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FIRST DIVISION

[G.R. No. 119786. September 22, 1998]

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE, COURT OF TAX APPEALS and COURT OF APPEALS,** *respondents.*

SYNOPSIS

Petitioner, a domestic corporation engaged in the business of mining copper from its concessions, purchased, beginning September 1974 through July 1983, from its suppliers, Petrophil Corporation and Mobil Oil Philippines, quantities of manufactured oil and other fuels which it used in its mining operations. Petrophil and Mobil Oil paid the specific taxes imposed by Sections 153 and 156 of the National Internal Revenue Code on all the oils and fuels they manufactured from which was drawn the quantity sold to petitioner for use in its operations. On June 14, 1956, Republic Act No. 1435 (An Act to Provide Means for Increasing the Highway Discretionary Funds) granted a refund of 25% of the specific taxes paid on oil products used by miners and forest concessionaires in their operations. Petitioner, invoking Sec. 5 of the law, filed with the Court of Tax Appeals petitions seeking the refund of 15% of specific taxes paid on oil products which it purchased and used in its mining operations. The tax court denied the claims for refund. On appeal, the Court of Appeals set aside the tax court's decision and remanded the cases to the tax court for proper determination of the total amount of specific taxes paid and the corresponding tax refund or credit to which petitioner is entitled. Thereafter, the tax court issued a resolution computing the 25% specific tax refund based on the rates of specific tax prescribed in RA 1435. The Court of Appeals affirmed the tax court's decision. Hence, this petition.

The main issue here is whether petitioner is entitled to the refund of 25 percent of specific taxes it actually paid on various refined and manufactured mineral oils and other oil products taxed under Secs. 153 and 156 of the 1977 National Internal Revenue Code. Relying on the case of *Davao Gulf Lumber*

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Corporation vs. Commissioner of Internal Revenue (G.R. No. 117359, July 23, 1998), which in turn reiterated the case of *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and Court of Tax Appeals* (G.R. Nos. 83583-84, September 30, 1991), the Supreme Court ruled that the tax refund must be computed on the basis of the specific tax deemed paid under Sections 1 and 2 of RA 1435, and not on the increased rates actually paid by the petitioner pursuant to Sections 153 and 156 of the National Internal Revenue Code.

Judgment affirmed.

SYLLABUS

TAXATION; TAX REFUND; IN CASE OF PETROLEUM PRODUCTS, IT IS COMPUTED ON THE BASIS OF THE SPECIFIC TAX DEEMED PAID UNDER SECTIONS 1 AND 2 OF R.A. 1435.— In *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue and Court of Appeals* (G.R. No. 117359, July 23, 1998), the Court *en banc* unanimously reiterated *Rio Tuba* and categorically held that the tax refund must be computed on the basis of the specific tax *deemed* paid under Sections 1 and 2 of RA 1435, not on the increased rates *actually* paid by the petitioners pursuant to Sections 153 and 156 of the NIRC.

APPEARANCES OF COUNSEL

M.L. Gadiona Law Office for petitioner.
The Solicitor General for public respondents.

DECISION

PANGANIBAN, *J.*:

In *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue and Court of Appeals*,[1] the Court *en banc* unequivocally held that the tax refund under Republic Act No. 1435 is computed on the basis of the specific tax deemed paid

[1] G.R. No. 117359, July 23, 1998.

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under Sections 1 and 2 thereof, not on the increased rates actually paid under the 1977 NIRC. We adhere to such ruling.

The Case

Petitioner challenges, under Rule 45 of the Rules of Court, the March 30, 1995 Decision of the Court of Appeals[2] in CA-GR SP No. 34081, which affirmed the December 24, 1991 Decision[3] of the Court of Tax Appeals (CTA), which in turn denied the claim of the petitioner for refund/tax credit of 25 percent of the specific tax it actually paid for the petroleum products purchased for its mining operations.

The Facts

The antecedent facts are summarized by the Court of Appeals as follows:[4]

"(1) Petitioner is a domestic corporation engaged in the business of mining copper from its mineral land and concessions in Toledo City, Cebu. During the periods under review, beginning from September 1974 through July 1983, petitioner purchased from its suppliers, Petrophil Corporation and Mobil Oil Philippines, referred to hereinafter respectively as Petrophil and Mobil Oil, quantities of manufactured oil and other fuels, like diesel and coco-diesel. It actually used these oils and fuels in its mining operations to run various items of machinery and equipment, motors and vehicles;

"(2) Petrophil and Mobil Oil paid the specific taxes imposed by Sections 153 and 156 (formerly Section 142 and 145) of the 1977 National Internal Revenue Code (NIRC) on all the oils and fuels they manufactured from which was drawn the quantity sold to the petitioner for use in its operations;

"(3) On June 14, 1956, Republic Act No. 1435, [An Act to Provide Means for Increasing the Highway Discretionary Funds], granted in Section 5 thereof, a refund of 25% of the specific taxes paid on oil

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[2] Penned by *J.* Jorge S. Imperial, *ponente* and chairman; with the concurrence of *JJ.* Corona Ibay-Somera and Conrado M. Vazquez, Jr.

[3] Penned by Associate Judge Ernesto D. Acosta, with the concurrence of Associate Judge Constante C. Roaquin.

[4] CA Decision, pp. 1-4; *rollo*, pp. 30-33.

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products used by miners and forest concessionaires in their operations, to wit:

> 'The proceeds of the additional tax on 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 percentum (25%) of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue upon submission of proof of actual use of oils 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.'

"(4) Invoking Section 5 of Republic Act 1435, petitioner filed with the Court of Tax Appeals several petitions seeking the refund of 15% of specific taxes paid on oil products which it purchased and used in its mining operations at various times in the following amounts:

C.T.A. Case No.	*Amount Claimed*	*Period Covered*
2840	₱ 3,928,614.19	Sept. 1974 - June 1976
3091	10,311,887.34	May 1978 - Feb. 1980
3426	8,972,165.34	March 1980 - Dec. 1981
3696	11,220,895.07	Jan. 1982 - July 1983
Total	₱34,433,563.94	

"(5) The aforecited cases were consolidated. On December 24, 1991, the Tax Court rendered a Decision denying the claims for refund on the basis of the Decision of the Supreme Court in *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and Court of Tax Appeals*, G.R. Nos. 83583-84, September 30, 1991, wherein it was held that the refund privilege granted by Section 5 of R.A. 1435 was impliedly repealed with the issuance of Presidential

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Decree No. 711, which took effect on July 1, 1975, abolishing all special and fiduciary funds;

"(6) Petitioner appealed the Tax Court's Decision to this Court under CA-G.R. Sp. No. 27676, entitled "*Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue and Court of Tax Appeals.*" On March 31, 1993, the Eleventh Division of this Court rendered a Decision setting aside the Tax Court's Decision and remanding the cases to the Tax Court for proper determination of the total amount of specific taxes paid and the corresponding tax refund or credit to which petitioner is entitled;

"(7) The decision of this Court was based on a Supreme Court Resolution dated March 25, 1992 and a Resolution dated June 15, 1992 modifying the Decision in Rio Tuba (*supra*), in that the refund privilege granted under Section 5 of R.A. 1435 was available up to 1985 since the Highway Special Fund was abolished only in 1986. Furthermore, said Resolutions ruled that the amount of specific taxes refundable should be computed on the basis of the rates of specific tax prescribed under Sections 1 and 2 of R.A. 1435 and not on the increased rates mandated under Sections 153 and 156 of the Tax Code:

"(8) Thus, this Court said:

> 'Thus, the respondent court's decision of December 24, 1991 should be SET ASIDE. The instant tax cases should be remanded to the respondent court for proper evaluation of the petitioner's evidence to determine the total amount of specific taxes and the 25% refund or tax credit *based on the specific tax rates prescribed in Sections 1 and 2 of RA 1435* in view of the allegation of the petitioner in the instant petition that the respondent court failed to consider certain exhibits or cited wrong exhibits.' (italics ours)'

"(9) On April 29, 1993, an Entry of Judgment was issued in CA - G.R. SP No. 27676 stating that the Decision therein had already become final and executory;

"(10) On April 18, 1994, after hearing, the Tax Court issued a Resolution computing the 25% specific tax refund based on the rates of specific tax prescribed in Sections 1 and 2 of RA 1435 and came out with the following amounts refundable:

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1) CTA Case No. 2840 - ₱208,129.57
2) CTA Case No. 3091 - 358,864.83
3) CTA Case No. 3426 - 270,369.02
4) CTA Case No. 3696 - 264,315.46

Total ₱1,101,678.88."

As earlier noted, the Court of Appeals affirmed the CTA Decision. Hence, this petition for review.[5]

The Ruling of the Court of Appeals

In affirming the Decision of the Court of Tax Appeals, Respondent Court relied on the Supreme Court ruling in *CIR v. Rio Tuba*[6] that the refund should be computed on the basis of the rates deemed paid under RA 1435, not on the increased rates actually paid under the NIRC. Respondent Court ruled:

"Moreover, the latest ruling of the Supreme Court on the matter is its Decision dated May 10, 1994 in *Commissioner of Internal Revenue vs. Hon. Court of Appeals and Atlas Consolidated Mining and Development Corporation,* G.R. No. 106913. This case also involves petitioner's claim for refund of 25% of specific taxes paid on oil products used in its mining operations for the periods July-December 1976, January-December 1977 and January-May 1978, pursuant to Section 5 of R.A. 1435. The Supreme Court, applying *Rio Tuba*, held:

> 'We rule, therefore, that since [Atlas'] 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 case at bar is no different from Rio Tuba and the aforecited G.R. No. 106913. Hence, the instant petition is devoid of merit.

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[5] The case was deemed submitted for resolution on July 4, 1997, upon receipt by the Court of petitioner's Memorandum.

[6] 207 SCRA 549, March 25, 1992.

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"Notably, therefore, the decision of the Supreme Court in *Insular Lumber Co. vs. CTA* (G.R. No. L-31057, 29 May 1981) and in *Commissioner of Internal Revenue vs. Atlas Consolidated Mining and Development Corporation, et al.* (G.R. No. 93631, 12 November 1990) have been superseded by the decision of the Supreme [C]ourt in *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp. and the Court of Tax Appeals and Atlas Consolidated Mining and Development Corp.* (G.R. No. 106913, dated May 10, 1994)."[7]

The Issues

Petitioner argues that Respondent Court of Appeals committed the following errors:

I

"Upholding the Tax Court decision and failing to apply the Supreme Court's *En Banc* decision in *Insular Lumber Co. vs. CTA*, thereby making as basis for its decision the Supreme Court's decision sitting in a division, in the *Rio Tuba* case.

II

"Failing to apply the increase in rates imposed by succeeding amendatory laws, under which petitioner paid the specific taxes on manufactured oils and other fuels.

III

"Unnecessarily interpreting Section 5 of Republic Act No. 1435, contrary to established legal principles.

IV

"Failing to apply Sections 142 and 145 of the National Internal Revenue Code, as amended, making the decision contrary to existing law and jurisprudence, resulting [in] unfair, erroneous, arbitrary, inequitable and oppressive consequences."

In sum, the main issue here is whether petitioner is entitled to the refund of 25 percent of specific taxes it *actually* paid on various refined and manufactured mineral oils and other oil products taxed under Sections 153 and 156 of the 1977 National

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[7] CA Decision, p. 9; *rollo*, p. 38.

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Internal Revenue Code (Sections 142 and 145, respectively, of the 1939 NIRC).

The Court's Ruling

The petition is devoid of merit.

Issue: Computation of Tax Refund

Petitioner is a duly licensed domestic corporation engaged in the business of mining copper from its concessions. Because the petroleum products it had purchased were used in its mining operations, it is entitled to claim a tax refund pursuant to RA 1435. The petroleum products were originally subject to specific tax under Sections 142 and 145 of the 1939 NIRC, which were amended by Sections 1 and 2 of RA 1435, respectively. At the time of the purchase of the petroleum products, Sections 142 and 145 were respectively renumbered Sections 153 and 156 of the 1977 NIRC, which imposed the higher rate of taxes petitioner paid.

It is undisputed that the refund privilege existed at the date the entitlement was being availed of. *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corporation*[8] held that the Highway Special Fund retained its status as a special fund up to 1985 or for 10 years after the effectivity of Presidential Decree 711, which mandated that all funds that had accrued from various special funds would be channeled to the general fund.

PD 711, which took effect on July 1, 1975, was invoked in previous cases as having impliedly repealed RA 1435, thereby abolishing the refund privilege accorded to miners and loggers. *Rio Tuba*, however, ruled that the privilege existed until 1985.

The only question in the present case, therefore, is the computation of the tax refund. As stated earlier, petitioner contends that the 25 percent refund should be based on the increased rates of specific tax it had actually paid under the 1977 NIRC, not on the prescribed rates under RA 1435.

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[8] *Supra*.

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The issue presented before us is already settled. In *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue and Court of Appeals,*[9] the Court *en banc* unanimously reiterated *Rio Tuba* and categorically held that the tax refund must be computed on the basis of the specific tax *deemed* paid under Sections 1 and 2 of RA 1435, not on the increased rates *actually* paid by the petitioners pursuant to Sections 153 and 156 of the NIRC. The Court held:

"A tax cannot be imposed unless it is supported by the clear and express language of a statute[;] on the other hand, once the tax is unquestionably imposed, "[a] claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken." Since the partial refund authorized under Section 5, RA 1435, is in the nature of a tax exemption, it must be construed *strictissimi juris* against the grantee. Hence, petitioner's claim of refund on the basis of the specific taxes it actually paid must expressly be granted in a statute stated in a language too clear to be mistaken.

"We have carefully scrutinized RA 1435 and the subsequent pertinent statutes and found no expression of a legislative will authorizing a refund based on the 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.

"The issue is not really novel. In *Commissioner of Internal Revenue vs. Court of Appeals and Atlas Consolidated Mining and Development Corporation* (the second Atlas case), the CIR contended that the refund should be based on Sections 1 and 2 of RA 1435, not Sections 153 and 156 of the NIRC of 1977. In categorically ruling that Private Respondent Atlas Consolidated Mining and Development Corporation was entitled to a refund based on Sections 1 and 2 of RA 1435, the Court, through Mr. Justice Hilario G. Davide, Jr., reiterated our pronouncement in *Commissioner of Internal Revenue vs. Rio Tuba Nickel and Mining Corporation*:

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[9] G.R. No. 117359, July 23, 1998, per Panganiban, *J.*

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

> '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.
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> '*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.
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> '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.*
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> '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.'

"We rule, therefore, that since Atlas' 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. (Italics supplied.)"[10]

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[10] *Supra*, pp. 15-17.

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Petitioner also calls attention to the apparent conflict between *Insular Lumber v. Court of Appeals*[11] and *Commissioner of Internal Revenue v. Atlas Consolidated Mining and Development Corporation*[12] (First Atlas Case), on the one hand, and *Rio Tuba* and the Second Atlas Case, on the other. This issue has been laid to rest by the Court in *Davao Gulf*:

"xxx. Neither *Insular Lumber Co.* nor the first Atlas case ruled on the issue of whether the refund privilege under Section 5 should be computed based on the specific tax deemed paid under Sections 1 and 2 of RA 1435, regardless of what was actually paid under the increased rates. *Rio Tuba* and the second Atlas case did.

"Insular Lumber Co. decided a claim for refund on specific tax paid on petroleum products purchased in the year 1963, when the increased rates under the NIRC of 1977 were not yet in effect. Thus, the issue now before us did not exist at the time, since the applicable rates were still those prescribed under Sections 1 and 2 of RA 1435.

"On the other hand, the issue raised in the first Atlas case was whether the claimant was entitled to the refund under Section 5, notwithstanding its failure to pay any additional tax under a municipal or city ordinance. Although Atlas purchased petroleum products in the years 1976 to 1978 when the rates had already been changed, the Court did not decide or make any pronouncement on the issue in that case.

"Clearly, it is impossible for these two decisions to clash with our pronouncement in *Rio Tuba* and second Atlas case, in which we ruled that the refund granted be computed on the basis of the amounts deemed paid under Sections 1 and 2 of RA 1435. In this light, we find no basis for petitioner's invocation of the constitutional proscription that 'no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in a division may be modified or reversed except by the Court sitting *en banc*."

Likewise, *Davao Gulf* has already debunked petitioner's argument that not applying Sections 142 and 145 of the NIRC rendered the CTA Decision unfair and arbitrary. The Court ruled:

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[11] 104 SCRA 710, May 29, 1981.

[12] G.R. No. 93631, November 12, 1990.

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"Finally, petitioner asserts that 'equity and justice demand that the computation of the tax refunds be based on actual amounts paid under Sections 153 and 156 of the NIRC.' We disagree. According to an eminent authority on taxation, 'there is no tax exemption solely on the ground of equity."

WHEREFORE, the petition is hereby *DENIED* and the assailed Decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug, and *Quisumbing, JJ.,* concur.

FIRST DIVISION

[G.R. No. 120600. September 22, 1998]

ERNESTO C. DAWSON, LOUIS P. DAWSON, JR., BENJAMIN C. DAWSON, JOSEPHINE DAWSON SOLIVEN, RALPH D. CUDILLA, ELIZA C. ISIP and LARRY D. ISIP, *petitioners, vs.* **REGISTER OF DEEDS OF QUEZON CITY and JUDGE OF REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 85,** *respondents.*

SYNOPSIS

On May 2, 1967, Louis P. Dawson entered into a contract to sell with Siska Development Corporation a parcel of land in Quezon City. Upon Dawson's death, petitioners, his surviving heirs, assumed the payment of the monthly amortizations from their own funds. Upon petitioners' full payment, Siska Development Corporation executed a deed of sale in favor of the deceased Louis P. Dawson, and TCT No. RT-58706 (248057) was correspondingly issued in the name of the said decedent. Petitioners filed a petition for cancellation and correction of