

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. RIO TUBA NICKEL MINING CORPORATION AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. Nos. 83583-84. March 25, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Private respondent Rio Tuba Nickel Mining Corporation (Rio Tuba) seeks a reconsideration of the Court's decision in G.R. Nos. 83583-84 dated September 30, 1991 denying its claim for refund of specific taxes paid on manufactured oils and diesel fuel oil.

The Court ruled in the decision that Section 5 of Republic Act (R.A.) No. 1435, which granted to lumber and mining companies the privilege of refund of twenty five (25%) percent of specific taxes paid by them when such oils are used in their operations, was impliedly repealed by Presidential Decree (P.D.) No. 711 which abolished all special and fiduciary funds.

Under R.A. No. 1435, the specific taxes on manufactured oils and diesel fuel oil accrued to the Highway Special Fund. The Court stated that miners and lumbermen were accorded refund privileges under R.A. No. 1435 because they seldom use the national highways since they have their own roads and it was unfair to subject them to the increased tax rates and in effect make them subsidize the construction of highways from which they did not directly benefit. According to the Court, since by virtue of P.D. No. 711, all funds that have accrued from the various special funds are channeled to the so-called General Fund, there is, therefore, no need nor justification for the continued special treatment of these miners and loggers. Thus, reasoned the Court, since under P.D. No. 711 any government project can be the beneficiary of such funds as long as it is for the general welfare of the masses and it is inevitable that sooner or later the miners and loggers will stand to benefit from these government benefits, then the refund privilege in R.A. No. 1435 has become an anachronism. The Court ruled that the refund privilege granted to miners and loggers under R.A. 1435 was impliedly repealed by P.D. No. 711.

This decision was premised on the assumption that the Highway Special Fund was one of those funds abolished and transferred to the General Fund by P.D. No. 711 which took effect on July 1, 1975.

Despite the mandate of P.D. No. 711, however, several special funds were still retained and the Highway Special Fund was one of them.

Proof that some of these special and fiduciary funds were retained may be extracted from the provisions of P.D. No. 1741 dated October 31, 1980 which governs the computation of national internal revenue allotments to local government units. Section 2 of said decree provides:

"SEC. 2. Magnitude of Assistance - A maximum of twenty per cent (20%) of national internal revenue taxes shall be available for national assistance to local government units. Provided, That the national revenue used as basis in computation shall exclude receipts accruing to Special or Fiduciary Funds and to Special Accounts in

the General Fund, amounts authorized by law to be used by the collecting agency, and amounts recorded as income of the General Fund but which are charged to appropriations in the General or other Appropriations Laws." (Underlining supplied)

The Internal Revenue Allotments annually prepared by the Bureau of Internal Revenue in accordance with the foregoing decree showed that the Highway Special Fund continued its existence up to 1985 and was channeled to the General Fund only in 1986.

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.

With the foregoing consideration, we cannot therefore state with definiteness that it was P.D. No. 711 which impliedly repealed Section 5 of R.A. No. 1435. We can however safely conclude that Section 5 of R.A. No. 1435 is now an anachronism because the Highway Special Fund, after 1985, no longer exists.

The rationale for the Court's decision denying the private respondent's twin claims for refund was that the specific taxes on these manufactured oils paid by the mining and lumber companies no longer accrued to the Highway Special Fund. But given the added circumstance that the Highway Special Fund which was financed by these specific taxes still continued up to 1985, it will be highly inequitable for the private respondent if we were to rule that no refund of specific taxes paid up to 1985 which actually accrued to the Highway Special Fund (not the General Fund) may be given. The private respondent still did not directly benefit from the projects supported by the Highway Special Fund.

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.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.
Feliciano, J., on leave.

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