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. 67
(C.T.A. Case No. 6308)

Present:

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

Promulgated:

JAN 05 2006 [signature]

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DECISION

UY, *J.*:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on March 4, 2005 under Republic Act No. 9282, seeking a review of the resolutions rendered by the then Court of Tax Appeals, which under R.A. 9282 is now a Division of the current Court of Tax Appeals, in C.T.A. Case No. 6308, entitled "Silkair (Singapore) PTE, Ltd. vs. Commissioner of Internal Revenue", to wit:

> 1) Resolution promulgated on September 9, 2004 setting aside the earlier Decision promulgated on March 10, 2004 denying herein respondent's claim for refund or issuance of a tax credit certificate in the amount of P4,831,224.70 representing specific (excise) taxes allegedly paid erroneously by herein respondent on its purchases of

aviation fuel from Petron Corporation for the period July 1, 1999 to December 31, 1999; and

2) Resolution promulgated on February 16, 2005 denying herein petitioner's Motion for Reconsideration of the aforesaid Resolution.

The undisputed facts of the case are as follows:

Petitioner Commissioner of Internal Revenue is the duly appointed government official empowered, among others, to decide, approve and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes with office address at BIR National Office Building, Diliman, Quezon City. Respondent Silkair (Singapore) PTE, Ltd., on the other hand, is a foreign corporation organized under the laws of Singapore with a Philippine Representative Office, with office address at Suite 302 Cebu Holdings Center, Cardinal Rosales Avenue, Cebu City and is engaged in business as on-line international carrier operating the Cebu-Singapore-Cebu and Davao-Singapore-Davao routes.

For the period covering July 1, 1999 to December 31, 1999, herein respondent purchased from Petron Corporation aviation jet fuel for use in its international flights and paid specific (excise) taxes totaling P4,831,224.70. The payment to Petron Corporation was advanced by Singapore Airlines, Ltd. on behalf of the respondent. Consequently, believing that it is exempt from the payments of the aforesaid specific (excise) taxes pursuant to Section 135 of the 1997 National Internal Revenue Code (1997 NIRC) and relying on BIR Ruling No. 339-92 dated December 1, 1992, respondent wrote a letter to the Bureau of Internal Revenue (BIR) on June 26, 2001 requesting for the refund of the said amount.

Respondent opined that an international flight by an international carrier and the petroleum products purchased by it and consumed in such flights are not subject to excise taxes. Furthermore, it cited CTA Case Nos. 5382 (June 7, 1999) and 5655

(May 24, 2000), wherein this Court granted respondent's claims for refund of excise taxes using the aforesaid BIR Ruling. The inaction of the petitioner on this letter claim for refund constrained respondent to timely file a petition for review on June 28, 2001 before the then Court of Tax Appeals.

In a Decision promulgated on March 10, 2004, herein respondent's claim for refund or issuance of a tax credit certificate was denied in C.T.A. Case No. 6308. However, respondent's Motion for Reconsideration of the said Decision was granted in the assailed Resolution dated September 9, 2004. In effect, the earlier Decision of March 10, 2004 was set aside, and herein petitioner was ordered to refund to respondent the reduced amount of P3,858,524.23 representing excise taxes erroneously paid for the period July 18, 1999 to December 31, 1999.

Subsequently, the Commissioner of Internal Revenue filed a Motion for Reconsideration of the Resolution dated September 9, 2004, but the same was denied for lack of merit in the assailed Resolution dated February 16, 2005. Hence, this recourse.

Petitioner presents the following arguments in the instant petition:

> a. 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 *(Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, 20 SCRA 1056 [1967])*;
>
> b. Excise tax on petroleum products is the direct liability of the manufacturer/producer;
>
> c. Under Paragraph 2, Section 130 of the 1997 NIRC, the return shall be filed and the excise tax paid by the manufacturer or producer before removal of domestic products from place of production;
>
> d. It was held in part in this Court's Resolution that excise tax is similar to VAT, as it is also an indirect tax. Thus, by analogy, when the VAT is passed on to a VAT-registered buyer, the latter may claim the input tax paid as creditable VAT when it filed its Monthly VAT Declaration and Quarterly VAT Returns, or may opt to apply for

VAT refund/TCC subject to the provisions of Section 113 and its implementing VAT regulations, particularly Revenue Regulations 7-95, as amended. However, when the VAT is passed on to Non-VAT registered buyer, including final consumers, the VAT paid forms part of the purchase price of the buyer and it is never recorded as input tax in its books of accounts;

e. In indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax *(Contex Corporation vs. Hon. Commissioner of Internal Revenue, 433 SCRA 376 [2004]*);

f. Section 135 of the 1997 NIRC merely contemplates an exemption from the payment of excise tax to the seller/manufacturer, the Petron Corporation in this case, but not exemption of payment of excise tax to the BIR, much more an entitlement to a refund from the BIR. Therefore, the buyer cannot seek refuge by filing administrative claim for refund with the BIR or file a judicial action with the CTA. Its remedy is to seek recourse against the seller, Petron Corporation;

g. The tax contemplated by law as refundable tax in case of erroneous payment, are those taxes remitted to the BIR by the person statutorily liable to pay the same;

h. Respondent slept on its right to remedy the situation if it indeed believed it is exempted from the payment of excise tax, because it regularly paid the passed-on tax which is already tantamount to consent to the practice of the seller-Petron Corporation in passing on the excise tax to its buyer as part of the purchase price of the fuel;

i. "In indirect taxes, 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 *(Cebu Portland Cement Co. vs. Collector, 25 SCRA 789 [1968]).*";

j. "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, the petition should fail *(Silkair [Singapore] Pte. Ltd. vs. Commissioner of Internal Revenue, CA-G.R. SP – 82902, September 13, 2004).*"; and

k. Respondent is not indeed the proper party that may ask for a refund. Applying the rulings enunciated in the above-cited cases of Contex Corporation, Cebu Portland Cement Co. and Silkair (Singapore) Pte. Ltd., if the respondent is at all entitled to the refund of excise taxes paid to the seller-Petron Corporation, the latter should be the one to ask for a refund from the BIR and not the former.

In respondent's Comment to the instant petition filed on April 20, 2005, it alleges that the CTA Division is correct in saying that Subsections (a), (b) and (c) of Section 135 of the 1997 NIRC provide for independent or separate exemptions and that respondent falls under the exemption provided in Section 135 (b). In citing the cases of *Commissioner of Internal Revenue vs. Procter & Gamble Philippine Manufacturing Corp. (204 SCRA 377 [1991]), Commissioner of Internal Revenue vs. Court of Appeals, et. al. (267 SCRA 557 [1997]),* and *Commissioner of Internal Revenue vs. Court of Appeals, et. al. (303 SCRA 508 [1999])*, respondent, however, emphasizes that petitioner belatedly raised the issue of whether or not herein respondent is the proper party to ask for a refund, considering that such matter was neither mentioned in his Answer dated August 7, 2001 nor in the Joint Stipulation of Facts and Issues submitted on October 17, 2001.

Moreover, respondent contends that petitioner is further barred from questioning the personality of respondent to file a claim for refund as he has already ruled on the matter per BIR Ruling No. 036-99 (March 29, 1999).

Concluding therefore, respondent argues that it is the proper party to claim for refund, as it was the one who made the actual payment of the excise taxes which were merely remitted by Petron Corporation to the BIR.

In addition, respondent Silkair posits that the provisions of Section 135 (b) of the 1997 NIRC and Article 4 of the Air Transport Agreement (between the Philippines and Singapore) are clear in providing for its exemption from the payment of excise tax on its purchases of petroleum products, citing for that purpose the case of *Maceda vs. Macaraig (197 SCRA 771 [1991]; 223 SCRA 217 [1993]).* As such, respondent insists that this is an instance where the law is clear, and there is no need for interpretation but only application.

Thus, petitioner raises the following assignments of errors in this petition:

A. ***The Honorable Division committed reversible error holding that respondent is entitled to a refund.***

B. ***The Honorable Division committed reversible error in holding that respondent is the proper party to claim for a refund.***

Significantly, the issues raised in this case are not novel to this Court. In the past, We had the occasion to take an extensive and deliberate study of the matter involved herein, and this case presents to Us the opportunity to discuss at length, once again, the merits and demerits of the arguments and counter-arguments of the parties, which may serve as a guidepost in deciding issues of similar nature in the future.

To begin with, We deem it apropos to dwell on the true nature of the tax involved in this case – the excise tax on petroleum products, including the person statutorily liable thereon, and when should it be paid.

Section 130(A)(2) of the 1997 NIRC is instructive on the matter. It provides:

> "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, <u>the 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" *(Underscoring and emphasis Ours)*

Evidently from the foregoing, excise tax on domestic products **should be paid** by the manufacturer or producer **before** its removal from place of production. Be that as it may, payment of excise taxes, being a kind of an indirect tax, could be validly passed on or shifted to another person, such as the purchaser of goods, although the statutory liability for such payment is upon the seller or manufacturer. This is one of the important attributes of an indirect tax. The incidence of or the liability for the payment of the tax falls on one person, but the burden thereof can be shifted to another.

This principle is not without authority. The Supreme Court has repeatedly stressed the nature and character of an indirect tax *vis-à-vis* a direct tax.

In the case of ***Maceda vs. Macaraig, Jr.,*** it elucidated thus:

> "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" ***((197 SCRA 771 [1991), Underscoring Ours)***.

Illustrating further this unique character of an excise tax being an indirect tax, the Supreme Court said in the case of ***Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue,*** that :

> "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 ***(20 SCRA 1056 [1967])*** ."

Reiterating the doctrine enunciated in the foregoing cases, the Supreme Court in the most recent case of ***Contex Corporation vs. Hon. Commissioner of Internal Revenue*** stressed 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 ***(433 SCRA 376 [2004])***."

Applying the aforequoted law and the jurisprudential authorities cited above to the case under consideration, We conclude that the tax sought to be refunded in this case is an excise tax on petroleum products, partaking of the nature of an indirect tax. Accordingly, the party to whom the law has imposed the obligation to pay is Petron Corporation, the seller/manufacturer thereof, although the burden of the tax was passed on to the herein respondent, the buyer/purchaser. By force of logic and invoking the previously quoted provision of Section 130(A)(2) of the 1997 NIRC, it is Petron Corporation, the taxpayer, which has the legal personality to claim any refund for an allegedly erroneously paid tax.

Respondent Silkair, on the other hand, argues that being an entity qualified under the exemptions from payment of the subject excise tax on petroleum products under Section 135 (b) of the 1997 NIRC and under the doctrine of reciprocity between States as implemented under Article 4 of the Air Transport Agreement (between the Philippines and Singapore), its payment of the passed-on excise tax is erroneous and therefore it is the proper entity that is entitled to a refund.

We find respondent's arguments untenable.

First of all, it is a recognized rule that 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 ***(Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, supra)***.

While this Court is cognizant of the claimed exempt status of the respondent under the law and treaty cited above, nevertheless, it is not also unaware of the fact that under Sections 130(A)(2) and 204 (C) of the 1997 NIRC, the right to claim for refund of taxes erroneously paid lies with **the person statutorily liable to pay the**

tax being claimed as bolstered by the provisions of Section 204 of the same Code, to wit:

> "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." *(Underscoring and emphasis Ours)*

In this case, the "**taxpayer**" contemplated under Section 204 of the 1997 NIRC is Petron Corporation, the manufacturer or seller of the petroleum products, as referred to in Section 130(A)(2) of the same Code. Apparently, upon removal of the petroleum products that were produced by Petron Corporation from its place of production, it paid the corresponding excise taxes thereon and it passed on or shifted the burden to its buyer, respondent Silkair (Singapore) Pte, Ltd..

We are in full agreement with the view of the petitioner that under the prevailing circumstances in the instant case, respondent, who claims to be exempt from the payment of the excise tax, should have invoked its exemption to Petron Corporation, the seller, before proceeding to buy the petroleum products, in order to give the latter the option of, whether or not, to pass on the tax burden to the buyer.

Thus, for purposes of consistency, this Court invokes the ruling of the Court of Appeals in a similar case involving the same parties, to wit:

> "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 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.
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> 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. Commissioner of Internal Revenue, CA-G.R. SP – 82902, September 13, 2004, Underscoring Ours).***

Finally, We find it imperative to discuss the matter raised by respondent, that petitioner belatedly raised the issue regarding the proper party to seek for a refund of a tax that was allegedly paid erroneously.

On this issue, We rule that this Court has the inherent authority to take cognizance of the same because We noted that it is one of the matters raised in the petitioner's pleadings, particularly in his Answer filed on August 8, 2001, as one of his special and affirmative defenses, to wit:

> "8. 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 obtain the article" (Philippine Acetylene vs. CIR, 20 SCRA 1056, *Underscoring Ours).*

To Us, this assertion in the answer is an implied challenge of the legal personality of the herein respondent to file the subject claim for a tax that was allegedly paid erroneously. Moreover, the matter of who is the proper party to claim a refund in an action involving tax refund is an essential and vital issue which is so interwoven and interrelated to the main cause of action, such that respondent could not deprive this Court of its solemn duty to exercise its judicial authority to look into the legal capacity of the parties before it.

By way of resume, since the excise tax was imposed upon Petron Corporation as the manufacturer of petroleum products, pursuant to Section 130(A)(2) of the 1997 NIRC, 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.

All the foregoing considered, We rule that 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 the petitioner, being an indirect tax, 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 September 9, 2004 and February 16, 2005 are hereby **SET ASIDE.** Accordingly, respondent Silkair (Singapore) PTE, Ltd.'s claim for refund is hereby **DENIED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

We Concur:

(I maintain the original decision.
I am for denial of Petition for Review)
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I concur with PJ 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 Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
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EN BANC

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SILKAIR (SINGAPORE), PTE, LTD., *Respondent.*	
	Promulgated: JAN 05 2006

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Dissenting Opinion

This Court's *En Banc* Decision sets aside the Court of Tax Appeal's Interim Division's Resolutions dated September 9, 2004 and February 16, 2005 and denies petitioner's claim for refund representing excise taxes erroneously paid for the period covering July 18, 1999 to December 31, 1999, on the ground that herein respondent 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.

With due respect to our esteemed colleagues, We wish to express our disagreement to the position of the majority on the ground that given the unique factual and legal backdrop of the case, herein respondent is actually the proper party to claim the tax refund.

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. Hence, the proper claimant to the subject request for tax refund is the seller Petron Corporation.

Notwithstanding 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 categorical grant of exemption from the payment of the said excise tax stated in Section 135 of the Tax Code and Article 4 of the Air Transport Agreement between the Philippine and Singapore.

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 are hereunder quoted for ready reference:

> "**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)*

Prescinding from the foregoing, the only other requisite for such exemption is that the Republic of Singapore exempts from similar excise taxes the petroleum products sold to Philippine carriers. This condition *sine qua non* 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; further confirming respondent's right to refund.

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 jurisprudence 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 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 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 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)*

We likewise differ with 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 possible.

Furthermore, 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 situation the law and the subject tax treaty definitely did not intend.

By way of resume, to deny herein respondent's lawful refund claim on the lone basis that allegedly the proper party is the seller Petron and not the respondent will not only defeat the tax exemption expressly 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. Accordingly, We manifest our position to deny the instant Petition for Review.

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A CASANOVA
Associate Justice