

## THIRD DIVISION

[ G.R. No. 186223, October 01, 2014 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
PHILIPPINE ASSOCIATED SMELTING AND REFINING  
CORPORATION, RESPONDENT.**

### RESOLUTION

**REYES, J.:**

The instant petition filed under Rule 45 of the Revised Rules of Court seeks to reverse and set aside the Court of Tax Appeals (CTA) En Bane Decision<sup>[1]</sup> dated November 12, 2008 in CTA E.B. Case No. 351 (CTA Case No. 7565) entitled "*Philippine Associated Smelting and Refining Corporation v. The Honorable Commissioner of Internal Revenue*" which ruled that respondent is a PEZA-registered enterprise and enjoys tax exemption privilege; hence, it is exempt from paying the excise tax on petroleum products in issue and entitled to seek a refund thereof. The Resolution<sup>[2]</sup> dated January 30, 2009 denied the motion for reconsideration filed by the Commissioner of Internal Revenue (petitioner).

The respondent Philippine Associated Smelting and Refining Corporation (PASAR) is a domestic corporation engaged in the business of processing, smelting, refining and exporting refined copper cathodes and other copper products, and a registered Zone Export Enterprise with the Export Processing Zone Authority (EPZA).<sup>[3]</sup> PASAR uses petroleum products for its manufacturing and other processes, and purchases it from local distributors, which import the same and pay the corresponding excise taxes. The excise taxes paid are then passed on by the local distributors to its purchasers. In this particular case, Petron passed on to PASAR the excise taxes it paid on the petroleum products bought by the latter during the period of January 2005 to October 2005, totalling eleven million six hundred eighty-seven thousand four hundred sixty-seven 62/100 (P11,687,467.62).

In December 2006, PASAR filed a claim for refund and/or tax credit with the Office of the Regional Director of Region XIV, which denied the same in a letter dated January 3, 2007.<sup>[4]</sup>

PASAR then filed a petition for review with the Court of Tax Appeals (CTA) Second Division, which was contested by the petitioner. The petitioner also filed a motion to preliminarily resolve whether PASAR is the proper party to ask for a refund. Thereafter, the parties agreed to the following stipulation of issues:

1. Whether or not petroleum products purchased from Petron and delivered to PASAR to be used in its operation in LIDE are exempt from excise taxes under Section 17 of P.D. No. 66 and thus entitled to a refund or issuance of a tax credit certificate.

2. Whether or not PASAR is the proper party to claim for refund or issuance of tax credit certificate for excise taxes paid.
3. Whether or not the claim for tax credit/refund is properly substantiated by receipts and invoices.
4. Whether or not the claim for tax credit/refund is timely filed.<sup>[5]</sup>

On September 19, 2007, the CTA Second Division issued a Resolution<sup>[6]</sup> granting the petitioner's motion to preliminarily resolve whether PASAR is the proper party to ask for a refund, and dismissed its petition for review. When its motion for reconsideration was denied in the Resolution<sup>[7]</sup> dated December 3, 2007, PASAR filed a petition for review with the CTA *En Banc*.

In the assailed Resolution<sup>[8]</sup> dated November 12, 2008, the CTA *En Banc* set aside CTA Resolutions dated September 19, 2007 and December 3, 2007, and ordered the remand of the petition for review to the CTA Second Division for reception of evidence and determination of the amount to be refunded to the petitioner. The petitioner filed a motion for reconsideration, which was denied by the CTA *En Banc* in the assailed Resolution<sup>[9]</sup> dated January 30, 2009.

In granting PASAR's petition for review, the CTA *En Banc* ruled that it is the proper party to claim the refund/credit, citing *Commissioner of Customs v. Philippine Phosphate Fertilizer Corp.*<sup>[10]</sup> and *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*.<sup>[11]</sup> According to the CTA, since PASAR is a PEZA-registered entity enjoying tax exemption privilege under Presidential Decree (P.D.) No. 66 and subsequently, Republic Act (R.A.) No. 7916, it is exempt from payment of excise taxes on petroleum products. And following the Court's ruling in the *Philippine Phosphate Fertilizer Corporation*, PASAR, therefore, may seek refund.<sup>[12]</sup>

The grounds relied upon in this petition are as follows:

I.

THE CTA SHOULD HAVE DISMISSED RESPONDENT'S PETITION FOR REVIEW FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

II.

THE CTA *EN BANC*'S RELIANCE ON *COMMISSIONER OF CUSTOMS V. PHILIPPINE PHOSPHATE FERTILIZER CORPORATION* AND *PHILIPPINE PHOSPHATE FERTILIZER CORPORATION V. COMMISSIONER OF INTERNAL REVENUE* IS MISPLACED.

III.

RESPONDENT IS NOT THE PROPER PARTY TO CLAIM A TAX CREDIT AND/OR REFUND.

#### IV.

THE SPECIFIC TAXES HEREIN SOUGHT TO BE REFUNDED/CREDITED DO NOT FORM PART OF THE EXPORT PRODUCTS MANUFACTURED BY RESPONDENT AND, THEREFORE, NOT REFUNDABLE.<sup>[13]</sup>

The petitioner contends that the CTA has no jurisdiction over the BIR Regional Director's denial of PASAR's claim, arguing that the CTA's exclusive appellate jurisdiction pertains only to decisions of the Commissioner of Internal Revenue, as provided in Section 7 of R.A. No. 1125, as amended by Section 7 of R.A. No. 9282. The petitioner also objects to the CTA *En Banc's* application of the *Commissioner of Customs* and *Philphos* cases in the present case and argues that *Commissioner of Customs* involved the tax refund/credit of customs duties and not excise taxes; *Philphos*, on the other hand, did not squarely resolve the issue of whether an EPZA-registered enterprise is exempt from paying the excise taxes on petroleum products indirectly used. The petitioner also contends that the proper party to seek a tax refund/credit is the statutory taxpayer or the person on whom the tax was imposed and paid the same, which in this case was Petron, even though the latter subsequently shifted the burden to PASAR. Finally, the petitioner believes that Section 17 of P.D. No. 66 does not clearly provide that petroleum products delivered to EPZA-registered enterprises are exempt from taxes, and that the petroleum products purchased by PASAR from Petron do not form part of the export products it manufactures.<sup>[14]</sup>

Respondent, meanwhile, claims that the petitioner is estopped from questioning the jurisdiction of the CTA. Respondent also contends, in sum, that *Commissioner of Customs* and *Philphos* are applicable in this case, that it is the proper party to apply for a tax refund and that it is exempted from paying excise taxes.<sup>[15]</sup>

At the outset, it must be stated that the Court will limit the issue to be resolved in this case to whether PASAR is the proper party to claim the tax credit/refund on the excise taxes paid on the petroleum products purchased from Petron. The other grounds raised by the petitioner, *i.e.*, jurisdiction and the factual basis of PASAR's claim for tax refund/credit, are not proper at the moment inasmuch as the CTA *En Banc's* review only dealt with the petitioner's "motion to preliminary resolve the issue of whether or not [respondent] is the proper party that may ask for a refund."<sup>[16]</sup> And on this issue, the Court finds that the CTA *En Banc* did not commit any reversible error when it ruled that PASAR is the proper party to file a claim for the refund/credit of excise taxes. Hence, the petition must be denied.

PASAR is a business enterprise registered with the EPZA pursuant to P.D. No. 66.<sup>[17]</sup> There is no dispute as regards its use of fuel and petroleum products for the processing, smelting and refining of its export copper products, and that Petron, from which PASAR purchased its fuel and petroleum products, passed on the excise taxes paid to the latter. In ruling that PASAR is the proper party to file the claim for the refund/credit, the CTA *En Bane* chiefly relied on the Court's rulings in