REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SILKAIR (SINGAPORE) PTE LTD.,
Petitioner,

- versus -

C.T.A. CASE NO. 5430

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 20 1999

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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 P1,554,973.00 allegedly representing its erroneously paid excise taxes on petroleum products (jet fuel) for the period October 1994 to April 1995.

As represented, Petitioner is a foreign corporation organized under the laws of Singapore and is authorized to engage in business in the Philippines as an on-line international carrier with office address at #424 Goroldo Avenue, Cebu City.

On May 14, 1992, the Civil Aeronautics Board (CAB) approved the petition of the Petitioner for the issuance of a Temporary Operating Permit (TOP) as a foreign carrier with routing Singapore/Cebu/Singapore (Exhibit R). Subsequently, or on November 12,

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1993, by virtue of Resolution No. 202(93), the CAB approved the petition of Petitioner for the issuance of a regular operating permit (Foreign Air Carrier's Permit) (Exhibit S).

For the period October 1994 to April 1995, Petitioner allegedly purchased aviation jet fuel from PETRON Corporation at the latter's facility at Mactan International Airport, Lahug, Cebu and paid the imposed excise tax thereon in the total amount of P1,554,973.00.

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 likewise considering that Singapore exempts Philippine carriers from similar taxes, Petitioner on January 18, 1996 filed with Respondent a claim for refund of the aforesaid excise taxes amounting to P1,554,973.00, contending that it falls within the ambit of Section 132 of the Tax Code. Hence, 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 of the 1995 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 October 16, 1996, Petitioner filed with this Court the instant petition for review.

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 and that BIR Ruling No. 339-92 is not applicable because it is based on facts not alleged or different from those alleged in the petition. Further, Respondent raises in the usual token of a defense that (1) taxes are presumed to have been collected in accordance with law, hence, Petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected, (2) Petitioner must show that it has complied with the provisions of Sections 204(3) and 230 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. Respondent further argued in his memorandum that the exhibits presented by Petitioner, particularly Exhibits "F" to "M-7", inclusive, were all in the name of Singapore Airlines and not of herein Petitioner, hence, it said that Petitioner has no personality to prosecute the instant case.

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 the legal standing to pursue the instant claim for refund before this Court, 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

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production (Section 127, 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, <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.
>
> 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 October 2, 1994 (the earliest date of delivery) is deemed paid on October 17, 1994 (which is fifteen [15] days from October 2, 1994), hence it is from this

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date that the two-year prescriptive period commences to run. Since the instant petition was filed with this Court on October 16, 1996, We rule that the Petitioner's claim for refund falls within the two-year period prescribed in Section 230 of the 1995 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 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 last two issues, 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** anchored on factual circumstances on all fours with the instant petition. The Court in said case ruled the second and third issues in the affirmative, that Petitioner has the legal standing to pursue the instant claim for refund with this Court and that the petroleum products purchased by Petitioner from PETRON are not subject to excise taxes, thus:

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"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.: Atty. Enrico G. Valdez

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." (Underscoring supplied)

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 October, 1994 to April 1995 (Exhs. E to E-65); various Aviation Delivery Receipts/Invoices and Cash Receipts issued by PETRON Corp. to Singapore Airlines (Exhs. F to M-7,

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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. O), 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. N) 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 C and E to T, inclusive) the Court finds the same sufficient to grant the relief sought by Petitioner but in a reduced amount of P1,552,404.98, as this was the only amount duly supported by Aviation Delivery Receipts/Invoices. Hereunder is the summary of the excise taxes which can be refunded to the Petitioner, in accordance with Section 145 of the Tax Code.

EXHIBIT	DATE OF DELIVERY	AVIATION DELIVERY RECEIPTS/INVOICE NO.	EXCISE TAX
F-1	02-Oct-94	1852	16,838.50
F-2	04-Oct-94	1861	24,126.06
F-3	07-Oct-94	1881	19,925.36
F-4	09-Oct-94	1886	21,427.14
F-5	09-Oct-94	1888	16,374.40

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F-6	11-Oct-94	1897	19,028.10
F-7	14-Oct-94	1919	19,273.24
F-8	16-Oct-94	1930	13,232.80
F-9	18-Oct-94	1948	16,726.64
F-10	21-Oct-94	1987	20,941.62
F-11	23-Oct-94	2003	14,370.44
F-12	25-Oct-94	2018	21,539.00
F-13	28-Oct-94	2042	19,485.06
F-14	30-Oct-94	2057	24,547.32
G-1	15-Nov-94	5254	42,818.58
G-2	01-Nov-94	2066	19,570.74
G-3	06-Nov-94	2100	12,878.18
G-4	08-Nov-94	5210	30,673.44
G-5	11-Nov-94	5229	4,690.98
G-6	13-Nov-94	5239	19,294.66
G-7	15-Nov-94	5253	20,577.48
G-8	20-Nov-94	5290	18,599.70
G-9	25-Nov-94	5338	35,074.06
G-10	27-Nov-94	5348	16,457.70
H-1	02-Dec-94	5383	37,396.94
H-2	04-Dec-94	5395	20,865.46
H-3	06-Dec-94	5412	37,663.50
H-4	09-Dec-94	5439	14,272.86
H-5	11-Dec-94	5451	22,840.86
H-6	13-Dec-94	5467	37,532.60
H-7	16-Dec-94	5492	25,123.28
H-8	18-Dec-94	5504	21,700.84
I-1	30-Dec-94	5576	11,414.48
I-2	27-Dec-94	5560	38,567.90
I-3	23-Dec-94	5540	12,237.96
I-4	20-Dec-94	5521	17,271.66
J-1	01-Jan-95	5580	15,084.44
J-2	03-Jan-95	5587	38,943.94
J-3	06-Jan-95	5704	37,335.06
J-4	08-Jan-95	5712	19,649.28
J-5	10-Jan-95	5720	39,208.12
J-6	15-Jan-95	5742	16,360.12
J-7	22-Jan-95	5773	14,982.10
J-8	24-Jan-95	5781	3,182.06
J-9	27-Jan-95	5800	20,470.38
J-10	29-Jan-95	5809	20,615.56
K-1	03-Feb-95	5834	30,844.80
K-2	05-Feb-95	5847	15,722.28
K-3	07-Apr-95	5856	18,511.64
K-4	10-Feb-95	5869	36,397.34
K-5	12-Feb-95	5876	15,850.80
K-6	14-Feb-95	5884	13,744.50
K-7	17-Feb-95	5896	38,558.38
K-8	19-Feb-95	5905	19,278.00

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K-9	24-Feb-95	5928	31,654.00
K-10	26-Feb-95	5936	17,185.98
L-1	03-Mar-95	5958	38,694.04
L-2	05-Mar-95	5965	15,498.56
L-3	07-Mar-95	5977	38,627.40
L-4	10-Mar-95	5995	9,662.80
L-5	12-Mar-95	6103	23,564.38
L-6	19-Mar-95	6135	15,565.20
L-7	24-Mar-95	6170	39,836.44
L-8	26-Mar-95	6178	16,000.74
M-1	02-Apr-95	6211	14,365.68
M-2	09-Apr-95	6244	15,708.00
M-3	16-Apr-95	6274	12,088.02
M-4	21-Apr-95	14002	15,427.16
M-5	23-Apr-95	14014	16,193.52
M-6	28-Apr-95	14041	17,678.64
M-7	30-Apr-95	14052	14,556.08
TOTAL			P 1,552,404.98

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 P1,552,404.98, representing the latter's excise taxes paid for the period October 1994 to April 1995. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge

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