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Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and *Gonzaga-Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 122161. February 1, 1999]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **COURT OF APPEALS and CDCP MINING CORPORATION,** *respondents.*

[G.R. No. 120991. February 1, 1999]

SIRAWAI PLYWOOD & LUMBER CO., INC., *petitioner, vs.* **COURT OF APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYNOPSIS

The CDCP Mining Corporation is a mining concessionaire while the Sirawai Plywood & Lumber Co., Inc., is a forest concessionaire. Sometime in 1980 to 1982, they purchased refined and manufactured mineral oils, motor fuels and diesel fuel oils from various oil companies which they actually and exclusively used in the exploitation and operation of their respective concessions. The oil companies paid and passed to them the specific taxes imposed under Sections 153 and 156 (formerly Sections 142 and 145) of the 1977 NIRC on refined and manufactured mineral oils, motor fuels and diesel fuel oils. Subsequently, both concessionaires filed a claim for tax refund with the Commissioner of Internal Revenue. But the Commissioner did not act on the said claims, hence, they filed a petition for review before the Court of Tax Appeals. The latter granted partial tax refunds to both concessionaires pursuant

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to Section 5 of Republic Act No. 1435. On Appeal, in the CDCP Mining Corp. case the Court of Appeals modified the decision of the Court of Tax Appeals by increasing the amount granted as tax refund while in the Sirawai Plywood and Lumber Co., Inc. case the Court of Appeals denied their appeal for lack of merit. In the petition before this Court, the only issue in both cases is whether the amount to be refunded should be based on the rates of specific tax under the 1939 Tax Code as amended by Republic Act No. 1435 or should it be based on the higher rates under the 1977 Tax Code as amended by P.D. 1672 and E.O. 672.

The Court ruled that a partial refund under Section 5, R.A. 1435 is in the nature of a tax exemption, and therefore, must be construed *strictissimi juris* against the grantee. As correctly argued by the Commissioner, there is nothing in Section 5 of R.A. 1435 which authorizes a tax refund based on the higher rates under Sections 153 and 156 of the 1977 Tax Code. It should be noted that Sections 1 and 2 of R.A. 1435 simply amended Sections 142 and 145 of the Tax Code. Section 5 was not incorporated in the Tax Code. It is no different when Section 1 of P.D. 1672 amended the re-numbered Section 153 of the Tax Code.

SYLLABUS

TAXATION; TAX REFUND; MUST BE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE GRANTEE.— A partial refund under Section 5, R.A. 1435 is in the nature of a tax exemption, and therefore, must be construed *strictissimi juris* against the grantee. As correctly argued by the Commissioner, there is nothing in Section 5 of R.A. 1435 which authorizes a tax refund based on the higher rates under Sections 153 and 156 of the 1977 Tax Code. It should be noted that Sections 1 and 2 of R.A. 1435 simply amended Sections 142 and 145 of the Tax Code. Section 5 was not incorporated in the Tax Code. It is no different when Section 1 of P.D. 1672 amended the re-numbered Section 153 of the Tax Code.

APPEARANCES OF COUNSEL

The Solicitor General for Bureau of Internal Revenue.
Carpio Villaraza & Cruz for CDCP Mining Corporation.

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DECISION

MARTINEZ, *J.*:

The Court *motu proprio* consolidates G.R. Nos. 122161 and 120991 as the issues raised are similar.

The undisputed facts as found by the Court of Appeals (CA) are as follows:

G.R. No. 122161

"During the period from July 1, 1980 to June 30, 1982, (private respondent) purchased from Mobil Oil Philippines, Inc. and Caltex (Philippines), Inc. quantities of manufactured mineral oil, motor fuel, diesel and fuel oil, which (private respondent) used exclusively in the expoitation (*sic*) and operation of its mining concession.

On September 06, 1982, (private respondent) filed with the Commissioner of Internal Revenue, a claim for refund in the amount of P9,962,299.71, representing 25% of the specific taxes collected on refined and manufactured mineral oil, motor fuel and diesel fuel that (private respondent) utilized in its operations as mining concessionaire, totalling (*sic*) P39,849,198,47.

As there was no immediate action on the claim, to toll the prescriptive period, on October 08, 1982, (private respondent) filed with the Court of Tax Appeals (CTA), a petition for review of the presumed decision of the Commissioner denying such claim.

On January 2, 1984, the Commissioner of Internal Revenue actually denied (private respondent's) claim for refund.

After due trial, on August 09, 1994, the Court of Tax Appeals rendered a decision granting (private respondent's) claim for refund only in the amount of P38,461.86, without interest. The tax court ruled that (private respondent) is entitled to a refund of the specific taxes that it paid during the period September 23, 1980 to June 30, 1982, prior to which the claim had prescribed, but at the rates specified under Sections 1 and 2 of R.A. No. 1435, without interest."[1]

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[1] Court of Appeals (CA) Decision in CA-G.R. No. 34987 promulgated November 9, 1994 penned by Justice B. Pardo with Justices J. Torres and C. Ibay-Somera, concurring, pp. 1-2; *Rollo* in G.R. No. 122161, pp. 23-24.

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The dispositive portion of the Court of Tax Appeals (CTA) decision reads:

"WHEREFORE, the respondent Commissioner of Internal Revenue is hereby ordered to refund in favor of petitioner CDCP Mining Corporation, the sum of P38,461.86 without interest, equivalent to 25% partial refund of specific taxes paid on its purchases of gasoline, oils and lubricants, diesel, fuel oils, and kerosene pursuant to the provision of Section 5 of Republic Act No. 1435, in relation to Sections 142 (b) and (c) of the National Internal Revenue Code and Section 145 as prescribed under Sections 1 and 2 of R.A. 1435.

"No pronouncements as to costs."[2]

Private respondent filed a petition for review before the CA, which on November 9, 1994, rendered a decision modifying that of the CTA, to wit:[3]

"WHEREFORE, the Court MODIFIES the appealed decision of the Court of Tax Appeals, and orders the Commissioner of Internal Revenue to refund to petitioner (*private respondent*) CDCP Mining Corporation the amount of P1,598,675.25, without interest, equivalent to 25% refund of specific taxes paid on its purchases during the period September 23, 1980 to June 30, 1982, of manufactured oil and other fuel and diesel fuel oil, pursuant to Section 5 of Republic Act No. 1435, in relation to Sections 153 and 156 of the Tax Code."

Both parties filed their respective motions for reconsideration. When the CA denied both motions,[4] petitioner filed a petition for review on *certiorari*.

G.R. No. 120991

"This is a petition for review of the decision dated August 2, 1994 of the Court of Tax Appeals (CTA Case No. 3554) granting the claim for partial tax refund of petitioner Sirawai Plywood and Lumber Co., Inc.,

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[2] Court of Tax Appeals (CTA) Decision promulgated August 9, 1994 penned by Associate Judge Gruba, and concurred in by Presiding Judge Acosta and Associate Judge De Veyra, p. 24; *Rollo* in G.R. No. 122161, p. 51.

[3] CA Decision, p. 3; *Rollo* in G.R. No.122161, p. 25.

[4] CA Resolution G.R. No. 122161 promulgated September 26, 1995 penned by Justice C. Ibay-Somera, concurred in by Justices J. Torres and R. Reyes, pp. 1-2; Annex "C" of Petition.

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under the provisions of Section 5 of Republic Act No. 1435 but reducing the amount of specific taxes to be refunded by respondent Commissioner of Internal Revenue from Ninety Nine Thousand Two Hundred Twenty Six and 17/100 Pesos (P99,226.17) to One Thousand One Hundred One and 15/100 Pesos (P1,101.15), without interest.

"The petitioner alleges that it is a duly licensed forest concessionaire with a Timber License Agreement duly entered into with the Ministry of Natural Resources; that during the period beginning July 1, 1980 to May 31, 1981, petitioner purchased from various oil companies refined and manufactured mineral oils, motor fuels and diesel fuel oils which petitioner actually and exclusively used in connection with the exploitation and operation of its forest concession; that the said oil companies paid and passed on to the petitioner the specific taxes imposed under Sections 153 and 156 (formerly Sections 142 and 145) of the 1977 NIRC on refined and manufactured mineral oils, motor fuels and diesel fuel oils that said company sold to petitioner; that in accordance with the provisions of Republic Act No. 1435 and the decision of the Supreme Court in *Insular Lumber Co. v. Court of Tax Appeals* (G.R. No. L-31057, May 29, 1981), petitioner filed with the respondent Commissioner on November 8, 1982, a claim for refund in the amount of Ninety Nine Thousand Two Hundred Twenty Six and 17/100 Pesos (P99,226.17) representing twenty five percent (25%) of the specific taxes collected on the refined and manufactured mineral oils, motor fuels, and diesel fuel oils that petitioner utilized in its operations as forest concessionaire as computed. In support of the claim for refund, the petitioner submitted to respondent Commissioner the affidavits of petitioner and four disinterested persons attesting to the fact that the refined and manufactured minerals oils, motor fuels, and diesel fuel oils that the petitioner purchased from various oil companies were actually used by the petitioner in the exploitation and operation of its forest concession.

"On December 13, 1982, the petitioner filed with the respondent Court of Tax Appeals a Petition for Review of the decision dated December 1, 1982 entitled *'Sirawai Plywood and Lumber Co., Inc. v. Commissioner of Internal Revenue,'* docketed as CTA No. 3554 to prevent the lapse of the two (2) years prescriptive period."

On August 2, 1994, the respondent CTA rendered a decision, the dispositive portion of which follows:

"WHEREFORE, in all the foregoing, Respondent Commissioner of Internal Revenue is hereby ORDERED to REFUND the sum of P1,101.15

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in favor of the herein petitioner which is equivalent to 25% partial refund of specific taxes paid on its purchases of fuel oils and lubricants 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. 1435."[5]

On appeal, the CA denied the same for lack of merit.[6] Hence, this petition for review on *certiorari*.

There is no dispute that the tax refund-claimants are indeed entitled to the 25% refund under Section 5 of R.A. 1435.[7] The only issue in both cases is whether the amount to be refunded should be based on the rates of specific tax under the 1939 Tax Code as amended by R.A. 1435 or should it be based on the higher rates under the 1977 Tax Code as amended by P.D. 1672 and E.O. 672. Stated differently, does the refund of "25% of the specific tax paid thereon" under Section 5 of R.A. 1435 refer to the rates mentioned in Sections 1 and 2 of R.A. 1435[8] as originally enacted and

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[5] CTA Decision dated August 2, 1994 in Case No. 3554 penned by Associate Judge Manuel Gruba with Judges Ernesto Acosta and Ramon de Veyra, concurring, p. 15; *Rollo* in G.R. No. 120991, p. 62.

[6] CA Decision promulgated July 10, 1995 in SP No. 34986, penned by Associate Justice Salome A. Montoya with Justices Angelina Gutierrez and Bernardo Salas, concurring, p. 6; *Rollo* in G.R. No. 120991, p. 47.

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

[8] R.A. 1435 —

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

"Section 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

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regardless of any amendments thereto or should it be based on the rate of tax deemed paid, thus, contemplating any subsequent amendments including the changes introduced under Sections 153 and 156 of the Tax Code.[9]

Sections 1 and 2 of R.A. 1435 amended Sections 142 and 145 of the 1939 Tax Code by changing the rates of tax for certain fuel and oil products. Section 5 of said Republic Act, which reads:

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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 producer's 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.

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

"Section 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. "x x x.

[9] P.D. 1672 –

"SECTION 1. Section 153 of the National Internal Revenue Code of 1977, as amended, do hereby order and decree the following:

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"The proceeds of the additional tax on the 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 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 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

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"Section 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, seven centavos;

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

(c) Naptha, 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 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;

(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 taxed 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."

"Section 156. *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, per liter of volume capacity, seventeen and one-half centavos, which tax shall attach to this fuel oil as soon as it is in existence as such."

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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." (italics supplied).

allows a tax refund of "25% of the specific tax paid thereon," subject to certain conditions. In 1977, P.D. 1158 codified all existing tax laws wherein Sections142 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. Later, the latter sections were amended by P.D. 1672 and subsequently by E.O. 672[10] wherein the tax rates for certain oil and fuel products were further increased.

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[10] E.O. 672. —

"Section 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) Naptha, 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 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, sixty-one centavos;
(g) Liquefied petroleum gas, per kilogram, twenty-one centavos: *Provided,* that, liquefied 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 petrolatum, per kilogram, fifty centavos;
(j) Aviation turbo-jet fuel, per liter of volume capacity, sixty-four centavos."

"Section 156. *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, 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."

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A partial refund under Section 5, R.A. 1435 is in the nature of a tax exemption, and therefore, must be construed *strictissimi juris* against the grantee.[11] As correctly argued by the Commissioner, there is nothing in Section 5 of R.A. 1435 which authorizes a tax refund based on the higher rates under Sections 153 and 156 of the 1977 Tax Code. It should be noted that Sections 1 and 2 of R.A. 1435 simply amended Sections 142 and 145 of the Tax Code. Section 5 was not incorporated in the Tax Code. It is no different when Section 1 of P.D. 1672 amended the re-numbered Section 153 of the Tax Code.

The issue raised herein had already been settled by the Court *en banc*'s ruling laid down in the recent case of *Davao Gulf Lumber Corporation v. CIR and CA,*[12] where the Court said that there is no "expression of a legislative will (in R.A. 1435) authorizing a refund based on the higher rates claimed by petitioner." Although that case was not cited by the parties, it being newly promulgated at the time of the submission of their respective memorandum,[13] yet a scrutiny of the relevant jurisprudence discussed therein and those cited by the parties in this case are the same. Said cases include: *Insular Lumber, Co. v. CTA;*[14] *CIR v. Rio Tuba Nickel Mining Corporation and CTA*[15] and the resolution modifying it;[16] the two Atlas cases of *CIR v. Atlas Consolidated Mining and Development Corp., et al.,*[17] and *CIR v. CA and Atlas Consolidated Mining and Development Corp., et al.*[18] Applicable herein is the pronouncement in said *Davao Gulf*, to wit:

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[11] *Insular Lumber Co. v. CTA,*104 SCRA 710.

[12] *Davao Gulf Lumber Corporation v. CIR and CA, (en banc)*, G.R. No. 117359, July 23, 1998.

[13] Petitioner's memorandum was filed on August 14, 1998 whereas that of private respondent on July 17, 1998. (*Rollo*, pp. 104, 143).

[14] 192 Phil. 221, 104 SCRA 710 (1981) *En banc.*

[15] 202 SCRA 137 Decision (Division); 207 SCRA 549 (1992) Resolution modifying the earlier decision.

[16] Resolution dated June 15, 1992.

[17] Resolution (Division) in G.R. No. 93631 dated November 12, 1990.

[18] 232 SCRA 321 (Division) (1994).

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"When the law itself does not explicitly provide that a refund under R.A. 1435 may be based on higher rates which were non-existent at the time of its enactment, this Court cannot presume otherwise, A legislative lacuna cannot be filled by judicial fiat."

Equally relevant herein is the following analysis in *Davao Gulf* with respect to the allegedly conflicting decision in the cases cited above:

"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 paid under Sections 1 and 2 of R.A. 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 R.A. 1435.

"On the other hand, the issue raised in the 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 1976-1978 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 the 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 R.A.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 division may be modified or reversed except by the Court sitting *en banc.*

"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.'"[19]

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[19] *Davao Gulf Lumber Corporation v. CIR and CA, supra.*

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At the risk of being tautological, nothing in Section 5 of R.A. 1435 was it provided that the *rate of refund* shall be based on the increased rates under Section 153.

WHEREFORE, premises considered, the petition in G.R. No. 122161 is *GRANTED* and the assailed decision of the Court of Appeals *REVERSED* and *SET ASIDE*. The Decision dated August 2, 1994 of Court of Tax Appeals in Case No. 3554 is *REINSTATED*. The petition in G.R. No. 120991 is *DENIED* and the assailed decision of the Court of Appeals is AFFIRMED *in toto*.

SO ORDERED.

Davide, Jr., C.J., Melo, and *Kapunan, JJ.,* concur.
Pardo, J., no part.

EN BANC

[G.R. No. 122485. February 1, 1999]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LARRY MAHINAY *Y* AMPARADO,** *accused-appellant.*

SYNOPSIS

Appellant was charged with rape with homicide for the sexual assault and death of Maria Victoria Chan, 12 years old. Evidence disclosed that Maria, on that fateful afternoon, went to the second floor of the house where appellant was staying. Appellant pulled her hand and her head hit the table causing her to become unconscious. At this stage, appellant, who was then drunk, had sexual intercourse with her. He then dumped the still unconscious victim inside the septic tank and thereafter took flight. The body of the victim was retrieved the following day wearing only a blouse without underwear. Recovered in the unfinished house where accused slept on the night of the incident was the victim's pair of shorts, brown