REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

DESTILERIA LIMTUACO & CO., INC., Petitioner,	**CTA CASE NO. 8499**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 2 2 2013 4:30 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

Before the Court is a Petition for Review filed by Destileria Limtuaco & Co. Inc. (petitioner) to seek a tax refund or issuance of tax credit certificate in the amount of P117,417.60, allegedly representing excise taxes paid in relation to goods that petitioner exported on July 2, 2010.

Petitioner is a corporation organized and existing under Philippine Laws, with principal office address at 1830 E. Delos Santos Ave., Quezon City. It is engaged in the business of manufacturing distilled spirits, whiskies, brandies, gins, rums, vodkas, tequilas, cocktails, herbal and sweet wines, and original medicinal wines for export and domestic distribution.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of her

[1] Exhibit "I", page 2

office, including, among others, the duty to act on and approve claims for refund or tax credit as provided by law.

On February 25, 2010, petitioner purchased from Central Azucarera de Tarlac 20,000 gauge liters of rectified alcohol for P1,359,346.24 at a unit price of P35.00 per gallon or for a total amount of P700,000.00.[2] The said purchase was charged against its advance deposit made on December 28, 2009 as evidenced by Central Azucarera de Tarlac Official Receipt No. 103381, referenced in the sales invoice as CASH ORM#103381 12/28/09.[3]

A portion of the 20,000 gauge liters of alcohol was used by petitioner as ingredient to produce 600 cases of the product Captain's Gold Rum 1.5L[4], which were exported to Busan, Republic of Korea on July 2, 2010.[5]

On August 6, 2010, petitioner filed, together with its supporting documents, a letter request for refund of the amount of P117,417.60, purportedly representing the excise taxes paid.[6]

On June 8, 2012, petitioner filed its judicial claim before this Court.[7]

In a letter[8] dated July 9, 2012, which was received by petitioner on July 18, 2012, respondent denied petitioner's claim for refund on the ground that petitioner, not being the statutory taxpayer, is not the proper party to question or seek refund of the indirect tax in the form of excise tax, citing the case of *Silkair (Singapore) Pte., Ltd. vs. Commissioner of Internal Revenue*[9].

In her Answer[10] filed on July 11, 2012, respondent interposed the following Special and Affirmative Defenses:

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[2] *Id.*, page 3
[3] Exhibit "F"
[4] *Id.*, page 4
[5] Exhibits "E" to "E-10"
[6] Exhibit "B", "B-1", and "C"
[7] Exhibit "A"
[8] Exhibit "G"
[9] G.R. No. 173594, February 6, 2008, 544 SCRA 100
[10] *Rollo*, pp. 39-43

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The amount of P117,417.60 allegedly representing excise taxes paid corresponding for goods actually exported on 2 July 2010 was not properly documented.

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the 1997 Tax Code on the prescriptive period for claiming tax refund/credit;

8. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998)**.

9. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et. al., CA G.R. SP No. 16432, March 30, 1999).** Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimijuris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377).**

> 10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)*."

During trial, petitioner presented and formally offered Exhibits "A" to "I", inclusive of submarkings;[11] which were all admitted by this Court in a Resolution[12] dated October 3, 2012. Meanwhile, respondent's counsels manifested that they have no witness to present and that they are submitting the case for decision based on the pleadings.[13]

The case was submitted for decision on December 21, 2012, considering respondent's Memorandum[14] filed on November 22, 2012 and petitioner's Memorandum[15] filed on December 19, 2012.

The parties submitted the following issue[16] for this Court's resolution:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO REFUND OR TAX CREDIT PURSUANT TO SECTION 130 (D) OF THE 1997 NIRC ON TAXES ALLEGEDLY PAID ON RAW MATERIALS USED AS INGREDIENTS ON DISTILLED PRODUCTS ACTUALLY EXPORTED."

Petitioner anchors its claim for refund in Section 130(D) of the NIRC of 1997, which provides:

> "SEC. 130. *Filing of Return and Payment of Excise Tax on Domestic Products.–*
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> xxx xxx xxx

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[11] *Rollo*, pp. 72-75
[12] *Rollo*, pp. 106-107
[13] Minutes of the October 29, 2012 hearing, *rollo*, p. 113
[14] *Rollo*, pp. 116-122
[15] *Rollo*, pp. 127-138
[16] *Rollo*, p. 63

(D) *Credit for Excise Tax on Goods Actually Exported.* – When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment; *Provided,* That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported."

Respondent contends that petitioner's reliance on Section 130(D) of the NIRC is erroneous. She states that excise tax is an indirect tax. Being an indirect tax, the liability for payment thereof is imposed upon the manufacturer or seller who has the option of shifting the burden thereof to the purchaser. Once the burden of the tax is shifted to the purchaser, the amount passed on to it is no longer a tax but becomes an added cost on the goods purchased which constitutes part of the purchase price. In support thereof, respondent cites the case of *Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue (Silkair Case)*[17]. Since petitioner is not the manufacturer or producer of the goods subject to excise tax, respondent argues that petitioner is not the statutory taxpayer; consequently, petitioner is not entitled to file a claim for refund.

Petitioner, on the other hand, counters that its reliance on Section 130(D) of the NIRC of 1997 is correct. Petitioner asserts that there is nothing in the said provision of law supplying a distinction whether the goods had to be exported by the person statutorily liable for the tax. Absent such distinction and considering that the exemption applies when the excisable goods are exported either in its original, diminished or derivative state, petitioner claims that it is but fair that the said law should be viewed as applicable to it for being the actual exporter of the raw alcohol materials it purchased. Furthermore, petitioner contends that respondent's use of the *Silkair Case* is misplaced since the basis of the right to claim refund in the said case was the statutory tax exemptions granted to specific persons and/or entities.

[17] G.R. No. 184398, February 25, 2010, 613 SCRA 639

Contrary to the position of petitioner,the right to claim a refund or tax credit of the paid excise taxes belongs to Central Azucarera de Tarlac - its supplier. The phrase "any excise tax paid thereon shall be credited or refunded" under Section 130(D) of the NIRC of 1997 requires that the claimant be the same person who paid the excise tax. In the case of *Diageo Philippines Inc. vs. Commissioner of Internal Revenue*[18], the Supreme Court explained the foregoing legal principle in the following manner:

> "A reading of the foregoing provision, however, reveals that contrary to the position of Diageo, the right to claim a refund or be credited with the excise taxes belongs to its supplier. The phrase 'any excise tax paid thereon shall be credited or refunded' requires that the claimant be the same person who paid the excise tax. In *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, the Court has categorically declared that '[t]he 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.'
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> Excise taxes imposed under Title VI of the Tax Code are taxes on property which are imposed on 'goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported.' Though excise taxes are paid by the manufacturer or producer before removal of domestic products from the place of production or by the owner or importer before the release of imported articles from the customshouse, the same partake of the nature of indirect taxes when it is passed on to the subsequent purchaser.
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> Indirect taxes are defined as those wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted to another person. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.

[18] G.R. No. 183553, November 12, 2012

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The statutory taxpayer is the proper party to claim refund of indirect taxes.

As defined in Section 22(N) of the Tax Code, a taxpayer means any person subject to tax. He is, therefore, the person legally liable to file a return and pay the tax as provided for in Section 130(A). As such, he is the person entitled to claim a refund.

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Pursuant to the foregoing, the person entitled to claim a tax refund is the statutory taxpayer or the person liable for or subject to tax. In the present case, it is not disputed that the supplier of Diageo imported the subject raw alcohol, hence, it was the one directly liable and obligated to file a return and pay the excise taxes under the Tax Code before the goods or products are removed from the customs house. It is, therefore, the statutory taxpayer as contemplated by law and remains to be so, even if it shifts the burden of tax to Diageo. Consequently, the right to claim a refund, if legally allowed, belongs to it and cannot be transferred to another, in this case Diageo, without any clear provision of law allowing the same.

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In sum, Diageo, not being the party statutorily liable to pay excise taxes and having failed to prove that it is covered by the exemption granted under Section 130(D) of the Tax Code, is not the proper party to claim a refund or credit of the excise taxes paid on the ingredients of its exported locally produced liquor."

When petitioner alleged that it paid the excise tax as shown by the sales invoice issued by its supplier Central Azucarera de Tarlac,[19]

[19] Exhibit "F"

what was passed on to petitioner was not the tax *per se* but the additional cost of the goods sold. Thus, Central Azucarera de Tarlac remained to be the statutory taxpayer even if petitioner, the purchaser, actually shouldered the burden of tax.

Long settled is the principle that statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of tax exemption must be clearly shown and based on language in the law too plain to be mistaken.[20] Unfortunately, petitioner failed to meet the burden of proof required by the exemption granted under Section 130(D) of the NIRC of 1997.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[20] *Mactan Cebu International Airport Authority vs. Marcos, et al.*, G.R. No. 120082, September 11, 1996

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice
Chairperson, 2nd Division