REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SILKAIR (SINGAPORE) PTE. LTD.,
Petitioner,

- versus - **C.T.A. Case No. 5891**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 17 2002

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DECISION

This is a judicial claim for the refund or tax credit of the amount of FIVE MILLION FIVE HUNDRED NINETY EIGHT THOUSAND THREE HUNDRED SEVENTY TWO & 14/100 PESOS (P 5,598,372.14) allegedly representing the excise tax paid on purchases of jet fuel made by the Petitioner for use in its international flights for the period of July to December 1997.

Petitioner is a foreign corporation organized under the laws of Singapore with a Philippine Representative Office address at Suite 302, Cebu Holdings Centre, Cardinal Rosales Avenue, Cebu Business Park, Cebu City *(Joint Stipulation of Facts, Item No. 1, CTA docket p. 37).* It is licensed to engage in business in the Philippines as an online international carrier initially covering the Singapore-Cebu-Singapore route under a temporary operating permit issued on May 14, 1992 and later under a regular operating permit approved by the Civil Aeronautics Board (CAB) per Resolution No. 202(93) dated November 12, 1993 (Exhibit S).

For the period July to December 1997, Petitioner purchased aviation jet fuel from Petron Corporation and paid the imposed specific tax thereon in the total amount of P 5,598,372.14.

On December 1, 1992, the BIR, through its Deputy Commissioner Victor Deoferio, issued to Petitioner BIR ruling No. 339-92 (Exhibit C), which declared that the Cebu link of the Singapore/Cebu/Singapore route is an international flight by an international carrier, and hence, petroleum products purchased and consumed in said flights shall not be subject to excise tax pursuant to Section 132 of the Tax Code, prior to its amendment. Relying on the aforesaid ruling, Petitioner on March 25, 1999, filed with Respondent an administrative claim for refund of the excise taxes amounting to P5,598,372.14 (Exhibit C), contending that it falls within the ambit of Section 132 of the Tax Code. For easy reference, Section 132 (now 135) of the Tax Code specifically provides, thus:

> **Section 132.** ***Petroleum products sold to foreign international carriers.*** - Petroleum products sold to an international carrier for its use or consumption outside of the Philippines shall not be subject to excise taxes, *Provided:* That the country of said carrier exempts from similar taxes petroleum products sold to Philippine carriers.

As Respondent undertook no action on Petitioner's claim for refund, Petitioner sought judicial recourse by elevating the matter to th's Court by way of Petition for Review on June 22, 1999.

Petitioner repleads its stance *a quo* in the instant petition while Respondent in his Answer raises the following Special and Affirmative Defenses, thus:

1. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Respondent's Bureau;

2. Respondent failed to show that it has submitted to the Commissioner of Internal Revenue duly authenticated documents issued by duly authorized officials of the country of Petitioner attesting to the fact that said country grants similar tax exemptions on petroleum products sold to Philippine carriers pursuant to Section 132 of the Tax Code;

3. In order to be exempt under Section 132 of the Tax Code, Petitioner has the burden of proof that the sale of the petroleum products was directly made from a domestic oil company to the international carrier. This is so because 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. (Philippines Acetylene vs CIR, 20 SCRA 1056);

4. Taxes paid and collected by the BIR are presumed to have been made in accordance with law, and the burden of proof to prove otherwise is upon Petitioner;

5. 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 Section 204 (c) and 230 of the 1993 Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund;

6. Claims for refund are construed strictly against the claimant for the same partake 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).

Petitioner in order to substantiate its claim presented the following documents as its evidence, thus:

(a) Authority to accept payments for excise taxes (Exhibits F to Q);

(b) Cash Receipts issued by Petron Corporation (Exhibits Z-1, Z-9, Z-18, Z-44, Z-52, Z-62, Z-84, Z-93, Z-126, Z-135, Z-166, Z-196, Z-197, Z-198, Z-208),

(c) Aviation Delivery Receipts/Invoice (Exhibits Z-2 to Z-8, Z-10 to Z-17, Z-19 to Z-43, Z-45 to Z-51, Z-53 to Z-61, Z-63 to Z-83, Z-85 to Z-92, Z-94 to Z-125, Z127 to Z-134, Z-136 to Z-165, Z-167 to Z-195, Z-199 to Z-240);

(d) Sales Agreement between Silkair & Petron Corp.(Exhibit R);

(e) Air Transport Agreement between the Phils. & Singapore (Exhibit W)

This Court is now tasked to resolve the following issues jointly stipulated by the Parties, thus:

(1) Whether or not Petitioner is entitled to a tax credit certificate/ refund in the amount of P 5,598,372.14, representing specific taxes paid on its purchases of jet fuel from Petron Corporation for the period July 1 to December 31, 1997;

(2) Whether or not Singapore grants similar tax exemptions to airline companies registered under the Philippine laws on purchases of petroleum products for use in international flights;

(3) Whether or not the purchases of jet fuel from Petron Corporation and the payment of excise taxes thereon are duly substantiated;

(4) Whether or not the jet fuel purchased by Petitioner from Petron Corporation were used in its international flights, particularly Singapore-Cebu-Singapore route.

The controversy at bar is not one of first impression. This Court could not fathom the reason why the Parties have brought as an issue the legal right of the Petitioner to seek the refund of the alleged erroneous payment of the excise tax considering both parties have explicitly admitted *(See The Parties Joint Stipulation of Facts, item No. 3,* *CTA docket p.38)* the existence of BIR Ruling No. 339-92, which already settled the matter. Said ruling issued by no less than the Respondent on December 1, 1992 has unequivocally declared the fact that Petitioner is an international air carrier whose local purchase and consumption of petroleum products for its Singapore/Cebu/Singapore route is not subject to excise tax pursuant to Section 132 of the Tax Code, as amended. Excerpts of the said ruling is hereunder provided, thus:

December 1, 1992

Bengzon, Zarraga, Narciso, Cudala
Pecson, Bengson & Jimenez
6th Floor, SOL Bldg.
Amorsolo St., Legaspi Village,
Makati Metro Manila

Attn.: Atty. Enrico G. Valdez

Gentlemen:

This refers to your letter dated July 9, 1992 requesting in behalf of your client, SILKAIR (Singapore) PTE LTD., a ruling exempting the latter from excise taxes on petroleum products purchased in the Philippines.

It is represented that SILKAIR is a corporation duly organized and existing under the laws of Singapore and engaged in international airline business; that on May 14, 1992, the Civil Aeronautics Board approved the petition of SILKAIR for issuance of a Temporary Operating Permit (TOP) as a foreign air carrier with routing Singapore/Cebu/Singapore; and that the laws of Singapore exempt Philippine carriers from similar taxes on petroleum products sold to the latter.

x x x x x x

Based on the foregoing and since the Cebu link of the route Singapore/Cebu/Singapore is an international flight by an international carrier, the petroleum products purchased by Silkair and consumed in such flights shall not be subject to excise tax pursuant to Section 132 of the Tax Code, as amended.

Very truly yours,

(SGD.) Victor A. Deoferio, Jr.
Deputy Commissioner

Clearly, Respondent is now estopped from questioning the applicability of the aforequoted ruling to the case of the Petitioner. True enough, the issues of whether or not Petitioner has a legal right to the claim for refund and whether or not the petroleum products purchased from Petron were subject to excise taxes are no longer novel issues, as this Court has already resolved the matter in favor of Petitioner. In similar cases entitled **SILKAIR (SINGAPORE) PTE LTD. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5382, dated June 7, 1999; SILKAIR (SINGAPORE) PTE LTD. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5430, dated August 20, 1999; SILKAIR (SINGAPORE) PTE LTD. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5655, dated May 24, 2000; and SILKAIR (SINGAPORE) PTE LTD. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5710, dated March 8, 2001**, this Court has made a pronouncement recognizing Petitioner's tax exempt status under Section 132 of the Tax Code, as amended. We find no compelling reason to deviate from the wisdom of Our decision in the aforesaid cases.

With regard to the second issue raised by the parties, We rule in the affirmative. Contrary to Respondent's assertion, the agreement entered into between the Philippines and Singapore is not in the nature of a foreign law, which need to be alleged and proved. However, it is worthy to stress that Petitioner formally offered as its evidence a certified true copy of the Air Transport Agreement between the government of the Philippines and the government of Singapore (Exhibit W) establishing the fact that Singapore likewise grants tax-exemption of airline companies registered under Philippine laws. This Court, as in some of the previous cases We decided in the past, has recognized the existence and validity of the said Air Transport Agreement between the government of the Republic of the Philippines and the government of the Republic of Singapore executed on July 11, 1974. Article 4(2) of the said agreement, quoted below, provides that the Government of Singapore is obliged to grant Philippine air carriers exemption from payment of excise taxes on petroleum products, thus:

> **"AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBL'C OF SINGAPORE**
>
> The Government of the Republic of the Philippines and the Government of the Republic of Singapore, hereinafter described as the Contracting Parties,
>
> Being parties to the Convention on International Civil Aviation and the International Air Services Transit Agreement both opened for signature at Chicago on the 7th day of December, 1944, and
>
> Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories,
>
> Hereby agree as follows:
>
> x x x
>
> **ARTICLE 4**
>
> x x x
>
> 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 to 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 above may be required to be kept under customs supervision and control."

x x x

It is significant to note that the aforequoted Air Transport Agreement between the Philippines and Singapore is not a mere moral obligation but creates a legally binding obligation between the Philippines and Singapore. It forms part of the laws of the countries involved in accordance with the most fundamental rule in international law, known as *pacta sunt servanda* – international agreements must be performed in good faith.

At this point what should have been given preferential concern and attention in this case is whether or not Petitioner has satisfactorily met the factual and evidentiary aspect of its claim for refund, covering the period July 1 to December 31, 1997.

A perusal of the records would reveal that Petitioner, in order to substantiate its claim for refund, adduced in evidence, *inter alia*, a Certification from Petron dated August 31, 1997 (Exhibit D) to prove payment by Petitioner of the excise tax due, various Authority to Accept Payment of Excise Tax (ATAPET's – BIR Form No. 2319A-E), to prove that PETRON Corp. remitted to Respondent the excise taxes on the sale of jet fuel to Petitioner for the period July 1997 to December 1997 (Exhibits F, F-1 to Q, Q-1) and various Aviation Delivery Receipts/Invoices and Cash Receipts issued by PETRON Corp. to Singapore Airlines (Exhibits 2-1 to 2-240, inclusive), to prove that

PETRON Corp. billed/charged and collected from Singapore Airlines the excise taxes on its jet fuel purchases. Petitioner also presented the letter dated June 16, 1992 of the General Manager in the Philippines of Singapore Airlines addressed to PETRON Corp. (Exh. T), to prove that (1) Singapore Airlines had ceased operations in Cebu starting June 2, 1992 and that Petitioner, its subsidiary airline will take over its direct flight Singapore-Cebu-Singapore on the same date, and (2) Singapore Airlines requested PETRON Corp. to extend the same credit line to Petitioner from the said date.

On March 9, 2000, the Court commissioned Mr. Ruben R. Rubio, an independent CPA, to ascertain Petitioner's claim for refund. An amended report, dated May 20, 2000, was presented stating the audit procedures performed. He also noted no exceptions in Petitioner's "Summary of Jet-A-1 Deliveries to Silkair Pte. Ltd. by Petron Corporation" for the period July 1 to December 31, 1997.

After a thorough examination of the evidentiary documents, this Court finds the report of the commissioned independent auditor to be in order.

However, Respondent, in his Memorandum argued that Petitioner is not entitled to the refund of the excise taxes paid on petroleum products for use or consumption on its international carrier flying the "Davao-Singapore-Davao" route pursuant to Sections 204 and 230 of the Tax Code, as amended for the reason that it failed to include in its administrative claim for refund the excise taxes paid and used by its carriers in its "Davao-Singapore-Davao" route. Respondent further contends that this Court has no jurisdiction to entertain the issue in Petitioner's Amended Petition for Review pursuant to Section 132 of the Tax Code, as amended.

We do not subscribe to the point propounded by the Respondent.

Our rules of civil procedure sanctions amendment to Petition for Review especially so if minor allegations were missed out in the original petition. True enough, Section 1 of Rule 10 of the Rules of Civil Procedure provides, thus:

Rule 10

> "**Section 1**. *Amendments in general.* - Pleadings may be amended by adding or striking out an allegation or the name of any party or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may be speedily determined, without regard to technicalities, and in the most expeditious and inexpensive manner."

The omission by Petitioner's counsel in not alleging in the administrative level the fact that part of the claimed amount pertains to the Davao-Singapore-Davao route should not prejudice the interest of the taxpayer (herein Petitioner). In its attempt to remedy the omission, Petitioner, upon leave of court filed an amended Petition for Review adding the fact that part of the claimed amount in the original Petition (P5,598,372.14) pertains to the Davao-Singapore-Davao route. Said amendment appears to have not substantially altered the cause of action because what has been claimed by the Petitioner with the BIR, is exactly the same amount as that claimed in the Petition for Review.

Furthermore, the evidence submitted by the Petitioner has satisfactorily established the factual aspect of its claim. Each of the documents submitted, properly supported the allegations of the Petitioner. Petitioner likewise established, that apart from the Cebu-Singapore-Cebu route, Petitioner also flew the Davao-Singapore-Davao route as evidenced by the various aviation delivery receipts/invoices which show delivery of fuel to Bangoy Airport in Davao. These receipts/invoices pertaining to the Davao-Singapore-Davao route were even attached to the administrative claim for refund with the BIR and were likewise considered in the report of the commissioned independent Auditor in checking the veracity of Petitioner's claim. Petitioner further submitted the operating permit issued by the Civil Aeronautics Board authorizing them to fly the Davao-Singapore-Davao route (Exhibit X). To ignore the said documents and to disallow Petitioner's amendment of its Petition for Review would be tantamount to defeating an otherwise valid claim with too much reliance to technicality and utter disregard of the substantial aspect of the case. Since the amount of refund prayed for in the appeal is similar to the amount claimed in the administrative level, we find it sufficient, in order for jurisdiction to attach to this Court.

Thus, after a circumspect study of the evidence presented by Petitioner (Exhibits A to M-11, inclusive), the Court finds no other recourse but to grant the relief sought by Petitioner.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate to herein Petitioner in the amount of P 5,598,372.14 representing the latter's erroneously paid excise taxes for the period July 1, 1997 to December 31, 1997. No costs.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge