REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6538

Members:

ACOSTA, ***Chairpersen,***
BAUTISTA, and
CASANOVA, ***JJ.***

Promulgated:

MAY 21 2007, 9:00 Am

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DECISION

ACOSTA, P.J.:

This is a Petition for Review seeking the refund or the issuance of a tax credit certificate in the amount of **TWENTY SIX MILLION FOUR HUNDRED THIRTY EIGHT THOUSAND FOUR HUNDRED FORTY FOUR PESOS & 78/100** (P26,438,444.78) allegedly representing erroneously paid excise taxes billed to petitioner for its purchases of petroleum products from Petron Corporation, for the period September 1999 to August 2001.

THE FACTS

Petitioner, Philippine Associated Smelting And Refining Corporation (PASAR), is a domestic corporation duly organized and existing under Philippine laws with principal office at the 6th and 7th Floors, Linden Suites, 37 San Miguel Avenue, Ortigas Center, Pasig City. It is engaged in the business of exporting, processing, smelting and refining metals and is a duly registered Zone Export Enterprise with the Export Processing Zone Authority pursuant to the provisions of P.D. No. 66, as amended, and E.O. No. 567 with Certificate of Registration No. 82-40 dated September 23, 1982. Its plant is located at the Leyte Industrial Development Estate (LIDE), Isabel, Leyte, a Special Export Processing Zone.

Respondent on the other hand is the Commissioner of Internal Revenue, empowered by law to decide on, among others, claims for refund and tax credits and holding office at the BIR National Office, Agham Rd., Diliman, Quezon City.

In its operations, petitioner uses petroleum products such as diesel, bunker fuel oil and lubricants. These products are purchased by petitioner from local distributors, like Petron Corporation. The latter remits the excise taxes thereon to the Bureau of Internal Revenue, and consequently bills petitioner these excise taxes.

For purchases of petroleum products from September 1999 to August 2001, Petron allegedly billed petitioner excise taxes amounting to P26,438,444.78. And on January 2, 2002, claiming exemption from internal revenue taxes, petitioner,

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filed with respondent an application for tax credit and/or refund of its excise tax payments (in the amount of P26,438,444.78), made in connection with its purchase of petroleum products from Petron Corporation, covering the period September 1999 to August 2001.[1]

Then on August 28, 2002, petitioner received respondent's August 13, 2002 letter, denying the claim for tax credit or refund,[2] it reads in part:

> "We regret that your claim for the tax refund is not meritorious on the basis that excise tax of petroleum products is the *direct liability of the manufacturer/producer, on your case PETROPHIL CORPORATION, and when added to the cost of goods sold to the buyer it is no longer a tax but a part of the price which the buyer has to pay to obtain the article. (Philippine Acetylene VS. CIR, 20 SCRA 1056).*
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> Based on the above ruling, PASAR, the buyer of said articles is not in the position to demand a tax refund for the excise taxes paid by Petrophil Corporation, the producer of said petroleum products. These taxes which formed part of the purchased *(sic)* price cannot be considered as tax anymore on the part of PASAR hence, tax refund is unwarranted for lack of legal basis."[3]

Hence, this Petition for Review filed on September 27, 2002.

On October 21, 2002, respondent, by counsel, filed an Answer raising the following special and affirmative defenses:

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> 4. Section 17(1) of PD No. 66 relied upon by petitioner does not clearly state that petroleum products sold and delivered to EPZA (now PEZA) registered entities are exempt from taxes. Settled is the

[1] *Joint Stipulation of Facts, par. 1.1.3, CTA Records, pages 112-113.*
[2] *Joint Stipulation of Facts, par. 1.1.4, CTA Records, pages 113.*
[3] *Exhibit "C"*

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rule that tax exemptions cannot be created by implications as they are highly disfavored in law. And considering further that a claim for tax refund partakes of the nature of an exemption, it cannot be allowed unless granted in the most explicit and categorical language. (BIR Ruling No. 126-86 dated July 23, 1986).

5. Contrary to petitioner's assertions, Sec. 18(i) of PD No. 66, as amended by PD No. 1449, states that the tax credit to be given to a registered zone enterprise shall cover the sales, compensating and specific taxes and duties on supplies, raw materials and semi-manufactured products used in the manufacture or processing or production of its export products and forming part thereof. Certainly, the petroleum products purchased by the petitioner do not form part of the export products manufactured by it and, therefore, the excise taxes on said petroleum products are not refundable;

6. Moreover, an indirect tax, i.e. ad valorem and specific taxes, when added to the cost of goods sold is no longer a tax but an additional cost which the purchaser has to pay to obtain the goods *(Commissioner of Internal Revenue v. American Rubber Co., 18 SCRA 1056)*. Further, in the case of *Philippine Acetylene v. Commissioner of Internal Revenue, 20 SCRA 1056,* it was held that excise tax on petroleum products is the direct liability of the manufacturer/producer, and when added to the cost of 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. In the instant case, petitioner merely paid the added cost of the regular gasoline and diesel fuel, not the ad valorem tax, the **entity or person subject thereto being Petron Corporation, the manufacturer. Section 130 (A)** of the **Tax Code**, as amended, on **persons liable to** file a return, filing of return on removal and **payment** of tax provides that '*Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production xxx. 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 xxx*'. In effect, if this Honorable Court would grant the refund of the excise taxes paid by Petron Corporation, the person directly liable to pay this particular kind of tax, through the petitioner in this instant case on the pretext that the amount passed on by Petron Corporation is in the form of taxes for which petitioner is allegedly not liable to pay,

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the government would be deprived of much needed revenues legally due it in the amount of P26,438,444.78. In fine, if this Honorable Court would allow the claim for refund applied for by the petitioner, it would in effect exempt the person directly and legally liable to pay the excise taxes from the payment thereof.

7. A cursory reading of the 1981 opinion of the then Ministry of Justice, the Ministry of Finance Ruling dated December 11, 1984, LOI No. 942 dated October 16, 1979 and Article 77(2) of Executive Order No. 226 of the Omnibus Investment Code being invoked by petitioner do not in any way show that the alleged ad valorem and specific tax erroneously billed to petitioner by Petron Corporation in the total amount of P26,438,444.78 for the period September 1999 to December 2001 is refundable to the former on its purchases of regular gasoline and diesel fuel from the latter;*[sic]*

8. In an action for refund/credit, 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. Petitioner which has the burden of proving its entitlement to the tax refund has failed to establish any clear interest in or right over the alleged ad valorem and specific taxes in the total amount P26,438,444.78;

9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit. It appears that transactions from September 1999 up to September 2000 should be denied outright for having been filed out of time;

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

With the filing and posting of the respondent's and petitioner's Memoranda[4] on April 28, 2006 and May 15, 2006, respectively, the case was submitted for decision on May 29, 2006.

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[4] *Petitioner in its Memorandum prayed for the refund or issuance of tax credits certificates in the reduced amount of P22,568,928.14, plus interest thereon, following the findings of the Independent Certified Public Accountant.*

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THE ISSUES

The parties presented the following issues for the resolution of the Court:

> 2.1.1 Whether or not PASAR filed its action for refund or issuance of tax credit certificate within the period required by law and whether or not there was substantial compliance with the requirements of applicable revenue rules and regulations.
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> 2.1.2. Whether or not the petroleum products purchased and used by PASAR in its business operations in Leyte Industrial Development Estate ('LIDE') are exempt from duties and taxes and whether or not PASAR is entitled to the privileges under Section 17 of P.D. No. 66 and thus entitled to a refund or issuance of a tax credit certificate.
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> 2.1.3. Whether or not the petroleum products purchased are covered by receipts and invoices.
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> 2.1.4. Whether or not PASAR actually paid Petron the total amount of PhP26,438,444.78 which Petron in turn paid to the Bureau of Internal Revenue on petroleum products Petron sold and delivered to PASAR during the period September 1999 to August 2001.
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> 2.1.5. Whether or not petitioner is the proper party to claim for refund or the issuance of a tax credit certificate for excise taxes paid.

THE PARTIES' ARGUMENTS

Petitioner argues that the petroleum products it purchased and used in its business operations in the Leyte Industrial Development Estate are exempt from duties and taxes. In support of this claim petitioner among others, cites the following:

(a) Section 17 of PD No. 66 that provides for the enumeration of goods which may be brought into the zones duty-free. (According to

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petitioner, the enumeration is all encompassing and broad enough to include anything that may be used in the manufacture or processing of exportable finished products such as foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description).

(b) Letter of Instruction (LOI) No. 942 dated October 16, 1979, which in part reads:

"7. Sales and deliveries of products to bonded warehouses of export-oriented manufacturers and to export processing zone enterprises can be considered as 'export sales' and products 'constructively' exported, so that tax credit and duty drawback can be availed of immediately, without awaiting for the actual exportation of the finished products abroad. For this purpose, the requirement that the exporter has in fact 'exported' shall include constructive 'exportation' as above defined."

(c) Section 130 (D) of the National Internal Revenue Code:

SEC. 130. Filing of Return and Payment of Excise Tax on Domestic Products. — xxx

(D) Credit for Excise Tax on Goods Actually Exported. — When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: *Provided*, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

(d) Article 77 (2) and 79 of E.O. 226 of the Omnibus Investments Code:

Article 77. **Tax treatment of Merchandise in the Zone.-** xxx

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(2) Merchandise purchased by a registered zone enterprise from the customs territory and subsequently brought into the zone, shall be considered as export sales and the exporter thereof shall be entitled to the benefits allowed by law for such transaction. xxx

Article 79. **Interpretation.**- All doubts concerning the benefits and incentives granted enterprises and investors by this Code shall be resolved in favor of investors and registered enterprises.

(e) The Special Economic Zone Act of 1995, R.A. No. 7916, as amended that provides:

"Except for real property taxes on land owned by the developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. xxx" [5]

And Section 23 thereof which reads:

"Section 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 Investments Code of 1987.xxx"

(f) Section 4 of Revenue Regulations No. 1-00 (Regulations Implementing Section 4 of R.A. No. 8748, entitled 'An Act Amending Republic Act No. 7916,' otherwise known as the Special Economic Zone Act of 1995, amending for its purpose Revenue Regulations No. 12-97), which states:

"SECTION 4. Nature of the 5% Tax and Extent of Tax Exemption. - The above 5% tax is imposed on 'gross income earned' hence, income tax in nature and a national internal revenue law in character. Registered ECOZONE enterprises

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[5] *Sec. 4 Amendments to Chapter III, Section 24 of R.A. 7916 by R.A. 8748*

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> shall be exempt from all other taxes, national or local, except the real property tax on land owned by developers, pursuant to Section 24 of R.A. No. 7916, as amended by R.A. No. 8748."

Petitioner also contends that the petroleum products it purchased from Petron are covered by receipts and invoices, the total amount of which is P26,438,444.78. And finally, petitioner asseverates that it is the proper party to claim for the refund or issuance of the excise taxes paid, for while Petron paid excise taxes on the petroleum products it sold, the taxes paid was shouldered and billed to petitioner. In this regard, Petron issued Certifications[6] that it paid the excise taxes but did not file any claim for the refund thereof, either with the Bureau of Internal Revenue (BIR) or with this Court.[7]

On the other hand, respondent opposes the claim and maintains that petitioner is not the proper party to ask for a refund. Respondent explains that excise tax, is an indirect tax imposed on commodities. They form part of the purchase price of the article and are passed on to customers. Being an indirect tax, it is the direct liability of the manufacturer (in this case, Petron), and when added to the cost of goods sold to the buyer (in this case, petitioner), it is no longer a tax but a part of the purchase price which the latter had to pay to obtain the article.

Further, according to respondent, the excise tax is imposed upon the manufacturer or producer and not on the purchaser of the goods. In support thereof, respondent cites Section 130 (A) (1) (2) of the NIRC:

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> "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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> (1) Persons Liable to File a Return. — Every person liable to pay excise tax imposed under this Title shall file a separate return for each place of production xxx
>
> (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 xxx"

Respondent also avers that even assuming for the sake of argument that petitioner is the proper party to claim the refund, it is just the same not entitled thereto, since the administrative and judicial claims were filed outside the statutory period of two years. Moreover, the report of the Independent CPA dated December 1, 2004, reveals several material discrepancies. Lastly, according to respondent, petitioner failed to prove entitlement to the refund/tax credit, since not one of the laws it invoked show that the alleged excise taxes billed to it by Petron are refundable.[8]

THE COURT'S RULING

The primordial issue to be resolved in this case is whether or not petitioner, an EPZA-registered enterprise, is entitled to the refund or issuance of tax credit

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[6] *Exhibits 'D' to "H-2', inclusive.*
[7] *Petitioner's Memorandum, CTA Records, page 640.*
[8] *Respondent's Memorandum, CTA Records, pages 598-616.*

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certificate for taxes it had paid on petroleum products purchased from Petron covering the period September 1999 to August 2001.

Petroleum products purchased and used by an EPZA-registered enterprise are exempt from duties and taxes, thus entitling the petitioner to the refund or tax credit sought. As correctly argued by petitioner, the grant of tax exemption to enterprises in export processing zone is clear and no construction or interpretation is necessary.

Petitioner is a duly registered Zone Export Enterprise with the Export Processing Authority (EPZA) pursuant to the Provisions of P.D. No. 66 and E.O. No.567. And under this law, enterprises registered with an export processing zone are granted certain incentives.

The Special Economic Zone Act of 1995, R.A. No. 7916, as amended clearly endows a tax exemption privilege on businesses within the ECOZONE:

> "Except for real property taxes on land owned by developers, **no taxes, local or national, shall be imposed on business establishments operating with the ECOZONE.**"

Section 23 thereof further provides that business establishments within the ECOZONES shall be entitled to fiscal incentives under P.D. No. 66 or those provided by Book VI of Executive Order No. 226, the Omnibus Investments Code of 1987.

Section 17 of P.D. No. 66 makes the entry of merchandise into the zone tax-free. It provides:

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> "Section 17. Tax Treatment of Merchandise in the Zone.-
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> (l) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description, except those prohibited by law, brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or **used directly or indirectly** in such activity shall not be subject to customs and internal revenue laws and regulations nor to the local tax ordinances, the provisions of the law to the contrary notwithstanding." *(Emphasis Supplied)*

As testified to by petitioner's witness,[9] the major products needed by PASAR in its smelting and refining business include bunker fuel and diesel oil. The use of these petroleum products will easily fall under the phrase "used directly or indirectly" in the business. Clearly then, these petroleum products qualify for tax and duty free privileges under Section 17(l) of P.D. 66 and should not be subjected to excise taxes.

Moreover, the Court agrees with the petitioner that the issuance of Letter of Instruction No. 942, dated October 16, 1979, further bolstered their claim that EPZA-registered enterprises are entitled to refund/credit of taxes paid on purchases of petroleum products, it states:

> "7. Sales and delivery of products to bonded warehouse of export-oriented manufacturers and to export processing zone enterprises can be considered as "export sales" and products constructively exported, so that tax credit and duly drawback can be availed of immediately, without awaiting for actual exportation of

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[9] *Mr. Leonardo Salve, Senior Manager of the Material Management Department of PASAR, TSN October 14, 2003, page 9.*

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> the finished products abroad. For this purposes, the requirement that the exporter has in fact exported shall include constructive exportation as defined."

It is noteworthy that exports are encouraged by providing enterprises with all the incentives including those discussed above, and for which reason the Omnibus Investments Code states "[A]ll doubts concerning the benefits and incentives granted enterprises and investors by the Code shall be resolved in favor of investors and registered enterprises."[10]

Even the Revenue Regulations implementing the Special Economic Zone Act of 1995[11] lend basis for the above-discussed exemption privileges:

> SECTION 4. Nature of the 5% Tax and Extent of Tax Exemption.- xxx Registered ECOZONE enterprises shall be exempt from all other taxes, national and local, except the real property tax on land owned by the developers, pursuant to Section 24 of R.A. No. 7916, as amended by R.A. No. 8747."

Moreover, Section 24 provides that no taxes shall be due on business within the ECOZONE, it reads:

> SECTION 24. Exemption from National and Local Taxes. – ***Except for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE***. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted as follows:
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> (a) Three percent (3%) to the National Government;
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located."

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[10] *Art. 79 Omnibus Investments Code of 1987*
[11] *Revenue Regulations No. 1-00*

In sum, ECOZONE enterprises, like PASAR, are exempt from all national and local taxes including excise taxes.

On the issue that the petitioner is not the proper party to claim for a refund/tax credit, the Court rules that the tax exemption privilege provided by Presidential Decree No. 66 extends to EPZA-registered enterprises. Consequently, petitioner as an EPZA-registered enterprise has the personality to invoke this privilege.

It is undeniable that it is petitioner which paid the excise taxes due on the transaction, despite the expressed grant of its exemption from the payment of taxes. Verily, denying petitioner's lawful claim on the lone basis that the proper party therefor is the seller Petron will only defeat the purpose of the law in granting the tax exemption.

Having established petitioner's legal entitlement to the refund claimed, scrutiny of documentary evidence is necessary to determine whether petitioner presented sufficient evidence to support the amount claimed and whether it was filed within the prescriptive period provided by law.

In support of its claim, petitioner presented the testimonies of: a) Mr. Leandro Salve, petitioner's Senior Manager, Materials Department; b) Mr. Roberto O. Canave, Accountant of Petron Corporation; and b) Ms. Herminia C. Trillana-Francisco, commissioned independent CPA (ICPA).

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Petitioner likewise submitted the following documentary exhibits: a) Certifications from Petron that it paid to the BIR excise taxes in the total amount of P26,428,444.78 on diesel and bunker fuel oil delivered to petitioner from September 1999 to August 2001 with attached summaries of petroleum products delivered to petitioner and lists of excise tax returns evidencing payment of excise taxes on petroleum products delivered to petitioner b) sales invoices issued by Petron to petitioner;[12] c) official receipts issued by Petron Corp. to petitioner;[13] d) Excise Tax Returns filed by Petron;[14] e) Petron's Withdrawal Certificates;[15] f) Petron's Daily Summaries of Liftings;[16] g) Petron's Payment Orders for SPT of PBR Liftings;[17] h) BIR Certifications of Collection;[18] i) report of the commissioned independent Certified Public Accountant (ICPA).[19]

The foregoing proves the fact of petitioner's receipt and payment of diesel and bunker fuel oil, inclusive of excise taxes, and the corresponding remittance of said excise taxes by Petron to the BIR. However, as correctly noted by the ICPA, out of the total claimed specific tax payments of P26,438,444.78, only the amount of P22,568,928.14 was properly substantiated:[20]

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[12] *Exhibits I, I-1 to I-222*
[13] *Exhibits P to EEE-1-C-1*
[14] *Exhibits J, J-1 to J-50*
[15] *Exhibits K, K-1 to K-50*
[16] *Exhibits L, L-1 to L-50*
[17] *Exhibits M, M-1 to M-50*
[18] *Exhibits N, N-1 to N-23*
[19] *Exhibit O, inclusive of submarkings*
[20] *Exhibit O-1*

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Based on my review and validation procedures, the amount of the said claim for refund that I determined to be substantiated by supporting documents is P22,568,928.14 (*Exhibit O-1*), computed as follows:

Per Claim	Amount of Excise Tax Per Undersigned's Verification		Difference	
	Exhibit No.	Amount	Exhibit No.	Amount
P26,438,444.78	O-1, O-2	P22,568,928.14	O-1, O-2	P3,869,516.64

Out of the P3,869,516.64 difference above, (P574,663.02) represents excise taxes paid based on the corrected total volume footing on diesel fuel deliveries for the period January to February 2001. The details of this correction are shown in Exhibit O-6.

P4,439,845.49 of the above difference represents excise taxes paid on Invoices, which payments I was not able to trace. The list of these Invoices is shown in Exhibit O-7.

The rest of the above difference amounting to P4,334.17 represents excise taxes paid based on the corrected quantity of diesel fuel deliveries, as shown in Exhibit O-8.

Likewise in issue is whether or not the instant claim for refund was timely filed within the period required by law. The pertinent provisions of the National Internal Revenue Code (NIRC), Sections 204(C) and 229, provide as follows:

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

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(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 value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the

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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.xxx"

"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." [*Emphasis supplied*]

Pursuant to the afore-quoted provisions, the reckoning of the two-year prescriptive period for the filing of a claim for refund of erroneously paid tax starts from the *date of payment of the tax.* Accordingly, the Court deems it necessary to look into the provisions of Section 130(A)(2) of the NIRC, 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

(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**

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> **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" [*Emphasis supplied*]

The diesel fuel and bunker fuel oil purchased by petitioner from Petron are locally manufactured petroleum products subject to excise tax under Sections 148(i) and (l) of the NIRC. Following the provisions of Section 130(A)(2) of the same Code, the specific (excise) tax due on such petroleum products shall be paid prior to their removal from the place of production starting from January 1, 1999 and thereafter.

An examination of the records reveal that on the following dates Petron remitted to the BIR the specific (excise) taxes it passed on to petitioner:

Exhibit	Payment Date	For liftings covering
M, J	09/04/99	09/03/99
M-1, J-1	09/17/99	09/16/99
M-2, J-2	10/14/99	10/13/99
M-3, J-3	11/05/99	11/04/99
M-4, J-4	11/16/99	11/15/99
M-5, J-5	12/12/99	12/11/99
M-6, J-6	12/27/99	12/26/99
M-7, J-7	01/02/00	01/01/00
M-8, J-8	01/13/00	01/12/00
M-9, J-9	01/24/00	01/23/00
M-10, J-10	02/02/00	02/01/00
M-11, J-11	02/05/00	02/04/00
M-12, J-12	02/21/00	02/20/00
M-13, J-13	02/27/00	02/26/00
M-14, J-14	03/11/00	03/10/00
M-15, J-15	02/26/00	02/25/00
M-16, J-16	04/06/00	04/05/00

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M-17, J-17	04/14/00	04/13/00
M-18, J-18	05/03/00	05/02/00
M-19, J-19	05/12/00	05/11/00
M-20, J-20	05/19/00	05/18/00
M-21, J-21	06/14/00	06/13/00
M-22, J-22	07/09/00	07/08/00
M-23, J-23	08/14/00	08/13/00
M-24, J-24	08/09/00	08/08/00
M-25, J-25	09/05/00	09/04/00
M-26, J-26	09/06/00	09/05/00
M-27, J-27	10/15/00	10/14/00
M-28, J-28	10/16/00	10/15/00
M-29, J-29	11/09/00	11/08/00
M-30, J-30	11/16/00	11/15/00
M-31, J-31	12/07/00	12/06/00
M-32, J-32	12/16/00	12/15/00
M-33, J-33	12/26/00	12/25/00
M-34, J-34	12/24/00	12/26/00
M-35, J-35	01/12/01	01/11/01
M-36, J-36	01/23/01	01/22/01
M-37, J-37	02/21/01	02/20/01
M-38, J-38	02/23/01	02/22/01
M-39, J-39	03/14/01	03/13/01
M-40, J-40	03/21/01	03/20/01
M-41, J-41	01/20/01	01/19/01
M-42, J-42	04/21/01	04/20/01
M-43, J-43	05/05/01	05/04/01
M-44, J-44	05/24/01	05/23/01
M-45, J-45	05/25/01	05/24/01
M-46, J-46	06/24/01	06/23/01
M-47, J-47	07/25/01	07/24/01
M-48, J-48	07/23/01	07/22/01
M-49, J-49	08/23/01	08/22/01
M-50, J-50	08/24/01	08/23/01

Considering that the specific (excise) tax remittance is made by Petron prior to delivery/sale of the petroleum products, it follows that the specific taxes of P4,806,314.17 and P5,648,988.10 corresponding to the diesel fuel oil and bunker fuel oil delivered and sold by Petron to petitioner from September 21, 1999 to September 27, 2000, respectively, totaling to P10,455,302.17, were included in the remittances of September 4, 1999 to September 6, 2000.

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				Volume (In liters)		Excise Taxes Paid	
						Diesel	BFO
Exh.	Invoice No.	Date	Value in Php	Diesel	BFO	@P1.63/liter	@P0.30/liter
I	1000197017	9/21/1999	525,425.40	9,748	66,967	P 15,889.24	P 20,090.10
I-1	1000197018	9/22/1999	915,707.89	9,380	127,165	15,289.40	38,149.50
I-2	1000197019	9/24/1999	631,518.07	13,243	73,349	21,586.09	22,004.70
I-3	1000197020	9/27/1999	1,035,545.46	15,830	127,826	25,802.90	38,347.80
I-4	1000197021	9/28/1999	528,220.88	6,443	67,296	10,502.09	20,188.80
I-5	1000197022	9/30/1999	512,436.45	6,627	64,802	10,802.01	19,440.60
I-6	1000197023	9/30/1999	1,481,007.69	18,591	188,007	30,303.33	56,402.10
			Total Sept 1999	**79,862**	**715,412**	**P 130,175.06**	**P 214,623.60**
I-7	1000238119	10/5/1999	2,162,368.55	30,005	269,931	48,908.15	80,979.30
I-8	1000238120	10/17/1999	2,651,272.25	37,733	307,713	61,504.79	92,313.90
I-9	1000238121	10/17/1999	618,498.75		81,209	-	24,362.70
I-10	1000238143	10/20/1999	6,720,784.44	129,771	738,223	211,526.73	221,466.90
I-11	1000245457	10/29/1999	4,709,079.34	81,716	528,540	133,197.08	158,562.00
			Total Oct 1999	**279,225**	**1,925,616**	**P 455,136.75**	**P 577,684.80**
I-12	1000248452	11/3/1999	2,245,642.41	14,172	274,960	23,100.36	82,488.00
I-13	1000264439	11/9/1999	3,601,380.39	53,376	401,639	87,002.88	120,491.70
I-14	1000290189	11/15/1999	4,873,823.21	16,196	615,441	26,399.48	184,632.30
I-15	1000291100	11/30/1999	6,204,113.18	98,600	683,375	160,718.00	205,012.50
I-16	1000291413	11/30/1999	3,072,954.13	58,127	326,564	94,747.01	97,969.20
			Total Nov 1999	**240,471**	**2,301,979**	**P 391,967.73**	**P 690,593.70**
I-17	1000292052	12/1/1999	76,089.16	7,742		12,619.46	
I-18	1000293593	12/1/1999	94,054.92	9,570		15,599.10	
I-19	1000300876	12/6/1999	99,310.00	10,000		16,300.00	
I-21	1000315362	12/15/1999	119,169.80	12,000		19,560.00	
I-23	1000320062	12/17/1999	119,169.80	12,000		19,560.00	
I-28	1000329323	12/23/1999	119,169.80	12,000		19,560.00	
I-29	1000336032	12/28/1999	119,169.80	12,000		19,560.00	
			Total Dec 1999	**75,312**	**-**	**122,758.56**	**-**
			Total Sept to Dec 1999	**674,870**	**4,943,007**	**P1,100,038.10**	**P1,482,902.10**
I-32	1000344518	1/1/2000	99,310.00	10,000		16,300.00	
I-33	1000360586	1/11/2000	119,169.80	12,000		19,560.00	
I-34	1000364180	1/13/2000	119,169.80	12,000		19,560.00	
I-35	1000364495	1/14/2000	8,012,114.66	96,760	887,012	157,718.80	266,103.60
I-221	1000368628	1/17/2000	119,169.80	12,000		19,560.00	-
I-37	1000388438	1/28/2000	5,780,778.07	90,321	614,664	147,223.23	184,399.20
I-38	1000389571	1/28/2000	2,848,163.68	42,851	304,879	69,847.13	91,463.70
I-40	1000393788	1/31/2000	2,774,868.26	47,266	290,221	77,043.58	87,066.30
			Total Jan 2000	**323,198**	**2,096,776**	**P 526,812.74**	**P 629,032.80**
I-45	1000441480	2/29/2000	8,306,961.63	116,744	891,019	190,292.72	267,305.70
			Total Feb 2000	**116,744**	**891,019**	**P 190,292.72**	**P 267,305.70**
I-47	1000473336	3/20/2000	135,609.80	12,000		19,560.00	
I-48	1000480293	3/23/2000	5,345,187.44	66,392	531,340	108,218.96	159,402.00

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I-49	1000480294	3/23/2000	1,229,021.80	15,265	122,172	24,881.95	36,651.60
I-50	1000480295	3/23/2000	8,622,307.79	132,353	824,447	215,735.39	247,334.10
			Total Mar 2000	**226,010**	**1,477,959**	**P 368,396.30**	**P 443,387.70**
I-52	1000494957	4/1/2000	1,326,687.05	18,753	128,939	30,567.39	38,681.70
I-54	1000496718	4/3/2000	704,856.82	9,563	69,099	15,587.69	20,729.70
I-59	1000527642	4/22/2000	6,524,035.13	101,518	622,859	165,474.34	186,857.70
I-60	1000527752	4/22/2000	5,332,725.39	79,595	513,473	129,739.85	154,041.90
I-62	1000531385	4/25/2000	4,032,029.54	58,243	390,723	94,936.09	117,216.90
I-63	1000534460	4/27/2000	1,749,884.16	27,560	166,639	44,922.80	49,991.70
			Total Apr 2000	**295,232**	**1,891,732**	**P 481,228.16**	**P 567,519.60**
I-65	1000558696	5/11/2000	7,093,199.82	115,419	672,049	188,132.97	201,614.70
I-66	1000587229	5/29/2000	6,915,865.96	154,188	602,206	251,326.44	180,661.80
I-67	1000587230	5/29/2000	693,527.87	8,635	69,083	14,075.05	20,724.90
			Total May 2000	**278,242**	**1,343,338**	**P 453,534.46**	**P 403,001.40**
I-74	1000648558	7/4/2000	1,516,307.86	25,380	121,102	41,369.40	36,330.60
I-76	1000663234	7/13/2000	9,900,494.27	150,625	808,772	245,518.75	242,631.60
I-78	1000678599	7/23/2000	8,162,517.33	127,339	663,021	207,562.57	198,906.30
I-79	1000682013	7/25/2000	2,296,376.58	35,827	186,526	58,398.01	55,957.80
I-80	1000682584	7/25/2000	103,569.80	8,267		13,475.21	-
I-81	1000683277	7/26/2000	176,829.60	14,000		22,820.00	-
I-82	1000689673	7/31/2000	1,435,041.11	12,509	124,586	20,389.67	37,375.80
I-83	1000690485	7/31/2000	4,061,437.30	57,579	325,525	93,853.77	97,657.50
			Total Jul 2000	**431,526**	**2,229,532**	**P 703,387.38**	**P 668,859.60**
I-84	1000694181	8/2/2000	176,829.60	14,000		22,820.00	-
I-85	1000705870	8/10/2000	176,829.60	14,000		22,820.00	-
I-86	1000708934	8/11/2000	9,435,449.61	133,900	756,090	218,257.00	226,827.00
I-88	1000716649	8/17/2000	5,154,546.52	51,497	439,034	83,940.11	131,710.20
I-89	1000725441	8/22/2000	4,050,208.42	41,565	343,619	67,750.95	103,085.70
I-91	1000731528	8/22/2000	723,596.27	5,518	63,736	8,994.34	19,120.80
I-92	1000731529	8/28/2000	3,944,524.08	38,983	336,493	63,542.29	100,947.90
I-94	1000738172	8/31/2000	3,886,186.00	38,398	331,528	62,588.74	99,458.40
			Total Aug 2000	**337,861**	**2,270,500**	**P 550,713.43**	**P 681,150.00**
I-97	1000759280	9/5/2000	3,816,362.11	40,970	321,560	66,781.10	96,468.00
I-98	1000759691	9/14/2000	4,929,317.43	56,801	393,131	92,585.63	117,939.30
I-99	1000760008	9/14/2000	1,657,779.23	21,523	129,263	35,082.49	38,778.90
I-102	1000779978	09/27/2000	10,871,338.88	145,682	842,143	237,461.66	252,642.90
			Total Sept 2000	**264,976**	**1,686,097**	**P 431,910.88**	**P 505,829.10**
			Grand Total	**2,948,659**	**18,829,960**	**P4,806,314.17**	**P5,648,988.00**

Since the Petition for Review was filed on September 27, 2002, the two-year prescriptive period commenced on September 27, 2000 and any excise tax payment made prior to September 27, 2000 had already prescribed. Hence, the

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specific taxes of P10,455,302.17 pertaining to remittances for the period September 4, 1999 to September 6, 2000 are barred by prescription. Only the remaining substantiated specific taxes of P12,113,625.97 (P22,568,928.14 less P10,455,302.17) fall within the two-year prescriptive period.

IN VIEW OF THE FOREGOING, the Petition for Review is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to refund or the issue a tax credit certificate the reduced amount of P12,113,625.97 representing petitioner's timely claimed and substantiated excise tax payments.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

Concurring:

(With Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE ASSOCIATED SMELTING & REFINING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 6538

Members:

ACOSTA, Chairman
BAUTISTA, and
CASANOVA, JJ.

Promulgated:
MAY 21 2007; 9:00 Am

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DISSENTING OPINION

With due respect, I humbly express my dissent from the opinion of my colleagues that petitioner is the proper party to claim for the refund or the issuance of a tax credit certificate amounting to ₱26,438,444.78 allegedly representing erroneously paid excise taxes billed to petitioner for its purchases of petroleum products from Petron Corporation, for the period September 1999 to August 2001.

There is no dispute that the excise tax imposed on the removal of petroleum products by oil companies is an indirect tax. In a number of cases, the Supreme Court has elucidated on the nature of indirect taxes as against direct taxes:

"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 engages 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 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."[1]

The Supreme Court also explained that although an indirect tax can be passed-on to the purchaser of goods, the liability for the indirect tax still remains with the manufacturer or seller. Thus:

"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.

We therefore hold that the tax imposed by section 186 of the National Internal Revenue Code is a tax on the manufacturer or producer and not a tax on the purchaser except probably in a very remote and inconsequential sense. Accordingly its levy on the sales made to tax-exempt entities like NPC is permissible."[2]

In *Contex Corporation vs. Hon. Commissioner of Internal Revenue,*[3] the High Court likewise discussed the nature of indirect taxes:

"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

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[1] Maceda vs. Macaraig, Jr., et al., 197 SCRA 771.
[2] Philippine Acetylene Co., Inc., vs. Commissioner of Internal Revenue, G.R. No. L-19707, August 17, 1967.
[3] G.R. No. 151135, July 2, 2004.

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 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." *(Citations omitted)*

The foregoing cases demonstrate that even though the burden of an indirect tax is shifted to the purchaser, still the liability for the indirect tax remains with the taxpayer.

The applicable law is Section 130 of the National Internal Revenue Code ("NIRC") of 1997. It dictates that the liability for the excise taxes on petroleum products is imposed upon the manufacturer or producer, thus, Sec. 130 (A) (2) provides:

"(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 gas 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 up to December 31, 1998; and before removal from the place of production of rich products from January 1, 1999 and thereafter; Provided, further, That . . ." *(Emphasis supplied)*

The afore-quoted provision clearly makes the manufacturer or producer of the petroleum products the one directly liable for the payment of excise tax before removal from the place of production. The manufacturer or producer is therefore the taxpayer under the law.

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Under Section 204 (c) of the NIRC, it is only the taxpayer, (the one liable for tax) that may ask for a refund in case of erroneous payment of taxes:

> SEC. 204. Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes. — The Commissioner may —
>
> 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 value upon proof of destruction. ***No credit or refund of taxes or penalties shall be allowed unless the <u>taxpayer</u> files in writing with the Commission or a claim for credit or refund within two (2) years after the payment of the tax or penalty***: Provided, however, That a return filed show in an overpayment shall be considered as a written claim for credit or refund. *(Emphasis Supplied)*
>
> xxx xxx xxx

I believe that petitioner's reliance on SEC. 130 (D)[4] is misplaced. This provision should not be read in isolation, but together with the other NIRC provisions specially, as in this case where what was omitted was the first part of the same provision. Hence, the tax incentive of refund or credit should therefore be interpreted to apply only to the taxpayer referred to in Section 130 (A) (2) as above-quoted, *i.e.,* the manufacturer or producer of the petroleum products.

The cases cited by petitioner in both its Petition for Review and its Memorandum, have already been reversed by both the CTA *En Banc* and the Highest Tribunal. Thus, in *Commissioner of Internal Revenue vs. Silkair (Singapore) PTE., LTD.,*[5] the CTA *En Banc* categorically ruled:

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[4] *Filing of Return and Payment of Excise Tax on Domestic Products. -- xxx*
(D) Credit for Excise Tax on Goods Actually Exported. -- When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: Provided, That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.
[5] *C.T.A. EB NO. 56, October 20, 2005. (C.T.A. CASE NO. 6217)*

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"xxx ***[S]ince the liability for the excise tax pursuant to Section 130 (A) (2) was placed upon Petron Corporation as the manufacturer of the petroleum products and it was shown that the excise taxes were paid by Petron Corporation xxx, any claim for refund of the excise taxes subject of this petition should only be made by Petron Corporation being the taxpayer***. This is in consonance with the rule on *strictissimi juris* with respect to tax exemptions. The respondent cannot be considered as the taxpayer because what was transferred to it was only the burden of the indirect tax (excise tax) on petroleum products. xxx

Furthermore, the Supreme Court reiterated in ***Contex Corporation vs. Hon. Commissioner of Internal Revenue***, (G.R. No. 151135, July 2, 2004), its ruling that in case of erroneously passed-on indirect tax, the proper party to claim the refund thereof is the taxpayer who is liable for the tax, thus:

> 'The point of contention here is whether or not the petitioner may claim a refund on the Input VAT erroneously passed on to it by its suppliers.
>
> While it is true that the petitioner should not have been liable for the VAT inadvertently passed on to it by its supplier since such is a zero-rated sale on the part of the supplier, the petitioner is not the proper party to claim such VAT refund.
>
> Section 4.100-2 of BIR's Revenue Regulations 7-95, as amended, or the "*Consolidated Value Added Tax Regulations*" provide:
>
>> "Sec. 4.100-2. Zero rated Sales. A zero-rated sale by a VAT registered person, which is a taxable transaction for VAT purposes, shall not result in any output tax. However, the input tax on his purchases of goods, properties or services related to such zero-rated sale shall be available as tax credit or refund in accordance with these regulations.
>>
>> The following sales by VAT-registered persons shall be subject to 0%:
>>
>> (a) Export Sales
>>
>> "Export Sales" shall mean . . .
>>
>> (b) Those considered export sales under Articles 23 and 77 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws, e.g. Republic Act No. 7227, otherwise known as the Bases Conversion and Development Act of 1992.
>>
>> (c) Sales to persons or entities whose exemption under special laws, e.g. R.A No. 7227 duly registered and accredited enterprises with Subic Bay Metropolitan Authority (SBMA) and Clark Development Authority (CDA), R.A. No. 7916, Philippine Economic Zone Authority (PEZA), or international agreements, e.g. Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc. to which the Philippines is a signatory effectively subject such sales to zero-rate."

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> Since the transaction is deemed a zero-rated sale, petitioner's supplier may claim an Input VAT credit with no corresponding Output VAT liability. Congruently, no Output VAT may be passed on to the petitioner.
>
> On the second issue, it may not be amiss to re-emphasize that the petitioner is registered as a NON-VAT taxpayer and thus, is exempt from VAT. As an exempt VAT taxpayer, it is not allowed any 'tax credit on VAT (input VAT) previously paid. In fine, even if we are to assume that exemption from the burden of VAT on petitioner's purchases did exist, petitioner is still not entitled to any tax credit or refund on the input VAT previously paid as petitioner is an exempt VAT taxpayer.
>
> Rather, it is the petitioner's suppliers who are the proper parties to claim the tax credit and accordingly refund the petitioner of the VAT erroneously passed on to the latter.'

> Although the above-mentioned case involves Value-Added Tax (VAT), the ruling is applicable in the case before Us considering that the excise tax on petroleum products is likewise an indirect tax. *A fortiori*, the same rule applies to excise taxes on petroleum products considering that the determination as to who is the **taxpayer** is much easier than in the value-added tax system. This is because in VAT, there is a system of offsetting the input and output VAT payments. In the Contex case, the Supreme Court ruled that the proper party who should claim the refund of VAT erroneously passed-on to therein petitioner is the 'petitioner's suppliers' referring to the taxpayers. In the case before Us, ***the taxpayer is unmistakably Petron Corporation***, hence, respondent Silkair (Singapore) Pte., Ltd. is not entitled to its claim for refund." *(Emphasis Supplied)*

The parallelism between the instant case and the above-quoted Silkair case is glaring. Also in this case, petitioner seeks the refund of alleged erroneously paid excise taxes. It is likewise clear from the facts of this case that the excise taxes were paid not by petitioner but by Petron to the Bureau of Internal Revenue ("BIR"), as the manufacturer of the goods.

Unquestionably, there is no erroneous payment of excise taxes which can be refunded to petitioner for the latter did not pay any excise taxes to the BIR. It is Petron who actually paid and remitted the excise taxes to the BIR and the taxpayer statutorily liable for the taxes, which can claim any refund.

The assertion of petitioner that it shouldered the payment of the excise tax when the same was passed on to it by Petron, deserves scant consideration. As already discussed above, it does not matter that an additional amount is billed as tax to the purchaser of the goods. The effect is still the same, the purchaser, petitioner in this case, did not pay the tax. It paid 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 acquire the goods and for nothing else. It is part of the purchase price. Being an indirect tax, the excise tax is the direct liability of the manufacturer, in this case Petron Corporation. Even though the impact of taxation fell on petitioner, it is still not the person statutorily liable to pay the tax.

Hence, notwithstanding the fact that petitioner is a registered ECOZONE enterprise and exempt from taxes, national or local, petitioner cannot file a claim for the refund of the excise tax billed to it, since, petitioner did not pay the tax *per se* but paid the purchase price to obtain the goods.

Moreover, the Certification issued by Petron Corporation dated June 6, 2000, to the effect that it paid the excise taxes on the petroleum products it delivered and sold to petitioner during the period September to December 1999 to the BIR and that it did not file any claim in any judicial or quasi-judicial agency because the excise taxes it paid were subsequently billed to petitioner, does not aid the latter's case. It only adds certitude to the Court's findings that it was Petron and not petitioner who paid the tax to the BIR. Thus, the taxpayer in Section 130 (D) refers not to petitioner, but to Petron, as the manufacturer, who paid and remitted the tax to the BIR and who is the proper party that can file a claim for any refund or credit of excise taxes paid.

Accordingly, in view of the foregoing considerations, I vote that the Petition for Review be denied for lack of merit.

LOVELL R. BAUTISTA
Associate Justice

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