REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SILKAIR (SINGAPORE) PTE, LTD.,
Petitioner,

- versus - C.T.A. CASE NO. 5996

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 06 2003

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DECISION

This case involves a claim for refund in the amount of P4,587,881.68 allegedly representing excise taxes erroneously paid by petitioner on its aviation jet fuel purchases from Petron Corporation for the period January 1, 1998 to June 30, 1998.

Petitioner is a foreign corporation organized under the laws of Singapore with a Philippine Representative Office with address at Suite 302, Cebu Holdings Center, Cardinal Rosales Avenue, Cebu City. It is engaged in business as an on-line international carrier operating the Cebu-Singapore-Cebu and Davao-Singapore-Davao routes (*pars. 1 & 2, Facts Admitted*).

In two separate letters dated September 17, 1997 and March 2, 1998, the Civil Aeronautics Board (CAB) approved petitioner's request to operate its Singapore-Cebu-Singapore and Singapore-Davao-Singapore routes for the period October 26, 1997 to March 28, 1998 and from March 29, 1998 to October 24, 1998, respectively (*Exhibits H & I*).

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From January 1, 1998 to June 30, 1998, petitioner allegedly purchased aviation jet fuel from Petron Corporation for use on its international flights and paid specific (excise) taxes thereon amounting to P4,587,881.68. The payment was allegedly paid in advance by Singapore Airlines but subsequently reimbursed by petitioner to the former.

Relying on BIR Ruling No. 339-92 dated December 1, 1992, wherein it was held that the Cebu link of the route Singapore/Cebu/Singapore is an international flight by an international carrier and the petroleum products purchased by petitioner and consumed in such flights shall not be subject to excise taxes pursuant to Section 132 (*now 135*) of the Tax Code, petitioner, on October 21, 1999, filed a formal request for the refund/issuance of a tax credit certificate with the Bureau of Internal Revenue of its alleged erroneous excise tax payment of P4,587,881.68 (*Annex D of the Petition for Review, page 13, CTA Records*).

On January 5, 2000, petitioner elevated its claim before this court via a Petition for Review citing as legal bases therefor Sections 135 in relation to Section 229 of the Tax Code.

Respondent, in his Answer filed through registered mail on February 24, 2000, interposed by way of Special and Affirmative Defenses the following:

> "6. Section 135 of the Tax Reform Act of 1997, is the main thrust of petitioner's claim for refund. However, said section lays down certain conditions to be satisfied first before a taxpayer may be entitled to tax exemption, thus:
>
> > "Section 135. **Petroleum Products Sold to International Carriers and Exempt Entities or Agencies**.- Petroleum products sold to the following are exempt from excise tax:

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a. International carriers of Phillippine or foreign registry on their use or consumption outside the Philippines. Provided, that the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;

b. Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumptions. Provided, however, that the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and

c. Entities which are by law exempt from direct and indirect taxes."

7. Assuming without admitting that a foreign law is applicable in the case at bar, the same must be proven as a fact;

8. It is well-settled in our jurisdiction that when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well founded doubt is fatal to the claim (Farrington vs. Tennessee and Country Shelby, 95 vs. 679,689; Oct. 22, 1975, SCRA 351);

9. Furthermore, petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code, as amended, to wit:

"Section 204. **Authority of the Commissioner to compromise, abate, and refund/credit taxes**.

c) Credit or refund of taxes erroneously or illegally received penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty."

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"Section 229. **Recovery of Tax erroneously or illegally collected**. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneosly or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner, but such suit or proceeding may be maintained whether or not such tax, penalty or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

xxx xxx xxx;

10. Hence, claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation.

As jointly stipulated by the parties, the issues to be resolved in this case are:

1. Whether or not petitioner is exempt from the payment of excise tax on its purchase of jet fuel as an on-line international carrier as provided under Section 135 of the Tax Code;

2. Whether or not the jet fuel purchased by petitioner for the period January 1 to June 30, 1998 was used in its international flight;

3. Whether or not the laws of Singapore exempts from excise taxes petroleum products sold to Philippine carriers;

4. Whether or not petitioner is entitled to a tax credit/refund in the amount of P4,587,881.68 representing excise taxes paid on its purchases of jet fuel from Petron Corporation for the period January 1 to June 30, 1998.

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After a careful perusal of all the records relative to the case at bar in relation to the existing laws and jurisprudence applicable thereto, this court rules against petitioner.

The instant case is anchored on the provisions of Section 135 in relation to Section 229 of the 1997 Tax Code, which are all quoted hereinbelow, thus:

> "**SEC. 135.** ***Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.*** – Petroleum products sold to the following are exempt from excise tax:
>
> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided,* That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
>
> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided, however*, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; xxx."
>
> "***SEC. 229. Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> "In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on

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> the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Clearly, from the foregoing, in order to be entitled to the refund sought for, petitioner must prove:

1. that it actually paid the claimed specific (excise) taxes of P4,587,881.68;
2. that it is exempted from the payment of such specific (excise) taxes as provided for under Section 135 of the Tax Code; and
3. that the claim for refund was filed within the two-year prescriptive period as provided for under Section 229 of the Tax Code.

With regard to the first requisite, petitioner submitted documentary exhibits such as the: 1) Aviation Supply Agreement executed between Petron Corp. and petitioner for the period April 1, 1997 until March 31, 1999 (*Exhibit B*); 2) Report of SGV & Co. dated May 31, 2001 regarding the results of the substantiation requirements for petitioner's claimed specific taxes of P4,587,881.68 (*Exhibit E*); 3.) Aviation Delivery Receipts/Invoices and Cash Receipts issued by Petron Corp. to Singapore Airlines (*Exhibit G-1 to G-247, inclusive*); 4.) a Letter dated June 16, 1992 from Chak Teck Sem, General Manager in the Philippines of Singapore Airlines addressed to Mr. Go of Petron Corporation requesting that a credit line be extended to petitioner (*Exhibit Q*); 5.) Authority to Accept Payment for Excise Taxes prepared by Petron Corporation and duly machine validated by the collection agent bank for the period January 1, 1998 to June 30, 1998 with one-page attachment showing volume of liters and corresponding amounts of excise taxes paid (*Exhibits J to O*); and 6.) a Certification from Petron Corporation that it paid excise taxes in the amount of P4,587,881.68 to the BIR on Jet-A-1 fuel product

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deliveries to Singapore Airlines from January 1 to June 30, 1998 (*Exhibit P*). A scrutiny of the preceding exhibits shows petitioner's receipt and payment of delivered aviation fuel, inclusive of excise taxes of P4,587,881.68, through the accommodation of Singapore Airlines and the corresponding remittance of said excise taxes by Petron Corporation to the BIR.

As to whether or not the claim was filed within the two-year prescriptive period, we answer in the affirmative.

Pursuant to the earlier quoted provisions of Section 229 of the Tax Code, the reckoning of the two-year prescriptive period for the refund of erroneously paid tax shall be from the *date of payment of the tax*. Accordingly, we need to look into the provisions of Section 130(A)(2) of the Tax Code, thus:

> "**SEC. 130.** ***Filing of Return and Payment of Excise Tax on Domestic Products.***
> "(A) *Persons Liable to File a Return, Filing of Return on Removal and Payment of Tax.* –
> xxx
> "(2) *Time for Filing of Return and Payment of the Tax.* — Unless otherwise specifically allowed, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production: *Provided*, That **the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 148** and 151(A)(4), respectively, of this Title **shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998;** within five (5) days from the date of removal of such products for the period from July 1, 1998 to December 31, 1998; and, before removal from the place of production of such products from January 1, 1999 and thereafter: xxx"

The aviation fuel purchased by the petitioner from Petron Corporation is a locally manufactured petroleum product subject to excise tax under Section 148(g) of the Tax

Code. Following the aforequoted provisions of Section 130(A)(2) of the Tax Code, Petron Corporation remitted to the Bureau of Internal Revenue on the following dates the specific (excise) taxes it passed on to petitioner:

Exhibit	Payment Date	Date of Removal
J	1/15/98	1/5/98
K	2/11/98	2/1/98
L	3/6/98	2/24/98
M	4/14/98	4/4/98
N	5/18/98	5/6/98
O	6/9/98	5/30/98

Since the Petition for Review was filed with this court on January 5, 2000, the two-year prescriptive period started to run on January 5, 1998. Hence, all of the above specific (excise) tax remittances fall within the two-year prescriptive period.

What now remains to be resolved is whether or not petitioner is exempted from the payment of the specific taxes of P4,587,881.68.

In a similar case involving the same parties and issues entitled ***Silkair [Singapore] PTE, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 6130, dated July 28, 2003***, this court laid down the following conditions in order that the petroleum products sold to an international air carrier will be exempted from the payment of excise taxes:

a. that the petroleum products sold to international carriers of Philippine or foreign registry shall be for their use or consumption outside the Philippines;

b. that the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner; and

c. that the country of said foreign international carrier exempts from similar taxes petroleum products sold to Philippine carriers.

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There is no doubt that petitioner is an international carrier and that the aviation jet fuel it purchased from Petron Corporation for the subject period of claim with the related specific taxes of P4,587,881.68 were used or consumed outside the Philippines.

Likewise, as to whether the country of said foreign international carrier exempts from similar taxes petroleum products sold to Philippine carriers, the court rules in the affirmative, thus:

> "xxx the Court finds that Petitioner had substantially complied with the reciprocity clause mentioned in Section 132 (now 135) of the Tax Code when it presented in evidence the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore executed on July 11, 1974 (Exh. J) specifically Art. 4(2) of the same (Exh. J-1), quoted below, xxx:
>
> "AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE
>
> The Government of the Republic of the Philippines and the Government of the Republic of Singapore, hereinafter described as the Contracting Parties,
>
> Being parties to the Convention on International Civil Aviation and the International Air Services Transit Agreement both opened for signature at Chicago on the 7th day of December, 1944, and
>
> Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories,
>
> Hereby agree as follows:
>
> x x x
>
> **ARTICLE 4**
>
> x x x

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> 2. Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control."
>
> x x x
>
> Moreover, the aforequoted Air Transport Agreement between the Philippines and Singapore is not a mere moral obligation but creates a legally binding obligation between the Philippines and Singapore. It forms part of the laws of the countries involved in accordance with most fundamental rule in international law, known as *pacta sunt servanda* – international agreements must be performed in good faith. Hence, both parties must fulfill the obligations undertaken." *(CTA Case No. 6130, supra)*

However, with reference to the second requisite, no evidence was adduced by petitioner to establish the fact that the aviation jet fuel it purchased from Petron Corp. came from the latter's bonded storage tank. Such failure on the part of petitioner is fatal to its claim. Petitioner should have presented convincing proof that its aviation jet fuel purchases fall the within the exemption provided for under Section 135 of the Tax Code. Considering the oft-repeated dictum that refund of taxes partakes of the nature of a tax exemption and is construed in strictissimi juris against the taxpayer and in favor of the taxing authority (***Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and the Court of Tax Appeals, G.R. Nos. L-83583-84, March 25, 1992, 207***

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SCRA 549; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd. 244 SCRA 332), this court rules to deny the instant petition.

While it is true that in the previous cases involving the same parties and subject matter, namely:

CTA CASE NO.	TITLE	DATE PROMULGATED	ENTRY OF JUDGMENT	PERIOD INVOLVED
5891	Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue	January 17, 2002	February 14, 2002	July - Dec 1997
5710	Silkair (Singapore) PTE. LTD., vs. Commissioner of Internal Revenue	Mach 8, 2001	July 5, 2001	Jan - Jun 1997
5655	Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue	May 24, 2000	June 14, 2000	Jul - Dec 1996
5430	Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue	August 20, 1999	November 4, 1999	Oct '94 - Apr '95
5382	Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue	June 7, 1999	June 25, 1999	Mar - Sep 1994

this court granted petitioner's claim for refund, nevertheless, the above cases are inapplicable to the present case. Since the periods involved in the said cases were from March 1994 to December 1997, the governing law was Section 132 of the Tax Code, prior to its amendment under Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, to wit:

> **"SEC. 132. *Petroleum products sold to foreign international carriers.*** - Petroleum products sold to an international carrier for its use and consumption outside of the Philippines shall not be subject to excise taxes, *Provided:* That the country of said carrier exempts from similar taxes petroleum products sold to Philippine carriers.

To be entitled to the exemption for the payment of the excise tax, the old Tax Code mentioned only one condition, that is, that the country of said carrier exempts from similar taxes petroleum products sold to Philippine carriers. However, Section 135 of the present Code provided two other requirements, as earlier mentioned.

IN VIEW OF THE FOREGOING, the Petition for Review is hereby ***DENIED***.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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DISSENTING OPINION

With due respect to the opinion of the majority, I beg to disagree with their opinion that because petitioner failed to prove that the fuel delivered by Petron came from the latter's bonded storage tank, the claim should be denied.

Oil companies were maintaining bonded storage tank as manufacturer, pursuant to Section 158 of the National Internal Revenue Code. In other words, said requirement is addressed to the oil company and it will be unfair to require it from the International Airline.

Granting for purposes of argument, that it is a <u>must</u> requirement under Section 135 (A), however, the tax exemption can still be justified under Section 135 (b), "*exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption*". The condition set by this provision is that the country of the said foreign international carrier or exempt entities or agencies exempts

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from similar taxes petroleum products sold to Philippine carriers, entities or agencies. There is no requirement that the fuel sold should come from a bonded storage tank.

The Philippines has an existing Air Transport Agreement with the Republic of Singapore, cited in the body of the decision, which provides under Article 4 as follows:

X X X

ARTICLE 4

X X X

> "2. Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, <u>be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party</u>, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control."

This agreement clearly provides the tax exemption of fuel and lubricants taken on board aircraft in the territory of one contracting party or on behalf of a designated airline of the other contracting party. This also shows the reciprocal enjoyment of the privilege of the designated airline of the contracting parties. This Air Transport Agreement clearly satisfies the requirement under Section 135 (b).

As held by this court in a previous case involving the same parties, CTA Case No. 5655 (cited also in the decision). I quote:

> "Moreover, the aforequoted Air Transport Agreement between the Philippines and Singapore is not a mere moral obligation but create a

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> legally binding obligation between the Philippines and Singapore. It forms part of the laws of the countries involved in accordance with most fundamental rule in international law, known as *pacta sunt servanda* – international agreements must be performed in good faith. Hence, both parties must fulfill the obligations undertaken." (CTA Case No. 5655, supra)"

The denial of this claim based on the ground stated by the majority opinion, is a clear disregard of this international bilateral agreement and will certainly have repercussion on our own Airline based on the reciprocity arrangement.

ERNESTO D. ACOSTA
Presiding Judge

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