**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SILKAIR (SINGAPORE) PTE., LTD.,**
Petitioner,

- versus -

C.T.A. CASE NO. 6308

**THE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
MAR 1 0 2004

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# DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P4,831,224.70 allegedly representing specific (excise) taxes erroneously paid by petitioner on its purchases of aviation jet fuel from Petron Corporation for the period July 1, 1999 to December 31, 1999.

Petitioner is a foreign corporation organized under the laws of Singapore with a Philippine Representative Office with address at Suite 302, Cebu Holdings Center, Cardinal Rosales Avenue, Cebu City (*par. 1, Facts Admitted*). It is engaged in business as an online international carrier flying the Singapore-Cebu-Singapore and Singapore-Cebu-Davao-Singapore routes (*TSN, p. 9, March 18, 2002*; *Exhibits B & C to C-5*).

For the period covering July 1, 1999 to December 31, 1999, petitioner allegedly purchased from Petron Corporation aviation jet fuel for use in its international flights and paid the corresponding specific (excise) taxes totalling P4,831,224.70. The payment to

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Petron Corporation was allegedly advanced by Singapore Airlines, Ltd. on behalf of petitioner (*TSN, pages 7-9 & 14-15, February 14, 2002; pages 15-16, March 18, 2002* ).

Believing that it is exempt from the payment of the aforesaid specific (excise) taxes pursuant to Section 135 of the Tax Code, petitioner filed a letter with the Bureau of Internal Revenue (BIR) on June 26, 2001, requesting for the refund of the amount of P4,831,224.70 (*Exhibit F*). Petitioner avers that in BIR Ruling No. 339-92 dated December 1, 1992, it was held that the Cebu link of the route Singapore-Cebu-Singapore is an international flight by an international carrier and the petroleum products purchased by petitioner and consumed in such flights shall not be subject to excise taxes pursuant to Section 132 (*now 135*) of the Tax Code. Moreover, petitioner cited an undated BIR Ruling [DA-038-02-05-98] wherein Mobil Philippines Incorporated was granted a refund for its excise taxes paid on its delivery of petroleum products to international carriers. To further support its position, petitioner cited CTA Case No. 5382 dated June 7, 1999 and CTA Case No. 5655 dated May 24, 2000, wherein this court granted petitioner's claims for refund of excise taxes using BIR Ruling No. 339-92 as basis.

Due to respondent's inaction on its claim, petitioner instituted the present appeal with this court on June 28, 2001, in order to preserve its right to a judicial claim for refund within the two-year prescriptive period as prescribed under Section 229 of the Tax Code.

Respondent, in his Answer filed on August 8, 2001, raised the following Special and Affirmative Defenses:

> "6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the respondent's Bureau;

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7. Petitioner failed to show that it has submitted to the Commissioner of Internal Revenue duly authenticated documents issued by duly authorized officials of Singapore attesting to the fact that said country grants similar tax exemptions on petroleum products sold to Philippines (sic) carriers pursuant to Section 135 of the Tax Code;

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 pay to obtain the article (Philippines Acetylene vs. CIR, 20 SCRA 1056);

9. Petitioner failed to substantiate its claim for refund/tax credit of the alleged excise taxes paid for the period covering July 1, 1999 to December 31, 1999;

10. Assuming without admitting that a foreign law is applicable in the instant case, the same must be proven as a fact;

11. 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;

12. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Sections 204(C) and 230 of the Tax Code. Otherwise, its failure to prove the same is fatal to the claim for refund; and

13. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue 124 SCRA 1211)."

In their Joint Stipulation of Facts and Issues filed on October 17, 2001 and approved by this court on October 29, 2001, the parties agreed to limit the issues to be resolved in this case as follows:

1. Whether or not petitioner is exempt from the payment of excise tax on its purchase of aviation jet fuel as an online international carrier as provided under Section 135 of the Tax Code;

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2. Whether or not the laws of Singapore grants similar excise tax exemptions to Philippine carriers on their purchases of petroleum products for use in its international flights;

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

4. Whether or not BIR Ruling No. 339-92 dated December 1, 1992 is applicable to the issues involved in the instant case; and

5. Whether or not petitioner is entitled to a tax credit certificate/refund in the amount of P4,831,224.70 representing excise taxes paid on its purchases of jet fuel from Petron Corporation for the period July 1, 1999 to December 31, 1999.

After a careful perusal of all the records relative to the case at bar in relation to the existing laws and jurisprudence applicable thereto, this court rules against petitioner.

Section 135 of the Tax Code provides thus:

> "**SEC. 135.** ***Petroleum Products Sold to 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)

Corollary thereto, Section 229 of the Tax Code reads as follows:

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> "***SEC. 229. Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> "In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided*, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on the above provisions of law, in order to be entitled to the refund sought for, petitioner must prove:

1. that it actually paid the claimed specific (excise) taxes of P4,831,224.70;
2. that it is exempted from the payment of such specific (excise) taxes as provided for under Section 135 of the Tax Code; and
3. that the claim for refund was filed within the two-year prescriptive period as provided for under Section 229 of the Tax Code (***Silkair (Singapore) PTE, Ltd. vs. The Commissioner of Internal Revenue, CTA Case No. 6217, November 5, 2003; Silkair (Singapore) PTE, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5996, November 6, 2003***).

Anent the first requisite, petitioner presented the testimonies of: a) Mr. Roberto Canave, Accountant of Petron Corporation (*TSN, February 14, 2002*); and b) Mr. Goh Boon Hwee, Country Manager of petitioner in the Philippines (*TSN, March 18, 2002*). Petitioner likewise submitted documentary exhibits such as: 1) a certified true copy of a letter dated June 16, 1992 from Chak Teck Sem, General Manager in the Philippines of Singapore Airlines addressed to Mr. Go of Petron Corporation (*Exhibit E* ); 2) Excise

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Tax Returns filed by Petron Corporation (*Exhibits G to M*); 3.) Certification from Petron Corporation that it paid to the BIR excise taxes in the amount of P4,831,224.70 on Jet-A-1 fuel product deliveries to Singapore Airlines from July to December 1999 (*Exhibit N);* 4.) Aviation Fuel Supply Agreement executed between petitioner and Petron Corp. for the period of April 1, 1999 until March 31, 2001 (*Exhibits P, P-1 & P-2*); and 5.) Aviation Delivery Receipts/Invoices and Cash Receipts issued by Petron Corp. to Singapore Airlines (*Exhibits S-1 to S-274*). All of the foregoing proved the fact of petitioner's receipt and payment of delivered aviation jet fuel, inclusive of excise taxes, through the accommodation of Singapore Airlines and the corresponding remittance of said excise taxes by Petron Corporation to the BIR. However, as correctly noted by the commissioned auditing firm, SyCip, Gorres, Velayo & Co., in its report dated July 22, 2002 (*Exhibit T-1*), petitioner was able to properly substantiate only the amount of P4,179,506.10 (*as summarized in pages 1-8 of Exhibit T-1*) out of the total claimed specific (excise) tax payments of P4,831,224.70.

As to whether or not the claim was filed within the two-year prescriptive period, this court partly rules in favor of petitioner.

Pursuant to the earlier quoted provisions of Section 229 of the Tax Code, the reckoning of the two-year prescriptive period for the refund of erroneously paid tax shall be from the *date of payment of the tax*. Accordingly, we need to look into the provisions of Section 130(A)(2) of the Tax Code, thus:

> "**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.* –
> xxx

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"(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: *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"

The aviation fuel purchased by petitioner from Petron Corporation is a locally manufactured petroleum product subject to excise tax under Section 148(g) of the Tax Code. Following the aforequoted provisions of Section 130(A)(2) of the Tax Code, the specific (excise) tax due on such petroleum product shall be paid prior to its removal from the place of production starting from January 1, 1999 and thereafter.

Records reveal that Petron Corporation remitted to the Bureau of Internal Revenue on the following dates the specific (excise) taxes it passed on to petitioner:

| Exhibit | Payment Date |
|---|---|
| G | 06/22/99 |
| H | 07/18/99 |
| I | 08/24/99 |
| J | 09/24/99 |
| K | 10/18/99 |
| L | 11/19/99 |
| M | 12/20/99 |

As can be seen from the above schedule, the earliest specific (excise) tax remittance was on June 22, 1999 and the next remittance was on July 18, 1999. Considering that the specific (excise) tax remittance is made before the delivery/sale of aviation fuel by Petron, it may then be safely assumed that the specific (excise) taxes of P320,981.87 corresponding to the aviation fuel sold and delivered by Petron Corp. to

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petitioner from July 1, 1999 to July 17, 1999 were included in the remittance of June 22, 1999. Below is the breakdown of the amount of P320,981.87:

| Exhibit | Aviation Delivery Date | Receipt/Invoice Number | Specific Tax Paid |
|---|---|---|---|
| S-6 | 1-Jul-99 | 214972 | P 29,763.70 |
| S-7 | 2-Jul-99 | 214979 | 28,515.90 |
| S-8 | 3-Jul-99 | 214991 | 26,020.30 |
| S-9 | 5-Jul-99 | 215008 | 24,295.40 |
| S-10 | 6-Jul-99 | 215017 | 21,946.60 |
| S-11 | 7-Jul-99 | 215024 | 6,239.00 |
| S-12 | 8-Jul-99 | 215041 | 20,441.90 |
| S-24 | 9-Jul-99 | 215048 | 24,699.10 |
| S-25 | 10-Jul-99 | 215080 | 27,414.90 |
| S-27 | 13-Jul-99 | 215092 | 27,451.60 |
| S-28 | 14-Jul-99 | 215100 | 7,527.17 |
| S-29 | 15-Jul-99 | 215116 | 24,845.90 |
| S-30 | 16-Jul-99 | 215135 | 23,561.40 |
| S-31 | 17-Jul-99 | 215149 | 26,020.30 |
| S-32 | 17-Jul-99 | 215150 | 2,238.70 |
| | | | P320,981.87 |

Since the Petition for Review was filed on June 28, 2001, the two-year prescriptive period started to run on June 29, 1999 and any excise tax payment made before June 29, 1999 had already prescribed. Hence, the specific taxes of P320,981.87 pertaining to the remittance of June 22, 1999 are barred by prescription. Only the remaining substantiated specific taxes of P3,858,524.23 (P4,179,506.10 less P320,981.87) fall within the two-year prescriptive period.

What now remains to be resolved is whether or not petitioner is exempted from the payment of the specific taxes of P3,858,524.23.

In the most recent case involving the same parties and issues entitled ***Silkair [Singapore] PTE, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 5996, dated November 6, 2003***, this court laid down the following conditions in order that the

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petroleum products sold to an international air carrier will be exempted from the payment of excise taxes:

a. that the petroleum products sold to international carriers of Philippine or foreign registry shall be for their use or consumption outside the Philippines;

b. 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; and

c. that the country of said foreign international carrier exempts from similar taxes petroleum products sold to Philippine carriers.

There is no doubt that petitioner is an international carrier and that the aviation jet fuel it purchased from Petron Corporation for the subject period of claim with the related specific taxes of P3,858,524.23 were used or consumed outside the Philippines.

Likewise, as to whether the country of said foreign international carrier exempts from similar taxes petroleum products sold to Philippine carriers, the court rules in the affirmative, thus:

> "xxx the Court finds that Petitioner had substantially complied with the reciprocity clause mentioned in Section 132 (now 135) of the Tax Code when it presented in evidence the 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 (Exh. J) specifically Art. 4(2) of the same (Exh. J-1), quoted below, xxx:
>
> "AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC 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

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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

Moreover, 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 most fundamental rule in international law, known as *pacta sunt servanda* – international agreements must be performed in good faith. Hence, both parties must fulfill the obligations undertaken." *(CTA Case No. 5996, supra)*

However, with reference to the second requisite, no evidence was adduced by petitioner to establish the fact that the aviation jet fuel it purchased from Petron Corp. with the related specific taxes of P3,858,524.23 came from the latter's bonded storage tank. Such failure on the part of petitioner is fatal to its claim. Petitioner should have presented convincing proof that its aviation jet fuel purchases fall the within the exemption provided for under Section 135 of the Tax Code. Considering the oft-repeated

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dictum that refund of taxes partakes the nature of a tax exemption and is construed in strictissimi juris against the taxpayer and in favor of the taxing authority (***Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and the Court of Tax Appeals, G.R. Nos. L-83583-84, March 25, 1992, 207 SCRA 549; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd. 244 SCRA 332)***, this court rules to deny the instant petition.

While it is true that in the previous cases involving the same parties and subject matter, namely;

| CTA CASE NO. | TITLE | DATE PROMULGATED | ENTRY OF JUDGMENT | PERIOD INVOLVED |
|---|---|---|---|---|
| 5891 | Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue | January 17, 2002 | February 14, 2002 | July – Dec 1997 |
| 5710 | Silkair (Singapore) PTE. LTD., vs. Commissioner of Internal Revenue | Mach 8, 2001 | July 5, 2001 | Jan – Jun 1997 |
| 5655 | Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue | May 24, 2000 | June 14, 2000 | Jul – Dec 1996 |
| 5430 | Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue | August 20, 1999 | November 4, 1999 | Oct '94 - Apr '95 |
| 5382 | Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue | June 7, 1999 | June 25, 1999 | Mar – Sep 1994 |

this court granted petitioner's claim for refund, nevertheless, the above cases are inapplicable to the present case. Since the periods involved in the said cases were from March 1994 to December 1997, the governing law was Section 132 of the Tax Code, prior to its amendment under Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, to wit:

> "**SEC. 132.** ***Petroleum products sold to foreign international carriers.*** - Petroleum products sold to an international carrier for its use and 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.

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To be entitled to the exemption from the payment of the excise tax, the old Tax Code mentioned only one condition, that is, that the country of said carrier exempts from similar taxes petroleum products sold to Philippine carriers. However, Section 135 of the present Code provided two other requirements, as earlier mentioned.

**IN VIEW OF THE FOREGOING**, petitioner's claim for refund or issuance of a tax credit certificate in the amount of P4,831,224.70 representing specific (excise) taxes erroneously paid by petitioner on its purchases of aviation jet fuel from Petron Corporation for the period July 1, 1999 to December 31, 1999 is hereby ***DENIED***.

**SO ORDERED**.

**LOVELL R. BAUTISTA**
Associate Judge

**I CONCUR:**

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

(On Leave)
**ERNESTO D. ACOSTA**
Presiding Judge

## 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 Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

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

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