

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. HON. COURT OF APPEALS AND ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 106913. May 10, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The petitioner seeks the modification of the 19 February 1992 Decision[1] of the Court of Appeals in CA-G.R. SP No. 20005[2] which affirmed the decision of the Court of Tax Appeals granting the claims of private respondent Atlas Consolidated Mining and Development Corporation (Atlas) for tax refund under Section 5 of R.A. No. 1435.[3]

The facts of the case are summarized by the respondent Court of Appeals as follows:

"It appears that petitioner mining corporation, organized and existing under and by virtue of the laws of the Philippines, operates a concession in Toledo City, Cebu. It actually used and/or consumed tax paid extra gasoline and diesel fuel for the mining operation purchased on various dates from Mobil Oil Philippines as follows:

PERIOD SPECIFIC TAXES 25%

July-Dec. P1,008,648.15 P252,162.04

1976

Jan.-Dec. P1,834,357.27 P458,589.32

1977

Jan.-May P 798,573.60 P199,643.40

1978

P 3,641,579.02 P910,394.76

On July 19, 1978 (pp. 9-10, CTA rec.) petitioner filed with the respondent [Commissioner of Internal Revenue] a written claim for tax credit of the total amount of P910,394.76 representing 25% of the specific taxes paid on said fuel oils pursuant to Sec. 5 of Republic Act No. 1435, *infra*, in relation to Sec. 142 and 145 of the Tax Code.

There being no action taken on its claim for refund on July 21, 1978, petitioner filed the instant judicial claim for refund.' (CTA Decision, pp. 68-69, Rollo).

On November 28, 1986, the Court of Tax Appeals rendered its decision, stating to wit:

‘WHEREFORE, finding the judicial claim for refund by petitioner well-taken, it is hereby GRANTED.

The Commissioner of Internal Revenue is hereby ordered to refund and/or credit petitioner in the amount of P910,394.76

No pronouncement as to costs.

SO ORDERED.' (CTA Decision, p. 78, Rollo)."[4]

From the decision of the Court of Tax Appeals, petitioner Commissioner of Internal Revenue appealed to the Court of Appeals raising the question of whether or not the privilege of a partial refund for specific tax paid on oils used in mining operations as provided under Section 5 of R.A. No. 1435 still subsists.

The petitioner argued before the Court of Appeals that private respondent Atlas is not entitled to the tax refund because no additional tax was imposed on it under any city or municipal ordinance as provided under Section 4 of R.A. No. 1435. It further contended that tax refunds provided to concessionaires under Section 5 of R.A. No. 1435 were deemed repealed by: (1) P.D. No. 314 issued on 20 October 1973, (2) the Local Tax Code effective 1 July 1973, (3) P.D. No. 426 effective 30 March 1974, (4) Local Tax Regulations No. 1-74 issued on 18 April 1974, (5) P.D. No. 711 effective 1 July 1975, and (6) P.D. Nos. 1158 and 1158-A issued on 3 June 1977.

In its Decision of 19 February 1992, the Court of Appeals affirmed the decision of the Court of Tax Appeals and disregarded the petitioner's theory of repeal. It held that there is no evident conflict between R.A. No. 1435 and subsequent legislations. It decreed, however, that the claim for refund of specific taxes paid before 21 July 1976 had already prescribed. Thus:

"We disagree with the contention of the petitioner-appellant that the privilege granted by R.A. 1435 was subsequently abrogated by the issuance of the previously enumerated decrees. The refund privilege, expressly provided by law, can not be presumed to have been repealed by other subsequent legislations when there was no evident conflict between them and R.A. 1435; implied repeal cannot be construed herein. Neither do We agree that the promulgation of P.D. No. 231, as amended by P.D. 426, or the Local Tax Code had affected the refund privilege granted by R.A. 1435 for this Act does not involve the imposition by any local government of any separate specific tax on manufactured oils. R.A. 1435 itself, had provided the imposition of additional specific tax on manufactured oils being purchased so as to realize an increased highway fund. The Act is separate and distinct from the Local Tax Code.

The refund on the specific tax paid prior to July 21, 1976 for the amount of P779,283.89 has already prescribed. The claim for refund should be made within two years from the date of payment of the tax sought to be refunded. The enactment of P.D. 69 in 1973 disregards the supervening cause rule hence the two year period is reckoned from the time of payment of the said tax. Consequently, payments made by the Atlas Mining Corporation two years prior to the commencement of its claim for refund or before July 21, 1976, has already prescribed. The refund that can be availed of are those that accrued from the payments made after July 21, 1976, which, in this case, amounted to P910,394.76.

Premises considered, the decision of the Court of Tax Appeals granting the refund and/or tax credit in favor of Atlas Consolidated Mining and Development Corporation for the sum of P910,394.76 is hereby AFFIRMED and the instant petition is DISMISSED.

SO ORDERED."[5]

The petitioner moved for the reconsideration of the above decision[6] and brought to the attention of the Court of Appeals our Decision of 30 September 1991 in Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation[7] wherein we held that the tax refunds under Section 5 of R.A. No. 1435 claimed by a mining firm for specific taxes paid in the purchase of manufactured oils were no longer allowed because of the repeal of such

privilege by P.D. No. 711. He alternatively argued:

"8. Assuming arguendo that private respondent is entitled to the refund, the whole amount of P910,394.76 is not refundable. This Honorable Court ruled that the claim for refund should be made within two years from the date of payment of the tax sought to be refunded and that, consequently, payments made by private respondent before July 21, 1976 has already prescribed (Decision, page 4). This is because the petition seeking the refund was filed with the Tax Court on July 21, 1978.

9. In the petition for review (page 30), we pointed out that the following payments were made before July 21, 1976:

O.R. No. Date of Amount

Payment

1. Exh. "E" 2950387 July 1, 1976 P838,221.71
2. Exh. "E-1" 2950384 June 25, 1976 779,283.89
3. Exh. "E-2" 2950394 July 1, 1976 209,600.00
4. Exh. "E-3" 2950393 July 1, 1976 717,522.59
5. Exh. "E-4" 2950411 July 12, 1976 293,500.00
6. Exh. "E-5" 2950401 July 7, 1976 712,569.93
7. Exh. "E-7" 2951271 July 19, 1976 267,600.00

Since the amount of P910,394.76 sought to be refunded includes specific tax payments made before July 21, 1976 as indicated above, the entire amount of P910,394.76 is not refundable."[8]

The Court of Appeals denied the motion in its Resolution of 4 September 1992.[9]

On 19 October 1992, the petitioner filed the instant petition. He concedes therein that Atlas is entitled to a tax refund of 25% of the specific taxes paid for manufactured oils or fuel oils it purchased for its mining operations as provided under Section 5 of R.A. No. 1435 and pursuant to our 25 March 1992 Resolution in the Rio Tuba case[10] which modified our original decision therein of 30 September 1991 by declaring that the "Highway Special Fund continued its existence up to 1985" and that, accordingly, "mining and logging companies are entitled to the refund privilege granted by R.A. No. 1435 on specific taxes paid up to 1985 on manufactured and diesel fuel oils." The petitioner contends, however, that the refund should be based on the tax rates fixed under Sections 1 and 2 of R.A. No. 1435 and not on the increased rates prescribed thereafter under various decrees, particularly Sections 153 and 156 of the 1977 Tax Code.

In its Comment[11] filed on 18 March 1993, Atlas opposed the petition on the following grounds: (1) the petitioner cannot raise for the first time a novel theory based on our aforesaid Resolution of 25 March 1992 in Rio Tuba in a petition for review on certiorari; 2) the facts and issues in Rio Tuba are not similar to the instant case; and 3) Atlas is entitled to a refund, consistent with the ruling of 12 November 1990 in G.R. No. 93631 entitled *Commissioner of Internal Revenue vs. Atlas Consolidated Mining and Development Corporation*.

The petitioner filed on 21 June 1993 a Reply[12] to the Comment alleging therein that the "novel" issue was raised for the first time because Rio Tuba is "of recent vintage"; moreover, the rule that no new issue may be raised on appeal is not absolute.

On 12 July 1993, we gave due course to the petition. The parties then filed their respective memoranda.

This petition is meritorious.

Our Resolution of 25 March 1992[13] modifying our 30 September 1991 Decision[14] in the Rio Tuba case sets forth the controlling doctrine. In that Resolution, we stated:

"It is not clear why the Highway Special Fund was maintained for 10 years after the effectivity of P.D. No. 711 or why it was abolished in 1986. The stark fact remains that it retained its status as a special fund up to 1985.

...

We, therefore, modify our decision in this case and rule that mining and logging companies are entitled to the refund privilege granted by R.A. No. 1435 on specific taxes paid up to 1985 on manufactured and diesel fuel oils.

Since the private respondent's claim for refund covers specific taxes paid from 1980 to July 1983 then we find that the private respondent is entitled to a refund. It should be made clear, however, that Rio Tuba is not entitled to the whole amount it claims as refund.

The specific taxes on oils which Rio Tuba paid for the aforesaid period were no longer based on the rates specified by Sections 1 and 2 of R.A. No. 1435 but on the increased rates mandated under Sections 153 and 156 of the National Internal Revenue Code of 1977. We note, however, that the latter law does not specifically provide for a refund to these mining and lumber companies of specific taxes paid on manufactured and diesel fuel oils.

In *Insular Lumber Co. v. Court of Tax Appeals*, (104 SCRA 710 [1981]), the Court held that the authorized partial refund under section 5 of R.A. No. 1435 partakes of the nature of a tax exemption and therefore cannot be allowed unless granted in the most explicit and categorical language. Since the grant of refund privileges must be strictly construed against the taxpayer, the basis for the refund shall be the amounts deemed paid under Sections 1 and 2 of R.A. No. 1435.

ACCORDINGLY, the decision in G.R. Nos. 83583-84 is hereby MODIFIED. The private respondent's CLAIM for REFUND is GRANTED, computed on the basis of the amounts deemed paid under Sections 1 and 2 of R.A. No. 1435, without interest."[15]

We rule, therefore, that since Atlas's claims for refund cover specific taxes paid before 1985, it should be granted the refund based on the rates specified by Sections 1 and 2 of R.A. No. 1435 and not on the increased rates under Sections 153 and 156 of the Tax Code of 1977, provided the claims are not yet barred by prescription.

The claim for refund on the specific tax paid prior to 21 July 1976 had already prescribed because claims for refund should be made within two years from the date of payment of the tax sought to be refunded[16] and Atlas' judicial claim for refund was made only on 21 July 1978.

We cannot subscribe to the view of Atlas that the petitioner cannot raise the new theory in its petition that the 25% tax refund should be based on the rates prescribed in Sections 1 and 2 of R.A. No. 1435 and not on the increased rates prescribed under Sections 153 and 156 of the Tax Code of 1977. The petitioner merely asks us to consider and apply the rule enunciated in the Resolution of 25 March 1992 in Rio Tuba that modified the 30 September 1991 Decision therein, which decision the petitioner had invoked in his motion to reconsider the judgment of the Court of Appeals. Since the modification took place after the filing of the motion for reconsideration and it was likely that the Court of Appeals was unaware of such modification when it promulgated on 4 September 1992 its resolution denying the motion for reconsideration, it is by no means improper for the petitioner to subsequently invoke that modificatory resolution. Furthermore, even if it be conceded ex gratia that the theory is new, the rule invoked by Atlas is not without exceptions. The Supreme Court

may review such matters as may be necessary to serve the interest of justice;[17] it has ample authority to review and resolve matters not specifically raised or assigned as error by the parties if it finds that the consideration and determination of the same is necessary in arriving at a just resolution of a case.[18] Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them.[19]

WHEREFORE, the petition is GRANTED. The challenged decision of the Court of Appeals in CA-G.R. SP No. 20005 is MODIFIED. As modified, the tax refund to be granted to private respondent Atlas Consolidated Mining and Development Corporation in C.T.A. Case No. 2964 shall be computed on the basis of the rates prescribed under Sections 1 and 2 of R.A. No. 1435 and shall be limited to the payments made by it prior to 21 July 1976. The petitioner shall forthwith revise the computation of the refundable amount which shall be remitted, without interest, to the private respondent within sixty (60) days from the finality of this decision.

No pronouncements as to costs.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Annex "B" of Petition; Rollo, 34-38. Per Associate Justice Antonio M. Martinez, concurred in by Associate Justices Asaali S. Isnani and Regina G. Ordoñez-Benitez.

[2] Entitled "Commissioner of Internal Revenue vs. Atlas Consolidated Mining and Development Corporation and the Court of Tax Appeals."

[3] "An Act to Provide Means of Increasing the Highway Special Fund."

[4] Rollo, 34-35.

[5] Rollo, 37-38.

[6] Annex "C" of Petition; Id., 39-49.

[7] 202 SCRA 137 [1991].

[8] Rollo, 47-48.

[9] Id., 51.

[10] 207 SCRA 549 [1992].

[11] Rollo, 64-69.

[12] Id., 73-78.

[13] Supra footnote no. 10.

[14] Supra footnote no. 7.

[15] Supra footnote no. 10, at 551-553.

[16] Section 230, National Internal Revenue Code.

[17] De Leon vs. Court of Appeals, 205 SCRA 612 [1992]; Asset Privatization Trust vs. Court of Appeals, 214 SCRA 400 [1992].

[18] Sociedad Europea de Financiacion S.A. vs. Court of Appeals, 193 SCRA 105 [1991].

[19] Insular Life Assurance Co., Ltd. Employees Association vs. Insular Life Assurance Co., Ltd., 76 SCRA 50 [1977].

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