ARAS-ASAN TIMBER CO., INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. 132155. August 16, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal by certiorari under Rule 45 of the Rules of Court from the decision of the Court of Appeals which affirmed the judgment of the Court of Tax Appeals in C.T.A. Case No. 3524, partially granting a claim for tax refund of specific taxes in favor of petitioner Aras-Asan Timber Co., Inc.

Briefly, the facts of the case are as follows:

Petitioner Aras-Asan Timber Company Inc., is a duly-licensed forest concessionaire with a Timber Licensing Agreement entered into with the then Ministry of Natural Resources, now Department of Environment and Natural Resources. During the period beginning from July 1, 1980 to October 31, 1981, petitioner purchased from Mobil Oil Philippines, Inc., refined and manufactured mineral oil, motor fuel, and diesel fuel oil, which petitioner actually and exclusively used in connection with the operation of its forest concession.

Pursuant to Sections 153 and 156 of the 1977 National Internal Revenue Code (NIRC),[1] Mobil Oil Philippines, Inc., paid and passed on to petitioner the specific taxes on refined and manufactured mineral oil, motor fuel and diesel fuel oil, which were included in the purchase price. Thereafter, on September 23, 1982, petitioner filed a claim for tax refund with the Commissioner of Internal Revenue, in the amount of P152,794.38, representing 25% of the specific taxes passed onto it by Mobil Oil Philippines, Inc.

Petitioner based its claim for refund on the Supreme Court ruling in the case of Insular Lumber Co. vs. Court of Tax Appeals[2] and Section 5[3] of Republic Act No. 1435 or "An Act to Provide Means for Increasing the Highway Special Fund." To support its claim, petitioner presented the affidavits of its president, cost accountant, chief accountant and two other duly-licensed forest concessionaires, to prove that for the period of July 1, 1980 to October 30, 1981, petitioner had actually used said petroleum products in its forest operations.

Without waiting for respondent Commissioner's decision on the matter, petitioner filed on October 8, 1982, a petition for review with the Court of Tax Appeals so as to prevent the lapse of the two-year prescriptive period within which to judicially claim a refund under Section 230 of the 1977 NIRC.[4]

On December 17, 1993, the CTA rendered judgment[5] granting the tax refund, but in the reduced amount of P2,721.63. While agreeing with petitioner that a tax refund was in order, the CTA differed in its computation of the amount to be refunded to petitioner and relied on the Supreme Court's pronouncement in Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and Court of Tax Appeals[6] as well as the subsequent Resolution[7] clarifying its pronouncement.

In accordance with this ruling, the CTA based the 25 % refund on the amount deemed paid by petitioner under the provisions of Sections 1[8] and 2[9] of R.A. No. 1435, instead of the amount which petitioner actually paid under

Sections 153 and 156 of the 1977 NIRC. The latter statutory provisions, which were applicable at the time of payment of the specific tax, amended Sections 1 and 2 of R.A. No. 1435 by increasing the tax rates prescribed therein.

As earlier stated, the Court of Appeals affirmed the CTA's judgment[10] and denied petitioner's motion for reconsideration.[11] Hence, this petition for review.

Petitioner submits that the appellate court committed the following errors:

> I
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> BASING THE REFUND ON THE AMOUNTS DEEMED PAID UNDER SECTIONS 1 AND 2 OF REPUBLIC ACT NO. 1435 IS CONTRARY TO THIS HONORABLE COURT'S EN BANC DECISION IN THE 1981 INSULAR LUMBER CASE, WHICH GRANTED THE CLAIM FOR PARTIAL REFUND OF SPECIFIC TAXES ACTUALLY PAID BY THE CLAIMANT, WITHOUT QUALIFICATION OR LIMITATION.
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> II
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> THE SAID RULING IGNORES THE INCREASE IN RATES IMPOSED BY SUCCEEDING AMENDATORY LAWS UNDER WHICH PETITIONER PAID THE SPECIFIC TAXES ON MANUFACTURED AND DIESEL FUELS.
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> III
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> THE RULE ON STRICTISSIMI JURIS FINDS NO APPLICATION IN THE CASE SUBJECT OF THE INSTANT PETITION, AND THE RESPONDENT COURT WENT AGAINST ESTABLISHED RULES OF CONSTRUCTION WHEN IT LENT ITSELF TO INTERPRETING SECTION 5 OF REPUBLIC ACT NO. 1435, CONSIDERING THAT THE CONSTRUCTION OF SAID LAW IS NOT NECESSARY.
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> IV
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> SECTIONS 1 AND 2 OF REPUBLIC ACT NO. 1435 ARE NOT THE OPERATIVE PROVISIONS TO BE APPLIED BUT, RATHER, SECTIONS 142 AND 145[12] OF THE 1977 NIRC (NOW SECTION 148 OF THE 1997 NIRC).
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> V
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> BASING THE COMPUTATION OF THE PARTIAL TAX REFUND ON SECTIONS 1 AND 2 OF REPUBLIC ACT NO. 1435, RATHER THAN SECTIONS 153 AND 156 OF THE 1977 NIRC (NOW SECTION 148 OF THE 1997 NIRC), IS UNFAIR, ERRONEOUS, ARBITRARY, INEQUITABLE, AND OPPRESSIVE).[13]

Notwithstanding the above formulation of alleged errors, we find that the principal issue is whether or not the lower court erred in its computation of the amount to be refunded to petitioner.

At the outset, we find instructive in this case our ruling in Davao Gulf Lumber Corporation vs. Commissioner of Internal Revenue,[14] promulgated on July 23, 1998. Petitioner's counsel now was the same counsel engaged by Davao Gulf Lumber Corporation in said case, wherein we upheld the appellate court's computation of the refund based on rates provided in Sections 1[15] and 2[16] of R.A. No. 1435. Despite said ruling, petitioner through counsel now undauntingly urges this Court to take a second look at the ruling in Davao Gulf, citing as reasons the very same arguments therein raised.

Despite petitioner's studied assertions, however we find no reason to depart from our Davao Gulf decision. While petitioner is indeed entitled to a refund under Section 5[17] of R.A. No. 1435, we hold that since the partial refund

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is in the nature of a tax exemption, it must be construed strictly against the grantee. Thus, we reiterate our well-considered view in Davao Gulf:

We have carefully scrutinized RA 1435 and the subsequent pertinent statutes and found no expression of a legislative will authorizing a refund based on higher rates claimed by petitioner. The mere fact that the privilege of refund was included in Section 5 and not in Section 1, is insufficient to support petitioner's claim. When the law itself does not explicitly provide that a refund under RA 1435 may be based on higher rates which were nonexistent at the time of its enactment, this Court cannot presume otherwise. A legislative lacuna cannot be filled by judicial fiat.[18]

Given this circumstance, we no longer find it necessary to discuss the other issues raised by petitioner. They have been well covered in Davao Gulf, supra. Suffice it to say that here the challenged decision of the Court of Appeals affirming that of the Court of Tax Appeals stands on sound statutory and jurisprudential foundations and need not be disturbed.

WHEREFORE, the instant petition is DENIED and the assailed judgment of the Court of Appeals in C.A.-G.R. SP No. 33062 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Sections 153 and 156 of the 1977 NIRC (formerly Sections 142 and 145 of the NIRC, as amended) underwent several amendments. At the time petitioners purchased the manufactured oils and paid the corresponding specific taxes, the following provisions of Sections 153 and 156 of the 1977 NIRC were applicable:

(A) Presidential Decree No. 1672 (effective February 8, 1980 to March 20, 1981)

SECTION 1. Section 153 of the National Internal Revenue Code of 1977, as amended, is hereby further amended to read as follows:

> "SEC. 153. Specific tax on manufactured oils and other fuels.--On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes which shall attach to the articles hereunder enumerated as soon as they are in existence as such:
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> "(a)
>
> Kerosene, per liter of volume capacity, seven centavos;
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> "(b)
>
> Lubricating oils, per liter of volume capacity, eighty centavos;
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> "(c)
>
> Naphtha, gasoline and all other similar products of distillation, per liter of volume capacity, ninety-one centavos: Provided, That, on premium and aviation gasoline, the tax shall be one peso per liter of volume capacity;
>
> "(d)
>
> On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo: Provided, That, unless otherwise provided for by special laws, if the denatured alcohol is mixed with gasoline, the specific tax

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on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purposes of this subsection, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety per centum absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary;

"(e)

Processed gas, per liter of volume capacity, three centavos;

"(f)

Thinners and solvents, per liter of volume capacity, fifty-seven centavos;

"(g)

Liquefied petroleum gas, per kilogram, fourteen centavos: Provided, That, liquefied petroleum gas used for motive power shall be taxes at the equivalent rate as the specific tax on diesel fuel oil;

"(h)

Asphalts, per kilogram, eight centavos;

"(i)

Greases, waxes and petrolatum, per kilogram, fifty centavos;

"(j)

Aviation turbo jet fuel, per liter of volume capacity, fifty-five centavos."

(B) Executive Order No. 672 (effective March 21, 1981)

SECTION 1. The rates of specific tax on certain petroleum products are hereby revised, hereby amending for this purpose Sections 153, 155 and 156 of the National Internal Revenue Code to read as follows:

"SEC. 153. Specific tax on manufactured oils and other fuels.--On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes which shall attach to the articles hereunder enumerated as soon as they are in existence as such:

"(a)

Kerosene, per liter of volume capacity, nine centavos;

"(b)

Lubricating oils, per liter of volume capacity, eighty centavos;

"(c)

Naphtha, gasoline and all other similar products of distillation, per liter of volume capacity, one peso and six centavos: Provided, That on premium and aviation gasoline the tax shall be one peso and ten centavos and one peso, respectively, per liter of volume capacity;

"(d)

On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo: Provided, That unless otherwise provided for by special laws, if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purpose of this subsection, the removal of denatured alcohol of not less then one hundred eighty degrees proof

(ninety per centum absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary;

"(e)

Processed gas, per liter of volume capacity, three centavos;

"(f)

Thinners and solvents, per liter of volume capacity, sixty-one centavos;

"(g)

Liquefied petroleum gas, per kilogram, twenty-one centavos: Provided, That liquified petroleum gas used for motive power shall be taxed at the equivalent rate as the specific tax on diesel fuel oil;

"(h)

Asphalts, per kilogram, twelve centavos;

"(i)

Greases, waxes and petroleum, per kilogram, fifty centavos;

"(j)

Aviation turbo-jet fuel, per liter of volume capacity, sixty-four centavos."

x x x

"SEC. 156. Specific tax on diesel fuel oil.— On fuel oil, commercially known as diesel fuel oil, and all similar fuel oils, having more or less the same generating power, per liter of volume capacity, twenty-five and one-half centavos, which tax shall attach to this fuel oil as soon as it is in existence as such."

[2] 104 SCRA 710 (1981).

[3] 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.

[4] Rollo, pp. 15-17.

[5] Id. at 87-109.

[6] 202 SCRA 137 (1991).

[7] Dated March 25, 1992.

[8] SECTION 1. Section one hundred and forty-two of the National Internal Revenue Code, as amended, is further amended to read as follows:

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"SEC. 142. Specific Tax on manufactured oils and other fuels.--On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:

"(a) Kerosene or petroleum, per liter of volume capacity, two and one-half centavos;

"(b) Lubricating oils, per liter of volume capacity, seven centavos;

"(c) Naptha, gasoline, and all other similar products of distillation, per liter of volume capacity, eight centavos; and

"(d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo: Provided, That if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purpose of this subsection, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety per centum absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary.

"Whenever any of the oils mentioned above are, during the five years from June eighteen, nineteen hundred and fifty two, used in agriculture and aviation, fifty per centum of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue upon the submission of the following:

"(1) A sworn affidavit of the producer and two disinterested persons proving that the said oils were actually used in agriculture, or in lieu thereof.

"(2) Should the producer belong to any producers' association or federation, duly registered with the Securities and Exchange Commission, the affidavit of the president of the association or federation, attesting to the fact that the oils were actually used in agriculture.

"(3) In the case of aviation oils, a sworn certificate satisfactory to the Collector proving that the said oils were actually used in aviation: Provided, That no such refunds shall be granted in respect to the oils used in aviation by citizens and corporations of foreign countries which do not grant equivalent refunds or exemptions in respect to similar oils used in aviation by citizens and corporations of the Philippines."

[9] SEC. 2. Section one hundred and forty-five of the National Internal Revenue Code, as amended, is further amended to read as follows:

"SEC. 145. Specific Tax on Diesel fuel oil.--On fuel oil, commercially known as diesel fuel oil, and on all similar fuel oils, having more or less the same generating power, there shall be collected, per metric ton, one peso."

[10] Supra, note 4 at 49-67.

[11] Id. at 69-70.

[12] Should be Sections 153 and 156.

[13] Supra, note 4 at 20-21.

[14] 293 SCRA 76 (1998).

[15] Supra note 8.

[16] Supra note 9.

[17] Supra note 3.

[18] 293 SCRA 76, 88 (1998) citing: Paper Industries Corp. of the Phil. vs. CA, G.R. Nos. 106984-85, 250 SCRA

434, 455 (1995).

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