REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

DIAGEO PHILIPPINES, INC., Petitioner,	**C.T.A. CASE NO. 7369**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUL 20 2006

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RESOLUTION

For resolution are:

1) Respondent's "Motion to Dismiss" filed on March 9, 2006; and

2) Petitioner's "Opposition [to Respondent's Motion to Dismiss dated 8 March 2006]" filed on April 12, 2006.

The Motion to Dismiss is anchored on the sole ground that petitioner, Diageo Philippines, Inc., has no legal personality to institute this judicial claim for refund of its alleged erroneously paid excise taxes on its purchases of raw alcohol used in the manufacture of finished alcohol and spirits for export. Respondent argues that, pursuant to Section 130(D) of the National Internal

125

Revenue Code of 1997, any claim for refund for excise taxes paid is available only to those persons who are legally bound to pay the same. Thus, considering that it was admitted by petitioner that it was its suppliers that paid for the excise taxes on the importation of the raw alcohol, petitioner now cannot claim to have the right to file this instant petition, citing the case of Dunlop Slazenger Philippines, Inc. vs. Commissioner of Internal Revenue, (CTA Case No. 6501, December 29, 2004), as jurisprudential basis.

On the other hand, petitioner opposes the above arguments, citing the cases of Manila Cordage Company vs. Commissioner of Internal Revenue, CTA Case No. 6032, March 5, 2002; and Commissioner of Internal Revenue vs. Court of Tax Appeals and Zippy Commercial Corporation, CA-GR Sp. No. 27349, March 26, 1996 as its bases. Petitioner submits that:

1. A close reading of Section 130 (D) of the NIRC of 1997 will patently show that the entity being referred to in the said provision as entitled to a tax refund or credit is the manufacturer-exporter;

2. The incentive to refund or credit of excise taxes under Section 130 (D) of the NIRC of 1997 applies to every exporter for as long as the following requirements are complied with: a) said goods are exported either in their original state or as ingredients or part of any manufactured goods or products; b) the exporter should submit proof of exportation; and c) the exporter should likewise submit proof of receipt of the corresponding foreign exchange payment. These requirements are similar to the pronouncement of the Honorable Court in the Manila Cordage case;

3. As expressed by the Honorable Court in the Zippy Commercial Corporation case, the legislative history of Section 130 (D) shows that the refund or credit of excise taxes paid on locally produced and manufactured goods which were actually exported is a form of incentive given to exporters. Hence, it is the exporters who are rightfully

126

entitled to claim for the refund or credit of the excise taxes paid on exported goods;

4. It was further ruled in the Zippy Commercial Corporation case that under Section 130(D), any and all excise taxes paid without distinction as to who paid it shall be credited or refunded. The excise taxes paid attaches to the goods or products, regardless of who paid them as long as the above-enumerated requisites for entitlement to a refund or credit are complied with; and

5. The cases cited in Dunlop Slanzenger Philippines, Inc. vs. Commissioner of Internal Revenue, particularly Cebu Portland Cement Co., Inc. vs. Collector of Internal Revenue, Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, and Contex Corporation vs. Commissioner of Internal Revenue, are not applicable to the instant Petition because they are not in all fours in fact and in principle.

After a careful consideration of the laws and jurisprudence on the matter, and the arguments raised by both parties, We grant respondent's Motion to Dismiss.

Section 130 (D) of the National Internal Revenue Code of 1997 provides that;

> **"Sec. 130. Filing of Return and Payment of Excise Tax on Domestic Products. –**
>
> xxx xxx 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 permit: 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."

127

In their Joint Stipulation of Facts and Issues, the parties stipulated that petitioner is a manufacturer and exporter of locally finished alcohol and spirits. Petitioner likewise admitted that it uses raw alcohol purchased from its importer-supplier as raw material in its manufacture of finished alcohol and spirits products. However, before a manufacturer/producer may be entitled to its claim for refund of any excise tax paid, it must necessarily follow that excise taxes had actually been paid on its purchase of raw materials.

In the case at bench, it must be emphasized that although an excise tax, which is an indirect tax, can be passed-on to the purchaser of goods, the liability however, for the indirect tax still remains with the manufacturer or seller, which in this case is petitioner's supplier of raw alcohol. 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. ***(Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, 10 SCRA 1056, G.R. No. 19707, August 17, 1967***). The manufacturer or seller has the option of whether to shift the burden of the tax to the purchaser or not. However, when shifted, the amount added by the manufacturer or seller then becomes only a part of the price, therefore, the purchaser does not really pay the tax per se, but only the price of the commodity.

When herein petitioner purchased the raw alcohol from its suppliers, which had admittedly paid for the excise taxes on their importation of raw

128

alcohol before selling the same to petitioner, the alleged "excise taxes" already formed part of the purchase price, though, the "tax" may have been separately "billed" in the sales invoices issued. Moreover, to allow refund to petitioner would run counter to the rule on strictissimi juris with respect to tax exemptions. Petitioner herein cannot be considered as one with the legal personality to claim the refund of excise taxes because of the fact that what was transferred to it was only the burden of the indirect tax and not the tax itself.

Petitioner, not being the real party in interest to file the present claim for refund, the Court is left with no recourse, but to grant the Motion to Dismiss.

Wherefore, premises considered, the Petition for Review is hereby **DISMISSED.**

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

129