REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MOBIL PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NOS. 6573 and 6576

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

APR 20 2005 Apolinario

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RESOLUTION

This resolves:

1) respondent's "MOTION TO RESOLVE FIRST THE ISSUE OF WHETHER OR NOT THE PETITIONER IS THE PROPER PARTY THAT MAY ASK FOR REFUND" filed on December 23, 2004; and

2) petitioner's "OPPOSITION (TO RESPONDENT'S MOTION TO RESOLVE FIRST THE ISSUE WHETHER OR NOT PETITIONER IS THE PROPER PARTY THAT MAY ASK FOR A REFUND)" filed on February 4, 2005.

Respondent's motion is anchored on the following grounds: (1) the motion is filed in the interest of the speedy disposition of the case

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since further trial will no longer be necessary if this Court finds that petitioner is not the proper party to claim for a refund; and (2) petitioner is not the proper party that may ask for a refund, citing *Cebu Portland Cement Co. vs. Collector, 25 SCRA 789; Contex Corp. vs. Commissioner of Internal Revenue, 433 SCRA 376; and Silkair (Singapore) PTE. Ltd. vs. Commissioner of Internal Revenue, CA-G.R. SP No. 82902, September 13, 2004.*

On the other hand, petitioner submits that:

> 1) it is the proper party to claim for a refund since Section 135 of the National Internal Revenue Code of 1997 clearly exempts from excise tax the petroleum products it sold to international carriers;
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> 2) the cases relied upon by respondent do not apply as it is erroneous to hastily equate the excise tax with the VAT; and,
>
> 3) respondent's motion is procedurally infirm since, essentially, it is a Motion to Dismiss governed by Rule 16 of the Rules of Court and as such, it must comply with the requisites set by the Rules. In this case, respondent's motion to dismiss was not only filed out of time but also it was filed almost after petitioner was about to rest its case.

The Court finds merit in the motion.

Petitioner's contention that respondent's Motion To Dismiss was not only filed out of time, but it was filed after petitioner was about to rest

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its case cannot be sustained. Record shows that on January 7, 2003, the Court granted respondent fifteen (15) days from January 4, 2003 or until January 19, 2003 within which to file his answer. On January 17, 2003, respondent seasonably filed his answer, raising as one of his special and affirmative defenses that the petitioner is not the proper party to request for a refund. Pursuant to *Section 6, Rule 16 of the 1997 Rules of Civil Procedure, as amended*, if no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer, and in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

Upon the other hand, it has been held that a preliminary hearing on an affirmative defense is not mandatory, and not necessary when the affirmative defense is failure of the complaint to state a cause of action (*Municipality of Biñan vs. Court of Appeals, 219 SCRA 69*). For it is well settled that where the plaintiff is not the real party in interest, the ground for the Motion to Dismiss is lack of cause of action (*Sustiguer vs. Tamayo, 176 SCRA 579*).

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When the ground of dismissal is that the complaint states no cause of action, the rule provides that its sufficiency can only be determined by considering the facts alleged in the complaint, and no other, the test being whether the court can render a valid judgment from the facts set forth (*Bacolod-Murcia Milling Co., Inc. vs. First Farmers Milling Co., Inc., etc., 103 SCRA 436*). The rule is that when the motion to dismiss is based on the ground that the complaint states no cause of action, no evidence may be allowed and the issue should only be determined in the light of the allegations of the complaint.

Paragraphs 3 to 10 of the petition read:

> "3. Petitioner is engaged in the sale of petroleum products to domestic and international carriers. For this purpose, it maintains a bonded storage facilities at the Joint Oil Companies AV-Fuel Storage Plant (JOCASP) Terminal of the Ninoy Aquino International Airport.
>
> 4. For the period December 2000, Petitioner purchased and received from Caltex Philippines, Inc. ("Caltex") and Petron Corporation ("Petron") Jet A-1 fuel, the specific (excise) taxes on which were duly paid and remitted by Caltex and Petron to the Bureau of Internal Revenue (BIR) on December 2000.
>
> 5. Since the excise taxes were passed on by Caltex and Petron, Petitioner shouldered the excise taxes on said deliveries of Jet A-1 fuel.

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6. Petitioner, in turn, sold the Jet A-1 fuel to international carries, free of any excise tax, as follows:

International Carrier	Quantity Sold (In Liters)	Amount of Excise Tax Paid by Petron/Caltex
KLM Group	P 609,280	P 2,236,057.60
Nauru Air	50,770	186,325.90
Northwest Orient Airlines	2,512,840	9,222,122.80
Thai Airways	1,557,870	5,717,382.90
China Airlines	628,460	2,306,448.20
Total	**P 5,359,220**	**P 19,668,337.40**

7. Likewise, in December 2000, Petitioner paid specific (excise) taxes on its purchase or importation of base oil and additives for the same period of December 2000, which were used to manufacture marine lubes, and which were subsequently sold to international carriers, as follows:

Product	**Base Oil Used**	**Specific Tax**	
	(Volume in Liters)	**Rate**	**Amount**
Marine Lube	13,096.32	P4.50	P58,933.44

8. Section 135 of the National Internal Revenue Code (NIRC), as amended, however, provides that:

'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

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> 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 or said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippines carriers, entities or agencies**; and
>
> (c) Entities which are by law exempt from direct and indirect taxes.' (Emphasis supplied)

Pursuant to the above provision, petroleum products are not subject to excise tax if sold to international carriers for use in their international flight operations, or sold to exempt entities covered by tax treaties, conventions and other international agreements for their use or consumption, provided that the country of said carrier or exempt entity exempts from similar taxes petroleum products sold to Philippine carriers or entities.

9. Consistent with the above provision, this Honorable Court has confirmed in a line of decision that petroleum products sold to an international carrier registered in a country granting similar exemption from taxes on petroleum products sold to Philippine carriers, are exempt from excise taxes (CTA Case No. 5382, June 7, 1999; CTA Case No. 5430, August 20, 1999; CTA Case No. 5655, may 24, 2000; CTA Case No. 5710, March 8, 2001, CTA Case No. 5891, January 17, 2002; all entitled *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue*).

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> 10. Petron and Caltex have not filed any claim for refund of the excise tax paid on Jet A-1 fuel delivered to Petitioner for the period December 2000 as said excise tax was billed to Petitioner and paid by Petitioner to Petron and Caltex, respectively."

From the allegations in the petition, admittedly petitioner purchased from Caltex Philippines, Inc. (hereafter "Caltex") and Petron Corporation (hereafter "Petron") Jet A-1 fuel, the excise tax of which was billed to petitioner and paid by petitioner for Petron and Caltex. It is easily discernible from the allegations in the petition that petitioner is not the proper party to seek for the refund of an indirect tax like an excise tax.

The National Internal Revenue Code provides for the administrative and judicial remedies of a taxpayer in instances of erroneous collection of taxes.

By taxpayer is meant the person adversely affected by the action taken by the Commissioner.

In *Cebu Portland Cement Co. vs. Collector of Internal Revenue, 25 SCRA 789*, the Supreme Court ruled that in indirect taxes, like an excise tax, the proper party who can question or seek a refund of the tax is the person on whom the tax is imposed by law and who paid the tax even

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when he shifts the burden thereof to another. This is bearing in mind that indirect tax is paid by the manufacturer or dealer of the product which was passed on to the purchaser as part of the purchase price.

Pursuant to the aforequoted ruling of the Supreme Court, petitioner Mobil Philippines, Inc. cannot ask for a refund since it is not the taxpayer under the law.

In this regard, *Section 130 (A)(2) of the National Internal Revenue Code of 1997, as amended*, provides:

> "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 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 the removal of domestic products from place of production: xxx"

It is clear from the aforecited provision, that the excise tax shall be paid by the manufacturer or producer. There was no erroneous payment of tax to speak of because Petron and Caltex are the ones statutorily liable for the payment of the excise tax. When the said oil companies passed on the excise tax to petitioner, the latter merely paid such tax as part of the purchase price for and in behalf of the oil companies because such amount formed part of the purchase price.

Parenthetically, under *Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended*, every action must be prosecuted and defended in the name of the real party-in-interest and that all persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. *Section 2, Rule 3, provides:*

> "SEC. 2. *Parties in interest*.- A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of a real party in interest."

The real party-in-interest is the party who stands to be benefited or injured by the judgment of the party entitled to the avails of the suit. "Interest" within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest (*House International Building Tenants Association, Inc. vs. IAC, 151 SCRA 703*). As a

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general rule, one having no right or interest to protect cannot invoke the jurisdiction of the Court as a party plaintiff in an action (*Sustiguer vs. Tamayo, supra*).

Petitioner, not being the real party-in-interest to file the present petition for refund, pursuant to settled jurisprudence, the case should be dismissed for lack of cause of action (*Sustiguer vs. Tamayo, supra*). The dismissal hereof is a matter of course.

The Court, therefore, is left with no recourse, but to dismiss the petition for lack of cause of action.

WHEREFORE, premises considered, the "Motion To Dismiss" is hereby **GRANTED**, and the case in caption is hereby **ORDERED DISMISSED**.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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