w/ DO

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DIAGEO PHILIPPINES, INC.,
Petitioner,

C.T.A. EB No. 260
(C.T.A. Case No. 7369)

Present:

Acosta, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, JJ.

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 0 2 2008
3:20 p.m.

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DECISION

BAUTISTA, J.:

Before Us is a Petition for Review[1] filed by herein petitioner on February 13, 2007, praying for the reversal of:

(1) the Resolution dated July 20, 2006 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 7369,

[1] *Rollo*, pp. 9 - 95, with Annexes.

dismissing the Petition for Review involving herein petitioner's claim for refund or issuance of tax credit certificate in the amount of P12,007,528.83, allegedly representing excise taxes paid on the raw alcohol that petitioner used for the manufacture of finished alcohol and spirits for export; and

(2) the Resolution dated January 8, 2007, denying herein petitioner's Motion for Reconsideration.

Antecedent Facts

The records reveal the following facts:

Petitioner Diageo Philippines, Inc. is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with its executive offices at 23rd Floor, Tower II, The Enterprise Center, 6766 Ayala Avenue, Makati City; and its manufacturing plant at 111 Technology Avenue, Laguna Technopark, Biñan, Laguna. It is primarily engaged in the business of importing, exporting, manufacturing, marketing, distributing, buying and selling, by wholesale, all kinds of beverages and liquors and in dealing in any materials, articles, or things required in connection with or incidental to the importation, exportation, manufacturing, marketing or distribution of such products. It is registered with the BIR as an Excise Tax taxpayer, with Tax Identification No. 000-161-879-000.[2]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to act as such, including, *inter alia*, the power to decide, approve, and grant refunds and/or issue tax credit certificates. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

For the periods November 1, 2003 to December 31, 2004, petitioner purchased from its supplier raw alcohol for use as raw material in its manufacture of finished alcohol and spirits. The supplier imported the raw alcohol, paid the related excise tax thereon, and sold the same to petitioner. The price of the raw alcohol included the related excise tax and Value-Added Tax ("VAT"). Petitioner then exported the locally manufactured finished alcohol and spirits to Japan, Taiwan, Turkey, and Thailand, and received the corresponding foreign exchange payment for the goods exported.[4]

Within two (2) years from the time that the excise taxes were paid by the supplier, petitioner filed its applications for tax refund/issuance of tax credit certificates for the excise taxes paid on the raw alcohol with the BIR Large Taxpayer's Audit and Investigation Division II. However, respondent's

[2] *Rollo*, pp. 11- 12.
[3] *Id.*, p. 12.
[4] *Id.*, pp. 12 – 13.

inaction on petitioner's request prompted the latter to file a Petition for Review before the Court of Tax Appeals.[5]

On November 14, 2005, petitioner filed a Petition for Review[6] with the CTA Interim Division, docketed as CTA Case No. 7369. In the Petition, petitioner sought the refund or issuance of tax credit certificate in the amount of P12,007,528.83, representing excise taxes allegedly paid on the raw alcohol used by petitioner for the manufacture of finished alcohol and spirits it exported during the period from November 1, 2003 to December 31, 2004.

On December 27, 2005, respondent filed an Answer,[7] raising by way of affirmative defense the lack of legal personality of petitioner to institute the judicial claim for refund under Section 130 (D) of the 1997 National Internal Revenue Code ("NIRC") because, as admitted by petitioner, it was not the one who paid the alleged excise taxes but its supplier.

Pre-trial conference was then set on February 16, 2006, during which the counsel for respondent requested for a period of thirty (30) days within which to file a Motion to Dismiss for lack of personality of petitioner to file the case.[8]

On March 9, 2006, respondent filed a Motion to Dismiss[9], arguing that petitioner has no legal personality to institute the judicial claim for refund given that the excise taxes were paid not by petitioner but by its suppliers.

[5] *Rollo*, pp. 13 - 14.
[6] *Id.*, pp. 39 - 45.
[7] *Records*, C.T.A. Case No. 7369, pp. 59 - 66.
[8] *Id.*, p. 80.
[9] *Rollo*, pp. 47 - 54.

Petitioner filed an Opposition (To Respondent's Motion to Dismiss dated 8 March 2006),[10] citing the cases of *Manila Cordage Company v. Commissioner of Internal Revenue* [11]and *Commissioner of Internal Revenue v. Court of Tax Appeals and Zippy Commercial Corporation*[12] to bolster its stand that, as a manufacturer-exporter, it is entitled to a refund or tax credit under Section 130 (D) of the NIRC.

The Ruling of the Court in Division

On July 20, 2006, the Court in Division issued a Resolution[13] granting respondent's Motion to Dismiss. It ruled that petitioner is not the real party in interest to file the present claim.

According to the Court in Division, although an excise tax, which is an indirect tax, can be passed on to the purchaser of goods, the liability however, for such indirect tax still remains with the manufacturer or seller. It elucidated that when the burden of the tax is shifted to the purchaser, the amount added by the manufacturer or seller then 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.

In addition, the Court in Division, as jurisprudential basis for the dismissal, cited the case of *Philippine Acetylene Co., Inc. v. Commissioner of*

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[10] *Rollo*, pp. 55 – 72.
[11] C.T.A. Case No. 6032, March 5, 2002.
[12] C.A.- G.R. S.P. No. 27349, March 26, 1996.
[13] *Rollo*, pp. 73 – 77.

Internal Revenue,[14] where the Supreme Court declared that: "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."

Accordingly, it disposed of the case in this wise:

> "Wherefore, premises considered, the Petition for Review is hereby **DISMISSED.**
>
> **SO ORDERED.**"

Aggrieved by the Resolution, petitioner filed a Motion for Reconsideration[15] on August 17, 2006, which was denied by the Court in Division in its Resolution[16] dated January 8, 2007.

The Issues

Hence, the present recourse, where petitioner raises the following assignment of errors:

> "I.
>
> **THE SECOND DIVISION SERIOUSLY ERRED IN SOLELY RELYING ON THE CASE OF *PHILIPPINES ACETYLENE CO., INC. VS. COMMISSIONER OF INTERNAL REVENUE* IN RULING THAT PETITIONER HAS NO LEGAL PERSONALITY TO CLAIM FOR REFUND OF EXCISE TAXES SINCE WHAT WAS TRANSFERRED TO PETITIONER WAS ONLY THE BURDEN OF THE INDIRECT TAX AND NOT THE TAX ITSELF.**

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[14] G.R. 19707, 20 SCRA 1056, August 17, 1967.
[15] *Rollo*, pp. 78 - 93.
[16] *Id.*, pp. 94 - 95.

II.
THE SECOND DIVISION SERIOUSLY ERRED IN RULING THAT REFUND TO PETITIONER WOULD RUN COUNTER TO THE RULE ON STRICTISSIMI JURIS WITH RESPECT TO TAX EXEMPTIONS.

III.
THE SECOND DIVISION SERIOUSLY ERRED IN NOT RULING THAT THE ENTITY BEING REFERRED TO IN SECTION 130 [D] AS ENTITLED TO A TAX REFUND OR CREDIT IS THE MANUFACTURER-EXPORTER.

IV.
THE SECOND DIVISION SERIOUSLY ERRED IN NOT RULING THAT SECTION 130 [D] OF THE TAX CODE IS A TAX INCENTIVE AVAILABLE TO EVERY EXPORTER."[17]

On March 1, 2007, We required the respondent to file her Comment to the Petition for Review, within ten (10) days from notice.[18]

On May 9, 2007, sans respondent's Comment, We gave due course to the Petition for Review and required the parties to submit their respective Memoranda, within fifteen (15) days from notice, afterwhich the Petition for Review shall be deemed submitted for decision.[19]

On July 16, 2007, for failure of both parties to file their respective Memoranda within the period prescribed, the case was deemed submitted for decision.[20]

This case was originally raffled to Presiding Justice Ernesto D. Acosta for study and report. Presiding Justice Acosta submitted his report to the Court *En Banc* recommending to grant the Petition, to which Justices Juanito

[17] *Rollo*, p. 17.
[18] *Id.*, p. 97.
[19] *Id.*, p. 99.
[20] *Id.*, p. 102.

C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez voted to deny the Petition and affirm the assailed Resolutions.

On June 20, 2008, the case was re-raffled to Justice Lovell R. Bautista for the writing of the majority decision.

The Ruling of the Court En Banc

The Petition for Review has no merit.

The foregoing assignment of errors may be synthesized into one single issue, that is, whether or not petitioner is the real party in interest to file the present claim.

A real party in interest is defined in Section 2, Rule 3 of the 1997 Revised Rules of Court, as follows:

> "SECTION 2. *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or **the party entitled to the avails of the suit.** Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest." *(Emphasis supplied)*

In taxation, a "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.[21]

Here, petitioner contends that it is entitled to refund as a manufacturer-exporter pursuant to Section 130 (D) of the NIRC, to wit:

> "**SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. -**
>
> xxx xxx xxx
>
> (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 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." (*Emphasis supplied*)

Indeed, the right to a refund/tax credit of the excise taxes is available to those persons enumerated in Section 130(A)(1) & (2)[22] of the NIRC, for they

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[21] Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corporation and the Court of Tax Appeals, G.R. No. 66838, 204 SCRA 377, December 2, 1991.

[22] **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

Should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon.

(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 form place of production: xxx are the ones primarily and legally liable to pay the excise taxes.[23] Section 130 (D) of the NIRC is a tax incentive available to a manufacturer-exporter who has paid excise taxes. However, in order to avail of this privilege, the manufacturer-exporter has to prove, among others, the fact that it has actually paid excise taxes.

In the case at bar, petitioner is claiming a tax refund or tax credit for excise taxes paid by its supplier, an importer of raw alcohol used by it in manufacturing finished alcohol and spirits. Considering that the excise taxes subject of this case were paid not by the manufacturer-exporter (herein petitioner) but by petitioner's supplier, the claim for refund must be denied. Petitioner is not entitled to a refund because it did not pay the subject excise taxes.

For this reason, We are in full accord with the Court in Division that the petitioner is not the proper party that may claim a refund in the instant case. The fact that the sales invoice issued by petitioner's supplier provides for the quantity and unit price of the raw materials sold and the related excise tax and VAT does not make the petitioner the taxpayer of the excise tax. As the Court in Division has explained: "When herein petitioner purchased the raw alcohol from its suppliers, which had admittedly paid for the excise taxes on their importation of raw alcohol before selling the same to petitioner, the

[23] Dunlop Slazenger Phils., Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6501, December 29, 2004.

alleged 'excise taxes' already formed part of the purchase price, though the 'tax' may have been separately 'billed' in the sales invoices issued."[24]

In this connection, it is well to note that an excise tax is considered as an indirect tax. Unlike a direct tax, where the taxpayer is directly liable on the transaction or business it engaged in, an indirect tax is primarily paid by persons who can shift the burden upon someone else.[25] An indirect tax is one wherein the incidence of or 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.[26]

In the case of *Philippine Acetylene Co., Inc., v. Commissioner of Internal Revenue,*[27] the Supreme Court explained the nature of an indirect tax, to wit:

> "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.
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> But the tax burden may not even be shifted to the purchaser at all. A decision to absorb the burden of the tax is largely a matter of economics. Then it can no longer be contended that a sales tax is a tax on the purchaser." *(Emphasis supplied)*

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[24] *Rollo,* pp. 76 - 77, Resolution dated July 20, 2006.
[25] Maceda vs. Macaraig, Jr., et al., G.R. No. 88291, 197 SCRA 771, May 31, 1991.
[26] Commissioner of Internal Revenue v. Silkair (Singapore) Pte., Ltd., C.T.A. EB No. 25 (C.T.A. Case No. 5996), May 20, 2005.
[27] *Supra,* at note 14.

Again, in the case of *Contex Corporation v. Hon. Commissioner of Internal Revenue,*[28] the Supreme Court said:

> "At this juncture, it must be stressed that the VAT is an indirect tax. As such, the amount of tax paid on the goods, properties or services bought, transferred, or leased may be shifted or passed on by the seller, transferor, or lessor to the buyer, transferee or lessee. Unlike a direct tax, such as the income tax, which primarily taxes an individual's ability to pay based on his income or net wealth, an indirect tax, such as the VAT, is a tax on consumption of goods, services, or certain transactions involving the same. The VAT, thus, forms a substantial portion of consumer expenditures.
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> Further, in indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of the 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." *(Emphasis supplied)*

Thus, in indirect taxes, like an excise tax, the proper party who can question or seek a refund of the tax is the person on whom the tax is imposed by law and who paid the tax even when he shifts the burden thereof to another.[29] The reason is obvious: where the burden of the tax is shifted to the buyer, the amount passed on to it is no longer a tax but becomes an added

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[28] G.R. No. 151135, 433 SCRA 376, July 2, 2004.
[29] *Supra,* at note 23, citing *Cebu Portland Cement Co. v. Collector of Internal Revenue, G.R. No. L-20563, 25 SCRA 789, October 29, 1968.*

cost on the goods purchased which constitutes a part of the purchase price,[30] and which the purchaser has to pay to the seller to obtain the goods.[31]

Accordingly, even if the supplier shifted or passed on to the petitioner the excise taxes it paid, this does not make the petitioner the person liable for the tax. Petitioner, as a buyer of raw alcohol, is not the taxpayer, because it merely shouldered the burden of the excise tax and not the excise tax itself. What was transferred to petitioner was only the burden of the indirect tax and not the excise tax itself. Again, only persons who are statutorily required to pay the taxes are clothed with the legal personality to claim a refund or tax credit thereof.[32]

As We see it then, the claim of P12,007,528.83 merely represents an additional cost of raw alcohol on the part of the petitioner and not an excise tax. Not being the taxpayer, petitioner is not the proper party to claim for the refund of the subject excise taxes.

Finally, We likewise agree with the Court in Division that to allow a refund to petitioner would run counter to the rule on *strictissimi juris* with respect to tax exemption. It has been repeated time and again that tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris*

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[30] *Supra*, at note 26.
[31] *Supra*, at note 23.
[32] See Commissioner of Internal Revenue vs. Silkair (Singapore) Pte., Ltd., C.T.A. EB No. 56 (C.T.A. Case No. 6217), October 20, 2005; *supra*, at note 26, Commissioner of Internal Revenue vs. Silkair (Singapore) Pte., Ltd., C.T.A. EB No. 25 (C.T.A. No. 5996), December 5, 2005; and Commissioner of Internal Revenue vs. Silkair (Singapore) Pte., Ltd., C.T.A. EB No. 67, (C.T.A. Case No. 6308) January 5, 2006.

against the person or entity claiming the exemption, as such, the burden in proving the claim for refund necessarily falls on the taxpayer or the person claiming the refund or exemption.[33]

WHEREFORE, the instant Petition for Review is hereby **DENIED.** Accordingly, the assailed Resolutions of the Second Division dated July 20, 2006 and January 8, 2007 are hereby **AFFIRMED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[33] Far East Bank and Trust Company v. Commissioner of Internal Revenue, G.R. No. 138919, 488 SCRA 473, May 2, 2006.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DIAGEO PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 260
(C.T.A. Case No. 7369)

Present:

ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUL 0 2 2008 [signature]
3:20 p.m.

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DISSENTING OPINION

This Court's *En Banc* Decision affirms the Court of Tax Appeals Second Division's Resolutions dated July 20, 2006 and January 8, 2007 and denies petitioner's claim for refund representing erroneously paid excise taxes, on the ground that herein petitioner is allegedly not the proper party to the said claim since the excise tax was merely factored in the purchase price of the raw alcohol used as raw material in its manufacture of finished alcohol and spirits.

With due respect to my esteemed colleagues, I wish to express my disagreement with their position because given the unique factual and legal backdrop of the case, petitioner is actually the proper party to claim the tax refund.

The contention that petitioner is not the proper party to claim refund is based on the line of reasoning that an excise tax, being an indirect tax, is the direct liability of the supplier-importer, although the burden of taxation falls on another person. And when the same is added to the cost of goods, it is no longer considered a tax but a part of the purchase price. Hence, the proper claimant to the subject request for tax refund is the supplier-importer.

Notwithstanding the play in semantics, it is undeniable that in effect it was petitioner that paid the excise taxes due on the transaction, despite the grant in its favor of exemption from payment of excise tax.

I reckon to quote Section 130(D) of the National Internal Revenue Code (NIRC), inasmuch as on its proper interpretation depends the proper resolution of the present controversy, to wit:

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

Section 130(D) of the NIRC clearly indicates that the entity referred to as entitled to tax refund or credit is the manufacturer-exporter. The privilege of tax refund or credit of excise taxes applies to every exporter as long as the following requirements are satisfied:

1. the goods are exported either in their original state or as ingredients or part of any manufactured goods or products;
2. the exporter should submit proof of exportation; and
3. the exporter should likewise submit proof of receipt of the corresponding foreign exchange payment.

The above is corroborated by this Court's Decision in the case of **Manila Cordage Company vs. Commissioner of Internal Revenue**[1], where this Court enumerated the conditions for a refund claim to be granted, to wit:

> "Based on the foregoing provisions of law, Petitioner must comply with the following conditions in order to be entitled to the claim for refund or issuance of a tax credit certificate, *viz*:
>
> 1. **That the excise taxes were actually paid on locally manufactured goods;**
>
> 2. **That such locally manufactured goods were exported either in their original state or as ingredients or parts of any manufactured goods or products; and**
>
> 3. **That there must be proof of actual exportation of the said goods and receipt of the corresponding foreign exchange payment.**
>
> **Petitioner must likewise prove that the claim for refund was filed within the two-year prescriptive period** provided under Section 229 in relation to Section130 (A)(2), both of the Tax Reform Act of 1997." (*Emphasis supplied*)

It should be noted that in the afore-quoted case, the excise taxes relating to therein petitioner's purchase of batching oil used as raw material in the production of abaca rope and twines for export were charged to or passed on to therein petitioner as shown in the price quotations, BIR certifications, and sales invoices

[1] CTA Case No. 6032, March 5, 2002.

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issued by the sellers. Nevertheless, this Court granted the claim for refund on the properly substantiated items.

As I have discussed in my Dissenting Opinion in the case of **Dunlop Slazenger Philippines, Inc. vs. Commissioner of Internal Revenue**[2]:

> "At this juncture, **Section 130 (D) of the NIRC of 1997** which serves as the crux of the controversy, is hereby quoted for easy reference, thus:
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> xxx xxx xxx
>
> Clearly from the foregoing, in order to be entitled to the refund of the excise tax paid on domestic purchases of bunker fuel oil, the petitioner only needs to prove that (1) it paid the excise tax on its domestic purchases of bunker fuel, (2) the same were used as raw materials for the production or manufacturing of goods (in this case tennis balls), (3) the manufactured goods were subsequently exported without returning to the Philippines, (4) receipt of the corresponding foreign exchange payment.
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> xxx xxx xxx
>
> xxx, it is undeniable that (1) petitioner made domestic purchases of bunker fuel oil in the amount of P1,415,100.00 covering the period from November 1999 to May 2001, (2) the same were used as raw materials for the production or manufacturing of tennis balls, (3) the manufactured tennis balls were subsequently exported without returning to the Philippines, and (4) the corresponding foreign exchange payments were received. These facts stand, the issue of 'improper party' notwithstanding.
>
> **A close reading of the said provision of law will clearly show that the entity being referred to in the said Section 130 (D) of the Tax Code as entitled to the tax credit is the manufacturer-exporter. Never was it mentioned that it is the supplier.**
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> **As properly pointed out by petitioner, to deny its claim for refund in spite of the pieces of evidence presented, the clear mandate of Section 130 (D) of the 1997 Tax Code, and the satisfaction of all its *sine qua non* requirements for refund will not only violate the said Tax Code provision but**

[2] Resolution, CTA Case No. 6501, June 23, 2005.

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> **the time – honored principles of 'unjust enrichment,' justice and fair play.** xxx" (*Emphasis supplied*)

In the afore-mentioned cases, there is clearly nothing in the language of the law that even suggests that only the one directly liable for the excise tax is entitled to the tax credit or the refund of excise taxes paid on goods subsequently exported. The legally mandated elements for refund or tax credit, which consist only of proof of actual exportation and receipt of foreign exchange payment, points only to the manufacturer-exporter and no other.

The factual and legal milieu of the case of **Philippine Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue**[3] is equally significant to the instant case. Philippine Phosphate Fertilizer Corporation (Philphos) was a domestic corporation engaged in the business of manufacturing fertilizer. It was registered with the Export Processing Zone Authority (EPZA) and was engaged in the business of manufacturing fertilizer for domestic and international distribution. Asserting that petroleum products are indispensable in its operations, petitioner obtained fuel and oil products from Petron Philippines Corporation (Petron). As importer of the petroleum products and fuel supplies, Petron paid the taxes and duties imposed upon the same. When the petroleum products were later sold by Petron to Philphos, the latter was billed the corresponding taxes and customs duties imposed on the petroleum products. On the belief that it enjoys tax and non-tax incentives by virtue of its EPZA registration, Philphos sought the refund of taxes paid for its purchases of fuel oil from Petron from the BIR until it finally reached the High Tribunal. The Honorable Supreme Court made the following findings:

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[3] G.R. No. 141973, June 28, 2005.

"... [P]etitioner, as an EPZA registered enterprise is exempted from the payment of excise taxes, and if said taxes were passed on by the supplier to EPZA registered enterprise like the petitioner, tax credit shall be granted to the latter. **The fact that it was not the petitioner who had paid the taxes directly to the Bureau of Internal Revenue does not have an adverse effect on petitioner's action for refund. The law granting the exemption makes no distinction as to the circumstances when the law shall apply. Since the law makes no distinction, neither should we.** xxx" (*Emphasis supplied*)

Here, there is a categorical grant on manufacturer-exporter, such as herein petitioner, of the privilege to claim refund or tax credit on excise taxes paid on raw materials used in its exported products as long as the conditions stated in the statute are fulfilled, namely: (1) the excise taxes were actually paid on locally manufactured goods; (2) such locally manufactured goods were exported either in their original state or as ingredients or parts of any manufactured goods or products; and (3) there must be proof of actual exportation of the said goods and receipt of the corresponding foreign exchange payment. These requisites are indicative that the manufacturer-exporter is the one granted the tax incentive; considering that the responsibility to satisfy all these requirements is within the control of the exporter, and not the supplier.

The majority emphasized the long-established legal principle that the law frowns upon exemptions from taxation. And statutes granting tax exemptions are construed *strictissimi juris* against the taxpayer, yet liberally in favor of the taxing authority. However, this rule admits of exceptions. Case in point is **Commissioner**

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of Internal Revenue vs. Court of Tax Appeals and Zippy Commercial Corporation[4].

Zippy Commercial Corporation (Zippy Commercial) was engaged in the businesses of buying locally-manufactured cigarettes with foreign brands from local manufacturers for export to foreign buyers. On the basis of the permit granted it by the BIR, Zippy Commercial purchased cases of cigarettes *from La Suerte Cigar and Cigarettes Factory* for a specified amount, inclusive of the *ad valorem* tax and value-added tax. The said cases of cigarettes were exported by Zippy Commercial which generated foreign exchange payment. Consequently, Zippy Commercial filed a claim for refund of the *ad valorem tax.*

The Court of Appeals sustained the granting of the refund and declared that there is no explicit mention that only manufacturers/producers who are also exporters can avail of the tax privilege granted under the said legal provision. On the contrary, the law only says that for locally produced or manufactured goods to be entitled to credit or refund of excise tax, the following requirements should be present: (1) said goods are exported either in their original state or as ingredients or part of any manufactured goods or products; (2) the exporter should submit proof of exportation, and (3) the exporter should likewise submit proof of receipt of the corresponding foreign exchange payment. It is understood that the tax concession applies to every exporter provided the above-enumerated conditions are met.

This Court even made the following remarks in the same case of *Zippy Commercial Corporation*[5]:

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[4] CA-G.R. SP No. 27349, March 26, 1996 (CTA Case No. 4477).
[5] *Supra.*

"However, We are inclined to agree with the theory of the petitioner when he argues that:

> '...It must be emphasized that when the law does not distinguish we should not make any distinction *Ubi Lex Non Distinguit Nec Nos Distinguere Debemos.* (Tañada v. Yulo, 61 Phil. 515 1935)
>
> Section 127(d) of the National Internal Revenue Code makes no mention that it is applicable only to manufacturers or producers...'

In fact, the law even states that it redounds to the benefit of all exporters considering that it mandates that 'goods locally produced or manufactured...whether so imported 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.'

> 'The law applies to manufactured goods or products, meaning a product not in its original state. Hence, even where a second, third, fourth, etc. sale after manufacture or production is involved prior to exportation, exemption from excise tax is mandated...'
>
> 'The law further states that 'any excise tax paid thereon shall be credited or refunded', meaning **any and all excise taxes paid, without distinction as to who paid it, shall be credited or refunded. In the final analysis, the end purchaser who bears a burden of any excise tax paid, in this case paid by the petitioner, should be entitled to the credit or refund.'**
>
> 'It must be borne in mind that the Chief Executive, in enacting E.O. No. 22 dated June 25, 1987, is presumed to have amended the NIRC to add significant changes and not merely adding words in vain or leaving part of the enactment devoid of sense or meaning.'

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Our agreement with the petitioner is based on the clear provision of the law involved Section 127(d), quoted above.

In accordance with the said provision of law, for locally or manufactured goods to be entitled to credit or refund of excise tax

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paid thereon, there are three (3) requisites which should be met, namely:

(a) the said goods are actually exported either in their original state or as ingredients or part of any manufactured goods or products;

(b) proof of actual exportation should be submitted;

(c) there should be proof of receipt of the corresponding foreign exchange payment.

Nowhere in the provision of the applicable law is there express mention that the manufacturer of the exported goods on which excise tax has been paid should be the exporter; nor is it stated that removal should immediately be followed by exportation. For a better understanding and interpretation of the law, we find it necessary to present the provision of the code prior to its amendment by E.O. 22. Section 127(d) was previously part of Section 109 (now Section 126) of the National Internal Revenue Code. The pertinent portion of which is read as follows:

> 'Excise taxes apply to articles manufactured or produced in the Philippines for domestic sale or consumption or for any disposition and to things imported, *but not to anything locally produced or manufactured which shall be removed for exportation and is actually exported in its original state or as an ingredient or part or any manufactured articles or products...'* (Emphasis supplied).

Please note that prior to the amendment there was an outright exemption from excise tax of exported goods. When Executive Order No. 22 was promulgated two significant changes were introduced, namely [1] excise tax has to be paid first [2] tax refund or credit shall be granted upon proof of actual exportation and receipt of foreign exchange payment. Obviously, the intention is to ensure that the foreign exchange payment for the export is inwardly remitted as a means of discouraging salting of foreign exchange on export proceeds. Nowhere in the amendments introduced by the said Executive Order can we infer that the tax incentive is only restricted to manufacturer or producer. **Considering the continuing policy of the government which is to encourage exportation, the more correct way of interpretation will be that the incentive will be extended to every exporter subject only to the conditions aforementioned.**" (*Emphasis supplied*)

Thus, it must be emphasized that in accordance with the Section 130(D) (formerly Section 127[d] of the Tax Code), any and all excise taxes paid, without any distinction as to who paid it, shall be credited or refunded. The excise tax paid attaches to the goods or products, irrespective of who paid it, as long as the necessary requisites for entitlement to the refund or tax credit are observed. Evidently, the foregoing interpretation is more in keeping with the language and spirit of the law.

It is a basic principle that when the statute is clear and explicit, there is no need for any extended court ratiocination; there is no room for interpretation, vacillation or equivocation, only application.[6] This is especially true when the law is plain and free from ambiguity; thus, mandating literal meaning and without attempted interpretation.[7] After all, the function of all judicial instrumentalities is to apply the law as they find it, not to reinvent or second-guess it.

By way of analogy, in the case of our value-added tax system (which is also an indirect tax), the same allows a party to claim refund or tax credit of input taxes incurred by the purchaser that are attributable to zero-rated sales[8]. It must be stressed that input taxes are the result of the "tax burden" passed on by the seller

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[6] Caguioa vs. Laviña, 345 SCRA 49.
[7] Del Mar vs. Philippine Amusement and Gaming Corporation, 358 SCRA 768.
[8] "SEC. 112. – Refunds or Tax Credits of Input Tax
(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a **tax credit certificate or refund** of creditable **input tax** due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of volume of sales: Provided, finally, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."

to the buyer. This is the distinction between input tax and output tax. Output tax is the direct tax liability of the seller; while input tax is the tax burden passed on to the purchaser.[9] The burden of the tax in the hands of the purchaser is no longer an output tax or a direct tax "liability", and yet, it may still be claimed for refund or tax credit by the party upon whom the burden is passed under certain circumstances.

Under Section 106(2) of the NIRC, the following sale of goods by VAT-registered persons shall be subject to zero percent (0%) rate:

"(a) Export Sales. – The term 'export sales' means:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and **paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)**;

(2) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and **paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;

(3) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(4) Sale of gold to the Bangko Sentral ng Pilipinas (BSP); and

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.

(b) Foreign Currency Denominated Sale. – The phrase 'foreign currency denominated sale' means **sale to a nonresident** of goods, except those mentioned in Sections 149 and 150, assembled or manufactured

[9] Section 110(A)(3) of the NIRC.

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in the Philippines for delivery to a resident in the Philippines, **paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).**

(c) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate." (*Emphasis supplied*)

Apparent from the foregoing list of zero-rated sales of goods is the fact that they are all foreign-bound transactions, be it actual or constructive exportation. The inducement of being able to claim refund of unutilized input taxes passed on by suppliers is granted to exporters since the intention of the government is to promote the infusion of foreign exchange into the Philippines.

Noticeably, Section 130(D) of the NIRC affords a similar benefit of tax refund or tax credit of excise taxes paid on goods exported and paid for in acceptable foreign currency. The same rationale applies to Section 130(D), which is to carry out the government policy of encouraging exports to ensure that much needed foreign exchange is infused into the country's economy.

Respondent's proposed construction of Section 130(D) of the NIRC could not have been the intention of Congress in enacting the said Tax Code provision. In fact, it defeats the very purpose of granting tax incentives to exports which generate inward-bound foreign currency. To subscribe to the proposition that the one directly liable for the excise tax is the only one authorized to claim refund or tax credit of excise taxes paid on exported articles, would lead to the unreasonable conclusion that exporter of alcohol products who relies on importers for its supply of raw materials, can never claim a refund of excise taxes paid on local purchases used in

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the manufacture of its exported products. Unquestionably, this could not have been the intention of the statute.

Moreover, the fact that it was the importer who directly paid the excise tax and arguably should be the rightful refund claimant, doesn't necessarily mean that the said importer will actually be allowed to claim refund. The privilege is granted not on the importer but on the exporter (petitioner), pursuant to Section 130(D) of the NIRC. The tax benefit is bestowed on the exporter as a motivation to increase the country's foreign reserves; rather than on the importer, who is actually among those that "deplete" the country's foreign reserves.

Inasmuch as the *raison d' etre* of the law is clear, the basic rule of statutory construction that the intent or spirit must prevail over the letter of the law must apply; for whatever is within the spirit of a statute is within the statute, since adherence to the letter would result in absurdity, injustice and contradictions and would defeat the plain and vital purpose of the statute.[10] *Ratio legis est anima.* The reason for the law is its very soul.[11]

Anent the issue of applicability of **Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue**[12], I again register my opposition on the ground that the *Philippine Acetylene* case is not on all fours to the present case, both in fact and in principle. In the *Philippine Acetylene* case, therein petitioner invoked the tax exemption of its buyer in attempting to relieve itself of sales tax liability. Logically, the tax exemption of the buyer does not generally extend to other taxpayers, including the seller. Whether a purchaser may have legal basis to

[10] Maynard Peralta vs. Civil Service Commission, G.R. No. 95832, August 10, 1992, citing Hidalgo vs. Hidalgo, G.R. No. L-25326, May 29, 1970.
[11] Commissioner of Internal Revenue vs. Seagate Technologies, G.R. No. 153866, February 11, 2005.
[12] G.R. No. L-19707, August 17, 1967.

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claim refund of the sales tax passed on to it was never raised as an issue. In fact, the party asking refund is the seller-producer based on the exemption granted under the law to the buyer, National Power Corporation (NPC) and Voice of America (VOA). The pronouncement that sales tax, being an indirect tax which is passed on to the purchaser as part of the purchase price of the commodity, is a tax on the seller and not on the buyer, only justified the ruling that even if the buyer happens to be tax-exempt, the seller is nonetheless liable for the payment of the tax. However, nowhere in the said Decision can it be found that the buyer is stripped of its tax exemption. Equally significant is the fact that the *Philippine Acetylene* case involves a direct imposition of the sales tax; while this case involves a clear grant of an incentive for exporters. Ergo, the said case cannot be made to apply to the instant Petition.

Time and again, the Highest Tribunal has emphasized that courts are not to give statutes an interpretation that would lead to absurdities or cause injustice. If the words of a statute are susceptible of more than one meaning, the absurdity of the result of one construction is a strong argument against its adoption, and in favor of such sensible interpretation. There are laws which are generally valid but may seem arbitrary when applied in a particular case because of its peculiar circumstances. The court is not bound to apply them in slavish obedience to their language.[13]

In recapitulation, denying petitioner's refund claim on the sole basis that the "proper party" to claim tax refund is supposedly the supplier-importer rather than petitioner will not only defeat the tax exemption privileges granted to petitioner as

[13] Spouses Bello vs. Philippine National Bank, G.R. No. 134330, March 1, 2001.

exporter under the Tax Code, but also leave petitioner at the mercy of respondent and importer's exercise of its non-existent right to claim refund on the ground that it is allegedly the "proper party".

ERNESTO D. ACOSTA
Presiding Justice