Republic Of The Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION
****

DUNLOP SLAZENGER PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6501

Members:

ACOSTA, *Chairman* (On Leave)
BAUTISTA, *Acting Chairman* and
CASANOVA, JJ

Promulgated:

DEC 29 2004

x - x

DECISION

BAUTISTA, L., J.

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P1,415,100.00 allegedly representing excise tax paid on purchases of bunker oil as raw materials used in the production of tennis balls which were exported for the period November 1999 to May 2001.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at 10th Avenue, Bataan Economic Zone, Mariveles, Bataan (*par. 1, Stipulation of Facts*). It is registered with the

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Bureau of Internal Revenue (BIR) as a VAT taxpayer under Certificate of Registration No. 2002-020-000678 dated August 27, 2002 (*Exhibit C*).

Petitioner is likewise registered with the Philippine Economic Zone Authority (PEZA) as an export producer of tennis balls pursuant to the provisions of Republic Act No. 7916 and covered by the Certificate of Registration No. 77-07 dated April 27, 1998 (*Exhibit D*).

For the period covering November 1999 to May 2001, petitioner allegedly purchased from Pilipinas Shell Petroleum Corporation and Petron Corporation a total of 4,717,000 liters of bunker fuel oil used as raw materials in the production of 60,623,640 pieces of tennis balls which were exported for the same period. The excise taxes on the said quantity of bunker fuel oil totalling P1,415,100.00 (or at the rate of P.30 per liter) were allegedly paid by Pilipinas Shell Petroleum Corporation and Petron Corporation to the Bureau of Internal Revenue (BIR) but were subsequently billed and passed on to petitioner as part of the selling price.

Petitioner further averred that the foreign currency proceeds of its export sales for the subject period were inwardly remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Relying on the provisions of Section 130(D) of the National Internal Revenue Code (NIRC) of 1997, petitioner filed on November 28, 2001 with the Large Taxpayers Services of the BIR, a letter applying for refund or tax credit of the excise taxes of P1,415,100.00 it allegedly paid on its purchases of bunker fuel oil for the period of November 1999 to May 2001 (*Exhibit H*).

Due to the inaction of the respondent, petitioner elevated its claim before this Court on July 1, 2002.

Respondent, in his Answer filed on August 2, 2002, raised the following Special and Affirmative Defenses:

> 4. Petitioner's alleged claim for refund is subject to administrative investigation by the Bureau;
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> 5. The claim has no basis in fact and in law;
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> 5.1 Section 130(D) is not applicable to the instant case because tennis ball is not an excisable article;
>
> 5.2 Revenue Regulations No. 8-96 provides:
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>> "SEC. 7. Creditable Excise Tax. – The crediting of excise taxes paid on purchased feedstock (bunker), as defined in Section 2(e) hereof, ***used in the manufacture of exciseable articles and forming part thereof*** shall be limited to the proportion of the volume such raw material used in production, in relation to the total volume of finished goods subject to tax. For purposes of these regulations, any excess of excise taxes paid on raw materials resulting from manufacturing, blending, processing, storage and handling losses shall not give rise to a tax refund or credit." (Emphasis supplied)
>
> 6. In an action for refund the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
>
> 7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

As jointly stipulated by the parties, the issues to be resolved by this Court are:

1. Whether or not petitioner purchased 4,717,000 liters of bunker fuel oil for the period starting from November 1999 to May 2001;

2. Whether or not excise tax was paid on the said domestic purchases of bunker fuel oil in the amount of One Million Four Hundred Fifteen Thousand One Hundred Pesos (P1,415,100.00);

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3. Whether or not the bunker fuel oil purchased were used in the production of tennis balls;

4. Whether or not the said tennis balls produced or manufactured were exported by petitioner; and

5. Whether or not petitioner is entitled to the refund of the excise tax paid on its domestic purchases of bunker fuel oil in the amount of One Million Four Hundred Fifteen Thousand One Hundred Pesos (P1,415,100.00) covering the period from November 1999 to May 2001, which was used for the production or manufacturing of tennis balls that were subsequently exported without returning to the Philippines.

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, submitted his case based on the pleadings (*page 230, CTA records*).

Anent the first and second issues, petitioner submitted documentary exhibits such as the: 1.) Summary of Bunker Fuel Oil purchased from Pilipinas Shell Petroleum Corporation and Petron Corporation for the period covering November 1, 1999 to May 31, 2001 (*Exhibit E*); 2) Certifications from Petron Corporation and Pilipinas Shell Petroleum Corporation (*Exhibits H & I*); 3) Sales Invoices from Pilipinas Shell Petroleum Corporation and Petron Corporation including supporting documents thereto such as disbursement vouchers, goods received notes and inspection reports (*Exhibits M to M-42; N to N-45; O to O-44; P to P-62; Q to Q-55; R to R-56; S to S-78; T to T-51; U to U-51; V to V-83*); and 4) Final Report of the commissioned independent CPA, Ms. Ma. Wencita C. Salvador (*Exhibit MM*).

A scrutiny of the preceding exhibits shows petitioner's purchase of 4,717,000 liters of bunker fuel oil for the period covering November 1, 1999 to May 31, 2001 and that petitioner's payment therefor included the amount of P1,415,100.00 excise taxes which

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were paid to the BIR by petitioner's suppliers, Pilipinas Shell Petroleum Corporation and Petron Corporation but were subsequently passed-on and billed to petitioner.

With regard to the third issue, it can be seen from the Formula of Conversion issued by the Industrial Technology Development Institute (*Exhibit G*), and petitioner's Export Data Summary (*Exhibit F*) that the 4,717,000 liters of bunker fuel oil were used by petitioner as raw materials in the production of 60,623,340 pieces of tennis balls for export.

As to the fourth issue, it was established that for the subject period, petitioner actually exported 60,623,340 pieces of tennis balls and that the foreign currency proceeds of the said export sales were remitted and accounted for in accordance with the rules and regulations of the BSP as evidenced by petitioner's various export sales invoices and bank credit memos issued by the Rizal Commercial Banking Corporation (*Exhibits FF to FF-53; GG to GG-354; HH to HH-186*), export declarations including supporting documents thereto such as PEZA export tally report (*Exhibits II to II-268; JJ to JJ-174)* and bills of lading *(Exhibits KK to KK-296; LL to LL-200*).

Finally, as regards the fifth issue, petitioner maintained that it is entitled to the refund of the excise tax paid on its domestic purchases of bunker fuel oil in the amount of P1,415,100.00 covering the period from November 1999 to May 2001, which were used as raw materials for the production or manufacturing of tennis balls that were subsequently exported without returning to the Philippines, pursuant to Section 130(D) of the NIRC of 1997.

Respondent, for his part, countered that petitioner is not entitled to the claim for refund on the grounds: 1) that the subject excise tax on the bunker fuel oil is the direct liability of the manufacturers or producers thereof, namely, Pilipinas Shell Petroleum

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Corporation and Petron Corporation and that when added to the cost of goods of the buyer (petitioner), it is no longer a tax but part of the purchase price which the buyer (petitioner) has to pay to obtain the article; 2) that Section 130(D) of the NIRC of 1997 is inapplicable to the instant case since the bunker fuel oil was used in the manufacture of tennis ball which is not an exciseable article; 3) that granting petitioner is entitled to the claim for refund, the same is already barred by prescription; and 4) that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the taxpayer.

We agree with the respondent.

The amount of P1,415,100.00 cannot be the subject of petitioner's claim for refund/tax credit under Section 130(D) of the NIRC of 1997, which provides:

> **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 the 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.

The right to a refund/tax credit of the excise taxes referred to under Section 130(D) of the NIRC of 1997 is available to those persons enumerated under Section 130(A)(1) & (2) of the same Code as primarily and legally liable to pay the excise taxes.

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In the case at bar, the claimed excise tax of P1,415,100.00 pertains to bunker fuel oil purchased by petitioner from Pilipinas Shell Petroleum Corporation and Petron Corporation for the period November, 1999 to May, 2001. The said bunker fuel oil is a locally manufactured petroleum product subject to an excise tax rate of P.30 per liter which is to be paid by the manufacturer or producer thereof, prior to removal from the place of production as provided for under Section 148(l) of the NIRC of 1997 in relation to Section 130(A)(2) of the same Code, to wit:

> **SEC. 148** ***Manufactured Oils and Other Fuels***. – There shall be collected on refined and manufactured mineral oils and motor fuels, the following excise taxes which shall attach to the goods hereunder enumerated as soon as they are in existence as such:
>
> xxx xxx xxx
>
> "(l) Bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity, Thirty centavos (P0.30).
>
> "**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) 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.*

Clearly, from the foregoing, it is petitioner's suppliers, namely, Pilipinas Shell Petroleum Corporation and Petron Corporation, who are directly liable to pay the excise taxes of P1,415,100.00 to the BIR. In fact, petitioner in its memorandum, admitted that the subject excise taxes were actually remitted by Pilipinas Shell Petroleum Corporation and

Petron Corporation to the BIR and that the same were merely shifted/passed-on by the said oil companies to petitioner.

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 the case of Cebu Portland Cement Co. vs. Collector of Internal Revenue, 25 SCRA 789, 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.

Indeed, excise tax, being an indirect tax, may be shifted/passed-on by the seller/manufacturer to the buyer. However, as correctly pointed out by the respondent, once the excise tax is shifted, it is no longer a tax but an additional cost which the purchaser has to pay to the seller to obtain the goods based on the Supreme Court's ruling in the case of ***Philippine Acetylene vs. CIR, 20 SCRA 1056*** (also cited in the case of ***Cebu Portland Cement Co. vs. Collector of Internal Revenue, supra***). 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 of 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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Moreover, in the more recent case entitled ***Contex Corp. vs. Commissioner of Internal Revenue, G.R. No. 151135, dated July 2, 2004***, the Supreme Court had the occasion to discuss the feature of an indirect tax in this wise:

> 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 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.

In the light of the aforecited Supreme Court rulings and provisions of law, this Court holds that the instant claim of P1,415,100.00 merely represents an additional cost of the bunker fuel oil on the part of the petitioner and not an excise tax, the entities being subject thereto are Pilipinas Shell Petroleum Corporation and Petron Corporation. To allow the refund/tax credit would in effect exempt Pilipinas Shell Petroleum Corporation and Petron Corporation from the payment of excise tax on the bunker fuel oil sold to petitioner which is not the intendment of the law.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

C E R T I F I C A T I O N

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

LOVELL R. BAUTISTA
Acting Chairman

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