LIB.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SILKAIR (SINGAPORE) PTE LTD.,
Petitioner,

- versus -

C.T.A. CASE NO. 5655

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 24 2000

x - x

DECISION

This is a petition for review filed by the Petitioner, SILKAIR (SINGAPORE) PTE LTD., against Respondent COMMISSIONER OF INTERNAL REVENUE, for the latter's failure to act on the former's claim for refund in the amount of P3,011,207.24 allegedly representing its erroneously paid excise taxes on petroleum products (jet fuel) for the period July 1996 to December 1996.

As represented, Petitioner is a foreign corporation organized under the laws of Singapore with a Philippine Representative office duly licensed to transact business in the Philippines by the Securities and Exchange Commission with office address at Suite 302, Cebu Holdings Center, Cardinal Rosales Avenue, Cebu Business Park, Cebu City.

On November 12, 1993, by virtue of Resolution No. 202(93), the Civil Aeronautics Board (CAB) approved the petition of Petitioner for the issuance of a regular operating permit (Foreign Air Carrier's Permit) as a foreign air carrier with routing Singapore/Cebu/Singapore (Exh. I).

For the period July 1996 to December 1996, Petitioner purchased aviation jet fuel from PETRON Corporation and paid the imposed excise tax thereon in the total amount of P3,011,207.24.

On the belief that the jet fuel purchased from PETRON are not subject to excise tax in consonance with BIR Ruling No. 339-92, dated December 1, 1992 which declared that the Cebu link of the route Singapore/Cebu/Singapore is an international flight by an international carrier and considering that Singapore exempts Philippine carriers from similar taxes, Petitioner on October 14, 1997 filed with Respondent a claim for refund of the aforesaid excise taxes amounting to P3,011,207.24, contending that it falls within the ambit of Section 132 of the Tax Code. Petitioner further contends that the petroleum products (or jet fuel in this case) it purchased from PETRON are not subject to excise tax, thus, a refund is in order. Section 132 (now 135) of the Tax Code specifically provides, thus:

> **Section 132.** ***Petroleum products sold to foreign international carriers.*** - Petroleum products sold to an international carrier for its use or 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 Philippines carriers.

The aforesaid claim for refund was not acted upon by Respondent, hence, on July 1, 1998, Petitioner filed with this Court the instant petition for review to toll the running of the two (2) year prescriptive period.

Petitioner repleads its stance *a quo* in the instant petition while Respondent in his Answer stressed that the Petitioner's claim for refund is under investigation. Further, Respondent raises the defense that (1) to be entitled to the claimed refund, petitioner must show compliance with the conditions laid down in Section 132 (now 135) of the Tax Code; (2) Petitioner must show that it has complied with the provisions of Sections 204(3) [now 204(C)] and 230 (now 229) of the Tax Code, and (3) claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation.

Thus, the issues to be resolved by the Court are (1) whether or not petitioner's claim for refund has already prescribed, (2) whether or not Petitioner has shown compliance with the conditions set forth in Section 132 (now 135) of the Tax Code, and (3) whether or not the petroleum products (jet fuel) purchased from PETRON by Petitioner are subject to excise taxes.

With regard to the issue of prescription, there is no doubt that Petitioner's claim for refund has not yet prescribed. The aviation jet fuel purchased by the Petitioner from PETRON is a locally manufactured petroleum product hence the excise tax levied on it must be paid within fifteen (15) days from the date of removal thereof from the place of production [Section 127 (now 130), NIRC]. Settled in the case of **Aras Asan Timber Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3524, December 17, 1993** that the specific taxes paid on the petroleum products, except lubricating oil and grease, purchased by a taxpayer falls due on the 15th day following the date of its removal, thus:

> "The Tax Code provides for the judicial remedy of filing a claim for refund within a period of two (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, except lubricating oil and grease, shall be paid within fifteen (15) days from the date of removal thereof from the place of production.
>
> x x x x x x x x x
>
> 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."

Ergo, applying the above ruling in the case at bar, the purchase by Petitioner of the aviation jet fuel on June 25, 1996 (the earliest date of delivery) is deemed paid on July 10, 1996 (which is fifteen [15] days from June 25, 1996), hence it is from this date that the two-year prescriptive period commences to run. Since the instant petition was filed with this Court on July 1, 1998, We rule that the Petitioner's claim for refund falls within the two-year period prescribed in Section 230 (now 229) of the Tax Code, quoted below:

Section 230. ***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 excessive 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 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: *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. x x x.

As to the second issue, the Court finds that Petitioner had substantially complied with the reciprocity clause mentioned in Section132 (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 Article 4(2) of the same (Exh. J-1), quoted below, thus, our ruling in the affirmative.

"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

ART. 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, 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.

As to the last issue, this Court has already resolved the same in **CTA Case No. 5382, promulgated June 7, 1999, entitled Silkair (Singapore) PTE, Ltd. vs. The Commissioner of Internal Revenue** with Entry of Judgment dated June 25, 1999, anchored on factual circumstances on all fours with the instant petition. The

Court in said case ruled the last issue in the affirmative, that the petroleum products purchased by Petitioner from PETRON are not subject to excise taxes, thus:

> "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."

Clearly, We find no compelling justification to deviate from the wisdom of Our decision in the aforesaid case, thus, the legal issues having been settled, what remains to be resolved by the Court involves factual matters and that is whether or not Petitioner has established by evidence its claimed refund.

To support its claim for refund, Petitioner adduced in evidence, *inter alia*, various ATAPET's – BIR Form Nos. 2319A to 2319A-E to prove that PETRON Corp. remitted to Respondent the excise taxes on the sale of jet fuel to Petitioner for the period July, 1996 to December 1996 (Exhs. E to E-30); various Aviation Delivery Receipts/Invoices and Cash Receipts issued by PETRON Corp. to Singapore Airlines (Exhs. D-34 to D-45-22, inclusive), to prove that PETRON Corp. billed/charged and collected from Singapore Airlines the excise taxes on its jet fuel purchases. Petitioner also presented the letter dated June 16, 1992 of the General Manager in the Philippines of Singapore Airlines addressed to PETRON Corp. (Exh. H), to prove that (1) Singapore Airlines had ceased operation in Cebu starting June 2, 1992 and that Petitioner, its subsidiary airline will take over its direct flight Singapore-Cebu-Singapore on the same date, (2) Singapore Airlines requested PETRON Corp. to extend the same credit line to Petitioner from the said date and (3) before the execution of the Sales Agreement between Silkair and PETRON Corp. (Exh. G) which took effect on January 1, 1995, PETRON Corp. was already supplying the jet fuel requirements of Petitioner since June 2, 1992 under the same credit line previously extended to Singapore Airlines.

After a minutiose scrutiny of the evidence presented by Petitioner (Exhs. A to J-1, inclusive) the Court finds the same sufficient to grant the relief sought by Petitioner but in a reduced amount of P2,854,983.06, as this was the only amount duly supported by Aviation Delivery Receipts/Invoices. The same amount was recommended for refund by the independent CPA who was commissioned by the Court on January 26, 1999 (Exh. D).

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate to herein petitioner in the amount of P2,854,983.06, representing the latter's excise taxes paid for the period July 1996 to December 1996. No costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(on leave)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge