REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ECCO ASIA NACAP NEDERLAND BV (JOINT VENTURE), Petitioner,	**C.T.A. EB NO. 579** **(C.T.A. Case No. 6595)**
	Members:
- versus -	**ACOSTA,** *PJ* **CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 29 2011 1:30 p.m.

x- -x

DECISION

Fabon-Victorino, J.:

This is a Petition for Review under Rule 43 of the Rules of Court filed by petitioner Ecco Asia Nacap Nederland BV (Joint Venture) on January 14, 2010, seeking to set aside the Decision[1] of the Court in Division dated September 08, 2009, denying for

[1] En banc docket, pp. 39-46.

lack of merit its claim for refund of alleged erroneously paid value-added tax (VAT) for the period covering the fourth quarter of taxable year 2000 to the fourth quarter of taxable year 2001, as well as the Resolution[2] dated December 08, 2009, denying its Motion for Reconsideration for the same reason.

The antecedents stated in the assailed Decision of the Court in Division are undisputed:

The Parties

> Petitioner Ecco Asia Nacap Nederland BV (Joint Venture) is an unregistered joint venture, with business address at the 2nd floor, Hatchasia Global City Center, 31st corner 2nd Avenue, E-Square IT Park, Fort Bonifacio Global City, Taguig, Metro Manila. It is registered with the Bureau of Internal Revenue (BIR) as a value-added taxpayer.[3]
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

The Facts

---

[2] En banc docket, pp. 48-50.
[3] Pars. 1 and 2, Joint Stipulation of Facts and Issues, docket, p. 80.

In December 1999, being engaged in the general contractor business, petitioner was awarded the "Gas Pipeline Facility Project" from the take-off point at Tabangao, Batangas City to the receiving point at 1200 MW Ilijan Natural Gas Combined Cycle Power Plant by the National Power Corporation (NPC). Among the responsibilities of petitioner under the contract is to furnish the supplying, manufacturing, testing and commissioning needs of the project.[4]

Petitioner alleges that in compliance with the requirements of its contract, it imported various capital goods during the fourth quarter of 2000, for which it paid ten percent (10%) VAT in the amount of P5,738,993.00, even though the named importer/consignee was NPC as shown in petitioner's Import Entry and Internal Revenue Declarations (IEIRDs).[5] Since petitioner claims that it was the one who paid the VAT on the importation allegedly made in the name of NPC, it asserts that this payment of P5,738,993.00 is its input VAT.[6]

Similarly, for the taxable period from the first to fourth quarters of 2001, petitioner purportedly imported capital goods in the name of NPC as importer/consignee and again paid the VAT due on said importation in the amount of P9,806,300.39.[7]

Petitioner filed its Quarterly and Monthly VAT Returns for the fourth quarter of 2000 and for the first to fourth quarters of taxable year 2001.[8]

On January 22, 2003, petitioner filed its applications for the issuance of tax credit certificate or for the refund of its unutilized input VAT for the period covering the fourth

[4] Exhibit "P".
[5] Exhibits "O-1-1", "O-2-1", "O-3-1", and "O-7-1".
[6] Exhibit "A".
[7] Exhibits "O-4-1", "O-5-1", "O-6-1", "O-8-1", "O-9-1", "O-10-1", "O-11-1", "O-12-1", "O-13-1", "O-14-1", "O-15-1", "O-16-1", "O-17-1", "O-20-1", "O-21-1", and "O-22-1".
[8] Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", and "W".

quarter of 2000 to the fourth quarter of 2001, based on its alleged VAT payments on importation of capital goods.[9]

Unacted upon by respondent, petitioner elevated the matter to this Court via Petition for Review on January 27, 2003.

Respondent raised the following Special and Affirmative Defenses, in his Answer filed on March 17, 2003:

> "5. The Petitioner's claim for tax refund/credit is still undergoing administrative routinary investigation/ examination by the Respondent's Bureau;
>
> 6. The alleged tax sought to be refunded was collected pursuant to law and pertinent implementing rules and regulations; hence, the same is not refundable;
>
> 7. Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not ipso facto warrant the refund/credit;
>
> 8. Claims for tax refund or credit are construed in *strictissimi juris* against the taxpayer as they partake the nature of an exemption from tax, and it is incumbent upon the Petitioner to prove that the same is fatal to its claim for refund/credit;
>
> 9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the National Internal Revenue Code of 1997."

xxx xxx xxx

---

[9] Par. 4, Joint Stipulation of Facts and Issues, docket, pp. 80-81.

On September 10, 2008, the case was submitted for decision, taking into consideration petitioner's Memorandum filed on August 19, 2008, *sans* respondent Memorandum.

The parties jointly stipulated the following issues for this Court's resolution:

> "1. Whether or not the ten percent (10%) VAT was erroneously paid by petitioner on importations by the National Power Corporation in relation to its Gas Pipeline Facility Project.
>
> 2. Whether or not the ten percent (10%) VAT erroneously paid on importation of capital goods claimed by petitioner was applied against its output VAT liability for fourth quarter of taxable year 2000 and the first, second, third and fourth quarters of taxable year 2001, respectively.
>
> 3. Whether or not the claim for issuance of tax credit certificate from input VAT paid on importation for the fourth quarter of taxable year 2000 and the first, second, third and fourth quarters of taxable year 2001, filed by the petitioner with the Bureau of Internal Revenue was filed within the two-year period provided by law.
>
> 4. Whether or not this Petition for Review filed by the petitioner with this Honorable Court was filed within the two-year period provided by law.
>
> 5. Whether or not the unutilized input VAT paid on importation of capital goods for the fourth quarter of taxable year 2000 and the first, second, third, and fourth quarters of taxable year 2001 (sic) sought to be refunded are fully substantiated.

> 6. Whether or not the input VAT sought to be refunded herein was applied against any output VAT liability of the petitioner for the succeeding taxable quarters after the taxable year 2001."

On September 8, 2009, the Court in Division denied the Petition for Review, for lack of merit. Exactly three months thereafter or on December 8, 2009, the same Court denied petitioner's Motion for Reconsideration, hence, this appeal before the Court *En Banc*.

Despite the opportunity granted, only petitioner filed a memorandum on April 26, 2010.

In the Resolution promulgated on May 6, 2010, the instant petition was deemed submitted for decision citing the following issues for the resolution of the Court *En Banc*:

> I. THE APPLICATION OF THE CASE OF SILKAIR (SINGAPORE) PTE., LTD. vs. COMMISSIONER OF INTERNAL REVENUE (Silkair case) IS MISPLACED CONSIDERING THE SUBSTANTIAL DISTINCTIONS BETWEEN THIS CASE AND THE Silkair Case.

II. THE RULING THAT PETITIONER IS NOT THE PROPER PARTY TO CLAIM THE REFUND, PURSUANT TO THE Silkair Case, DEPARTS FROM THE RULES OF COURT, TAX CODE AND JURISPRUDENCE.

III. PETITIONER'S RIGHT TO CLAIM A REFUND FALLS SQUARELY WITHIN SECTION 229 OF THE TAX CODE GRANTING THE RECOVERY OF TAX ERRONEOUSLY OR ILLEGALLY COLLECTED.

IV. BOTH THE SUPREME COURT AND THE HONORABLE COURT HAS UPHELD THE APPLICABILITY OF QUASI-CONTRACTS IN TAX CASES.

V. THE FIRST DIVISION'S RULING WOULD LEAVE PETITIONER WITHOUT A REMEDY.

Ruling of the Court En Banc

A judicious examination of the arguments set forth by the petitioner in its Petition for Review readily shows that the grounds relied upon as well as the matters raised therein are merely a replication of its arguments before the Court in Division, all of which had already been exhaustively determined and discussed in the assailed Decision and Resolution respectively promulgated on September 08, 2009 and December 08, 2009.

Be that as it may and if only to put petitioner's mind to rest, let it be repeated that **petitioner is not the proper party to claim the refund**, in view of the admitted fact the subject tax was assessed on the NPC being the importer/consignee on record.

As correctly pointed out by the Court in Division, the importations were made in the name of the NPC and as the importer/consignee of the imported materials it is the statutory taxpayer or the party on whom the tax is imposed by law although it may shift the burden of paying the said tax to another. For easy reference, the relevant portion of the Decision is hereby reproduced, thus:

> "A scrutiny of the subject contract reveals that it is indeed petitioner's obligation, among others, to provide all labor, goods, materials, equipment, and temporary works required for the design, execution, testing and commissioning of the project.[10] But as found in the records, specifically, the IEIRDs,[11] the importations were made in the name of NPC as the importer/consignee; while the taxes due on the said importations were paid by petitioner as shown in the manager's checks[12] issued payable to the order of the "Bureau of Customs FAO NPC" and the Application to Purchase Managers' Checks.[13] Even Mr. Romeo Ballesteros,

[10] Exhibit "P-1".
[11] Exhibits "O-1-1", "O-2-1", "O-3-1", "O-4-1", "O-5-1", "O-6-1", "O-7-1", "O-8-1", "O-9-1", "O-10-1", "O-11-1", "O-12-1", "O-13-1", "O-14-1", "O-15-1", "O-16-1", "O-17-1", "O-20-1", "O-21-1", and "O-22-1".
[12] Exhibits "T" to "T-11", docket, pp. 548-551.
[13] Exhibits "T-12" to "T-23", docket, pp. 552-557.

petitioner's project accountant, testified during the November 17, 2003 and October 5, 2004 hearings that the importation of the materials was made in the name of NPC, since NPC is the owner of the imported materials and that all the said materials formed part of the project.[14]

This brings Us then to the issue of who is the proper party to claim the refund, considering that the tax thereon was assessed on NPC being the importer/consignee on record.

The case of **Silkair (Singapore) Pte. Ltd. vs. Commissioner of Internal Revenue** is in point, where the Supreme Court defined the term "proper party" in a refund claim, in this manner:

> "(t)his Court has categorically ruled that **'the proper party to question, or seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another'**. . . .
>
> xxx xxx xxx
>
> The person entitled to claim a tax refund is the statutory taxpayer. Section 22(N) of the NIRC defines a taxpayer as 'any person subject to tax'. In *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*, the Court ruled that:
>
> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer'. The terms 'liable for tax' and 'subject to tax' both connote a legal obligation or duty to pay a tax.

---
[14] TSN dated October 5, 2004, pages 9-10 and 38.

> xxx. Petitioner is neither a 'person liable for tax' nor 'a person subject to tax'. There is also no legal duty on the part of petitioner to pay the excise tax; hence, petitioner cannot be considered the taxpayer." (*Emphasis supplied*)
>
> In the instant case, the tax was assessed on NPC and that petitioner merely paid for it in its behalf as stated in the manager's checks. [15] The proper party therefore to claim the refund is NPC.
>
> It is NPC which is granted the privilege of tax exemption by virtue of Republic Act No. 6395 (The Revised NPC Charter), as amended by P.D. Nos. 380 and 938. Petitioner cannot invoke NPC's tax exemption privileges for it is exclusively and legally granted to NPC by the State."

Petitioner claims that the principle laid down in the Silkair case should not have been applied in the instant case due to substantial distinction between the two cases. It argues that in the instant case, the NPC is not the "person liable for tax" while Petron in the *Silkair case* was the entity mandated to pay excise tax under the Tax Code. The NPC has been granted a tax exemption under Republic Act No. 6395[16], as amended, which privilege was not accorded to Petron. In the instant case, there was no person on whom the tax was imposed by law since an exempt entity, such as the NPC, is not subject to VAT.

---

[15] Exhibits "T" to "T-11", docket, pp. 548-551.
[16] The Revised NPC Charter.

The Court *En Banc* is not convinced.

As discussed by the Court in Division in its Resolution of December 08, 2009, the NPC was the named importer against whom the tax was assessed and the one with the obligation to pay the same. The only difference is that the NPC, under its Revised Charter as amended by Presidential Decree Nos. 380 and 938, had been granted a tax exemption. Thus the Court in Division ruled:

> "It bears stressing that the circumstances of the instant case are peculiar since NPC was the one named in the Import Entry and Internal Revenue Declarations (IEIRDs) as the importer/consignee although petitioner was the one who paid the taxes due on the said importations, as shown in the manager's checks issued payable to the order of the "Bureau of Customs FAO NPC" and the Application to Purchase Manager's Checks".[17] In order to determine whether petitioner is the proper party to claim refund, this Court sought counsel in the Silkair case which categorically defined the term "proper party" in a refund claim. In the Silkair case, the High Tribunal identified the "proper party' in a refund claim as the statutory taxpayer, defined under Section 22(N) of the National Internal Revenue Code as "any person subject to tax"[18]. xxx xxx xxx
>
> Let this Court further point out that the importer against whom the tax was assessed is the one with the legal obligation

---

[17] Exhibits "T" to "T-11" and "T-12" to "T-23", docket, pp.548-557.
[18] G.R. Nos. 171383 and 172379, November 14, 2008.

> to pay the tax, only that in this case, the named importer (NPC) is granted the privilege of tax exemption as provided for under Republic Act No. 6395 (The Revised NPC Charter), as amended by Presidential Decree Nos. 380 and 938; and that petitioner, despite such exemption, paid the tax on behalf of NPC. Thus, NPC, being the importer/consignee and against whom the tax was assessed, is deemed to be the statutory taxpayer and not petitioner."

Indubitably, the proper party to question, or claim a refund or tax credit is the importer/consignee of the imported materials, which in the instant case is the NPC being the company on which the tax was assessed.

While it may be true that petitioner was the one who paid the VAT on the imported materials, it should be noted that **petitioner paid the VAT for and in behalf of the NPC.** And the fact that the VAT on the imported materials were paid, albeit by petitioner, gives the importer-NPC, which is a tax exempt entity, the right to claim for a refund of erroneously paid tax.

Petitioner's claim that it is the proper party to claim for a refund since it was the one that erroneously paid the VAT simply cannot be countenanced. There is nothing in the record that shows that petitioner was a party to the importation. In fact, the IEIRDs were all in the name of the NPC as the importer.

Moreover, the check payments for the assessed VAT on the importations were all for the account of the NPC.

If petitioner was indeed the importer of the imported materials and the one that paid the VAT as it claims to be, then VAT payments were **not** erroneously made. Petitioner, as the importer, was the statutory taxpayer who had the legal obligation to pay the VAT due. And since the payments were valid, they are not proper subject of refund. As observed by the Court in Division it is the NPC that is tax exempt and by virtue of Republic Act 6395, as amended, and not petitioner. A fortiori, petitioner cannot legally avail of the same privilege exclusively and legally granted unto the NPC. The petition is obviously a sly approach to get back what is legally due the Government.

Petitioner's reliance on Article 2142 in relation to Article 2154, both of the New Civil Code is misplaced

Petitioner insists that it has the right to demand from respondent the return of money it paid for taxes that were in the first place not due. The fact that the Government received the money which it had no right to collect gives rise to a quasi contract defined under Article 2142[19] of the New Civil Code and under Article 2154 of the same Civil Code,[20] the Government is obligated to return the amount it erroneously paid.

Let it be stressed to the point of being repetitive that under the obtaining circumstances, petitioner is not the statutory taxpayer and the person entitled to claim a tax refund. As earlier stated, the statutory taxpayer in the case at bar is the NPC. It is only the NPC that can validly claim for a refund or tax credit and not petitioner.

Be that as it may, petitioner has the option to collect the alleged VAT payments it made from the NPC based on the principle of *solutio indebiti*, principally governed by Articles 2142[21] and 2154[22] of the New Civil Code. The NPC, being the proper party to claim the refund or the issuance of tax credit, has the obligation to reimburse petitioner of any amount it may recover so as not to be accused of unjust enrichment. It may be a longer process but it is the proper remedy.

---

[19] Article 2142. Certain lawful , voluntary and unilateral acts give rise to the juridical relation of quasi contract to the end that no one shall be unjustly enriched or benefited at the expense of another.
[20] Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.
[21] *Supra.*
[22] *Supra.*

On a final note, tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken.[23] Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

WHEREFORE, the Court E*n Banc* finds no reversible error to warrant the reversal of the assailed Decision promulgated on September 8, 2009 and the Resolution dated December 8, 2009, respectively.

Accordingly, the instant Petition for Review is hereby **DENIED** and the assailed Decision and Resolution are hereby **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

[23] Commissioner of Internal Revenue v. Solidbank Corporation, 462 Phil. 96, 131-132 [2003].

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice