REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SILKAIR (SINGAPORE) PTE LTD.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5382

Promulgated:
JUN 07 1999

x - x

DECISION

This is a judicial claim for refund of specific taxes paid on purchases of aviation fuel made during the period March to September 1994 in the amount of ₱1,726,371.08 which Petitioner believes should not have been paid in the first place due to its satisfaction of the requirements for exemption therefrom as provided in Section 132 of the Tax Code, as amended.

Petitioner is a foreign air carrier organized under the laws of Singapore, with office address at #42A Gorordo Avenue, Cebu City. It is authorized to engage in business in the Philippines as an international carrier covering the Singapore/Cebu/Singapore route, initially, under a temporary operating permit issued on May 14, 1992 and later under a regular operating permit approved by the Civil Aeronautics Board per Resolution No. 202(93) dated November 12, 1993

The facts are simple.

During the period covering March to September of 1994, Petitioner bought Petron jet A-1 and AvGas 100 LL types of aviation fuel from Petron Corporation's facility at Mactan International Airport, Lahug, Cebu and paid the corresponding specific tax thereon in the aggregate sum of P1,726,731.08.

Pursuant to Respondent's BIR Ruling No. 339-92, dated December 1, 1992 (Exhibit "B"), wherein Petitioner's purchase and consumption of petroleum products have been declared not subject to excise tax under Section 132 of the Tax Code, as amended, on account of findings therein that the Cebu link of the route Singapore/Cebu/Singapore was an international flight by an international carrier, and that the laws of Singapore exempt Philippine carriers from similar taxes on petroleum products used by them, Petitioner, on January 31, 1995 filed a written claim for refund with the Respondent on said amount of specific taxes (see Exhibit "C").

On May 22, 1996, however, Petitioner initiated the instant action before this Court allegedly due to Respondent's delay in granting said claim for refund and in order to protect and preserve its right to seek judicial remedy within the prescriptive period set under Section 230 of the Tax Code.

At bar, Petitioner reasserts its stance *a quo*. On the other hand, Respondent answers, *inter alia*, the following special and affirmative defenses, to wit:

> x x x x x x x x x
>
> 7. A claim for tax refund partakes of the nature of a tax exemption, hence, must be construed strictly against petitioner;
>
> 8. Petitioner must prove that the alleged refundable excise taxes were actually paid, remitted to, and received by respondent;
>
> x x x x x x x x x
>
> 10. In addition, petitioner must establish that the alleged refundable excise taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding year nor included as creditable taxes declared and applied for the succeeding taxable year/s;
>
> 11. Moreover, petitioner has the burden of showing that it has complied with the provisions of Section 230 of the Tax Code, as amended;
>
> 12. Finally, the presumption is that the excise taxes in question were assessed and/or collected in accordance with law; hence, it is for petitioner to prove that the taxes sought to be refunded were erroneously and/or illegally collected by respondent.

Records show that the hearing of herein case involved mainly the presentation and formal offer of Petitioner's exhibits with the Respondent opting to simply submit his case for decision based on the pleadings. Petitioner filed its memorandum on February

25, 1999 while Respondent submitted his on November 9, 1998.

In his memorandum, Respondent contends the following arguments, to wit:

x x x x x x x x x

> "Worthy to note here further is the burden of the petitioner to prove that it satisfied its claim by clear and convincing evidence. But nowhere in the evidence submitted by the petitioner herein proved that its country of origin which is Singapore also exempts from similar taxes petroleum products sold to Philippine carriers.
>
> In the case at bar, petitioner asserts the application of the foreign law. Well settled is the rule, that when in a litigation the application of a foreign law is sought, it is necessary to prove before the court, in a satisfactory manner, the existence of such law as a question of fact, and when proof of such fact is lacking, it is improper to apply an unknown law to a suit pending before the court. Sy Joc Lieng, etc. vs. Sy Quia, etc (16 Phil 137). Thus, a foreign law must be properly pleaded and proved as a fact. (Adong vs. Cheong Seng Gee, 43 Phil. 43).
>
> While it is true that petitioner is a holder of a regular operating permit with the routing Singapore/Cebu/Singapore, it also caters to monitor and liaise in the operation of schedules and services and/or charter flights to and from Cebu and in Metro Manila and other provinces by Silkair (Singapore) Private Ltd. which is domestic in character.
>
> Petitioner failed to prove that all the various purchases of jet fuel were all consumed outside the Philippines. Likewise, it must be noted that aviation delivery receipts/invoices offered in evidence contain numerous erasures which tend it to become unreliable, moreso self-serving though certified as true copies issued by the petitioner's accountant, Lorna L. Sandiko.

x x x x x x x x x

Petitioner, although a subsidiary of Singapore Airlines, has a distinct and separate personality from the latter.

A subsidiary corporation is one which is so related to another corporation that it has the power either directly, or indirectly through another corporation or series of corporations, to elect a majority of the directors of operation. (Commercial Laws of the Philippines, 1970 Edition, volume 3, page 33). But ownership or control by a single stockholder of one or more corporations is not sufficient ground to disregard separate corporate personality. (Burnet, Commissioner v. Clarke, 287 US 410, 53 S. Ct. xxx 207, 77 L. Ed.) Authorities rule that it is lawful to obtain a corporate charter, even with a single substantial stockholder, to engage in a specific activity, and such activity may co-exist with other private activities of the stockholder. If the corporation is a substantial one, conducted lawfully and without fraud on another, its separate identity is to be respected. (Commercial laws of the Philippines, 1970 Edition Volume 3, page 32). Thus, Singapore Airlines is the proper taxpayer which should have filed this instant petition being the real party in interest.

After a painstaking scrutiny of the facts, the disquisition of the parties and the laws and jurisprudence in point, We are confronted with the following issues, namely:

1. Whether or not the Petition at bar has complied with the provisions of Section 230 of the Tax Code, as amended; and if in the affirmative;

2. Whether or not Petitioner or its parent company, Singapore Airlines, has the legal standing to pursue the instant claim for refund before this Court; and if in favor of Petitioner;

> 3. Whether or not Petitioner is legally entitled to its claim for refund under Section 123 of the Tax Code, as amended, in view of Respondent's assertion that Petitioner's evidence failed to show that the laws of Singapore similarly grants exemption to excise taxes on petroleum products purchased by Philippine air carriers; and lastly,
>
> 4. Whether or not there is sufficient evidence to prove the factual requirements of Petitioner's claim for refund.

As respondent posed the question of whether or not the petitioner has complied with the prescriptive period provided by Section 230 of the Tax Code, we must first deal with this foremost issue as this would be determinative of whether or not the other issues still deserve our consideration.

The records show that a written claim for refund was filed by the Petitioner on January 31, 1995; that the petition at bar was filed on May 22, 1996; that herein claim for refund of excise taxes covers purchase of aviation fuel delivered from March 1, 1994 up to September 30, 1994; and that the fuel deliveries were paid by the Petitioner through bank checks which were received by Petron Corporation, per cash receipts (Exhibits J to M), on separate dates starting from May 23, 1994 up to October 27, 1994.

It is further observed that Petitioner presented Petron Corporation's various Authority to Accept Payment for Excise Taxes ("ATAPET" for brevity; Exhibits F to F-56) with corresponding machine validation thereon on excise taxes due covering the period February 9, 1994 up to September 14, 1994 in order to prove that such excise taxes on the aviation fuel it purchased were indeed remitted and paid to respondent's Bureau.

Upon this factual backdrop, Section 230 of the Tax Code, as amended, provides the following requirements, to wit:

> **SEC. 230.** ***Recovery of tax erroneously of 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 excessive or in any manner wrongfully collected, <u>until a claim for refund or credit has been duly filed with the Commissioner;</u> but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> <u>In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:</u> *Provided, however,* That the Commissioner may, even without 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.
>
> (Underscoring supplied)

Applying the abovesaid Section 230 to the facts of the case at bar, We readily see that Petitioner has met the need for filing a written claim for refund with the Respondent prior to recourse to judicial remedy. With respect to determining whether Petitioner's claim for refund has been filed with within the stated two-year prescriptive period, We must look into the provisions of Section 127 of the Tax Code to be able to know the date of payment of these excise taxes, thus:

> "x x x the excise tax on locally manufactured petroleum products and indigenous petroleum levied under Sections 145 and 151(a)(4), respectively, of this Title shall be paid within 15 days from date of removal thereof from the place of production. x x x" (Underscoring supplied)

The aviation fuel purchased by the Petitioner is a locally manufactured petroleum product subject to Section 145 of the Tax Code, hence, the excise tax levied on it should be paid by Petron Corporation within 15 days from date of removal from the place of production. In the case of **Aras-Asan Timber Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3524, dated December 17, 1993,** this Court had the occasion to interpret the provisions of the aforequoted Section 127 in relation to Section 230 of the Tax Code where the prescriptive period of two years starts from the date of payment of the taxes. Because of the peculiar circumstances surrounding the payment of excise taxes as provided for in Section 127 of the Tax Code, the determination of what payments fall within the two year prescriptive period and those that fall outside were properly explained in the Aras-Asan case in this manner:

> "The Tax Code provides for the judicial remedy of filing a claim for refund within a period of (2) years from the date of payment of the tax pursuant to the provision of Section 230 (formerly Section 292).
>
> Section 135 [now Section 127] of the Tax Code insofar as pertinent provides "that specific taxes on locally manufactured petroleum products levied under Sections 153, 155 and 156 of this title, <u>except lubricating oil and grease,</u> shall be paid within fifteen (15) days from the date of removal thereof from the place of production.
>
> xxx xxx xxx
>
> Following the provision of Section 135 of the Tax Code, the specific taxes paid on the rest of the petroleum products purchased by petitioner falls due on the 15th day following the date of its removal. Therefore, all shipments of petroleum products, except oils and lubricants, paid by petitioner 15 days prior to October 8, 1980 or on September 23, 1980 are deemed paid on October 8, 1980 [the petition for review having been filed on October 8, 1982] which is well within the two-year prescriptive period as prescribed under Section 230 of the National Internal Revenue Code.
>
> The specific taxes collected from petitioner on its purchases of petroleum products other than oils on September 23, 1980 shall be paid within 15 days from the date of its removal or on October 8, 1980. It follows that on October 8, 1980, purchases of locally manufactured petroleum products, except oils, on September 23,1980 are deemed paid. Thus, purchases of fuels prior to September 23, 1980 have prescribed."

Applying the above maxim to the case at bar, the excise taxes paid on the petroleum products purchased by petitioner falls due on the 15th day following the date of its removal. Therefore all shipments of petroleum products, paid by petitioner fifteen (15) days prior to May 22, 1994 or on May 7, 1994 (the petition for review having been filed on May 22, 1996) are well within the two-year prescriptive period provided by Section 230 of the Tax Code.

Again following this Court's interpretation in the aforequoted Aras-Asan case, the specific taxes collected from petitioner on its purchases of petroleum products on May 7, 1994 shall be paid within 5 days from the date of its removal or on May 22, 1994. It follows then that on May 22, 1994, purchases of locally manufactured petroleum products on May 7, 1994, are deemed paid. The purchases of fuels prior to May 7, 1994 have already prescribed.

Anent the second issue, there is no rhyme nor reason as to why Respondent persists on denying the instant claim for refund through the alleged lack of legal standing of the Petitioner to pursue its case at bar. BIR Ruling No. 339-92 issued by the Respondent on December 1, 1992 has unequivocally declared and thus admitted, the fact that Petitioner is an international air carrier whose local purchase and consumption of petroleum products for its Singapore/Cebu/Singapore route is not subject to excise tax pursuant to Section 132 of the Tax Code, as amended (Exhibit B). Thus:

December 1, 1992

Bengzon, Zarraga, Narciso, Cudala
Pecson, Bengson & Jimenez
6th Floor, SOL Building
Amorsolo St., Legaspi Village
Makati, Metro Manila

Attn.: <u>Atty. Enrico G. Valdez</u>

Gentlemen:

This refers to your letter dated July 9, 1992 requesting in behalf of your client, SILKAIR (Singapore) PTE LTD., a ruling exempting the latter from excise taxes on petroleum products purchased in the Philippines.

It is represented that SilkAir is a corporation duly organized and existing under the laws of Singapore and engaged in international airline business; that on May 14, 1992, the Civil Aeronautics Board approved the petition of SilkAir for issuance of a Temporary Operating Permit (TOP) as a foreign air carrier with routing Singapore/Cebu/Singapore; and that the laws of Singapore exempt Philippine carriers from similar taxes on petroleum products sold to the latter.

In support of the above representation, you presented the following documents, viz: (1) Copy of Articles of Association and Certification of the Company's Secretary; (2) Certification of the Civil Aeronautics Board regarding the approval of the petition of SilkAir for Temporary Operating Permit; (3) Certification from Customs and Excise Department, Singapore, that commercial air operating companies enjoy duty exemption from payment of customs duties on petroleum uplifted by the aircraft departing to destinations outside Singapore; and (5) Letter dated September 1, 1992 from Philippine Airlines (PAL) confirming that it is exempt from tax and duty on its fuel purchases in Singapore.

Based on the foregoing and since the Cebu link of the route Singapore/Cebu/Singapore is an international flight by an international carrier, the petroleum products purchased by

> SilkAir and consumed in such flights shall not be subject to excise tax pursuant to Section 132 of the Tax Code, as amended.
>
> Very truly yours,
>
> (Sgd.) Victor A. Deoferio, Jr.
> Deputy Commissioner

Verily, Respondent is estopped from questioning the legal standing of the Petitioner as he has previously recognized it as a taxable person enjoying exemption status under said Section 132.

With regard to the third issue, We also see the matter as a *fait accompli*. Respondent's BIR Ruling No. 339-92, likewise, unmistakably acknowledged the representation of the Petitioner therein through supporting documents that the laws of Singapore exempt Philippine carriers from similar taxes on petroleum products sold to them. Again, Respondent is in clear estoppel.

Having brushed aside Respondent's frivolous and contumacious attitude in trying to doggedly defeat legally herein claim for refund despite the incontestable existence and unrevoked status of his own Ruling as above mentioned, We now deem it wise to delve into the only remaining obstacle to Petitioner's claim, which should have been given preferential attention by the Respondent in the first place, that is, whether or not it has satisfied the factual elements of its claim covering the period June 5, 1994 up to September 16, 1994. We partially rule in the affirmative.

To definitely prove the merit of its case, Petitioner submitted in evidence the following pertinent documentary exhibits, which We partly reiterate, to wit: various ATAPETs' - BIR Form Nos. 2319A & 2319A-E, issued to taxpayer Petron Corporation for excise taxes due for the period June 5, 1994 to September 14, 1994 (Exhibits F-34 to F-56); various Aviation Delivery Receipt/Invoices and Cash Receipts issued by Petron Corporation to Singapore Airlines for the period March to September 1994 (Exhibits G to M, inclusive); and Letter dated June 16, 1992 of the General Manager in the Philippines of Singapore Airlines addressed to Petron Corporation requesting that a credit line be extended to Petitioner (Exhibit N).

An examination of the preceding exhibits readily shows Petitioner's receipt and payment of delivered aviation fuel, inclusive of excise taxes, through the accommodation of Singapore Airlines and the corresponding remittance of said excise taxes by Petron Corporation.

As to why Singapore Airlines made payments instead of Petitioner, the testimony of Mr. Leopoldo Tolentino, an aviation account executive of Petron Corporation handling the accounts of both Singapore Airlines and herein Petitioner, succinctly explains the apparent discrepancy, to wit:

x x x x x x x x x

Q. And could you please tell us how Silkair Singapore Private Limited became Petron Corporation's client?

A. Silkair is basically in Mactan, before it is operated by Singapore Airlines. And Singapore Airlines, sometime in mid 1992, [ceased] operation in Mactan. And its subsidiary, which is Silkair, took over the operation in Mactan for direct flight to Mactan to Singapore international flights. And based on this, Singapore Airlines, being our client for quite sometime, requested us to accommodate Silkair in terms of credit, to extend the same credit and same conditions in sale of fuel at Mactan.

x x x x x x x x x

Q. Mr. Witness, where was (sic) the billings and invoices made?

A. The invoices are prepared at Mactan International Airport, but these are forwarded to our head office in Makati. And I am personally in-charge of distribution and even collection of these invoices.

Q. After the delivery of the aviation delivery receipts which were made in Mactan after its delivery to your head office in Manila, Petron Corporation, what did you do with these aviation delivery receipts?

A. I personally sent it to the head office in Manila which is the Singapore Airlines where the collection is being made.

Q. Why did you send it to Singapore Airlines in Manila office?

A. Singapore Airlines is the one preparing the checks for Cebu operations [of] Silkair. So, all the collections for both Singapore Airlines and Silkair are done here in the Manila office since it is improbable for me to take people every now and then at Cebu, Mactan.

Q. Are all these documents for the sale of jet fuel to Silkair?

A. Yes.

Q. I will refer you to Exhibits G, H, I, J, K, L, M, G-3, H-3, J-7, J-11, K-1, K-9 and K-14. In these particular documents, the aviation delivery receipts and the cash receipts are shown to be sold to Singapore Airlines. The names Singapore Airlines are designated in those particular documents only. Will you please reconcile your statement that these aviation delivery receipts are proof of sales of jet fuel to Silkair?

A. Yes, if you will notice like in Exhibit G-3, although it was stated that the fuel was sold to Singapore Airlines, perhaps this could be a typographical error on the part of our previous accountant in Mactan, but you see the booking copy in which the customer number is 13321-40. This reflects for Silkair because Singapore Airlines formally (sic) the collection, our customer number for Singapore Airlines is 13320-40 and in fact we have a run on our computer that Singapore Airlines and Silkair has a separate credit line.

Q. So, you are saying that the customer number distinguishes the receipts [given] to Singapore Airlines?

A. Yes.

x x x x x x x x x

Q. How would you account the appearance of the name of Singapore Airlines Private Limited in this receipt?

A. Because our people there could have taken Singapore Airlines and Silkair as one and the same, because they are subsidiaries like our company PNOC and Petron, many people are thinking that they are just one and the same, but its a separate entity. And Singapore Airlines is different from Silkair and as such, we have created a customer account number for Silkair which is 13321-40.

x x x x x x x x x

(TSN dated October 6, 1997)

Petitioner has also sufficiently demonstrated by way of the aforestated BIR Ruling that it has been licensed by the Civil Aeronautics Board to fly only the Singapore/Cebu/Singapore route. In the absence of any concrete evidence showing that it has assumed flights other than said route, the presumption stands that Petitioner utilized all of its aviation fuel exclusively for such route. Respondent's allegation in his memorandum, *supra*, that it has chartered domestic flights to and from Cebu and Metro Manila and other provinces is not supported by evidence on record. Thus, it appears to be baseless and a barren assertion.

However, as earlier discussed and in line with this Court's ruling in the Aras-Asan case, purchases made by petitioner of Jet A-1 and Avgas 100 LL prior to May 7, 1994 have already prescribed, thus petitioner is only entitled to a reduced amount of ₱1,193,571.06, detailed as follows:

Exh.	Aviation Delivery Receipt/Invoice	Date Delivered	Excise Tax
K-4	94908	05-10-94	₱ 14,494.20
K-5	94934	05-13-94	22,312.50
K-6	94895	05-08-94	18,028.50
K-7	94951	05-15-94	13,654.06
K-8	94962	05-17-94	19,656.42
K-9	94971	05-18-94	21,898.38
K-10	94987	05-20-94	6,892.48
K-11	94986	05-20-94	4,574.36
K-12	94997	05-22-94	22,634.86
K-13	95106	05-24-94	17,126.48
K-14	95133	05-29-94	20,329.96
K-15	95138	05-29-94	15,572.34
K-16	95124	05-27-94	20,494.18
K-17	95151	05-31-94	21,334.32
K-5	94934	05-13-94	22,312.50
J-2	95185	06-05-94	14,946.40
J-3	95199	06-07-94	21,779.38
J-4	95222	06-10-94	18,261.74
J-5	95230	06-12-94	18,818.66
J-6	95241	06-14-94	17,921.40
J-7	95248	06-15-94	20,184.78
J-8	95267	06-17-94	20,084.82
J-9	95275	06-19-94	18,851.98
J-10	95282	06-21-94	18,561.62
J-11	01005	06-26-94	22,431.50
J-12	01008	06-26-94	18,683.00
J-13	01021	06-28-94	17,240.72
J-14	01008	06-26-94	18,683.00
I-1	01040	07-01-94	23,714.32
I-2	01051	07-03-94	17,828.58
I-3	01065	07-05-94	20,646.50
I-4	01086	07-08-94	20,510.84
I-5	01097	07-10-94	3,065.44
I-6	01112	07-12-94	18,368.84
I-7	01139	07-15-94	18,704.42
I-8	01148	07-17-94	13,582.66
I-9	01156	07-19-94	16,645.72
I-10	01173	07-22-94	8,910.72
I-11	01181	07-24-94	15,210.58
I-12	01190	07-26-94	21,531.86
I-13	01211	07-29-94	23,233.56
I-14	01222	07-31-94	18,204.62
H-1	01233	08-02-94	17,216.92

H-2	01252	08-05-94	21,341.46
H-3	01261	08-07-94	16,414.86
H-4	01264	08-07-94	16,164.96
H-5	01277	08-09-94	20,591.76
H-6	01417	08-12-94	18,121.32
H-7	01465	08-14-94	15,384.32
H-8	01479	08-16-94	18,980.50
H-9	01500	08-10-94	24,352.16
H-10	01510	08-21-94	17,785.74
H-11	01523	08-23-94	18,747.26
H-12	01540	08-26-94	20,291.88
H-13	01553	08-28-94	14,920.22
H-14	01571	08-30-94	17,278.80
G-1	01587	09-02-94	2,903.60
G-2	01601	09-04-94	19,642.14
G-3	01599	09-04-94	20,715.52
G-4	01612	09-06-94	6,399.82
G-5	01639	09-11-94	14,084.84
G-6	01663	09-16-94	19,104.26
G-7	01672	09-18-94	15,484.28
G-8	01682	09-20-94	14,151.48
G-9	01801	09-23-94	21,810.32
G-10	01816	09-25-94	16,817.08
G-11	01828	09-27-94	20,310.92
G-12	01844	09-30-94	16,631.44
T O T A L			₱1,193,571.06

Prescinding from the above, We consider as bereft of logic and applicability the argument of the Respondent in his Answer that Petitioner must be able to establish that the alleged refundable excise taxes were neither automatically applied as tax credit against tax liability for succeeding quarters nor included as creditable taxes declared and applied for the succeeding years.

It must be noted that the rule on carry over of tax credits for the succeeding year applies only to creditable income and value-added taxes and it has nothing to do with the payment of excise taxes. The form on the Authority to Accept Payment for Excise Taxes (BIR

Form No. 2319A-E) simply does not provide for any pass-on tax credits for excise taxes.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the amount of P1,193,571.06 immediately. No pronouncement as to cost.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

(On leave)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

RAMON O. DE VEYRA
Associate Judge