415 Phil. 563

SECOND DIVISION

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

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

D E C I S I O N

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

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.

II

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.

III

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.

IV

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).

V

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 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.