REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

SILKAIR (SINGAPORE) PTE. LTD.,
Petitioner,

C.T.A. CASE NO. 6491

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 27 2006

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DECISION

CASANOVA, C., J.:

Before Us is a Petition for Review under Section 9 of Republic Act No. 9282 seeking a refund/tax credit in the amount of Three Million Nine Hundred Eighty Three Thousand Five Hundred Ninety Pesos and 49/100 (P3,983,590.49) allegedly representing erroneous payment of excise taxes on the purchase of aviation jet fuel from Petron Corporation utilized by petitioner in its international flights for the period June to December 2000.

Silkair (Singapore) PTE. LTD. ("petitioner") is a foreign corporation organized under the laws of Singapore with a Philippine Representative office with address at Suite 302, Cebu Holdings Center, Cardinal Rosales Avenue, Cebu City. It is engaged in business as an online international carrier plying the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes.

The Commissioner of Internal Revenue ("respondent"), on the other hand, is duly authorized to decide, approve and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes pursuant to Section 4 of the 1997 National Internal Revenue Code ("NIRC") with office address at 4/F BIR National Office Building, Diliman, Quezon City.

For the period June to December 2000, Petron Corporation ("Petron") supplied aviation jet fuel to petitioner and the latter paid the corresponding excise taxes in the amount of P3,983,590.49.

Earlier, the Bureau of Internal Revenue ("BIR") issued Ruling No. 339-92 dated December 1, 1992 declaring that the Singapore-Cebu-Singapore route is an international flight by an international carrier and the petroleum products purchased by the petitioner shall not be subject to excise taxes under Section 135 of the 1997 NIRC.[1]

Relying on the above BIR Ruling, petitioner instituted an administrative claim for refund on June 24, 2002 in the amount of P3,983,590.43 representing the excise taxes it paid on the aviation jet fuel purchased from Petron for the period of June to December 2000.[2]

On June 27, 2002, petitioner filed a Petition for Review before this Court invoking its exemption from payment of excise taxes in accordance with the reciprocity clause under Article 4(2) of the Air Transport Agreement entered between the Republic of the Philippines and the Republic of Singapore. Petitioner further alleges that the said agreement should be read in conjunction with Section 135 of the 1997 of the NIRC which exempts entities covered by tax treaties, conventions and other international agreements from excise taxes

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[1] Exhibit C
[2] Exhibit E; Par. 4, Joint Stipulation of Facts and Issues, Rollo, p. 53

provided that the country of said carrier or exempt entity likewise exempts from similar taxes, the petroleum products sold to Philippine carriers or entities.

In his Answer filed on July 18, 2002, the respondent raised the following Special and Affirmative Defenses:

> ***"7. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by respondent's Bureau;***
>
> ***8. Petitioner failed to show that it has submitted to the Commissioner of Internal Revenue duly authenticated documents issued by duly authorized officials of Singapore attesting to the fact that said country grants similar tax exemptions on petroleum products sold to Philippine carriers pursuant to Section 135 of the Tax Code;***
>
> ***9. Petitioner must prove that it is the "designated airline" referred to under the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore (Article I paragraph 1.(b); Under said agreement the term "designated airline" by written application to the other Contracting party, in accordance with Article 3 of the present Agreement..."; Further, Article 2 paragraph 4 of the same Agreement provides that "All rights granted in this Agreement by one Contracting Party shall only be exercised by and exclusively for the benefit of the designated airline of the other Contracting Party";***
>
> ***10. Petitioner failed to prove that the sale of the petroleum products was directly made from a domestic oil company to the international carrier. The excise tax on petroleum products is the direct liability of the manufacturer/producer, and when added to the cost of the goods sold to the buyer, it is no longer a tax but part of the price which the buyer has to pay to obtain the article (Philippine Acetylene vs. CIR, 20 SCRA 1056;***
>
> ***11. Petitioner failed to substantiate its claim for refund/tax credit of the alleged excise taxes paid for the period covering January 1, 2000 to June 30, 2000;***
>
> ***12. Assuming but without admitting that a foreign law is applicable in the instant case, the same must be proven as a fact;***
>
> ***13. Taxes paid and collected by the Bureau of Internal Revenue are presumed to have been paid in accordance with law, and the burden of proof to prove otherwise is upon the petitioner;***
>
> ***14. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Sections 204(C) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund;***
>
> ***15. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."[3]***

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[3] Rollo, pp. 18-20

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During trial, petitioner adduced testimonial and documentary evidence before the Court. The case was submitted for decision on August 25, 2005 after both parties have filed their respective memoranda.

The parties jointly stipulate the following issues for the consideration of the Court:

> *"1. Whether or not Petitioner is exempt from the payment of excise tax on its purchase of aviation jet fuel as an online international carrier as provided under Section 135 of the Tax Code;*
>
> *2. Whether or not the laws of Singapore grants similar excise tax exemptions to Philippine carriers on their purchases of petroleum products for use in its international flights;*
>
> *3. Whether or not Petitioner is the "designated airline" referred to under the Air Transport Agreement between the Philippine Government and the Government of Singapore;*
>
> *4. Whether or not Petitioner has complied with the provisions under Section 204 (C) and 229 of the Tax Code, as amended; and*
>
> 5. *Whether or not purchases of jet fuel by petitioner from Petron Corporation and the payment of excise taxes thereon are duly substantiated."*[4]

We find it apropos to resolve first the fourth issue of whether or not petitioner has complied with the provisions of Section 204(C) and 229 of the Tax Code, as amended.

The administrative claim for refund was filed by the petitioner on June 24, 2002 while the judicial claim was filed on June 27, 2002. Pursuant to Sections 229 and 204(C) of the Tax Code, as amended, in relation to Section 130 of the same Code, petitioner's claim should be filed within two years from the date of removal of the subject fuel from the place of production. Considering that the earliest removal subject of this claim was made on June 30, 2000, the present petition is therefore within the two-year period allowed by law.

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[4] Rollo, p. 54

As regards the first and second issues, petitioner avers that it is exempt from the payment of excise tax on its purchases of jet fuel from Petron Corporation, it being an online international carrier in accordance with Section 135 of the Tax Code which provides:

> "*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."

According to the petitioner, based on Section 135(b) above quoted, petroleum products are not subject to excise tax if sold to or used by exempt entities covered by tax treaties, conventions and other agreements, provided that the country of said carrier or exempt entity exempts from similar taxes petroleum products sold to Philippine carriers or entities.

However, respondent argues that petitioner is not entitled to the refund of alleged erroneous excise tax payments since excise tax is in the nature of an indirect tax, hence, when passed on to the buyer, the same is no longer a tax but forms part of the purchase price. Besides, assuming *arguendo* that petitioner is entitled to the refund, it is not a proper party that may ask for a refund.

We do not subscribe to respondent's view. The only requirement under Section 135(b) above-cited is that the Republic of Singapore exempts from similar taxes petroleum

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products sold to Philippine carriers or entities. With respect to the argument that petitioner is not the proper party to claim for the refund of excise taxes paid on its purchases of aviation jet fuel for the subject period, We are not swayed.

An online international airline is exempt from excise tax under Section 135(b) as long as its country exempts from similar taxes petroleum products sold to Philippine carriers or entities or agencies.

The case of **Contex Corporation vs. Hon. Commissioner of Internal Revenue,** *G.R. No. 151135, July 2, 2004*, was unfortunately 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. Thus, petitioner is indeed not the proper party to ask for the refund but the petitioner's suppliers that possess such personality.

Similarly, the case of **Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue,** *20 SCRA 1056*, is not applicable to the present case. The facts of the same are not in all fours with that of the case at bar. In the *Philippine Acetylene case*, the party claiming 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.

The more pertinent jurisprudence and application of this view can be found in the ruling made by the Honorable Supreme Court in the case of **Maceda vs. Macaraig,** *197 SCRA 771 (1991); 223 SCRA 217 (1993)*, where the High Tribunal ruled that if the tax

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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 Court in its Resolution on the Motion for Reconsideration involving the same case of **Maceda vs. Macaraig**, *supra*, 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**

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> **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" (*Emphasis supplied*)

Equally noteworthy is the fact that in **BIR Ruling No. 036-99** dated March 29, 1999, herein respondent 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)*

Likewise, We disagree with the 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 possible.

Furthermore, the opinion that petitioner could have spared itself from this problem by choosing to purchase from other sellers which do not 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 situation the law and the subject tax treaty definitely did not intend.

Thus, as long as the Republic of Singapore exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies, petitioner may qualify for excise tax exemption under Section 135(b) of the Tax Code, as amended.

To prove that it indeed qualifies for exemption, petitioner submitted the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore.[5] Article 4(2) of the said Agreement provides that fuel used for international flights of the respective Contracting Parties shall be exempt from the payment of excise tax. To quote:

> "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."

From the above Agreement, the second issue of whether Singapore grants similar excise tax exemption to Philippine carrier on the purchase of petroleum products for use in international flight is resolved in the affirmative.[6]

As to whether petitioner, for the period June to December 2000, was authorized to operate in the Philippines, and thus, entitled to the above excise tax exemption, petitioner prayed in its Omnibus Motion filed on May 23, 2005, that it be allowed to compare the regular operating permits as well as the licenses issued by the Civil Aeronautics Board to prove that it is a foreign carrier authorized to operate in the Philippines for the period involved in this case with the Certified True Copies and to transfer the exhibit markings (Exhibits "A", "P", "Q" & "R") on the latter documents. However, this Court denied said

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[5] Exhibit F

[6] Silkair (Singapore) PTE Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 6217, November 5, 2003; Silkair (Singapore) PTE Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5996, November 6, 2003; Silkair (Singapore) PTE Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 6308, March 10, 2004

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motion[7] because petitioner was already given enough time and opportunity to present the original or certified true copies of the petitioner's SEC Certificate of Registration (Exhibit "A") and operating permits issued by the Civil Aeronautics Board to fly the routes Singapore/Cebu/Singapore and Singapore/Cebu/Davao/Singapore for the period October 1999 to October 28, 2000 (Exhibits "P", "Q" & "R"). Moreover, it is worth emphasizing that the subject claim covers the period October to December 2000 and notably, petitioner likewise failed to present proof that it was authorized to operate in the Philippines for the period October 29, 2000 to December 2000.

In view thereof, We will no longer delve on the remaining issues.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

[7] Resolution, July 15, 2005

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CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

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