REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION, Petitioner,	**C.T.A. CASE NO. 7565**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
THE HON.COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 19 2007

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RESOLUTION

For resolution are:

a) respondent's **"Motion To Preliminary Resolve The Issue Of Whether Or Not Petitioner Is The Proper Party That May Ask For A Refund"** filed on June 20, 2007; and

b) petitioner's **"Comment/Opposition (To Respondent's Motion To Preliminary Resolve The Issue Of Whether or Not Petitioner Is The Proper Party That May Ask For A Refund)"** filed on July 10, 2007.

Respondent contends that it is only the taxpayer who has the legal personality to claim any refund of excise taxes erroneously paid on petroleum products, pursuant to Section 204 (C) of the Tax Reform Act of 1997, as

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amended. In the present case, petitioner paid the excise taxes as part of the purchase price of petroleum products it bought from Petron Corporation from January 2005 to October 2005. As petitioner merely paid the price of the commodity, it made no erroneous payment of excise taxes.

On the other hand, petitioner opposes the motion on the ground that as an export processing zone enterprise, it is explicitly granted tax exemptions from the payment of customs and internal revenue taxes by the provisions of PD No. 66 (the "EPZA Law"), RA No. 7916 or the "Special Economic Zone Act of 1995" (the "PEZA Law"), the Rules and Regulations To Implement RA No. 7916 or the "Special Economic Zone Act of 1995' (the "PEZA IRR") and as ruled by the Supreme Court in *Commissioner of Customs vs. Philippine Phosphate Fertilizer Corporation (437 SCRA 453)*. Hence, since petitioner was made liable to pay the excise taxes, it is the proper party to claim for the refund and/or issuance of tax credit certificate.

The Court finds merit in the motion.

In *Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue (20 SCRA 1056),* the Supreme Court ruled:

> "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."

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This ruling was reiterated in the recent case of *Contex Corporation vs. Hon. Commissioner of Internal Revenue (433 SCRA 376),* where the Supreme Court ruled:

> "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, <u>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.</u>
>
> Further, in indirect taxation, there is a need to distinguish between the liability for the tax and the burden of the tax. As earlier pointed out, the amount of tax paid may be shifted or passed on by the seller to the buyer. What is transferred in such instances is not the liability for the tax, but the tax burden. In adding or including the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, <u>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</u>." (Underscoring supplied.)

Like the VAT, the excise tax is also an indirect tax. As such, the seller who paid the excise tax may shift or pass the same to the buyer as part of the price of the commodity. This does not mean however that the seller is transferring his liability for the excise tax. Instead, he is transferring the burden to pay the excise tax to the buyer (*Cebu Portland Cement Co. vs. Collector of Internal Revenue*, 25 SCRA 789).

In this case, petitioner neither paid nor remitted excise taxes to the BIR. When the petitioner purchased the subject petroleum products from

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Petron, the latter included in the purchase price the excise taxes it paid and remitted. In other words, what was transferred to petitioner was only Petron's excise tax burden. Being the party liable for the excise tax, Petron is the proper party to claim for a refund. Thus, petitioner cannot ask for a refund because it was not the proper party in this case.

Under Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended, every action must be prosecuted and defended in the name of the real party-in-interest. Petitioner, not being the real party-in-interest to file the present petition for refund or issuance of tax credit certificate for the allegedly erroneously paid excised taxes, the case should be dismissed for lack of cause of action (*Sustiguer vs. Tamayo*, 176 SCRA 579).

WHEREFORE, premises considered, respondent's motion is hereby **GRANTED.** Accordingly, the instant Petition for Review is **DISMISSED**.

SO ORDERED.

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

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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