**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SILKAIR (SINGAPORE) PTE, LTD.,**
Petitioner,

- versus -

C.T.A. CASE NO. 6130

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
JUL 28 2003

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# DECISION

This is a judicial appeal from the inaction of the respondent on petitioner's claim for refund in the amount of P5,007,043.39 allegedly representing petitioner's erroneously paid excise tax for its purchase of jet fuel from Petron Corporation for the period commencing July 1, 1998 to December 31, 1998.

Based on the records of the case, the antecedent facts are as follows:

Petitioner is a foreign corporation organized under the laws of Singapore with a Philippine Representative Office, with address at Suite 302, Cebu Holdings Center, Cardinal Rosales Avenue, Cebu City. It is engaged in business as an on-line international carrier operating the Cebu-Singapore-Cebu and Davao-Singapore-Davao routes *(paragraphs 1 and 2, Joint Stipulation of Facts)*.

From July 1, 1998 to December 31, 1998 petitioner purchased aviation fuel from Petron Corporation for use on its international flights and paid the excise taxes thereon in the sum of P5,007,043.39. The payment was advanced by Singapore Airlines, Ltd. to Petron Corporation on behalf of the petitioner.

Believing that it erroneously paid the excise taxes, on October 20, 1999, petitioner filed an administrative claim for refund in the amount of P5,007,043.39 representing excise taxes paid on its purchase of jet fuel from Petron Corporation.

On June 30, 2000, petitioner filed a Petition for Review with this court to toll the running of the two-year prescriptive period.

Summons was issued to respondent and in his Answer filed on August 9, 2000, he raised the following as Special and Affirmative Defenses, thus:

> "5. Section 132 of the Tax Code, as amended is the main thrust of Petitioner's claim for refund. However, said section lays down certain conditions to be satisfied first before a taxpayer may be entitled to tax exemption. Section 132, as amended, now Section 135, provides that:
>
> > "Section 135. **Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.** - Petroleum products sold to the following are exempt from excise tax:
> >
> > a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines. Provided, that the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
> >
> > b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumptions. Provided, however, that the

country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine Carriers, entities or agencies; and

c) Entities which are by law exempt from direct and indirect taxes."

6. Assuming without admitting that a foreign law is applicable in the case at bar, the same must be proven as a fact.

7. The alleged claim for refund is subject to administrative investigation/examination by the respondent.

8. Petitioner failed to show that the taxes subject of the case at bar were erroneously or illegally collected.

9. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

10. In an action for tax credit/refund, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

11. It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 204(c) and 229 of the National Internal Revenue Code, amended.

12. It is well-settled in our jurisdiction that when tax exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well founded doubt is fatal to the claim ***(Farrington vs. Tennessee & Country Shelby, 95 vs. 679, 696; Oct. 22, 1975, SCRA 351).*** Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA121).***"

After trial on the merits, the case was submitted for decision on March 11, 2003.

The parties jointly stipulated the issues to be resolved in this case, to wit:

1. Whether or not petitioner is exempt from the payment of excise tax on its purchase of jet fuel as an on-line international carrier as provided under Sec. 135 of the Tax Code.

2. Whether or not the jet fuel purchased by petitioner for the period July 1 to December 31, 1998 was used in its international flights.

3. Whether or not the laws of Singapore exempts from excise taxes petroleum products sold to Philippine carriers.

4. Whether or not petitioner is entitled to a tax credit/refund in the amount of P5,007,043.39 representing excise taxes paid on its purchases of jet fuel from Petron Corporation for the period July 1 to December 31, 1998.

Petitioner maintains that as an online international carrier, it is exempt from the payment of excise tax for the purchases of jet fuel from Petron Corporation. It finds legal basis on the exemption provided for under Section 135 (*formerly Section 132*) of the Tax Code. Petitioner supported its claim for refund by presenting the following documents:

| DOCUMENT | EXHIBIT |
|---|---|
| 1) Regular Operating Permit (Foreign Air Carrier's Permit) issued by the Civil Aeronautics Board to Silkair (Singapore) Pte. Ltd. | A |
| 2) Aviation Supply Agreement executed between Petron Corporation and Silkair (Singapore) Pte. Ltd. for the period of April 1, 1997 until March 31, 1999 | B |
| 3) BIR Ruling No. 339-92 | C |
| 4) Administrative Claim filed by the Petitioner with the Bureau of Internal Revenue (BIR) on October 20, 1999 asking for a refund of excise taxes paid for the period of July 1, 1998 to December 31, 1998 | D |
| 5) A letter dated June 16, 1992 addressed to Mr. Go of Petron Corporation informing him that Singapore Airlines has ceased operations in Cebu and its subsidiary airline, Silkair (Singapore) Pte. Ltd. has taken over its Singapore/ Cebu/Singapore route | E |
| 6) Authority To Accept Payment For Excise Taxes from Petron | F, G & H |
| 7) Excise Tax Returns | I, J, K, L, M & N |

| | |
|---|---|
| 8) Certification from Petron stating that it paid excise taxes in the amount of P5,007,043.39 to the BIR | O |
| 9) Summary of JET-A-1 Deliveries to Singapore Airlines Ltd. | P, P-1 to P-6 |
| 10) Aviation Delivery Receipts/Invoices and Cash Receipts | Q, Q-1 to Q-253 |
| 11) Reports of the independent CPA | R & S |
| 12) Certified True Copy of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore issued by the Department of Foreign Affairs | T |
| 13) An operating permit issued by the Civil Aeronautics Board (CAB) dated March 2, 1998 and addressed to Mr. Tan Han Soo of Silkair (Singapore) Pte. Ltd. | U |
| 14) An operating permit issued by the CAB dated September 3, 1998 and addressed to Mr. Tan Han Soo | V |

According to petitioner, there is no doubt that it is an international carrier. In BIR Ruling No. 339-92, respondent ruled that the Cebu link of the Singapore-Cebu-Singapore route is an international flight by an international carrier. The Civil Aeronautics Board granted it permit to engage as an international carrier here in the Philippines and such permit has not yet been revoked. In fact, all passengers originating from Singapore are either bound for Cebu or Davao and vice-versa.

In addition, petitioner claims that the laws of Singapore exempt from excise taxes petroleum products sold to Philippine carriers. The exemption is based on the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore executed on July 11, 1974.

On the contrary, respondent argues that petitioner is not entitled to the claim for refund. While petitioner is an international carrier that uses or consumes petroleum products outside the Philippines, it did not manufacture, produce nor sell such petroleum products. According to respondent, excise tax on petroleum products is the direct liability of the manufacturer or producer and when added to the cost of the goods sold to the buyer, it is no longer a tax but part of the price. Consequently, petitioner is not the entity directly liable to pay the tax; hence, it is not the proper party who should claim the refund of the excise tax.

Moreover, respondent claims that petitioner anchors its claim on the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore, particularly Article 4(2) thereof, which exempts from taxation the purchases of jet fuel of its international carriers as designated by the contracting parties but petitioner failed to present clear and unequivocal proof that it is the designated airline to fall within the ambit of tax exemption.

We found the petition for review without merit.

While the court is aware that there are previous cases involving the same parties and subject matter, to enumerate:

| CTA CASE NO. | TITLE | DATE PROMULGATED | ENTRY OF JUDGMENT | PERIOD INVOLVED |
|---|---|---|---|---|
| 5891 | Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue | January 17, 2002 | February 14, 2002 | July - Dec 1997 |
| 5710 | Silkair (Singapore) PTE. LTD., vs. Commissioner of Internal Revenue | Mach 8, 2001 | July 5, 2001 | Jan - Jun 1997 |
| 5655 | Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue | May 24, 2000 | June 14, 2000 | Jul - Dec 1996 |
| 5430 | Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue | August 20, 1999 | November 4, 1999 | Oct '94 - Apr '95 |
| 5382 | Silkair (Singapore) PTE. LTD., vs. The Commissioner of Internal Revenue | June 7, 1999 | June 25, 1999 | Mar - Sep 1994 |

it should be noted that the periods involved in the above cases were from March 1994 to December 1997. In all these cases, the court granted petitioner's claim for refund pursuant to Section 132 of the 1995 Tax Code which provides:

> "**SEC. 132. *Petroleum products sold to foreign international carriers.*** - Petroleum products sold to an international carrier for its use and consumption outside of the Philippines shall not be subject to excise taxes, *Provided:* That the country of said carrier exempts from similar taxes petroleum products sold to Philippine carriers.

However, in the present case, the foregoing provision no longer applies. The period covered in the present claim is from July 1, 1998 to December 31, 1998, that is, after the effectivity of the 1997 Tax Code. Consequently, the pertinent provision is Section 135 of the present Code. For easy reference, we quote:

> "**SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.*** – Petroleum products sold to the following are exempt from excise tax:
>
> (a) International carriers of Philippine or foreign registry on their use or consumption outside the Philippines: *Provided,* That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner;
>
> (b) Exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption: *Provided, however,* That the country of said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies; and
>
> (c) Entities which are by law exempt from direct and indirect taxes. (Underlining provided)

From the above provision, it is clear that there are several requirements in order that the petroleum products sold to an international air carrier will be exempted from the payment of excise taxes. These requirements are:

a. That the petroleum products sold to international carriers of Philippine or foreign registry shall be for their use or consumption outside the Philippines;

b. That the petroleum products sold to these international carriers shall be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner; and

c. That the country of said foreign international carrier exempts from similar taxes petroleum products sold to Philippine carriers;

To be entitled to the exemption for the payment of the excise tax, the old Tax Code mentioned only one condition, that is, that the country of said carrier exempts from similar taxes petroleum products sold to Philippine carriers. However, the present Code provided two other requirements.

We shall discuss petitioner's compliance thereof.

As regards the first requirement, the court is convinced that indeed, petitioner, as an online international carrier, purchased from and paid excise tax to Petron Corporation in its international flights. Petitioner presented evidence such as Aviation Delivery Receipts/Invoices to show that it purchased jet fuel from Petron and paid the excise tax, *(Exhibits Q-2 to Q-14, Q-16 to Q-22, Q-24 to Q-28, Q-30 to Q-33, Q-35 to Q-41, Q-43 to Q-50, Q-52 to Q-64, Q-66 to Q-74, Q-76 to Q-81, Q-83 to Q-86, Q-88 to Q-92, Q-94 to Q-102, Q-104 to Q-106, Q-108 to Q-125, Q-127 to Q-130, Q-132 to Q-150, Q-152 to Q-159, Q-161 to Q-170, Q-172 to Q-179, Q-181 to Q-200, Q-202 to Q-209, Q-211 to Q-232, Q-234 to Q-253)*. Also, as an online international carrier it used or consumed the jet fuels for its international flights.

And, as to whether the country of said foreign international carrier exempts from similar taxes petroleum products sold to Philippine carriers, the court rules in the affirmative, thus:

> "xxx the Court finds that Petitioner had substantially complied with the reciprocity clause mentioned in Section 132 (now 135) of the Tax Code when it presented in evidence the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore executed on July 11, 1974 (Exh. J) specifically Art. 4(2) of the same (Exh. J-1), quoted below, xxx:
>
> "AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE
>
> The Government of the Republic of the Philippines and the Government of the Republic of Singapore, hereinafter described as the Contracting Parties,
>
> Being parties to the Convention on International Civil Aviation and the International Air Services Transit Agreement both opened for signature at Chicago on the 7th day of December, 1944, and
>
> Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories,
>
> Hereby agree as follows:
>
> x x x
>
> **ARTICLE 4**
>
> x x x
>
> 2. Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first

> Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control."
>
> x x x
>
> Moreover, the aforequoted Air Transport Agreement between the Philippines and Singapore is not a mere moral obligation but creates a legally binding obligation between the Philippines and Singapore. It forms part of the laws of the countries involved in accordance with most fundamental rule in international law, known as *pacta sunt servanda* – international agreements must be performed in good faith. Hence, both parties must fulfill the obligations undertaken." *(CTA Case No. 5655, supra)*

Unfortunately, however, as to the second requirement, petitioner failed to prove that the said jet fuel delivered by Petron came from the latter's bonded storage tank. No evidence was presented by petitioner to prove that fact and the court cannot conclude otherwise without clear and convincing proof. Petitioner is duty bound to present available, clear and convincing evidence to show that its case would surely fall within the exemption provided for by law. Such defect is fatal to its claim. Well settled is the principle that taxation is the rule and exemption is the exception. "A claim for refund is in the nature of a claim for exemption, hence should be construed in strictissimi juris against the taxpayer" (*Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332*).

In the present case, the court found no reason to deviate therefrom. Thus, petitioner having failed to comply with one of the requirements set forth above, we are compelled to deny the claim for refund.

**In the light of the foregoing**, petitioner's claim for refund in the amount of P5,007,043.39 allegedly representing erroneously paid excise tax for the period July 1, 1998 to December 31, 1998 is hereby **DENIED** for lack of merit.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Judge

**WE CONCUR:**

Dissenting
**ERNESTO D. ACOSTA**
Presiding Judge

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Judge

## CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

**ERNESTO D. ACOSTA**
Presiding Judge

Republic of the Philippines
**COURT OF TAX APPEALS**
**Quezon City**

**SILKAIR (SINGAPORE) PTE, LTD.,**
Petitioner,

- versus -

**C.T.A. CASE NO 6130**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**Promulgated:**

JUL 28 2003

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## DISSENTING OPINION

With due respect to the opinion of the majority, I beg to disagree with their opinion that because Petitioner failed to prove that the fuel delivered by Petron came from the latter's bonded storage tank, the claim should be denied.

Oil companies were maintaining bonded storage tank as manufacturer, pursuant to Section 158 of the National Internal Revenue Code. In other words, said requirement is addressed to the oil company and it will be unfair to require it from the International Airline.

Granting for purposes of argument, that it is a <u>must</u> requirement under Section 135 (A), however, the tax exemption can still be justified under Section 135 (b), *"exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption"*. The condition set by this provision is that the country of the said foreign international carrier or exempt entities or agencies exempts from similar taxes petroleum products sold to Philippine carriers, entities or agencies. There is no requirement that the fuel sold should come from a bonded storage tank.

The Philippines has an existing Air Transport Agreement with the Republic of Singapore, cited in the body of the decision, which provides under Article 4 as follows:

X X X

**ARTICLE 4**

X X X

> "2. Fuel, lubricants, spare parts, regular equipment and aircraft stores introduced into, or taken on board aircraft in the territory of one Contracting Party by, or on behalf of, a designated airline of the other Contracting Party and intended solely for use in the operation of the agreed services shall, with the exception of charges corresponding to the service performed, be exempt from the same customs duties, inspection fees and other duties or taxes imposed in the territory of the first Contracting Party, even when these supplies are to be used on the parts of the journey performed over the territory of the Contracting Party in which they are introduced into or taken on board. The materials referred to above may be required to be kept under customs supervision and control."

This agreement clearly provides the tax exemption of fuel and lubricants taken on board aircraft in the territory of one contracting party or on behalf of a designated airline of the other contracting party. This also shows the reciprocal enjoyment of the privilege of the designated airline of the contracting parties. This Air Transport Agreement clearly satisfies the requirement under Section 135 (b).

As held by this Court in a previous case involving the same parties, CTA 5655 (cited also in the decision). I quote:

> "Moreover, the aforequoted Air Transport Agreement between the Philippines and Singapore is not a mere moral obligation but create a legally binding obligation between the Philippines and Singapore. It forms part of the laws of the countries involved in accordance with most fundamental rule in international law, known as *pacta sunt servanda* – international agreements must be performed in good faith. Hence, both parties must fulfill the obligations undertaken." (CTA Case No. 5655, supra)"

The denial of this claim based on the ground stated by the majority opinion, is a clear disregard of this international bilateral agreement and will certainly have repercussion on our own Airline based on the reciprocity arrangement.

**ERNESTO D. ACOSTA**
**Presiding Judge**