REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SILKAIR (SINGAPORE), PTE, LTD., *Petitioner,*	**C.T.A. EB No. 129** **(C.T.A. Case No. 6371)**
-versus-	Present: **Acosta, *P.J.*,** **Castañeda, Jr.,** **Bautista,** **Uy,** **Casanova, and** **Palanca-Enriquez, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 19 2006 avApolinario

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DECISION

ACOSTA, P.J.:

This is a Petition for Review seeking the reversal and setting aside of the Decision of this Court's Second Division promulgated on May 27, 2005, which denied herein petitioner's claim for tax refund or issuance of a tax credit certificate in the amount of P4,567,450.79, representing the excise taxes paid for the purchase of jet fuel for use in its international flights from January 1, 2000 to June 30, 2000 and the subsequent Resolution dated September 22, 2005, which denied petitioner's Motion for Reconsideration.

The antecedent facts as culled from the records are as follows:

Petitioner is a foreign corporation organized under the laws of Singapore with Philippine Representative Office and with office address at Suite 302, Cebu Holdings

Center, Cardinal Rosales Avenue, Cebu City. It is engaged in business as an on-line international carrier operating the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes.

On December 19, 2001, herein petitioner filed an administrative claim for refund in the amount of P4,567,450.79 representing excise taxes paid on its purchase of jet fuel from Petron Corporation for use in its international flights covering the period from January 1, 2000 to June 30, 2000, on the belief that, coupled with the BIR Ruling No. 339-9 dated December 1, 1992 issued by the BIR to petitioner, the Air Transport Agreement between the Government of the Philippines and the Government of the Republic of Singapore, particularly, Article 4 (2), exempts the payment of excise taxes for the purchase of fuel used for international flights of designated airlines of the respective contracting parties.

There being no action taken by herein respondent on petitioner's claim for tax refund and in order to toll the running of the two-year prescriptive period to claim tax refund or tax credit provided in Section 229 of the 1997 Tax Code, the latter filed a Petition for Review before the Court of Tax Appeals.

The CTA Second Division, in its Decision promulgated on May 27, 2005, dismissed the Petition for Review on the ground that "the right to claim for the refund of excise taxes paid on petroleum products lies with Petron Corporation who paid and remitted the excise tax to the BIR. Respondent (sic), on the other hand, may only claim from Petron Corporation the reimbursement of the tax burden shifted to the former by the latter. The excise tax partaking the nature of an indirect tax is clearly the liability of the manufacturer or seller who has the option whether or not to shift the burden of the tax to the purchaser. Where the burden of the tax is shifted to the seller, the amount passed on to it is no longer a tax but becomes an added cost on the

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goods purchased which constitutes a part of the purchase price. The incidence of taxation or the person statutorily liable to pay the tax falls on Petron Corporation though the impact of taxation or the burden of taxation falls on another person, which in this case is petitioner Silkair." The pertinent and dispositive portions of which are quoted hereunder, to wit:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DISMISSED.** Accordingly, petitioner's claim for tax refund is hereby **DENIED** for lack of merit
>
> **SO ORDERED."**

Herein petitioner filed a Motion for Reconsideration which was subsequently denied via a Resolution dated September 22, 2005 of the CTA Second Division in this manner:

> "**WHEREFORE**, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

The petitioner, on November 17, 2005, filed the instant Petition for Review to the CTA *En Banc* in accordance with Section 18 of Republic Act No. 1125, as amended by Section 11 of Republic Act No. 9282, seeking to reverse the May 27, 2005 Decision and the subsequent September 22, 2005 Resolution of the CTA Second Division; raising the sole issue of "Whether or not the petitioner is the proper party to claim for tax refund?"

In respondent's Comment filed on January 12, 2006, he countered that aside from the argument that petitioner is not a proper party to the claim for tax refund, the instant petition was filed outside of the fifteen (15)-day period, hence, the Court *En Banc* cannot take cognizance of the case. According to the respondent, based on records, the Resolution dated September 22, 2005 was received by petitioner on

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October 3, 2005, hence, petitioner had only until October 18, 2005 within which to file its Petition for Review with the Court *En Banc*. The Motion for Extension of Time to File Petition for Review was filed by the petitioner only on October 28, 2005, "thus, rendering the Decision and Resolution promulgated on May 27, 2005 and September 22, 2005, respectively, final and executory."

A perusal of the pertinent dates reveals the following:

- April 26, 2004 – Atty. Teodoro A. Pastrana and Atty. Mary Jane A. Delgado of Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya & Fernandez Law Offices entered their appearance as counsels for the petitioner with conformity of petitioner;

- April 27, 2004 – Attys. Fara G. Vargas, Emilou G. Patnugot and Sherry Obiles filed their Withdrawal of Appearance as counsels for petitioner with the consent of Ronnie Lau described as the Philippines Manager of Silkair (Singapore) Pte. Ltd;

- June 22, 2005 – Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya & Fernadez Law Offices received a copy of the Decision dated May 27, 2005;

- July 7, 2005 – Petitioner filed its Motion for Reconsideration through its counsel Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya & Fernandez Law Offices signed by Atty. Mary Jane A Delgado;

- September 12, 2005 – An Entry of Appearance for the Bengzon Law Firm was filed and signed by Atty. Teodoro A. Pastrana and Atty. John Ezra U. Villegas;

- September 22, 2005 – The Court's Second Division promulgated its Resolution denying petitioner's Motion for Reconsideration;

- October 3, 2005 – The Notice of Resolution dated September 26, 2005 shows that Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya & Fernandez Law Offices received the September 22, 2005 Resolution;

- October 13, 2005 – A Notice of Withdrawal of Appearance was filed by Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya and Fernandez Law Offices signed by Atty. Mary Jane B. Austria-Delgado with the conformity of Mr. Nabil Rohman described as the Philippines Manager of Silkair (Singapore) Pte. Ltd. The Notice of Withdrawal was served on the Office of the Solicitor General and Commissioner of Internal Revenue of October 12, 2005;

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- October 13, 2005 – The Petitioner has filed a Manifestation/Motion through the Bengzon Law Firm stating that on August 24, 2005, it served notice to the Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya & Fernandez Law Offices thru a fax letter of "its decision to cease all legal representation handled by them." The Manifestation/Motion also contained a request from the Bengzon Law Firm to be furnished with an official copy of the Resolution dated September 22, 2005;

- October 14, 2005 – The Notice of Resolution dated October 14, 2005 shows that Atty. John Ezra U. Villegas of the Bengzon Law Firm received a copy of the Resolution dated September 22, 2005;

- October 28, 2005 – The Petitioner filed a Motion for Extension of Time to File Petition for Review stating that "on 14 October 2005, petitioner, through undersigned counsel, received an official copy of the 22 September 2005 Resolution of the 2nd Division of this Honorable Court, which denied petitioner's Motion for Reconsideration." Petitioner prayed for an additional period of 15 days or until November 13, 2005 within which to file its Petition for Review with the Court *En Banc*;

- November 3, 2005 – The Court *En Banc* granted petitioner's prayer extending the period to appeal up to November 14, 2005, considering that November 13, 2005 was a Saturday;

- November 11, 2005 – The Bengzon Law Firm through Atty. John Ezra U. Villegas filed a Withdrawal of Appearance as counsel of the Petitioner, without the latter's written consent or conformity indicated thereon;

- November 11, 2005 – An Entry of Appearance was filed by the Law Firm of Pastrana and Fallar, signed by Atty. Teodoro A. Pastrana, as counsel for the petition;

- November 11, 2005 – Petitioner again filed a Motion for Extension of time for an additional ten (10) days or until November 24, 2005 within which to file its Petition for Review;

- November 17, 2005 – Petitioner filed its Petition for Review with the Court *En Banc*; and

- November 22, 2005 – The Court *En Banc* issued a Resolution granting the petitioner an additional period of ten (10) days or until November 24, 2005 within which to file its Petitioner for Review.

The above-enumerated significant dates support the finding that the Petition for Review was filed out of time.

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A petitioner is given a period of fifteen (15) days from notice of award, judgment, final order or resolution, or denial of motion for new trial or reconsideration to appeal to the proper forum, in this case, the CTA *En Banc*. This is clear from both **Section 11 and Section 9 of Republic Act No. 9282,** that amend Section 18 and Section 11 of Republic Act No. 1125, respectively, which are hereunder quoted in part for ready reference, to wit:

> "Section 18. Appeal to the Court of Tax Appeals *En Banc*. xxx
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> "a party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."
>
> "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. xxx
>
> A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration or new trial before the same Division of the CTA within fifteen (15) days from notice thereof:

The petitioner, through its counsel of record Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya & Fernandez Law Offices, received the Resolution dated September 22, 2005 on October 3, 2005. At that time, the petitioner had two counsels of record, namely, Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya & Fernandez Law Offices and The Bengzon Law Firm which filed its Entry of Appearance on September 12, 2005. However, as of said date, Atty. Mary Jane B. Austria-Delgado of Jimenez, Gonzales, Lumanag, Bello, Valdez, Caluya & Fernandez Law Offices was still the counsel of record considering that the Notice of Withdrawal of Appearance signed by Atty. Mary Jane B. Austria-Delgado was filed only on October 13, 2005 or ten (10) days after receipt of the September 22, 2005 Resolution of the Court's Second Division. This notwithstanding, **Section 2 of Rule 13 of the Rules of Court** provides that if any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where a party is represented by more than one counsel of record, "notice to any one of the several counsel on record is equivalent to notice to all the counsel (**Damasco vs. Arrieta, et al.**, *7 SCRA 224*)." Considering that petitioner, through its counsel of record, had received the September 22, 2005 Resolution as early as October 3, 2005, it had only until October 18, 2005 within which to file its Petition for Review. Petitioner only managed to file the Petition for Review with the Court *En Banc* on November 17, 2005 or thirty (30) days had lapsed from the final date of October 18, 2005 to appeal.

The argument that it requested Motions for Extension of Time to File Petition for Review, the first Motion for Extension on October 28, 2005 or ten (10) days from the appeal period and the second Motion for Extension of Time to file its Petition for Review on November 11, 2005 and its allowance by the CTA *En Banc* notwithstanding, the questioned Decision is no longer appealable for failure to timely file the necessary Petition for Review.

The Honorable Supreme Court in one case declared an analogous finding where after requiring the parties to submit their respective Memoranda, denied the Petition for Review on the ground that the Motion for Extension of Time was filed beyond the appeal period, thus:

> "The Court gave due course to the petition and required the parties to submit their respective memoranda.
>
> After a comprehensive and well-studied review of the *Rollo* and the records of the Court of Appeals, we resolve to deny the petition.
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> **The Office of the Solicitor General (OSG) admitted in the petition at bar that it received a copy of the assailed decision of the CA on October 21, 1999. Under Section 2, Rule 45 of the Rules of Court, the OSG had until November 5, 1999 within which to file its**

> **petition for review on certiorari. However, it did so only on November 25, 1999, long after the period therefor had lapsed.** We reject as totally unacceptable the pretext of Solicitor Ma. Theresa Dolores C. Gomez-Estoesta that, because of heavy pressure of work, the actual filing of the motion to file the petition at bar prepared on November 3, 1999, was "accidentally slighted." **The Solicitor is mandated to insure that her motion for extension was filed within the period therefor.** Volume of work is a lame excuse. She cannot escape the adverse effects of her forgetfulness."[1] (*Emphasis supplied*)

Accordingly, the subject Decision is now final and out of the jurisdiction of this Court (**Miranda vs. Guanzon, *et al.***, *92 Phil.168*). Long established is the legal principle that the right to appeal is not a natural right nor is it a part of due process, for it is merely a statutory privilege that must be exercised in the manner and according to procedures laid down by law (**Borre vs. Court of Appeals**, *158 SCRA 560*), and its timely perfection within the statutory period is mandatory and jurisdictional (**Delgado vs. Republic**, *164 SCRA 347*).

Nothing is more settled in law than that when a judgment becomes final and executory it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether made by the highest court of the land. The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of Courts must be final at some definite date fixed by law (**Nacuray vs. NLRC,** *270 SCRA 9*).

With the recognition of the fact that the decision subject of this petition had already become final and executory, it will be an exercise in futility for this Court to dwell upon the error raised. The issue on proper party to the tax refund claim will no longer be discussed inasmuch as the foregoing explanation as to the question of

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[1]**People of the Philippines vs. De los Reyes**, *G. R. No. 140657, October 25, 2004.*

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timeliness of the appeal, already serves as sufficient basis for the dismissal of the instant petition, thus, make any further discussions moot and academic.

WHEREFORE, the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

(Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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SILKAIR (SINGAPORE) PTE. LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 129
(C.T.A. CASE NO. 6371)

Promulgated

MAY 19 2006

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the ruling that the Petition for Review was filed beyond the reglementary fifteen (15) day period of appeal, hence, the assailed Decision had attained finality and is no longer appealable.

Moreover, the petition should likewise be denied for lack of merit as petitioner is not the proper party to claim the refund. The sole issue presented for resolution in this appeal is:

WHETHER OR NOT THE PETITIONER IS THE PROPER PARTY TO CLAIM FOR TAX REFUND

Under Section 130 of the National Internal Revenue Code of 1997, the person statutorily liable to pay the excise tax on domestic products is the manufacturer or producer of such goods. An excise tax is in the nature of an indirect tax, as such, the burden of the tax may be shifted or passed-on to the purchaser of goods, however, the liability for the indirect tax still remains with the manufacturer or seller of the goods. The purchaser is ***not*** the taxpayer and therefore ***cannot*** claim the refund thereof.

The Court *En Banc* had already ruled in prior cases[1], involving the same issue and the same parties, that it is only the *taxpayer* which has the legal personality to claim any refund of excise taxes paid on petroleum products. This ruling is based on *Sections 130 (A) (2)* and *204 (C)* of the National Internal Revenue Code of 1997 (1997 NIRC). The liability for the excise taxes on petroleum products is imposed on the manufacturer or producer by *Sec. 130 (A) (2)* which provides:

> **SEC. 130. Filing of return and payment of excise tax on domestic products. –**

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[1] *Commissioner of Internal Revenue vs. Silkair (Singapore) PTE. Ltd.,* C.T.A. EB No. 56, October 20, 2005; *Commissioner of Internal Revenue vs. Silkair (Singapore) PTE. Ltd.,* C.T.A. EB No. 25, December 5, 2005; *Commissioner of Internal Revenue vs. Silkair (Singapore) PTE. Ltd.,* C.T.A. EB No. 67, January 5, 2006.

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(A) *Persons liable to file a return, filing of return on removal and payment of the tax. –*

(1) Persons liable to file a return. – x x x

(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 removal of domestic products from place of production: Provided, That the excise tax on locally manufactured petroleum gas products and indigenous petroleum levied under Sections 148 and 151 (A) (4), respectively, of this Title shall be paid within ten (10) days from the date of removal of such products for the period from January 1, 1998 to June 30, 1998; within five (5) days from the date of removal of such products for the period from July 1, 1998 up to December 31, 1998; and before removal from the place of production of such products from January 1, 1999 and thereafter; Provided, further, That xxx xxx xxx" *(Emphasis supplied)*

The afore-quoted provision makes the manufacturer or producer of the petroleum products as the one directly liable for the payment of excise tax – the manufacturer or producer is the taxpayer. The determination of who is the taxpayer plays a pivotal role in claims for refund because the same law provides that it is only the ***taxpayer*** who has the legal personality to ask for a refund in case of erroneous payment of taxes. Section 204 (C) of the NIRC of 1997 provides:

SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. - The Commissioner may –

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the **taxpayer** files in writing with the Commissioner a claim for credit or refund within two (2) years after

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> the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx (Emphasis supplied)

A brief discussion on the nature of the excise taxes on petroleum products is necessary in order to fully understand the significance of the above-cited provisions in relation to petitioner's claim for refund. The excise tax imposed on the removal of petroleum products by the oil companies is an indirect tax. The Supreme Court in a number of cases had explained the nature of indirect taxes vis-à-vis direct taxes, as follows:

> "It may be useful to make a distinction, for the purpose of this disposition, between a direct tax and an indirect tax. A direct tax is a tax for which a taxpayer is directly liable on the transaction or business it engages in. Examples are custom duties and ad valorem taxes paid by the oil companies to the Bureau of Customs for their importation of crude oil, and the specific and ad valorem taxes they pay to the Bureau of Internal Revenue after converting the crude oil into petroleum products. On the other hand, indirect taxes are taxes primarily paid by persons who can shift the burden upon someone else. For example, the excise and ad valorem taxes that the oil companies pay to the Bureau of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the cash and/or selling price." [2]

Furthermore, the Supreme Court had likewise explained that although the burden of an indirect tax can be shifted or passed-on to the purchaser of the goods, nevertheless, the liability for the indirect tax still remains with the manufacturer or seller, thus:

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[2] *Maceda vs. Macaraig, Jr., et. al.,* G.R. No. 88291, May 31, 1991 (197 SCRA 771)

"It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes a part of the price which the purchaser must pay. It does not matter that an additional amount is billed as tax to the purchaser. The method of listing the price and the tax separately and defining taxable gross receipts as the amount received less the amount of the tax added, merely avoids payment by the seller of a tax on the amount of the tax. **The effect is still the same, namely, that the purchaser does not pay the tax.** He pays or may pay the seller more for the goods because of the seller's obligation, but that is all and the amount added because of the tax is paid to get the goods and for nothing else." [3] *(Emphasis supplied)*

The foregoing ruling had been recently reiterated by the Supreme Court, thus:

1. "Further, in indirect taxation, there is need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, **the seller remains the person primarily and legally liable for the payment of the tax**. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services, is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or consumer of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax." [4]

2. "On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated otherwise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. **When**

[3] *Philippine Acetylene Co., Inc., vs. Commissioner of Internal Revenue,* G.R. No. L-19707, August 17, 1967 (20 SCRA 1056).

[4] *Contex Corporation vs. Hon. Commissioner of Internal Revenue,* G.R. No. 151135, July 2, 2004 (433 SCRA 377)

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> **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." [5] *(Emphasis supplied)*

As explained in the above-cited decisions, the manufacturer or seller has the option whether or not to shift the burden of the tax to the purchaser. When shifted, the amount added by the manufacturer or seller becomes only a part of the price, therefore, the purchaser does not really pay the tax *per se* but only the price of the commodity. This has been the consistent ruling of the Supreme Court since the landmark case of *Philippine Acetylene Co. Inc. vs. CIR, supra.,* where the High Court cited the opinion of Justice Holmes that the purchaser does not pay the tax, thus:

> "Many years ago, Mr. Justice Oliver Wendell Holmes expressed dissatisfaction with the use if the phrase "pass the tax on." Writing the opinion of the U.S. Supreme Court in *Lash's Products v. United States [278 U.S. 175 (1928)]*, he said: "The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the manufacturer and on him alone. **The purchaser does not really pay the tax.** He pays or may pay the seller more for the goods because of the seller's obligation, but that is all. x x x **The amount added because of the tax is paid to get the goods and for nothing else. Therefore it is part of the price** x x x." *(Emphasis supplied)*

All of the foregoing jurisprudential authorities show that even though the burden of an indirect tax is shifted to the purchaser, still,

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5 *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company,* G.R. No. 140230, December 15, 2005.

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the liability for the indirect tax remains with the manufacturer as the ***taxpayer***. To quote the words of Justice Holmes *"[t]he purchaser does not really pay the tax".* We therefore concur with the ruling of the Court in Division that:

> "While it is true that in the case of excise tax imposed on petroleum products, the seller thereof may shift the tax burden to the buyer, the latter is the proper party to claim for the refund in case of exemption from excise tax. Since the excise tax was imposed upon Petron Corporation as the manufacturer of petroleum products, pursuant to Section 130(A)(2), and that the corresponding excise taxes were indeed, paid by it, hence, any claim for refund of the subject excise taxes should be filed by Petron Corporation as the taxpayer contemplated under the law. Petitioner cannot be considered as the taxpayer because it merely shouldered the burden of the excise tax and not the excise tax itself."

Necessarily, a refund of erroneously paid or illegally received internal revenue tax can only be made in favor of the ***taxpayer*** pursuant to Section 204 (C) of the NIRC of 1997 which provides that "no credit or refund of taxes or penalties shall be allowed unless the ***taxpayer*** files in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty". Section 204 (C) applies to both direct and indirect taxes. In indirect taxes, it is the manufacturer of the goods who is entitled to claim any refund thereof, the Supreme Court ruled:

> "The tax provided under this section of the Code is imposed upon the manufacturer or producer and not on the purchaser. On this matter of who bears the burden of the sales tax, this Court, after an extensive research on the subject, said:
>
> > We begin with an analysis on the nature of the percentage (sales) tax imposed by Section 186 of the Code. Is it a tax on the

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> producer or on the purchaser? Statutes of the type under consideration, which impose a tax on sales, have been described as 'act(s) with schizophrenic symptoms', as they apparently have two faces – one that of a vendor tax, and the other, a vendee tax. Fortunately, for us, the provisions of the Code throw some light on the problem. The Code states that the sales tax 'shall be paid by the manufacturer or producer' who must make a true and complete return of the amount of his, her or its gross monthly sales, receipts or earnings or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each month, pay the tax due thereon.'
>
> xxx xxx xxx.
>
> It follows that it is petitioner, and **not its customers**, that may ask for a refund of whatever amounts it is entitled for the percentage or sales taxes it paid before the amendment of section 246 of the Tax Code." [6] (Emphasis supplied)

In both *Cebu Portland Cement*[7] and *Contex Corporation*[8] cases, the Supreme Court specifically ruled that it is the manufacturer or producer of the goods who are the proper parties that may ask for the refund of the indirect taxes they paid to the BIR. The indirect taxes paid cannot be refunded to the purchasers of the goods because the purchasers are not the taxpayers.

Applying all the foregoing to the case before Us, since the liability for the excise tax pursuant to Section 130 (A) (2) was placed upon Petron Corporation as the manufacturer of the petroleum products, therefore, the claim for refund of the excise taxes subject of

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[6] *Cebu Portland Cement Company vs. Collector (Now Commissioner) of Internal Revenue,* No. L-20563, October 29, 1968 (25 SCRA 789).

[7] *Ibid.*

[8] *Contex Corporation vs. Hon. Commissioner of Internal Revenue, supra.*

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this petition should only be made by Petron Corporation being the taxpayer. Petitioner Silkair (Singapore) Pte. Ltd. "*is not the proper party to seek for the refund of excise taxes passed-on to it by Petron Corporation.*"[9]

Finally, respondent's assertion that "the more relevant ruling is the case of *Maceda vs. Macaraig (197 SCRA 771[1991]; 223 SCRA 217 [1993])*" cannot be sustained. First of all, the basis of petitioner's exemption is Section 135 (b) of the NIRC of 1997 but in the *Maceda* case, the ground for exemption of the National Power Corporation was that it was exempt from all taxes (now Section 135 (c) of the NIRC) as provided for in its charter. Very recently, the Supreme Court had clarified Its ruling in the *Maceda* case as follows:

> "It may be so that in *Maceda vs. Macaraig, Jr.* the Court held that an exemption from *all taxes* granted to the National Power Corporation (NPC) under its charter includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of Maceda being that an exemption from all *taxes* excludes indirect taxes, unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption."[10] *(citations omitted)*

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[9] *Silkair (Singapore) Pte. Ltd., vs. Commissioner of Internal Revenue,* CA-G.R. SP – 82902, September 13, 2004.

[10] *Commissioner of Internal Revenue vs. Philippine Long Distance Telephone Company, supra.*

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Secondly, the rule on *strictissimi juris* was not applied in the *Maceda* case since the National Power Corporation is a government owned or controlled corporation, the Supreme Court said:

> "The reason for the rule does not apply in the case of exemptions running to the benefit of the government itself or its agencies. In such case, the practical effect of an exemption is merely to reduce the amount of money that has to be handled by government in the course of its operations. For these reasons, provisions granting exemptions to government agencies may be construed liberally, in favor of non-tax liability of such agencies."

Petitioner Silkair (Singapore) PTE. Ltd. is neither a government owned or controlled corporation nor an entity which has been granted exemption from all kinds of taxes. As such, petitioner cannot rely thereon as basis for its claim for refund. "It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute the favor would be extended beyond dispute in ordinary cases"[11]. Clearly, the doctrine of strict construction applies

[11] *Ibid.,* p. 16

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even against the taxpayer himself who claims exemption. Therefore, it is beyond doubt that the doctrine of *strictissimi juris* should be strictly adhered to in a claim for tax refund by an entity who, **not** being the taxpayer, seeks the refund of taxes paid by the real taxpayer.

WHEREFORE, for reasons stated above, I concur with the **DISMISSAL** of petitioner's Petition for Review.

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