

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SPECIAL SECOND DIVISION

PACIFIC EAST ASIA CARGO C.T.A. CASE NO. 7680
AIRLINES, INC. and PETRON
CORPORATION,

Petitioners, Members:

-versus-

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

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

MAR 03 2010

3:57 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

The proper party to question or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another (*Silkair (Singapore) Pte. Ltd. vs. CIR, 571 SCRA 154*).

THE CASE

This is a Petition for Review filed by petitioners Pacific East Asia Cargo Airlines, Inc. (hereafter "PEAC") and Petron Corporation



(hereafter "Petron") praying for the refund or issuance of a tax credit certificate (TCT) of erroneously paid excise taxes on petroleum products in the aggregate amount of P3,430,906.84 from September 24, 2005 to December 31, 2005.

THE PARTIES

Petitioner PEAC is a domestic corporation duly organized and existing under Philippine laws, with principal office at 2nd Floor, International Cargo Terminal Building, NAIA Complex, Pasay City. On the other hand, petitioner Petron is a corporation organized and existing under Philippine laws, with principal office at Petron Megaplaza Building, 358 Sen. Gil Puyat Ave., Makati City. Petitioner PEAC is engaged in the business of international aircraft carriage, while petitioner Petron is engaged in the manufacture and sale of petroleum products.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes.

THE FACTS

The antecedent facts of the case are, as follows:



PEAC has international flights for cargo in Laoag City to Taipei and Pudong, Shanghai. For all its cargo aircrafts for said international flights, PEAC has been purchasing Jet A-1 fuel, a kind of aviation turbo jet fuel and a petroleum product, solely from Petron in Laoag.

According to petitioners, all Jet A-1 fuel in Petron Laoag, from which PEAC solely purchases its fuel, are sourced from Pandacan, Manila. These Jet A-1 fuel withdrawn from Pandacan for delivery to Petron Laoag were allegedly paid by Petron in lump sum, with the corresponding excise taxes, together with excise taxes for other petroleum products withdrawn on the same day.

Petron is informed in advance of the international flight schedules of PEAC in Laoag City, hence, Petron's delivery trucks automatically proceed to the airport in Laoag City and directly load the fuel into the aircraft of PEAC. PEAC allegedly has advance payments for its purchases to Petron, from which the corresponding purchase price of delivered Jet A-1 fuels was debited/deducted. Said purchase price allegedly includes the excise tax component previously paid by Petron to the BIR at the time of withdrawal of fuel from Pandacan.

On August 9, 2007, petitioners PEAC and Petron separately filed their written claims for refund with RDO No. 51 and RDO No. 121,



respectively, both for the amount of P10,842,075.48, inclusive of P3,430,906.84, for the period of September 24, 2005 to December 31, 2005.

For failure of respondent to act on petitioners' claim and to toll the running of the prescriptive period, on September 24, 2007 petitioners filed with this Court the instant Petition for Review for the claim covering the period of September 24, 2005 to December 31, 2005.

In his Answer filed on December 3, 2007, by way of Special and Affirmative Defenses, respondent averred: that excise tax imposable under Section 148 is a direct liability of Petron, and PEAC merely paid the added cost of Jet A-1 fuel, not the excise tax; that PEAC has no legal personality to claim for the refund of excise taxes paid on petroleum products sold to international carriers, according to *Section 130 (A) (2) and 204 (C)*, in relation to *Section 135 (a) of the NIRC of 1997, as amended*; that the instant Petition for Review is an inofficious filing of a claim for failure to exhaust administrative remedies; that in an action for refund/tax credit, the burden of proof is on the taxpayer to establish its claim; and petitioners must likewise show that it has complied with the provisions of *Sections 205 (C) and 229 of the NIRC of 1997, as amended*; that Petron is neither entitled to claim for refund since it has miserably

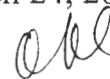


failed to state a cause of action; and that the principle of solutio indebiti is not applicable since such principle is based on a general law, the Civil Code, while the liability of Petron to pay the excise tax is based on *Section 130 (A) (2) of the NIRC of 1997, as amended*.

Petitioners presented Regina Mariano, Susan Rivera, Florita Evangelista, Reizer Vizconde, Rafael de Leon and Maryglenn Bondoc, as witnesses, and documentary evidence, marked as *Exhibits "A" to "W"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated September 4, 2008.

On the other hand, during the hearing held on February 16, 2009, counsel for respondent manifested that he is waiving the right to present his evidence for failure of RDO No. 51, Pasay City, to submit the report of investigation on petitioners' claim.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from February 16, 2009 or until March 18, 2009. Considering petitioners' "Memorandum" filed on March 18, 2009 and the report of the Judicial Records Division dated March 23, 2009 that respondent failed to file his memorandum despite notice, the case was deemed submitted for decision on March 24, 2009.



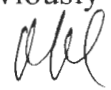
ISSUE

As stipulated upon by the parties, the sole issue for this Court's consideration is:

WHETHER OR NOT PETITIONERS ARE ENTITLED TO THEIR CLAIM FOR TAX REFUND AND/OR TAX CREDIT OF ERRONEOUSLY PAID TAXES ON JET A-1 AVIATION TURBO JET FUEL TO THE BUREAU OF INTERNAL REVENUE IN THE TOTAL AMOUNT OF THREE MILLION FOUR HUNDRED THIRTY THOUSAND NINE HUNDRED SIX & 84/100 (P3,430,906.84) FOR THE SALE OF JET A-1 FUEL BY PETRON TO PEAC FOR THE LATTER'S INTERNATIONAL AIR CARGO FLIGHTS FROM LAOAG CITY TO TAIPEI AND PUDONG, SHANGHAI FROM SEPTEMBER 24, 2005 TO DECEMBER 31, 2005.

Petitioners' Arguments

Petitioners argue that PEAC is an international carrier of Philippine registry, duly authorized to conduct international air cargo flights from Laoag bound for Pudong, Shanghai and Taipei; that PEAC actually consumed the Jet A-1 fuel for its international flights; that Petron paid to the BIR excise taxes on Jet A-1 fuel sold to PEAC for said international flights; that for Jet A-1 fuel deliveries to the aircraft of PEAC in Laoag, Petron billed PEAC inclusive of excise taxes Petron previously paid to the BIR.



Respondent's Arguments

Respondent maintains that the person or entity liable to pay the excise tax is Petron and the excise tax imposable under *Section 148* of the *NIRC of 1997, as amended* is a direct liability of Petron and PEAC merely paid the added cost of Jet A-1 fuel, not the excise tax; and refund, if any, of erroneously paid taxes shall only be granted to the taxpayer.

THE COURT'S RULING

The petition has merit.

Sold and Delivered Petroleum Products

Admittedly, PEAC entered into a supply arrangement with Petron for the exclusive supply of aviation Jet A-1 fuel to be used by its aircrafts in Laoag starting August 10, 2005 (*Exhibit "L"*). By virtue of said agreement, Petron sold and delivered aviation Jet A-1 fuel to PEAC's aircrafts in Laoag, according to the demand of PEAC.

On direct examination, petitioners' witness, Regina Mariano, testified that for the period from September 24, 2005 to December 31, 2005, 934,852 liters of Jet A-1 fuel sourced from Pandacan oil depot were directly delivered and loaded to PEAC aircrafts in Laoag (*Exhibit "Q"*, *TSN dated April 21, 2008, pp. 6-9*). The fact of delivery and actual refueling of PEAC's aircrafts were confirmed by petitioners' witness,



Reizer Vizconde, the Flight Operations Supervisor of PEAC (*Exhibit "T", TSN dated May 21, 2008, pp. 12-15*). Said testimonies were corroborated by documentary evidence, such as the Withdrawal Certificates (*Exhibit "E" and submarkings*), showing the volume of petroleum products withdrawn from Pandacan terminal, and various Petron Aviation Delivery Receipts (*Exhibit "J" and submarkings*), confirming the fact of delivery and actual quantities of petroleum products delivered.

**Exemption of Petroleum Products
Sold to International Carriers**

We now address the question of whether the sale of petroleum products of Petron to PEAC is exempt from excise tax.

Section 135 (a) of the NIRC of 1997, as amended, provides:

"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;

xxx

xxx."



Pursuant to the aforecited, the sale of petroleum products to international carriers is exempt from excise tax, subject to compliance with the following prescribed requirements:

- 1) that the petroleum products are used and consumed outside the Philippines by international carriers of Philippine or foreign registry; and
- 2) that such petroleum products are stored in a bonded storage tank and disposed of in accordance with the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

Petitioners presented documentary evidence, such as communication letters from Philippine Civil Aeronautics Board, License of Operation from Civil Aviation Administration of China, Civil Aeronautics Administration Ministry of Transportation and Communications Air Route Certificate (*Exhibits "M" to "P"*), which show that PEAC has international flights for cargo bound to Taipei and Pudong, Shanghai.

For these international operations, Petron exclusively supplied PEAC its petroleum products for its aircrafts. PEAC's purchases of petroleum products from Petron were evidenced by various sales



invoices (*Exhibit "I" and submarkings*). Petitioners also presented various Petron Aviation Delivery Receipts (*Exhibit "J" and submarkings*) to prove the exact quantities of delivered Jet A-1 aviation turbo jet fuel, which were directly loaded to PEAC aircrafts in Laoag bound for Taipei and/or Pudong, Shanghai.

A careful examination of said Aviation Delivery Receipts shows the aircraft type loaded with Petron Jet A-1 fuels, its flight number, origin and destination. The foregoing information, which were signed and confirmed by the representatives of both Petron and PEAC, proves that the petroleum products were used and consumed by aircrafts bound outside the Philippines.

For all the foregoing, we rule that Petron's sale of petroleum products to PEAC is exempt from excise tax.

Excise Taxes Were Paid

However, in order to claim a refund, the fact of payment must first be established, as the removal of the petroleum products from its place of production must be in accordance with the law. *Section 130 (A) (2) of the NIRC 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. –

- (1) **Persons Liable to File a Return.** – Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production setting forth, among others, the description and quantity or volume of products to be removed, the applicable tax base and the amount of tax due thereon: xxx
- (2) **Time for Filing of Return and Payment of the Tax.** - Unless otherwise specifically allowed, the return shall be filed and excise tax paid by the manufacturer or producer before removal of domestic products from place of production: xxx”

Corollary thereto, *Section 148 (g)* of the same Code provides:

“SEC. 148. Manufactured Oils and Other Fuels. – There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attached to the goods hereunder enumerated as soon as they are in existence as such:

xxx xxx

- (g) Aviation turbo jet fuel, per liter of volume capacity, Three pesos and sixty-seven centavos (P3.67);

xxx xxx”

Pursuant to the above provisions, the excise tax is directly levied on the manufacturers/producers upon removal of the taxable petroleum product from the place of production. The manufacturer/producer has



the duty to pay the excise tax before the products are removed from the place of production in the amount of P3.67 per liter of volume capacity.

In the case at bench, Petron, as the manufacturer/producer, has the burden of proving that correct excise taxes were paid upon withdrawal of the aviation Jet A-1 fuel from Pandacan.

In this regard, petitioners presented Susan Rivera and Florita Evangelista, who testified that Petron made advance payments of excise taxes to the BIR for petroleum products to be withdrawn from the Pandacan terminal (*Exhibits "R" and "S", TSN dated April 21, 2008, pp. 15-20, and May 21, 2008, pp. 7-9, respectively*). In support of said testimonies, petitioners, likewise, presented Excise Tax Returns, EFPS Payment Detail Inquiry, Summary of Removals and Excise (*Exhibits "F" to "H", and their submarkings*) to prove the advance payments for excise taxes to the BIR for the petroleum products to be withdrawn from Pandacan terminal and its liquidation upon withdrawal of the aviation Jet A-1 fuel delivered to Laoag to be reloaded to PEAC's aircrafts for international flights.

The testimonial and documentary evidence presented by petitioners were not controverted by counsel for the respondent, who waived his right to present evidence. The Court, therefore, finds that Petron indeed sold and delivered petroleum products to PEAC for its



international flights and paid the corresponding excise taxes thereon upon withdrawal of the petroleum products from their place of production.

**Excise Taxes Paid On Petroleum Products
Sold And Delivered To Exempt Entities
Partake Of The Nature Of
Erroneously Collected Taxes,
Hence, Refundable**

Considering that Petron has proved that it paid the corresponding excise taxes on aviation Jet A-1 fuel sold to PEAC upon removal of said petroleum products from Pandacan oil depot, notwithstanding the exemption granted by *Section 135 (a) of the NIRC of 1997, as amended*, the excise taxes paid partake of the nature of erroneously collected taxes.

Section 229 of the NIRC of 1997, as amended, provides:

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

Pursuant to the aforesaid provision, an erroneously or illegally collected tax may be recovered within two (2) years from the date of the payment of the tax, provided an administrative claim for refund has been filed with the Commissioner first.

Record shows that the earliest withdrawal of petroleum products covered by this case was made on September 24, 2005 (*Exhibit "E"*). Since petitioners filed its administrative claim for refund on August 9, 2007 (*Exhibits "C" and "D"*), and the instant petition on September 24, 2007, petitioners' claim for refund was filed within the two-year prescriptive period.

Pursuant to *Revenue Memorandum Order No. 19-2006 (Prescribing the Guidelines and Procedures for the Processing of Pending Claims for Tax Credit/Refund of Excise Taxes paid on Petroleum Products)*, petitioners presented the following documentary evidence:

- 1) Withdrawal Certificates (*Exhibit "E" and submarkings*);
- 2) Excise Tax Returns, Summary of Removals, EFPS Payment Detail Inquiries (*Exhibits "F" to "H" and submarkings*);



- 3) Petron Aviation Delivery Receipts (*Exhibit "J" and submarkings*);
- 4) Sales Invoices (*Exhibit "I" and submarkings*);
- 5) Official Receipts (*Exhibit "K" and submarkings*); and
- 6) Communication letters from Philippine Civil Aeronautics Board, Authenticated License of Operation from Civil Aviation Administration of China, and Authenticated Civil Aeronautics Administration Ministry of Transportation and Communications Air Route Certificate (*Exhibits "M" to "P"*).

After a careful examination and scrutiny of petitioners' documentary evidence, which were uncontroverted by respondent, We find that petitioners were able to substantiate the claimed amount of P3,430,906.84, representing the excise taxes paid for the period from September 24, 2005 to December 31, 2005.

Proper Party to Claim for Refund

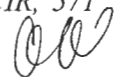
Under *Section 130 (A)(2)* of the NIRC of 1997, as amended, which provides that "unless otherwise specifically allowed, the return shall be filed and ***the excise tax paid by the manufacturer or producer*** before removal of domestic products from place of production", it is the manufacturer who is the statutory taxpayer.



The settled rule is that an excise tax is an indirect tax, where the tax burden can be shifted to the consumer but the tax liability remains with the manufacturer or producer. Even if the consumers or producers ultimately pay for the tax, they are not considered the taxpayers.

Equally settled is the rule that the proper party to question or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another [*Silkair (Singapore) Pte. Ltd. vs. CIR, 544 SCRA 100, 112*].

A perusal of the records shows that both PEAC and Petron filed the instant claim for tax refund/tax credit before the BIR and this Court. However, in this case, Petron, which paid the excise tax upon removal of the petroleum products from its Pandacan refinery, is the person liable for tax. PEAC is neither a “person liable for tax” nor “a person subject to tax.” There is no legal duty on the part of PEAC to pay the excise tax; hence, PEAC cannot be considered the taxpayer. Even if the tax is shifted by Petron to PEAC, Petron remains to be the taxpayer because excise tax is imposed directly on Petron, as the manufacturer. When Petron passed on to PEAC the burden of the tax, the additional amount billed to PEAC for Jet A-1 fuel is not a tax, but part of the price which PEAC has to pay as the purchaser [*Silkair (Singapore) Pte. Ltd. vs. CIR, 571*



SCRA 141]. Hence, Petron, as the statutory taxpayer, is the proper party that can claim the refund of the excise taxes paid to the BIR. Accordingly, PEAC has no personality to claim for a refund in this instant case.

We, therefore, conclude that Petron is the party legally entitled to claim for the refund of the amount of P3,430,906.84, representing excise taxes paid for the period from September 24, 2005 to December 31, 2005.

Finally, considering that the evidence of petitioners clearly shows that the excise tax was passed on to and paid by PEAC, conformably to the doctrinal principle that no person shall be allowed to enrich himself at the expense of others, Petron should reimburse PEAC the amounts the latter paid for the excise tax since the transaction between the two petitioners is clearly exempt from excise tax. It would be unjust enrichment on the part of Petron, if it is relieved of the obligation to reimburse.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Petron Corporation the amount of **THREE MILLION FOUR HUNDRED THIRTY**



THOUSAND NINE HUNDRED SIX PESOS & 84/100

(P3,430,906.84), representing excise taxes paid by Petron on petroleum products sold to international carrier (PEAC) for the period covering September 24, 2005 to December 31, 2005.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


ERNESTO D. ACOSTA
Presiding Justice