMISSIONER OF INTERNAL REVENUE is hereby ordered to REFUND in favor of petitioner, PHILEX MINING CORP., the sum of P16,747.36 without interest, equivalent to 25% partial refund of specific taxes paid on its purchases of gasoline, oils and lubricants, diesel and fuel oils 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. No. 1435.
>
> No pronouncement as to costs.
>
> SO ORDERED."[2]

As set forth in the decision of the Court of Appeals, the following relevant incidents took place:

Petitioner as a domestic mining corporation had entered into a Mining License Agreement with the then Ministry of Natural Resources (now the Department of Environment and Natural Resources). From the period July 1, 1980 to December 31, 1981, petitioner purchased from several oil companies, refined and manufactured mineral oils, motor fuels, and diesel fuel oils. The specific taxes passed on to the petitioner amounted to two million, four hundred ninety-two thousand, six hundred seventy-seven pesos and twenty-two centavos (P2,492,677.22).

On October 22, 1982, pursuant to Republic Act No. 1435, petitioner filed a claim for refund with the Commissioner of Internal Revenue (CIR) for six hundred twenty-three thousand, one hundred sixty-nine pesos and thirty centavos (P623,169.30), representing the twenty-five (25%) percent of the specific taxes paid. The petitioner presented as evidence the affidavits of its president, purchasing manager, and two disinterested representatives of another licensed mining corporation. They averred that for the period July 1980 to December 1981, petitioner used refined and

manufactured mineral oils, motor fuels and diesel fuel oils in their business operation and paid the corresponding specific taxes.

Pending CIR action, on November 16, 1982, the petitioner filed a case for tax refund with the Court of Tax Appeals (CTA). The petitioner sought judgment ordering the CIR to pay as refund the amount of P623,169.30, with twenty (20%) percent interest per annum, plus the costs of suit.

On August 4, 1994, the CTA rendered its decision, quoted at the outset, granting the petitioner's claim, but only to the extent of sixteen thousand, seven hundred forty-seven pesos and thirty-six centavos (P16,747.36).

The Court of Appeals affirmed the decision of the CTA. Before us, the petitioner now cites the following alleged errors of the Court of Appeals:

"I. BASING THE REFUND ON THE AMOUNTS DEEMED PAID UNDER SECTIONS 1 AND 2 OF R.A. NO. 1435 IS CONTRARY TO THE SUPREME COURT'S EN BANC DECISION IN *INSULAR LUMBER CO. V. COURT OF TAX APPEALS* WHICH GRANTED THE CLAIM FOR PARTIAL REFUND ON THE BASIS OF SPECIFIC TAXES ACTUALLY PAID BY THE CLAIMANT WITHOUT QUALIFICATION OR LIMITATION.

"II. THE SAID RULING OF THE RESPONDENT COURT IGNORES THE INCREASE IN RATES IMPOSED BY SUCCEEDING AMENDATORY LAWS, UNDER WHICH THE PETITIONER PAID THE SPECIFIC TAXES ON MANUFACTURED AND DIESEL FUELS.

"III. IN MAKING THE RULING, THE RESPONDENT COURT WENT AGAINST THE ESTABLISHED RULES OF CONSTRUCTION IN THAT IT LENT ITSELF TO INTERPRETING SECTION 5 OF R.A. NO. 1435, WHEN THE CONSTRUCTION OF SAID LAW IS NOT NECESSARY.

"IV. SECTIONS 1 AND 2 OF R.A. NO. 1435 ARE NOT THE OPERATIVE PROVISIONS TO BE APPLIED BUT RATHER, SECTIONS 142 AND 145 (WHICH WOULD BECOME SECTIONS 153 AND 156) OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

"V. BASING THE COMPUTATION OF THE PARTIAL TAX REFUND ON SECTIONS 1 AND 2 OF R.A. NO. 1435, RATHER THAN ON SECTIONS 153 AND 156 OF THE NATIONAL INTERNAL REVENUE CODE, IS UNFAIR, ERRONEOUS, ARBITRARY, INEQUITABLE AND OPPRESSIVE."[3]

There are two clear-cut issues now raised before the Court:

1) Whether respondent court erred in basing the tax refund under Sections 1 and 2 of R.A. 1435, instead of the increased rates imposed by Sections 142 and 145 (which became Sections 153 and 156) of the National Internal Revenue Code, as amended.

2) Whether the respondent court erred in relying on the Supreme Court's decision in *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp.*[4] which allegedly runs counter to the Court's decision in *Insular Lumber Co. vs. Court of Tax Appeals*.[5]

R.A. 1435, "An Act to Provide Means for Increasing the Highway Special Fund," states that the specific taxes collected on gasoline and fuel which accrue to the Fund shall be used for the construction and maintenance of the highway system. Mining and lumber companies seldom use national highways. Since the gasoline and fuel purchased by mining and lumber companies are used within their own compounds and roads, and they do not benefit directly from the Fund, the government granted to these companies a 25% partial refund of specific taxes paid on purchases of manufactured diesel and fuel oils. This tax relief was embodied in Section 5 of R.A. No. 1435, which states:

> "*Sec. 5* of R.A. 1435 -- 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."

In 1977, P.D. 1158 codified all existing laws. 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.[6] Later, these sections were amended by P.D. No. 1672 and subsequently by E.O. 672 increasing the tax rates for certain oil and fuel products.[7] When the Highway Special Fund was abolished in 1985, the reason for the refund ceased to exist.

This Court, in a string of decisions, repeatedly held that the tax refund under R.A. 1435 is computed on the basis of the specific tax deemed paid under Sections 1 and 2, and not on the increased rates actually paid under the 1977 NIRC. Among these cases, are *CIR vs. Rio Tuba Nickel Mining Corporation,*[8] *CIR vs. CA and Atlas Consolidated Mining and Development Corp.,*[9] *en banc's* ruling in *Davao Gulf Lumber Corporation vs. CIR and CA,*[10] *Atlas Consolidated Mining and Development Corp. vs. CIR, et. al.*[11] and the recently decided consolidated cases of *CIR vs. C.A. and CDCP Mining Corporation*[12] and *Sirawai Plywood & Lumber Co., Inc. vs. CA and CIR..*[13]

The fundamental issues raised herein appear to be the very issues settled in the case of *Davao Gulf Lumber Corporation vs. CIR and CA.*[14] We are guided and constrained by this precedent in now reaching a similar resolution of the issues,