REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

KOYO MANUFACTURING (PHILIPPINES) CORPORATION, ***Petitioner,***	**C.T.A. E.B. NO. 194** **(C.T.A. CASE NOS. 6494 & 6598)** Present: ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
-versus-	
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** MAR 0 1 2007 GrApolinario

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DECISION

PALANCA-ENRIQUEZ, J.:

A claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by

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words too plain to be mistaken and too categorical to be misinterpreted *(Sea-Land Services, Inc. vs. Court of Appeals, 357SCRA 444).*

THE CASE

This is a Petition for Review filed by Koyo Manufacturing (Philippines) Corporation (hereafter "petitioner") under *Section 18* of *Republic Act No. 1125 as amended by Republic Act No. 9282* (An Act Expanding the Jurisdiction of the Court of Tax Appeals), in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended,* which seeks the reversal of the Decision, dated December 5, 2005, issued by the First Division of this Court in C.T.A. Case Nos. 6494 and 6598, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the instant Petitions for Review are hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

and Resolution, dated June 21, 2006, denying petitioner's Motion For Reconsideration, the dispositive portion of which reads as follows:

> "**IN VIEW OF THE FOREGOING,** petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.
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> **SO ORDERED.**"

THE FACTS

The antecedent facts are culled from the records of the case.

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippine, with its principal office located at Lima Technology Center, Malvar, Batangas. It is principally engaged in the manufacture and export of miniature bearings for hard disk drives. It is duly registered with the Philippine Economic Zone Authority (PEZA), as an Ecozone Enterprise with Certificate of Registration No. 98-012 issued on February 6, 1998 under Republic Act No. 7916, as amended by *Republic Act No. 8748.* It is also registered with the Bureau of Internal Revenue as an export enterprise taxpayer with Certificate of Registration No. 97-590-000583, dated September 16, 1997.

On July 14, 2000, petitioner entered into Fuel Supply and Purchase Agreement with Toyota Tsusho Corporation (Manila Branch), a corporation organized and existing under the laws of the Philippines, for the supply of its monthly requirement of petroleum products estimated to be at 500,000 liters (*Exhibit "B"*). The price of the fuel products was stipulated to include specific tax at the rate of P1.63 per liter (*Exhibits "B-1" and "B-3"*).

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For the period June 1, 2000 to January 31, 2002, petitioner purchased diesel fuel from Toyota Tsusho Corporation (Toyota Tsusho) which was purchased by the latter from Caltex (Philippines), Inc. Petitioner paid Toyota Tsusho excise taxes on said purchase of fuel products in the aggregate amount of P9,385,540.00 in compliance with their agreement. However, it alleged that such payment was erroneous because under *Section 135 (c) of the National Internal Revenue Code of 1997*, the petroleum products sold to an ECOZONE entity, which is by law exempt from direct and indirect taxes, are exempt from excise tax. Petitioner relies on *Section 24, Republic Act No. 7916*, otherwise known as *"The Special Economic Zone Act of 1995", as amended*, as legal basis for its exemption from direct and indirect taxes.

Believing that it is entitled to the refund of an alleged erroneously paid excise tax, petitioner filed on two (2) occasions two (2) separate applications for claim for refund with the Revenue District Office No. 59 (Lipa City) of the Bureau of Internal Revenue. The first application was filed on June 27, 2002, covering the period June 2000 to June 2001 in the amount of P5,744,120.00. The second application was filed on January 16, 2003 with the same revenue district office covering the period July

2001 to January 2002 in the amount of P3,641,420.00. On June 28, 2002 and January 31, 2003, petitioner filed two Petitions For Review with this Court in order to toll the running of the two-year prescriptive period, docketed as CTA Case Nos. 6494 and 6598, respectively.

In his Answer filed in C.T.A. Case Nos. 6494 and 6598, respondent alleged the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
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> 5. The amounts of P5,744,120.00 and P3,641,420.00 being claimed by petitioner as alleged specific taxes paid on its purchases of diesel fuel from Caltex Philippines, Inc. for the period June 2000 to June 2001 and July 2001 to January 2002, respectively, were not properly documented;
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> 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/credit;
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> 7. Petitioner must show that it has complied with the provisions of Section 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit; and
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> 8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

Thereafter, on May 6, 2003, upon motion of the petitioner, the two cases were ordered consolidated.

After trial on the merits, the First Division rendered the assailed Decision on December 5, 2005 denying the Petitions for Review for lack merit.

Not satisfied, petitioner moved for reconsideration of the same. On January 6, 2006, the First Division denied petitioner's "Motion for Reconsideration".

Hence, the present petition.

ISSUES

Petitioner submits the following issues for Our consideration:

I

PETITIONER IS EXEMPT FROM EXCISE TAXES ON ITS PURCHASES OF DIESEL FUEL REGARDLESS OF WHETHER IT AVAILED OF THE 5% PREFERENTIAL RATE OR THE INCOME TAX HOLIDAY PROVIDED IN EXECUTIVE ORDER NO. 226 ("EO 226").

II

PETITIONER IS EXEMPT FROM EXCISE TAXES ON ITS PURCHASES OF DIESEL FUEL SINCE THESE PURCHASES ARE TANTAMOUNT TO EXPORT SALES BY FICTION OF LAW.

III

THE BURDEN OF SHOULDERING THE EXCISE TAXES ON THE PURCHASE OF FUEL WAS PASSED

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UNTO PETITIONER WHO MAY CLAIM A REFUND BY VIRTUE OF ITS REGISTRATION WITH THE PHILIPPINE ECONOMIC ZONE AUTHORITY.

On August 8, 2006, We required respondent to file his comment on the petition, within fifteen (15) days from notice.

On September 11, 2006, respondent filed his Comment.

Hence, the petition is now deemed submitted for decision.

The issues raised by petitioner boil down to the principal issue of whether or not petitioner is exempt from excise taxes on its purchases of petroleum products, particularly diesel fuel that will entitle it to a tax refund or tax credit certificate.

THE COURT *EN BANC'S* RULING

The Petition has no merit.

After a careful examination of the arguments raised in the instant petition, the Court *En Banc* finds that the issues raised by petitioner are a mere rehash of its Petition for Review and Motion for Reconsideration filed with the First Division of this Court and present no new arguments nor new matters which have not been considered and passed upon by the First Division in the assailed Decision and Resolution. Nevertheless, the Court *En Banc* will discuss them in *seriatim*.

Petitioner's Theory

Petitioner's main contention is that it is exempt from payment of direct and indirect taxes as an ECOZONE enterprise pursuant to *Section 24* of *Republic Act No. 7916* (hereafter R.A. No. 7916).

Petitioner further asserts that its purchase of diesel fuel is exempt from payment of excise taxes as it is to be stored and used in relation to its activities as an entity registered with the Philippine Economic Zone Entity (hereafter "PEZA"), pursuant to *Article 77* of *Executive Order No. 226* (hereafter "*EO 226*"), otherwise known as the "*Omnibus Investments Code of 1987*".

Furthermore, petitioner invokes *Section 135* of the *NIRC of 1997, as amended,* in support of its claim that petroleum products sold to an ECOZONE enterprise is not subject to excise tax.

Respondent's Theory

Respondent, on the other hand, maintains that the 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. And the proper party who can seek a refund of the tax is the person on whom the law imposes the tax and who paid the tax even when he shifts the burden to another, hence, it is Caltex Philippines, Inc. (hereafter "Caltex") which should claim for the refund, assuming that it is entitled to a refund because it was the one which paid and remitted the tax to the BIR.

We rule for the respondent.

Section 24 of R.A. No. 7916 provides:

> "SEC. 24. Exemption from Taxes Under the National Internal Revenue Code. — Any provision of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu of paying taxes, five percent (5%) of the gross income earned by all businesses and enterprises within the ECOZONE shall be remitted to the national government. This five percent (5%) shall be shared and distributed as follows:
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> (a) Three percent (3%) to the national government;
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> (b) One percent (1%) to the local government units affected by the declaration of the ECOZONE in proportion to their population, land area, and equal sharing factors; and
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> (c) One percent (1%) for the establishment of a development fund to be utilized for the development of municipalities outside and contiguous to each ECOZONE: Provided, however, That the respective share of the affected local government units shall be determined on the basis of the following formula:
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> (1) Population — fifty percent (50%);

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> (2) Land area — twenty-five percent (25%); and
> (3) Equal sharing — twenty-five percent (25%)."

Pursuant to the aforequoted provision, business establishments operating within the ECOZONE are exempt from national and local taxes, excise tax included, the same being a national tax. In lieu thereof, the said enterprises shall pay 5% preferential tax to the national government. However, such fiscal incentive is not absolute.

Section 23 of Republic Act No. 7916, in relation to *Presidential Decree No. 66* and *Executive Order No. 266* (hereafter E.O. No. 266), provides:

> "SEC. 23. Fiscal Incentives. — Business establishments operating within the ECOZONES shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
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> Furthermore, tax credits for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994."

Under the above provision, a PEZA-registered enterprise has the option to choose between two sets of fiscal incentives. First, that which is provided for under *PD No. 66*, as amended, and *Section 24* of *R.A. No.*

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7916 which includes 5% preferential tax on gross income earned, in lieu of national and local taxes, and second, that provided for under *Book VI* of *E.O. 226* in relation to *Rule VI* of the *Rules and Regulations to Implement E.O. No. 226*, including, but not limited to an income tax holiday (hereafter "ITH") of 4 or 6 years depending on whether an entity is registered as a pioneer or non-pioneer enterprise. If an ECOZONE enterprise chooses the 5% preferential tax, it is exempt from payment of all national and local taxes, including excise tax. While, if an ECOZONE enterprise opted for the ITH, it shall only be exempt from income tax, but will still be subject to other internal revenue taxes provided for under the *NIRC of 1997*, as amended, such as, but not limited to excise tax.

After a careful examination of the evidence presented and the laws applicable, We agree with the First Division's finding that petitioner failed to prove that it had opted for the 5% preferential tax to entitle itself to the exemption of the excise tax, as petitioner failed to present proof of payment of its 5% preferential tax. Petitioner likewise failed to present any documentary evidence to prove its availment of the fiscal incentive under *P.D. No. 66*. It is vital that petitioner establishes the fiscal

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incentive it availed, since there is a difference in the taxes to be paid depending on the incentive chosen.

It is well settled that tax refunds partake of the nature of tax exemptions, thus it should be construed *strictissimi juris* against the person or entity claiming of such exemption. The burden of proof is on the taxpayer to prove his entitlement thereto. In this case, it is clear from the records that petitioner failed to discharge this burden, as it failed to present documentary proof of the availment of the 5% preferential tax. Having failed to discharge this burden, We therefore rule that petitioner cannot avail of the exemption for indirect taxes, particularly excise taxes on its purchase of its diesel fuel from Toyota Tsusho.

Moreover, even granting that petitioner is exempt from payment of the excise tax, still, it has no personality to claim for a refund from the BIR. It is clear from the records of the case that petitioner purchased the diesel fuel from Toyota Tsusho, who in turn purchased the same from Caltex Philippines, Inc. Clearly, petitioner was already a third party to the excise tax charged by Caltex, hence, the amount quoted by Toyota Tsusho to petitioner already included the excise tax as part of the purchase price. What was transferred in this instance is not the liability of

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the tax, but the tax burden. In adding or including the excise tax 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. 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 *(Contex Corporation vs. Commissioner of Internal Revenue, 433 SCRA 385).*

Likewise, while it is true that in the case of excise tax imposed on petroleum products, the seller thereof may shift the tax burden to the buyer, the former is the proper party to claim for the refund in case of exemption from excise tax. Since the excise tax was imposed upon Caltex, as the manufacturer of petroleum products, 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 Caltex, as the taxpayer contemplated under the law. Petitioner cannot be considered as the taxpayer because it merely shouldered the burden of the excise tax and not the excise tax itself. It may indeed be that the economic burden of the tax finally falls on the purchaser; when it does the tax becomes 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. The purchaser 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 the tax is paid to get the goods and for nothing else *(Philippine Acetylene Co. Inc., vs. Commissioner of Internal Revenue, 20 SCRA 1063).*

As aptly ruled by the First Division,

> "xxx The subject diesel fuel were sold by Caltex to Toyota Tsusho, a trading company duly licensed to do business in the Philippines through its Manila branch office, although the products were delivered to petitioner's place of business. In fact, the invoices issued by Caltex, were in the name of Toyota Tsusho and not that of the petitioner. It was Toyota Tsusho, in turn, which issued a receipt to petitioner for the diesel fuel bought pursuant to the Fuel Supply and Purchase Agreement between itself and petitioner. Verily, the purchase and sale transactions were between Toyota Tsusho and Caltex. In which case, the excise tax imposed on the sale of the diesel fuel was passed on to Toyota Tsusho already as part of the purchase price and not to petitioner. Under the Fuel Supply and Purchase Agreement, the agreed "price" to be billed was already inclusive of the excise tax of P1.63/liter. Clearly, the

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> "excise tax" formed part of the "selling price" of Toyota Tsusho for the fuel products it sold to Koyo.
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> The liability for excise tax on petroleum products that are being removed from its refinery is imposed on the manufacturer/producer (Section 130 of the NIRC of 1997). Considering that excise tax on petroleum products is being levied at the point of removal from refinery, the seller of these petroleum products will necessarily pass on the tax burden to its buyers. Section 135 of the NIRC of 1997, however, provides for exemptions of certain entities from the payment of excise tax on its purchase of petroleum products. In the case of buyers who are exempt from the payment of excise tax under this section, they should invoke their exemption from the excise tax to the seller before proceeding to buy, in order to give the latter the option of whether or not to pass on to the burden. Where the tax burden is not passed on to the buyer, the seller may claim for the refund of the excise taxes, which were paid upon removal of the petroleum products from the refinery (Silkair (Singapore) PTE. LTD. vs. The Commissioner of Internal Revenue, C.T.A. Case NO. 6371, May 27, 2005).
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> The excise tax partaking of the nature of an indirect tax, is clearly the liability of the manufacturer or seller who has the option whether or not to shift the burden of the tax to the purchaser. Where the burden of the tax is shifted to the seller, 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."

Therefore, the right to claim for the refund of excise taxes paid on petroleum products lies with Caltex, who paid and remitted the excise tax to the BIR. The incidence of taxation or the person statutorily liable to

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pay the tax falls on Caltex, though the impact of taxation or the burden of taxation falls on another person, which in this case is the petitioner. At most, petitioner made the erroneous payment of passed-on excise tax, not to the respondent, but to the seller, Toyota Tsusho and Caltex.

For all the foregoing, We see no reason to reverse the assailed Decision and Resolution of the First Division.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice