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FIRST DIVISION

[G.R. No. 166482, January 25, 2012]

SILKAIR (SINGAPORE) PTE. LTD., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Assailed in this Rule 45 Petition is the Decision[1] dated September 13, 2004 and Resolution[2] dated December 21, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 82902.

Petitioner Silkair (Singapore) Pte. Ltd. is a foreign corporation duly licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines as an on-line international carrier operating the Cebu-Singapore-Cebu and Davao-Singapore-Davao routes. In the course of its international flight operations, petitioner purchased aviation fuel from Petron Corporation (Petron) from July 1, 1998 to December 31, 1998, paying the excise taxes thereon in the sum of P5,007,043.39. The payment was advanced by Singapore Airlines, Ltd. on behalf of petitioner.

On October 20, 1999, petitioner filed an administrative claim for refund in the amount of P5,007,043.39 representing excise taxes on the purchase of jet fuel from Petron, which it alleged to have been erroneously paid. The claim is based on Section 135 (a) and (b) of the 1997 Tax Code, which provides:

> SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies*. – Petroleum products sold to the following are exempt from excise tax:
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> (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;
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> (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
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> x x x x (Emphasis supplied.)

Petitioner also invoked Article 4(2) of the Air Transport Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Singapore[3] (Air Transport Agreement between RP and Singapore) which reads:

ART. 4

x 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.[4]

Due to the inaction by respondent Commissioner of Internal Revenue, petitioner filed a petition for review with the Court of Tax Appeals (CTA) on June 30, 2000.

On July 28, 2003, the CTA rendered its decision[5] denying petitioner's claim for refund. Said court ruled that while petitioner's country indeed exempts from similar taxes petroleum products sold to Philippine carriers, petitioner nevertheless failed to comply with the second requirement under Section 135 (a) of the 1997 Tax Code as it failed to prove that the jet fuel delivered by Petron came from the latter's bonded storage tank. Presiding Justice Ernesto D. Acosta dissented from the majority view that petitioner's claim should be denied, stating that even if the bonded storage tank is required under Section 135 (a), the claim can still be justified under Section 135 (b) in view of our country's existing Air Transport Agreement with the Republic of Singapore which shows the reciprocal enjoyment of the privilege of the designated airline of the contracting parties.

Its motion for reconsideration having been denied by the CTA, petitioner elevated the case to the CA. Petitioner assailed the CTA in not holding that there are distinct and separate instances of exemptions provided in paragraphs (a), (b) and (c) of Section 135, and therefore the proviso found in paragraph (a) should not have been applied to the exemption granted under paragraph (b).

The CA affirmed the denial of the claim for tax refund and dismissed the petition. It ruled that while petitioner is exempt from paying excise taxes on petroleum products purchased in the Philippines by virtue of Section 135 (b), petitioner is not the proper party to seek for the refund of the excise taxes paid. Petitioner's motion for reconsideration was likewise denied by the appellate court.

In this appeal, petitioner argues that it is the proper party to file the claim for

refund, being the entity granted the tax exemption under the Air Transport Agreement between RP and Singapore. It disagrees with respondent's reasoning that since excise tax is an indirect tax it is the direct liability of the manufacturer, Petron, and not the petitioner, because this puts to naught whatever exemption was granted to petitioner by Article 4 of the Air Transport Agreement.

Petitioner further contends that respondent is estopped from questioning the right of petitioner to claim a refund of the excise taxes paid after issuing BIR Ruling No. 339-92 which already settled the matter. It further points out that the CTA has consistently ruled in a number of decisions involving the same parties that petitioner is the proper party to seek the refund of excise taxes paid on its purchases of petroleum products. Finally, it emphasizes that respondent never raised in issue petitioner's legal personality to seek a tax refund in the administrative level. Citing this Court's ruling in the case of *Commissioner of Internal Revenue v. Court of Tax Appeals, et al.*[6] petitioner asserts that respondent is in estoppel to question petitioner's standing to file the claim for refund for its failure to timely raise the issue in the administrative level, as well as before the CTA.

On the other hand, the Solicitor General on behalf of respondent, maintains that the excise tax passed on to the petitioner by Petron being in the nature of an indirect tax, it cannot be the subject matter of an administrative claim for refund/tax credit, following the ruling in *Contex Corporation v. Commissioner of Internal Revenue.*[7] Moreover, assuming arguendo that petitioner falls under any of the enumerated transactions/persons entitled to tax exemption under Section 135 of the 1997 Tax Code, what the law merely contemplates is exemption from the payment of excise tax to the seller/manufacturer, in this case Petron, but not an exemption from payment of excise tax to the BIR, much more an entitlement to a refund from the BIR. Being the buyer, petitioner is not the person required by law nor the person statutorily liable to pay the excise tax but the seller, following the provision of Section 130 (A) (1) (2).

The Solicitor General also asserts that contrary to petitioner's argument that respondent never raised in the administrative level the issue of whether petitioner is the proper party to file the claim for refund, records would show that respondent actually raised the matter of whether petitioner is entitled to the tax refund being claimed in his Answer dated August 8, 2000, in the Joint Stipulation of Facts, and in his Memorandum submitted before the CTA where respondent categorically averred that "petitioner x x x is not the entity directly liable for the payment of the tax, hence, not the proper party who should claim the refund of the excise taxes paid."[8]

We rule for the respondent.

The core issue presented is the legal personality of petitioner to file an administrative claim for refund of excise taxes alleged to have been erroneously paid to its supplier of aviation fuel here in the Philippines.

In three previous cases involving the same parties, this Court has already settled the issue of whether petitioner is the proper party to seek the refund of excise taxes paid on its purchase of aviation fuel from a local manufacturer/seller. Following the principle of *stare decisis*, the present petition must therefore be denied.

Excise taxes, which apply to articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines,[9] is basically an indirect tax. While the tax is directly levied upon the manufacturer/importer upon removal of the taxable goods from its place of production or from the customs custody, the tax, in reality, is actually passed on to the end consumer as part of the transfer value or selling price of the goods, sold, bartered or exchanged.[10] In early cases, we have ruled that for indirect taxes (such as valued-added tax or VAT), the proper party to question or seek a refund of the tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even when he shifts the burden thereof to another.[11] Thus, in *Contex Corporation v. Commissioner of Internal Revenue*,[12] we held that while it is true that petitioner corporation should not have been liable for the VAT inadvertently passed on to it by its supplier since their transaction is a zero-rated sale on the part of the supplier, the petitioner is not the proper party to claim such VAT refund. 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.[13]

In the first *Silkair* case[14] decided on February 6, 2008, this Court categorically declared:

> 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. Section 130 (A) (2) of the NIRC provides that "[u]nless 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." Thus, **Petron Corporation, not Silkair, is the statutory taxpayer which is entitled to claim a refund based on Section 135 of the NIRC of 1997 and Article 4(2) of the Air Transport Agreement between RP and Singapore.**
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> Even if Petron Corporation passed on to Silkair the burden of the tax, the additional amount billed to Silkair for jet fuel is not a tax but part of the price which Silkair had to pay as a purchaser.[15] (Emphasis supplied.)

Just a few months later, the decision in the second *Silkair* case[16] was promulgated, reiterating the rule that in the refund of indirect taxes such as excise taxes, the statutory taxpayer is the proper party who can claim the refund. We also clarified that petitioner Silkair, as the purchaser and end-consumer, ultimately bears the tax burden, but this does not transform its status into a statutory taxpayer.

> 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: