REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SILKAIR (SINGAPORE) PTE. LTD., Petitioner,	C.T.A. E.B. NO. 267 (C.T.A. CASE NO. 6491)
	Present:
- versus -	ACOSTA, *P.J.* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, *and* PALANCA-ENRIQUEZ, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 27 2008

x- -x

DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on February 26, 2007 seeking a review of the Decision and Resolution dated July 27, 2006 and January 17, 2007, respectively, rendered by the First Division of this Court[1] (Court in Division) in C. T. A. Case No. 6491 entitled "Silkair (Singapore) Pte. Ltd., petitioner, vs. Commissioner of Internal Revenue, respondent", pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282. The dispositive portions of which read as follows:

[1] Ponencia of Associate Justice Caesar A. Casanova and concurred by Presiding Justice Ernesto D. Acosta, with concurring and dissenting opinion by Associate Justice Lovell R. Bautista.

Decision promulgated on July 27, 2006:

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

SO ORDERED."

Resolution promulgated on January 17, 2007:

"**WHEREFORE**, there being no new matter which has not been considered and passed upon by this Court in resolving the instant case, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The undisputed facts, as found by the Court in Division, are as follows:

Silkair (Singapore) PTE. LTD. (petitioner) is a foreign corporation organized under the laws of Singapore with a Philippine Representative office located 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 National Internal Revenue Code (NIRC) of 1997 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 NIRC of 1997.

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.

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 NIRC of 1997 which exempts entities covered by tax treaties, conventions and other international agreements from excise taxes 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 its Decision promulgated on July 27, 2006[2], the Court in Division ruled that petitioner is not entitled to the refund or tax credit pertaining to its payment of excise tax, which it is exempted from under Section 135 (b) of the NIRC of 1997, on the ground that petitioner failed to present proof that it was

[2] Docket, pp. 21 – 37.

authorized to operate in the Philippines during the period material to its claim.

Failure to prove was due to the non-admission of the following:

Exhibit	Description
A	SEC Certificate of Registration No. AFO92000026 dated May 26, 1992
P, Q, and R	Operating permits issued by the Civil Aeronautics Board (CAB) to fly the routes of petitioner for the period October 1999 to October 28, 2000.

A Concurring and Dissenting Opinion was rendered by the Honorable Associate Justice Lovell R. Bautista, stating his position that he concurs with the majority view insofar as the Petition for Review was dismissed, however, he holds the view that petitioner has no right to claim for refund of the excise taxes which were allegedly erroneously paid since the taxpayer contemplated in Section 204(C) of the NIRC of 1997 is the manufacturer or seller of the petroleum products as referred to in Section 130(2) of the same code, to elucidate further:

> "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.
>
> x x x
>
> xxx an 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.
>
> x x x
>
> xxx the respondent (sic) cannot be considered as the taxpayer because it merely shouldered the burden of the excise tax and not the excise tax itself. The right to claim for the refund of excise taxes paid on petroleum products lies with Petron Corporation, the taxpayer who paid and remitted the excise tax to the BIR."[3]

[3] Ibid., at pp. 34 – 37.

Petitioner filed its Motion for Reconsideration on September 11, 2006 seeking reconsideration of the aforesaid Decision. Subsequently, the Court in Division denied the said motion in its Resolution dated January 17, 2007.[4]

Therefore, this recourse before the Court *En Banc* praying that: (a) the assailed Decision and Resolution dated July 27, 2006 and January 17, 2007, respectively, be set aside and a new one be entered allowing it to present certified true copies of Exhibits "A", "P", "Q" and "R", and (b) petitioner's claim for refund or tax credit of erroneous payment of excise tax on aviation fuel purchased from Petron for the period June to December 2000 be granted.

Accordingly, this case was deemed submitted for decision in the Resolution dated October 22, 2007.

Hence, this Decision.

THE ISSUES

Petitioner raised the issue in its Petition for Review for the Court En Banc's consideration of whether or not petitioner has in fact presented proof that it was authorized to operate in the Philippines for the period material to the petition.

On the other hand, respondent brought up the more important legal issue of whether or not petitioner is the proper party who is entitled under the law to claim for refund of excise tax erroneously paid.

PETITIONER'S ARGUMENTS

Petitioner submits that it has presented the necessary proof of its authority to operate in the Philippines during the period covered by this claim

[4] Id., at pp. 38 – 41.

for refund pertaining to the excise tax erroneously paid with respondent for the period June to December 2000.

It contends that the Court in Division did not accept Exhibit "A", the SEC Certificate of Registration issued in favor of the petitioner approving its application to establish a branch in the Philippines, on the ground that it has not been properly identified during trial.

Petitioner argues that the same document, Exhibit "A", was previously offered and admitted in evidence in similar cases involving the subject matter between the same parties before this Court. These cases are as follows:

CTA Case No.	*Subject Matter*	*Promulgation of Decision*	*Entry of Judgment*	*Period Involved*
5891	Refund of erroneously paid excise taxes	January 17, 2002	February 14, 2002	July – December 1997
5710	Refund of erroneously paid excise taxes	March 8, 2001	July 5, 2001	January – June 1997
5655	Refund of erroneously paid excise taxes	May 24, 2000	June 14, 2000	July – December 1996
5430	Refund of erroneously paid excise taxes	August 20, 1999	November 4, 2001	October 1994 – April 1995
5382	Refund of erroneously paid excise taxes	June 7, 1999	June 25, 1999	March – September 1994

The case of Clarion Printing House, Inc. vs. National Labor Relations Commission (461 SCRA 272) was cited by petitioner regarding the instances when a court will take judicial notice of a certain fact, it held:

> "A court will take judicial notice of its own acts and records in the same case, of fact established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court."

Thus, petitioner contends that since the existence of Exhibit "A" is known by this Court, the same need not be proven and should have been properly admitted as part of petitioner's evidence in the instant case, without the need of identifying such exhibit during trial.

With regard to the non-admission of Exhibits "P", "Q", and "R" for failure to present the originals for comparison, petitioner emphasizes that while these were initially referred by it as "operating permits", said exhibits are actually its flight schedules during the period material to this case. These are routinely submitted to the Civil Aeronautics Board (CAB) to monitor whether or not the carrier is complying with the limits of flight frequency as indicated in the Air Services Agreement between the Republic of the Philippines and the Republic of Singapore.

On the contrary, petitioner avers that its operating permit is its Foreign Air Carrier's Permit (FACP) that was issued to it by the CAB on November 12, 1993 through Resolution No. 202(93), a certified true copy of which was marked, offered and admitted as Exhibit "B" for the petitioner.

It should be noted that the FACP, as above-mentioned, continues to be effective unless it is suspended or revoked. And, unless a definite period is stated in the FACP, the same shall be valid for a period of twenty five (25) years.

Therefore, petitioner submits that since its FACP was valid during the period material to this case, and it shall continue to be effective until its expiration in 2018 unless sooner suspended or revoked by the CAB, then, even without Exhibits "P", "Q" and "R", it can be proven that petitioner is duly authorized by CAB to operate in the Philippines.

In addition, petitioner alleges that the fact that Exhibits "P", "Q" and "R" were properly identified by its witnesses during trial, without the respondent objecting to the admissibility of these documents, this Court is duty bound to admit them as part of petitioner's evidence. It emphasizes that timeliness is essential in the submission of a valid objection to evidence such that failure to seasonably object to inadmissible evidence renders the same *ipso jure* admissible.

RESPONDENT'S COUNTER-ARGUMENTS

Respondent maintains that the Court in Division did not err in denying the claim for refund of petitioner due to the non-admission of Exhibits "A", "P", "Q" and "R" on the ground that the admissibility of these exhibits has been decided already by the Court in Division when it promulgated the Resolutions dated April 12, 2005[5] and July 15, 2005.[6] The Court in Division denied the admission of the said exhibits on the ground that petitioner was given ample time and opportunity to present the original or certified true copies of the denied documents for comparison, and petitioner failed to do so.

Further, she contends that even assuming that petitioner was able to show that it has the proper authority to operate in the Philippines when such exhibits are admitted, still, this petition should be dismissed on the ground that petitioner is not the proper party who may ask for a refund.

Respondent forwards the argument that excise taxes imposed on commodities are in the nature of indirect taxes which may or may not be passed on to another. These are charges paid by a person other than the one on whom it is legally imposed. It is demanded from one person in the expectation and intention that he shall indemnify himself at the expense of

---

[5] CTA Case No. 6491, Docket, pp. 174 – 177.
[6] Ibid., at pp. 254 – 255.

another. The liability for the payment of tax falls on one person but the burden thereof can be shifted or passed on to another.

As a matter of fact, to strengthen her view, respondent enumerated a number of relevant cases,[7] involving the same issue, previously settled by the Supreme Court.

Lastly, respondent concludes that excise tax, being an indirect tax, is the direct liability of the manufacturer, or Petron, in this case; and therefore, it is this taxpayer who may apply for a refund and not the buyer-petitioner who simply absorbed the payment of tax.

THE COURT EN BANC'S RULING

Petitioner's argument is devoid of merit.

On the issue of whether or not petitioner has, in fact, presented proof that it was authorized to operate in the Philippines for the period beginning June to December 2000, We rule that after a careful and closer look at the arguments set forth by petitioner in the instant petition for review, the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the Court in Division that had already been exhaustively discussed and passed upon in the assailed Decision and Resolution promulgated on July 27, 2006 and January 17, 2007, respectively, as well as the Resolutions promulgated on April 12, 2005 and July 15, 2005 by the Court in Division denying admission into evidence petitioner's Exhibits "A", "P", "Q" and "R".

---

[7] Philippine Acelylene vs. Commissioner of Internal Revenue, G.R. No. L-19707, August 17, 1967, 20 SCRA 105. Cebu Portland Cement Co. vs. Collector of Internal Revenue, G.R. No. L-20563; October 29, 1968, 25 SCRA 789. Contex Corp. vs. Commissioner of Internal Revenue, G.R. No. 151135, July 2, 2004, 433 SCRA 376.

For purposes of further clarifying the Decision of the Court in Division however, We shall discuss why petitioner's exhibits were denied admission, thus, correspondingly resulting in the Court in Division's denial of its claim for refund or tax credit due to insufficiency of evidence to prove its authority to operate in the Philippines.

Anent petitioner's argument that the Court in Division should have taken judicial notice of the existence of Exhibit "A" (petitioner's SEC Certificate of Registration), although not properly identified during trial as this has previously been offered and admitted in evidence in similar cases involving the subject matter between the same parties before this Court, We are in agreement with the ruling of the Court in Division, as discussed in its Resolution dated April 12, 2005 resolving petitioner's Motion for Reconsideration on the court's non-admission of Exhibits "A", "P", "Q" and "R", wherein it said that :

> "Each and every case is distinct and separate in character and matter although similar parties may have been involved. Thus, in a pending case, it is not mandatory upon the courts to take judicial notice of pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. **Evidence already presented and admitted by the court in a previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew.**
>
> The cases cited by petitioner concerned similar parties before the same court but do not cover the same claim. **A court is not compelled to take judicial notice of pieces of evidence offered and admitted in a previous case unless the same are properly offered or have accordingly complied with the requirements on the rules of evidence. In other words, the evidence presented in the previous cases cannot be considered in this instant case without being offered in evidence.**

> Moreover, Section 3 of Rule 129 of the Revised Rules of Court provides that hearing is necessary before judicial notice may be taken by the courts. To quote said section:
>
>> Sec. 3.*Judicial notice, when hearing necessary.* — During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.
>>
>> After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.
>
> Furthermore, petitioner admitted that Exhibit "A" have been offered and admitted in evidence in similar cases involving the same subject matter filed before this Court. Thus, petitioner is and should have been aware of the rules regarding the offering of any documentary evidence before the same can be admitted in court.
>
> As regards Exhibit "P", "Q" and "R", the original copies of these documents were not presented for comparison and verification in violation of Section 3 of Rule 130 of the 1997 Revised Rules of Court. The said section specifically provides that 'when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself xxx'. **It is an elementary rule in law that documents shall not be admissible in evidence unless and until the original copies itself are offered or presented for verification in cases where mere copies are offered, save for the exceptions provided for by law. Petitioner thus cannot hide behind the veil of judicial notice so as to evade its responsibility of properly complying with the rules of evidence. For failure of herein petitioner to compare the subject documents with its originals, the same may not be admitted.**"[8] (*Emphasis Ours*)

Likewise, in the Resolution dated July 15, 2005 of the Court in Division denying petitioner's Omnibus Motion seeking allowance to compare the denied exhibits with their certified true copies, the court *a quo* explained that:

[8] CTA Case No. 6491, Docket, pp. 175 – 177.

> "Petitioner was already given enough time and opportunity to present the originals or certified true copies of the denied documents for comparison. When petitioner received the resolution denying admission of the provisionally marked exhibits, it should have submitted the originals or certified true copies for comparison, considering that these documents were accordingly available. But instead of presenting these documents, petitioner, in its Motion for Reconsideration, tried to hide behind the veil of judicial notice so as to evade its responsibility of properly applying the rules on evidence. It was even submitted by petitioner that these documents should be admitted for they were previously offered and admitted in similar cases involving the same subject matter and parties. If this was the case, then, there should have been no reason for petitioner to seasonably present the originals or certified true copies for comparison, or even, marking. xxx[9]"

In view of the foregoing discussion, the Court *en banc* finds that indeed, petitioner indubitably failed to establish its authority to operate in the Philippines for the period beginning June to December 2000.

On the more important issue raised by respondent as to whether or not buyer-petitioner is the proper party to file for the refund of erroneously paid excise tax, We rule in the negative.

Foremost, it is imperative that We take note of the true nature of the tax involved in this case — excise tax on petroleum products, including the person statutorily liable thereon.

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 manufacturer or seller. The excise tax

[9] Ibid., at pp. 254 – 255.

imposed on the removal of petroleum products by the oil companies is an indirect tax.

The Supreme Court in the case of ***Maceda vs. Macaraig, Jr.***[10] elucidated on the nature and character of indirect taxes vis-à-vis direct taxes, in the following manner:

> "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 tax 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.'"*** (*Emphasis Ours*).

Likewise, in the case of ***Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue***,[11] the Highest Court explained the unique character of an excise tax being an indirect tax that can be passed-on to the purchaser of goods, but nevertheless, the liability still remains with the manufacturer or seller. To quote:

> "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

[10] G.R. No. 88291; May 31, 1991; 197 SCRA 771.
[11] G.R. No. L-19707, August 17, 1967, 20 SCRA 1056.

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.

We therefore hold that the tax imposed by section 186 of the National Internal Revenue Code is a tax on the manufacturer or producer and not a tax on the purchaser except probably in a very remote and inconsequential sense."

Furthermore, in the case of ***Contex Corporation vs. Commissioner of Internal Revenue***,[12] it was ratiocinated that:

"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."

[12] G.R. No. 151135, July 2, 2004, 433 SCRA 376.

Applying the foregoing jurisprudence in the case at bench, We conclude that the tax sought to be refunded is an excise tax on petroleum products, which partakes of the nature of an indirect tax. Thus, the manufacturer or seller has the option of whether or not to shift the burden of the tax to the purchaser. And 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.[13] Accordingly, the party to whom the law has imposed the obligation to pay said tax is Petron, the manufacturer or seller thereof, although the burden of the tax was passed on to herein petitioner, being the buyer or purchaser.

Logically and pursuant to Section 130(A)(2) of the NIRC of 1997, it is Petron, the taxpayer, which has the legal personality to claim any refund for any alleged erroneously paid excise tax. Said legal provision reads:

> "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 return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production***: xxx" (***Emphasis and italics Ours***)

Moreover, Section 204 (C) of the NIRC of 1997 provides for the administrative and judicial remedies of a taxpayer – who is required by law to

[13] Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, supra.

be the one statutorily liable for the tax – in instances of erroneous collection of taxes, to wit:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without; authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, 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." (*Emphasis Ours*)

Based on the foregoing, the taxpayer contemplated is, again, none other than Petron, the manufacturer or seller of the petroleum products, as referred to in Section 130(A)(2) of the NIRC of 1997.

In cases of 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 seller of the product which was passed on the purchaser as part of the purchase price[14].

In the light of the foregoing discussions, We hereby uphold the Court in Division's denial of petitioner's claim for refund or tax credit on the ground of insufficiency of evidence to prove its authority to operate in the Philippines.

[14] Silkair [Singapore] Pte. Ltd. vs. Commissioner of Internal Revenue, CA-G.R. SP – 82902, September 13, 2004, citing Cebu Portland Cement Company vs. Commissioner of Internal Revenue, G.R. No. L-20563, October 29, 1968; 25 SCRA 789.

However, We modify the findings of the Court in Division that petitioner is the proper party to claim for the refund of excise taxes paid on its purchases of aviation jet fuel for the subject period. Instead, We hold that petitioner, despite the fact that it is the one who actually shouldered the burden of the excise tax, not the liability of the excise tax itself, cannot ask for a refund on the ground that it is not the taxpayer under the law. Pursuant to Section 130(A)(2) of the NIRC of 1997, it is Petron, as the manufacturer or seller of petroleum products, who is made liable to pay and actually paid for the excise tax, that may claim for refund in the present case. This is based on the fact that Petron is the taxpayer as contemplated under the law.

It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference.[15] When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute the favor would be extended beyond dispute in ordinary cases.[16] Where the law specifically provided for who is the party entitled to claim for refund, which is Petron in this case, applying the doctrine of *strictissimi juris,* it is to be construed as excluding all others who, not being the taxpayer, seeks the refund of taxes paid by the real taxpayer.

---

[15] Commissioner of Internal Revenue v. Philippine Long Distance Company, G.R. No. 140230, December 15, 2005.

[16] Lung Center of the Philippines vs. Quezon City and Constantino P. Rosas, in his capacity as City Assessor of Quezon City, G.R. No. 144104, June 29, 2004. San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue, G.R. No. 147749, June 22, 2006.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit. The assailed Decision dated July 27, 2006 dismissing the instant petition on ground of failure of petitioner to prove that it was authorized to operate in the Philippines for the period from June to December 2000, is hereby **AFFIRMED WITH MODIFICATION** that petitioner is further not found to be the proper party to file the instant claim for refund.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I concur with the Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice