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The accused-appellants have conspired to recruit complainants without the necessary permit or license and victimized more than three persons in the case at bar. Thus, they are guilty of illegal recruitment by a syndicate in large scale and must suffer the consequences thereof.

IN VIEW WHEREOF, the Court hereby *AFFIRMS* the appealed decision *in toto*. With costs.

SO ORDERED.

Davide, Jr., C.J., Melo, and *Kapunan, JJ.,* concur.

Ynares-Santiago, J., no part.

SECOND DIVISION

[G.R. No. 120324. April 21, 1999]

PHILEX MINING CORPORATION, *petitioner, vs.* COMMISSIONER OF INTERNAL REVENUE, AND THE COURT OF APPEALS, *respondents.*

SYNOPSIS

Pursuant to RA No. 1435 (An Act to Provide means for Increasing the Highway Special Fund), petitioner PHILEX, a domestic mining corporation, filed a claim for refund with the Commissioner of Internal Revenue (CIR) for P623,169.30 representing the 25% percent of the specific taxes it paid on its purchases from several oil companies refined and manufactured mineral oils, motor fuels, and diesel fuel oils. Pending CIR action, petitioner filed a case for tax refund with the CTA seeking judgment ordering the CIR to pay tax refund with 20% percent interest per annum. The CTA granted petitioner's claim, but only to the extent of P16,747.36, the amount refundable based on Sections 1 and 2 of RA 1435. The Court of Appeals affirmed

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the CTA's decision. In its petition for *certiorari* before the Supreme Court, petitioner raised the issue of whether or not respondent court erred in basing the tax refund under Sections 1 and 2 of RA 1435, instead of the increased rates imposed by Sections 153 and 156 of the NIRC, as amended.

The subsequent codification of tax laws under the 1977 NIRC, Sections 153 and 156, mandated the increased rates of specific taxes levied on manufactured oils, other fuels and diesel fuel oils. Although PHILEX paid the taxes on their oil and fuel purchases based on the increased rates, the latter law did not specifically provide for a refund based on the increased rates. Since the grant of refund privileges must be strictly construed against the taxpayer, the basis for the refund remains to be the amounts deemed paid under Sections 1 and 2 of RA 1435. Furthermore, the claims for refund which were not filed with the CIR and those that prescribed must be deemed excluded, for being outside the ambit of the legislative enactment.

SYLLABUS

1. **TAXATION; RA 1435 (AN ACT PROVIDING MEANS FOR INCREASING HIGHWAY SPECIAL FUNDS); MINING AND LUMBER COMPANIES GRANTED 25% PARTIAL REFUND OF SPECIFIC TAXES PAID ON PURCHASES OF MANUFACTURED DIESEL AND FUEL OILS.**— R.A. 1435, "An Act to Provide Means for Increasing the Highway Special Fund," states that the specific taxes collected on gasoline and fuel which accrue to the Fund shall be used for the construction and maintenance of the highway system. Mining and lumber companies seldom use national highways. Since the gasoline and fuel purchased by mining and lumber companies are used within their own compounds and roads, and they do not benefit directly from the Fund, the government granted to these companies a 25% partial refund of specific taxes paid on purchases of manufactured diesel and fuel oils.

2. **ID.; NATIONAL INTERNAL REVENUE CODE; TAX REFUND; STRICTLY CONSTRUED AGAINST TAXPAYER.**— The subsequent codification of tax laws under the 1977 NIRC, Sections 153 and 156, mandated the increased rates of specific taxes levied on manufactured oils, other fuels and diesel fuel oils. Although Philex Mining Corporation paid

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the taxes on their oil and fuel purchases based on the increased rates, the latter law did not specifically provide for a refund based on the increased rates. Since the grant of refund privileges must be strictly construed against the taxpayer, the basis for the refund remains to be the amounts deemed paid under Sections 1 and 2 of R.A. 1435. Furthermore, the claims for refund which were not filed with the CIR and those that prescribed must be deemed excluded, for being outside the ambit of the legislative enactment.

3. **ID.; ID.; ID.; NO INTEREST ON REFUND OF TAX; EXCEPTION.**— No interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. None of the exceptions are present in the case at bar. Respondent's decision denying petitioner's claim for refund was based on an honest interpretation of law.

APPEARANCES OF COUNSEL

Lucito A. Tan & Ranil M. Reynante for petitioner.
The Solicitor General for respondents.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* pursuant to Rule 45 of the Rules of Court seeks to set aside the May 18, 1995 Decision[1] of the Court of Appeals in CA-GR SP No. 34988, which affirmed the Decision of the Court of the Tax Appeals in CTA Case No. 3547. The Court of Tax Appeals disposed of the case as follows:

"WHEREFORE, the respondent, COMMISSIONER OF

[1] Penned by Associate Justice Cancio C. Garcia, with the concurrence of Associate Justices Arturo B. Buena and Eugenio S. Labitoria; *Rollo*, pp. 45-51.

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INTERNAL REVENUE is hereby ordered to REFUND in favor of petitioner, PHILEX MINING CORP., the sum of P16,747.36 without interest, equivalent to 25% partial refund of specific taxes paid on its purchases of gasoline, oils and lubricants, diesel and fuel oils 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. No. 1435.

No pronouncement as to costs.

SO ORDERED."[2]

As set forth in the decision of the Court of Appeals, the following relevant incidents took place:

Petitioner as a domestic mining corporation had entered into a Mining License Agreement with the then Ministry of Natural Resources (now the Department of Environment and Natural Resources). From the period July 1, 1980 to December 31, 1981, petitioner purchased from several oil companies, refined and manufactured mineral oils, motor fuels, and diesel fuel oils. The specific taxes passed on to the petitioner amounted to two million, four hundred ninety-two thousand, six hundred seventy-seven pesos and twenty-two centavos (P2,492,677.22).

On October 22, 1982, pursuant to Republic Act No. 1435, petitioner filed a claim for refund with the Commissioner of Internal Revenue (CIR) for six hundred twenty-three thousand, one hundred sixty-nine pesos and thirty centavos (P623,169.30), representing the twenty-five (25%) percent of the specific taxes paid. The petitioner presented as evidence the affidavits of its president, purchasing manager, and two disinterested representatives of another licensed mining corporation. They averred that for the period July 1980 to December 1981, petitioner used refined and manufactured mineral oils, motor fuels and diesel fuel oils in their business operation and paid the corresponding specific taxes.

Pending CIR action, on November 16, 1982, the petitioner

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[2] *Rollo*, p. 72.

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filed a case for tax refund with the Court of Tax Appeals (CTA). The petitioner sought judgment ordering the CIR to pay as refund the amount of P623,169.30, with twenty (20%) percent interest per annum, plus the costs of suit.

On August 4, 1994, the CTA rendered its decision, quoted at the outset, granting the petitioner's claim, but only to the extent of sixteen thousand, seven hundred forty-seven pesos and thirty-six centavos (P16,747.36).

The Court of Appeals affirmed the decision of the CTA. Before us, the petitioner now cites the following alleged errors of the Court of Appeals:

"I. BASING THE REFUND ON THE AMOUNTS DEEMED PAID UNDER SECTIONS 1 AND 2 OF R.A. NO. 1435 IS CONTRARY TO THE SUPREME COURT'S *EN BANC* DECISION IN *INSULAR LUMBER CO. V. COURT OF TAX APPEALS* WHICH GRANTED THE CLAIM FOR PARTIAL REFUND ON THE BASIS OF *SPECIFIC TAXES ACTUALLY PAID* BY THE CLAIMANT WITHOUT QUALIFICATION OR LIMITATION.

"II. THE SAID RULING OF THE RESPONDENT COURT IGNORES THE INCREASE IN RATES IMPOSED BY SUCCEEDING AMENDATORY LAWS, UNDER WHICH THE PETITIONER PAID THE SPECIFIC TAXES ON MANUFACTURED AND DIESEL FUELS.

"III. IN MAKING THE RULING, THE RESPONDENT COURT WENT AGAINST THE ESTABLISHED RULES OF CONSTRUCTION IN THAT IT LENT ITSELF TO INTERPRETING SECTION 5 OF R.A. NO. 1435, WHEN THE CONSTRUCTION OF SAID LAW IS NOT NECESSARY.

"IV. SECTIONS 1 AND 2 OF R.A. NO. 1435 ARE NOT THE OPERATIVE PROVISIONS TO BE APPLIED BUT RATHER, SECTIONS 142 AND 145 (WHICH WOULD BECOME SECTIONS 153 AND 156) OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

"V. BASING THE COMPUTATION OF THE PARTIAL TAX REFUND ON SECTIONS 1 AND 2 OF R.A. NO. 1435,

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RATHER THAN ON SECTIONS 153 AND 156 OF THE NATIONAL INTERNAL REVENUE CODE, IS UNFAIR, ERRONEOUS, ARBITRARY, INEQUITABLE AND OPPRESSIVE."[3]

There are two clear-cut issues now raised before the Court:

1) Whether respondent court erred in basing the tax refund under Sections 1 and 2 of R.A. 1435, instead of the increased rates imposed by Sections 142 and 145 (which became Sections 153 and 156) of the National Internal Revenue Code, as amended.

2) Whether the respondent court erred in relying on the Supreme Court's decision in *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp.*[4] which allegedly runs counter to the Court's decision in *Insular Lumber Co. vs. Court of Tax Appeals.*[5]

R.A. 1435, "An Act to Provide Means for Increasing the Highway Special Fund," states that the specific taxes collected on gasoline and fuel which accrue to the Fund shall be used for the construction and maintenance of the highway system. Mining and lumber companies seldom use national highways. Since the gasoline and fuel purchased by mining and lumber companies are used within their own compounds and roads, and they do not benefit directly from the Fund, the government granted to these companies a 25% partial refund of specific taxes paid on purchases of manufactured diesel and fuel oils. This tax relief was embodied in Section 5 of R.A. No. 1435, which states:

"*Sec.* 5 of R.A. 1435 — 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

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[3] *Rollo*, pp. 18-19.

[4] 202 SCRA 137 (1991); 207 SCRA 549 (1992) Resolution modifying the earlier decision.

[5] 104 SCRA 710 (1981).

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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."

In 1977, P.D. 1158 codified all existing laws. Sections 142 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.[6] Later, these sections were amended by P.D. No. 1672 and subsequently by E.O. 672 increasing the tax rates for certain oil and fuel products.[7] When the Highway Special Fund was abolished in 1985, the reason for the refund ceased to exist.

This Court, in a string of decisions, repeatedly held that the tax refund under R.A. 1435 is computed on the basis of the specific tax deemed paid under Sections 1 and 2, and not on the increased rates actually paid under the 1977 NIRC. Among these cases, are *CIR vs. Rio Tuba Nickel Mining Corporation*,[8] *CIR vs. CA and Atlas Consolidated Mining and Development Corp.*,[9] *en banc's* ruling in *Davao Gulf Lumber Corporation vs. CIR and CA*,[10] *Atlas Consolidated Mining and Development Corp. vs. CIR, et al.*[11] and the recently decided consolidated cases of *CIR vs. C.A. and CDCP Mining Corporation*[12] and *Sirawai Plywood & Lumber Co., Inc. vs. CA and CIR.*[13]

[6] *Commissioner of Internal Revenue v. Court of Appeals and CDCP Mining Corp., and Sirawai Plywood and Lumber Co., Inc. v. CA and CIR,* G.R. Nos. 122161 & 120991, February 1, 1999.

[7] *Ibid.*

[8] See note 4, *supra.*

[9] 232 SCRA 321 (1994).

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

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

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

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

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The fundamental issues raised herein appear to be the very issues settled in the case of *Davao Gulf Lumber Corporation vs. CIR and CA.*[14] We are guided and constrained by this precedent in now reaching a similar resolution of the issues, adverse to herein petitioner.

In *Davao Gulf,* the Court *en banc* held:

"x x x Since the partial refund authorized under Section 5, R.A. 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 R.A. 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. x x x 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.*" (citations omitted)[15]

In *Davao Gulf,* the Court also laid to rest the alleged conflict between the *Insular Lumber* and the *Rio Tuba* decisions, in this manner:

"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.

x x x x x x x x x

Clearly it is impossible for these two decisions to clash with our pronouncements 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 R.A. 1435. In the light, we find no basis for petitioner's invocation of the constitutional proscription

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[14] See note 10, *supra.*

[15] *Id.*, G.R. No. 117359, Advance copy of the decision of the Supreme Court at pp. 15-16.

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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.'" (citations omitted)[16]

The subsequent codification of tax laws under the 1977 NIRC, Sections 153 and 156, mandated the increased rates of specific taxes levied on manufactured oils, other fuels and diesel fuel oils. Although Philex Mining Corporation paid the taxes on their oil and fuel purchases based on the increased rates, the latter law did not specifically provide for a refund based on the increased rates. Since the grant of refund privileges must be strictly construed against the taxpayer, the basis for the refund remains to be the amounts deemed paid under Sections 1 and 2 of R.A. 1435.[17] Furthermore, the claims for refund which were not filed with the CIR and those that prescribed must be deemed excluded, for being outside the ambit of the legislative enactment.

As to the 20% interest per annum prayed by the petitioner, we reiterate our pronouncement in *Rio Tuba*, where no interest was awarded although the claim for refund was granted. As aptly stated by the CTA, *viz.*:

"x x x [T]he rule is that no interest on refund of tax can be awarded unless authorized by law or the collection of the tax was attended by arbitrariness. An action is not arbitrary when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. None of the exceptions are present in the case at bar.

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[16] *Id.*, at pp. 19-20.

[17] *Commissioner of Internal Revenue v. Court of Appeals and Atlas Consolidated Mining and Development*, G.R. No. 119786, September 22, 1998; citing *Commissioner of Internal Revenue v. Rio Tuba Nickel and Mining Corporation,* 207 SCRA 549 (1992).

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Respondent's decision denying petitioner's claim for refund was based on an honest interpretation of law. We, therefore see no reason why petitioner should be entitled to the payment of interest. (citations omitted)"[18]

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

Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Puno, and *Mendoza, JJ.,* concur.

Buena, J., no part.

EN BANC

[G.R. No. 120420. April 21, 1999]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUFINO MIRANDILLA BERMAS,** *accused-appellant.*

SYNOPSIS

On the day scheduled for his arraignment in the rape case filed against him by his own daughter, accused-appellant Rufino Bermas was brought before the trial court without counsel. The court thereupon assigned Atty. Rosa Villamin of the Public Attorney's Office (PAO) to be his counsel *de officio*. He forthwith pleaded not guilty. During the reception of the evidence for the prosecution where complainant was placed at the witness stand testifying on direct examination, the defense counsel hardly had any participation who inexplicably waived the cross-examination and then asked the court to be relieved of her duty as counsel de officio. Another lawyer was appointed in his

[18] *Rollo*, pp. 70-71.