REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY
EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SILKAIR (SINGAPORE) PTE, LTD.,
Respondent.

C.T.A. EB No. 25
(C.T.A. Case No. 5996)

Present:

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

Promulgated:
MAY 20 2005

x---x

DECISION

BAUTISTA, J.:

In this Petition for Review, petitioner assails the Resolutions dated May 12, 2004 and August 13, 2004 rendered by the Court of Tax Appeals, sitting as a Division, in CTA Case No. 5996 entitled "Silkair (Singapore) Pte, Ltd. vs. Commissioner of Internal Revenue".

The Resolution rendered by the Court's Division on May 12, 2004 reversed its decision which denied respondent's claim for refund in the

On January 5, 2000, respondent elevated its claim before the Division of the Court of Tax Appeals through a Petition for Review citing as legal bases Sections 135 in relation to Section 229 of the Tax Code.

A Decision was rendered by the Court's Division on November 6, 2003, denying respondent's claim for refund for failure to establish the fact that it has complied with the requirements set forth under Section 135 of the 1997 Tax Code. The Division held, thus:

> "In a similar case involving the same parties and issues entitled Silkair [Singapore] Pte., Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 6130, dated July 28, 2003, this court laid down the following conditions in order that the petroleum products sold to an international air carrier will be exempted from the payment of excise taxes:
>
> a. that the petroleum products sold to international carriers of Philippine or foreign registry shall be for their use or consumption outside the Philippines;
>
> b. that the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner; and
>
> c. that the country of said foreign international carrier exempts from similar taxes petroleum products sold to Philippine carriers.
>
> There is no doubt that petitioner is an international carrier and that the aviation jet fuel it purchased from Petron Corporation for the subject period of the claim with the related specific taxes of P4,587,881.68 were used or consumed outside the Philippines.
>
> Likewise, as to whether the country of said foreign international carrier exempts from similar taxes petroleum

products sold to Philippine carriers, the court rules in the affirmative, thus:

> "xxx the Court finds that Petitioner has substantially complied with the reciprocity clause mentioned in Section 132 (now 135) of the Tax Code when it presented in evidence the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore executed on July 11, 1974 (Exh. J) specifically Art. 4(2) of the same (Exh. J-1)"

xxx xxx xxx

However, with reference to the second requisite, no evidence was adduced by petitioner to establish the fact that the aviation jet fuel it purchased from Petron Corp. came from the latter's bonded storage tank. Such failure on the part of petitioner is fatal to its claim. Petitioner should have presented convincing proof that its aviation jet fuel purchases fall within the exemption provided for under Section 135 of the Tax Code. Considering the oft-repeated dictum that refund of taxes partakes the nature of a tax exemption and is construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. (**Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and the Court of Tax appeals, G.R. Nos. L-83583-84, March 25, 1992, 207 SCRA 549; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd. 244 SCRA 332**), this court rules to deny the instant petition.

xxx xxx xxx"

Respondent, thereafter, moved for reconsideration of the above-quoted decision. In a Resolution dated May 12, 2004, the division granted respondent's motion and reversed the assailed decision, to wit:

" xxx xxx xxx

Clearly by its description alone, Section 135 **expanded** the coverage of exemption as to cover exempt entities or agencies. It uses the word following which involves an enumeration. Undoubtedly, <u>any of them</u> may be exempt from excise taxes.

xxx xxx xxx

Section 135(b), on the other hand, provides exemption to exempt entities or agencies <u>covered by tax treaties, convention and other international agreements and to foreign international carriers</u>. The only condition being that the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies (reciprocity clause). It must be observed also that under this provision, exemption is provided only to international carriers of foreign registry. The fact that the reciprocity clause is found in this Section 135(b) mentions about foreign international carriers means that it also covers foreign international carriers that are covered by treaties, conventions and other international agreements.

Moreover, under this subparagraph, the destination of the use or consumption is not specified as differentiated from subparagraph (a). Thus, the use or consumption of petroleum products sold may be within or outside the Philippines. Notably, the requirement that the petroleum products sold must be stored in a bonded storage tank is not included in this subparagraph. This goes without saying that the petroleum products sold may be taken from any depot other than a bonded storage tank.

xxx xxx xxx

In sum, Sections (a), (b) and (c) provide for independent or separate exemptions. The law is really clear and there is no need for interpretation but mere application. Further, we agree with the petitioner that where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation. Conversely, courts may not enlarge nor restrict statutes if the provision contains no limitations in its operation or scope.

The assailed decision already found that petitioner is a foreign international carrier that purchased aviation fuel from Petron Corporation for the subject period and paid the

> corresponding excise taxes thereon as evidenced by the delivery receipts/invoices it submitted. In addition, petitioner was able to prove that its country exempts from similar taxes petroleum products sold to Philippine carriers *(Exhibit J)*. Plainly, it qualifies for exemption under Section 135 (b) of the 1997 Tax Code.
>
> **IN VIEW OF ALL THE FOREGOING**, our Decision promulgated on November 6, 2003 is hereby **SET ASIDE**. Petitioner's claim for refund in the amount of P4,587,881.68 is **GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** to the petitioner the amount of P4,587,881.68 representing excise taxes erroneously paid for the period January 1, 1998 to June 30, 1998
>
> **SO ORDERED.**"

Petitioner moved for the reconsideration of the Division's May 12, 2004 Resolution which was denied in a Resolution dated August 13, 2004. Thus, on October 8, 2004, petitioner filed his Petition for Review before the Court *En Banc* assailing the abovementioned resolutions and raising the following issues, to wit:

I.

> Whether or not respondent is the proper party to ask for the refund.

II.

> Whether or not respondent is entitled to the refund of the amount of P4,587,881.68 allegedly representing excise taxes erroneously paid for the period January 1, 1998 to June 30, 1998.

The Court's Division correctly held in its Resolution dated May 12, 2004, that respondent qualifies for exemption under Section 135(b) of the

1997 Tax Code. Respondent has proven the fact that it is a foreign international carrier duly authorized to transact business in the Philippines, that its country of origin reciprocally grants exemption from similar taxes on petroleum products sold to Philippine carriers, entities or agencies and that it purchased aviation fuel from Petron Corporation for the period January 1, 1998 to June 30, 1998.

While the Court *En Banc* agrees with the Division's findings that respondent qualifies for exemption under Section 135(b) of the 1997 Tax Code, yet it does not have the right to claim for the refund of the alleged erroneous payment of excise taxes on the its purchase of aviation fuel. Being qualified for the exemption is one thing but the right to claim for the alleged erroneous payment is another thing.

Petitioner contends that respondent is not the proper party to claim for the refund of excise taxes paid to the BIR. Furthermore, he argues that the tax contemplated by law as refundable in case of erroneous payment are those taxes remitted to the BIR by the person statutorily liable to pay the same.

He explains further that the excise taxes remitted by Petron Corporation to the BIR was made pursuant to Section 130 of the 1997 Tax Code. There was no erroneous payment to speak of in this case because Petron Corporation is not exempt from the payment of excise tax. Petitioner asserts that even assuming that respondent qualifies for exemption from the payment of excise tax, when Petron Corporation passed on the excise tax to respondent, the latter made an erroneous payment of passed-on excise tax, not with the BIR, but with the seller, Petron Corporation.

Furthermore, petitioner claims that in case of an exempt buyer, like herein respondent, the seller may simply opt to absorb or shoulder the excise tax component of the petroleum products sold because, excise tax, being an indirect tax, may or may not be passed-on to the buyer.

Respondent, in his Comment filed on December 6, 2004 contends otherwise. It argues that it is the proper party to claim for the refund, as it was the one who made the actual payment of the excise taxes which were only remitted by Petron Corporation to the BIR.

We find merit in petitioner's contentions.

It is well-settled that 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. An excise tax is an example of an indirect tax which may be passed on to the purchaser of goods, but the liability for such payment is imposed upon the seller or manufacturer.

The Supreme Court explained the distinction between an indirect tax and a direct tax in the case of ***Maceda vs. Macaraig, Jr., et. al., 197 SCRA 771:***

"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 engaged 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."

In the case of ***Philippine Acetylene Co., Inc., vs. Commissioner of Internal Revenue, G. R. No. L-19707, August 17, 1967,*** the High 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.

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."

In the more recent case of ***Contex Corporation vs. Hon. Commissioner of Internal Revenue, G.R. No. 151135, July 2, 2004***, the Supreme Court held:

"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.

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."

From the foregoing pronouncements, the excise tax which partakes 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 buyer, the amount passed on to it is no longer a tax but becomes an added cost on the goods purchased which constitutes a part of the purchase price.

However, respondent argues that it was the one who actually paid the excise tax on petroleum products purchased and not the seller, Petron

Corporation, although it was the latter who remitted the tax to the BIR. Hence, it is the proper party to claim for the refund.

We do not agree.

Pursuant to Section 130(2) of the 1997 Tax Code, to wit:

> "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. – xxx
> (2) Time for Filing of Return and Payment of the Tax.- Unless otherwise specifically allowed , the <u>return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production</u>: *Provided,* That the excise tax on locally manufactured petroleum 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 to December 31, 1998; and before removal from the place of production of such products from January 1, 1999 and thereafter: xxx"

Moreover, Section 204(C) of the same code provides, *viz*:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – the Commissioner may –
>
> (A) xxx xxx xxx
> (B) 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 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 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"

Based on the foregoing, the right to claim for refund of taxes erroneously paid lies with the person statutorily liable to pay the tax being claimed. In the instant case, the taxpayer contemplated in Section 204(C) of the Tax Code is the manufacturer or seller of the petroleum products as referred to in Section 130(2) of the same Code. Upon removal of the petroleum products from the place of production, the manufacturer or producer pays the corresponding excise tax thereon who may later on pass or shift the burden to its purchasers.

The law is clear. Section 130 of the 1997 Tax Code provides for the imposition of the excise tax on petroleum products which are being removed from its refinery, this tax is imposed on the manufacturer/producer. Considering that excise tax on petroleum products are being levied at the point of removal from refinery, the seller of these petroleum products will necessarily pass on the tax burden to its buyers. Section 135 of the same code, however provides for the exemption of certain entities from the payment of excise tax on its purchase of petroleum products. In the case of buyers who are exempt from the payment of the excise tax under this section, they should invoke their exemption from the excise tax to the seller before proceeding to buy, in order to give the latter the option of whether or not to pass on the tax burden. Where the tax burden is not passed on to the buyer, the seller may claim for the refund of the excise taxes which were paid upon removal of the petroleum products from the refinery.

While it is true that in the case of excise taxes imposed on petroleum products, the seller thereof may shift the tax burden to the buyer, the latter is not the proper party to claim for the refund in case of exemption from excise tax. In a similar case involving the same parties, the Court of Appeals ruled:

> "The Tax Code provides for the administrative and judicial remedies of a taxpayer in instances of erroneous collection of taxes.
>
> By taxpayer is meant the person adversely affected by the action taken by the Commissioner. The Supreme Court, in Cebu Portland Cement Co. vs. Collector of Internal Revenue, ruled that 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. This is bearing in mind that indirect tax is paid by the manufacturer or dealer of the product which was passed on to the purchaser as part of the purchase price.
>
> xxx xxx xxx
>
> This simply means that petitioner Silkair cannot ask for a refund since it is not the taxpayer under the law. This is without saying that Petrol (sic) corporation, the taxpayer, may seek for a refund since it is not exempt from paying excise tax. Respondent CIR correctly observed that petitioner Silkair made

> the erroneous payment of passed-on excise tax, not with the BIR, but the seller, Petron Corporation.
>
> All told, it is hereby concluded that petitioner Silkair is exempt from paying excise tax on petroleum products purchased in the Philippines by virtue of Section 135 (b) but it is not the proper party to seek for the refund of an indirect tax like an excise tax. Hence, this petition should fail." [***Silkair (Singapore) Pte. Ltd. vs. Commissionerof Internal Revenue, CA-G.R. No. 82902]***

Based on the foregoing, 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. As earlier mentioned, the respondent cannot be considered as the taxpayer because it merely shouldered the burden of the excise tax and not the excise tax itself.

Therefore, 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, on the other hand, may only claim from Petron Corporation the reimbursement of the tax burden shifted to the former by the latter. As correctly pointed out by petitioner in his Memorandum, "being an indirect tax, therefore, excise tax is the direct liability of the manufacturer, Petron Corporation in the instant case. 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, Silkair, in this case."

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. The assailed Resolutions dated May 12, 2004 and August 13, 2004 are hereby **SET ASIDE** and a new one entered dismissing respondent Silkair's petition for review for ack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(With Separate Opinion)
ERNESTO D. ACOSTA
Presiding Justice

ON LEAVE
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(Concurring with the Separate Opinion of Presiding Justice Acosta)
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 above Resolution 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

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

SILKAIR (SINGAPORE), PTE, LTD.,
Respondent.

C.T.A. EB No. 25
(C.T.A. Case No. 5996)

Present:

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

Promulgated:

MAY 20 2005 Gr.Apolinario

x--x

Separate Opinion

With due respect to my esteemed colleagues, it is our humble opinion that the Decision of the Court En Banc disallowing herein respondent's refund claim on the sole ground that it is allegedly not the proper party to the said claim but the seller Petron Corporation inasmuch as the excise tax paid was merely factored in the purchase price, is unjust and inequitable in view of the facts and legal backdrop of the case.

The contention that respondent is not the proper party to claim for refund is based on the line of reasoning that an excise tax, being an indirect tax, is the direct liability of the producer, 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. Accordingly, the rightful claimant to the subject refund claim is the seller Petron Corporation.

Despite the play in semantics, it is undeniable that in effect it was herein respondent that paid the excise taxes due on the transaction which the seller Petron forwarded to the BIR, despite the expressed grant of exemption from the payment of the said excise tax. Denying respondent's lawful refund claim on the lone basis that the proper party is the seller Petron and not the respondent will not only defeat the tax exemption categorically granted to respondent under the Tax Code and the tax treaty between the Philippines and Singapore, but also leave respondent at the mercy of Petron's exercise of the right to refund.

Section 135 of the Tax Code and **Article 4 of the Air Transport Agreement** between the Government of the Republic of the Philippines and the Government of the Republic of Singapore clearly provide for the exemption of respondent from the payment of excise tax on its purchases of petroleum products, to quote:

> "**Sec. 135. Petroleum products sold to foreign international carriers and Exempt Entities or Agencies.** – Petroleum products sold to the following are exempt from excise tax:
>
> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: Provided, That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
>
> (b) **Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption; Provided, however, That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies**; and

(c) Entities which are by law exempt from direct and indirect taxes." *(Emphasis supplied)*

Article 4, Air Transport Agreement.

"2. Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, **be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party, even when these supplies are be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board.** The materials referred to the above may be required to be kept under customs supervision and control" *(Emphasis supplied)*

The only other requisite for such exemption, *viz.*, the Republic of Singapore exempts from similar excise taxes the petroleum products sold to Philippine carriers had long been settled by both the CTA and the BIR, such as in **BIR Ruling No. 339-92** dated December 1, 1992, where it was declared by herein petitioner that the laws of Singapore exempt Philippine carriers from similar taxes on petroleum products sold to the latter. Hence, further confirming respondent's right to refund.

Likewise, the suggested interpretation that the exemption provided under Section 135 of the Tax Code merely contemplates exemption from the payment of excise tax to the seller but not entitlement to a refund from the BIR, and that in case of erroneous payment, the remedy is to seek recourse against the seller, does not hold water. Upholding this line of reasoning is unmerited inasmuch as Petron after "paying" to the BIR the excise taxes indirectly paid by the buyer-respondent, Petron no longer has the amount in question to which recourse of reimbursement can be feasible.

Moreover, the opinion that respondent could have spared itself from this problem by choosing to purchase from other sellers which do not to pass on the indirect tax to its buyers not only negates the exemption provided under the law but can also greatly inconvenience the buyer. A circumstance the law and the subject tax treaty definitely did not intend.

It is rather unfortunate that the case of **Contex Corporation vs. Hon. Commissioner of Internal Revenue,** *G.R. No. 151135, July 2, 2004*, was cited out of context. In the said case, petitioner buyer, being registered as a non-VAT taxpayer, is thus exempt from VAT, and as an exempt VAT taxpayer, it only follows that it is not allowed any input tax previously paid because only VAT-registered entities can claim Input VAT Credit/Refund. Hence, petitioner is indeed not the proper party to ask for the refund but the petitioner's suppliers that possess such personality.

Furthermore, the case of **Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue,** *20 SCRA 1056*, is not applicable to the instant case. The facts of the said case are not in all fours with that of the case at bar. In the Philippine Acetylene case, the party asking for the 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 indeed 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, and not the other way around. Nowhere in the said decision can it be found that the buyer is removed of its tax exemption.

As correctly argued by herein respondent, the more relevant ruling is the case of **Maceda vs. Macaraig,** *197 SCRA 771 (1991); 223 SCRA 217 (1993)*, where the

High Tribunal ruled that if the tax exemption granted clearly includes indirect taxes, which sellers of goods and services usually pass on to their customers, then there is a valid basis for allowing the refund. In the said case, the tax exemption of NPC was couched in general terms including "all forms of taxes, duties, fees, imposts etc." which logically includes exemption from indirect taxes on petroleum products used in its operation. In the same manner, Article 4 of the Air Transport Agreement Between the Government of the Republic of the Philippines and the Government of the Republic of Singapore provides that "Fuel, lubricants x x x introduced into, or taken on board aircraft in the territory of one Contracting Party by or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, **be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party** x x x."

The High Tribunal in its Resolution on the Motion for Reconsideration involving the same case of Maceda vs. Macaraig, explained thus:

> "Tax exemptions are undoubtedly to be construed strictly but not so grudgingly as to defeat their purpose. It is common knowledge that many impositions taxpayers have to pay are in the nature of indirect taxes. To limit the exemption granted the National Power Corporation to direct taxes notwithstanding the general and broad language of the statute will be to thwart the legislative intention in giving exemption from all forms of taxes and impositions without distinguishing between those that are direct and those that are not."
>
> "In view of all the foregoing, the Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is expected to be passed on through the channels of commerce to the user or consumer of the goods sold. Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from

> absorbing the economic burden of indirect taxation. This means, on the one hand, that the oil companies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes. This means also, on the other hand, that the NPC may refuse to pay that part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. If NPC nonetheless purchases such oil from the oil companies because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas-NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR. xxx"

In **BIR Ruling No. 036-99** dated March 29, 1999, herein petitioner even recognized the right and/or the personality of a tax-exempt entity to file a claim for refund when it resolved that:

> "For this reason, if the petroleum products sold by Petron to NPC are sourced from tax-paid inventories, the recourse of Petron is to claim for refund or tax credit of the excise tax paid. **In the event that Petron did not opt to claim the same as refund but, as in the instant case, passed on the cost of excise tax to NPC, then the latter may claim for refund or tax credit pursuant to Section 135(c) of the Tax Code**. xxx" *(Emphasis supplied)*

Lastly, it must be noted that the issue involving the question whether or not the petitioner is a proper party was belatedly raised by herein petitioner. the Supreme Court made a pronouncement in the case entitled **Commissioner of Internal Revenue vs. Procter and Gamble Philippine Manufacturing Corp.,** *204 SCRA 377 (1991)*, that the BIR should not be allowed to defeat an otherwise valid claim for refund by subsequently raising the question of alleged incapacity to file the claim, such as in the case at bar.

To recapitulate, the Government is admittedly not estopped from collecting taxes legally due because of mistakes or errors of its agents, but like other principles of law, this admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer. Accordingly, We manifest our position to deny the instant Petition for Review.

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A CASANOVA
Associate Justice