686 Phil. 944

FIRST DIVISION

[G.R. No. 188497, April 25, 2012]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PILIPINAS SHELL PETROLEUM CORPORATION, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Petitioner Commissioner of Internal Revenue appeals the Decision[1] dated March 25, 2009 and Resolution[2] dated June 24, 2009 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 415. The CTA dismissed the petition for review filed by petitioner assailing the CTA First Division's Decision[3] dated April 25, 2008 and Resolution[4] dated July 10, 2008 which ordered petitioner to refund the excise taxes paid by respondent Pilipinas Shell Petroleum Corporation on petroleum products it sold to international carriers.

The facts are not disputed.

Respondent is engaged in the business of processing, treating and refining petroleum for the purpose of producing marketable products and the subsequent sale thereof.[5]

On July 18, 2002, respondent filed with the Large Taxpayers Audit & Investigation Division II of the Bureau of Internal Revenue (BIR) a formal claim for refund or tax credit in the total amount of P28,064,925.15, representing excise taxes it allegedly paid on sales and deliveries of gas and fuel oils to various international carriers during the period October to December 2001. Subsequently, on October 21, 2002, a similar claim for refund or tax credit was filed by respondent with the BIR covering the period January to March 2002 in the amount of P41,614,827.99. Again, on July 3, 2003, respondent filed another formal claim for refund or tax credit in the amount of P30,652,890.55 covering deliveries from April to June 2002.[6]

Since no action was taken by the petitioner on its claims, respondent filed petitions for review before the CTA on September 19, 2003 and December 23, 2003, docketed as CTA Case Nos. 6775 and 6839, respectively.

In its decision on the consolidated cases, the CTA's First Division ruled that respondent is entitled to the refund of excise taxes in the reduced amount of P95,014,283.00. The CTA First Division relied on a previous ruling rendered by the CTA *En Banc* in the case of "*Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*"[7] where the CTA also granted respondent's claim for refund on the basis of excise tax exemption for petroleum products sold to international carriers of foreign registry for their use or consumption outside the Philippines. Petitioner's motion for reconsideration was denied by the CTA First Division.

Petitioner elevated the case to the CTA *En Banc* which upheld the ruling of the First Division. The CTA pointed out the specific exemption mentioned under Section 135 of the National Internal Revenue Code of 1997 (NIRC) of petroleum products sold to international carriers such as respondent's clients. It said that this Court's ruling in *Maceda v. Macaraig, Jr.*[8] is inapplicable because said case only put to rest the issue of whether or not the National Power Corporation (NPC) is subject to tax considering that NPC is a tax-exempt entity mentioned in Sec. 135 (c) of the NIRC (1997), whereas the present case involves the tax exemption of the sale of petroleum under Sec. 135 (a) of the same Code. Further, the CTA said that the ruling in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[9] likewise finds no application because the party asking for the refund in said case was the seller-producer based on the exemption granted under the law to the tax-exempt buyers, NPC and Voice of America (VOA), whereas in this case it is the article or product which is exempt from tax and not the international carrier.

Petitioner filed a motion for reconsideration which the CTA likewise denied.

Hence, this petition anchored on the following grounds:

I

SECTION 148 OF THE NATIONAL INTERNAL REVENUE CODE EXPRESSLY SUBJECTS THE PETROLEUM PRODUCTS TO AN EXCISE TAX BEFORE THEY ARE REMOVED FROM THE PLACE OF PRODUCTION.

II

THE ONLY SPECIFIC PROVISION OF THE LAW WHICH GRANTS TAX CREDIT OR TAX REFUND OF THE EXCISE TAXES PAID REFERS TO THOSE CASES WHERE GOODS LOCALLY PRODUCED OR MANUFACTURED ARE ACTUALLY EXPORTED WHICH IS NOT SO IN THIS CASE.

III

THE PRINCIPLES LAID DOWN IN *MACEDA VS. MACARAIG, JR. AND PHILIPPINE ACETYLENE CO. VS. CIR* ARE APPLICABLE TO THIS CASE.[10]

The Solicitor General argues that the obvious intent of the law is to grant excise tax exemption to international carriers and exempt entities as buyers of petroleum products and not to the manufacturers or producers of said goods. Since the excise taxes are collected from manufacturers or producers before removal of the domestic products from the place of production, respondent paid the subject excise taxes as manufacturer or producer of the petroleum products pursuant to Sec. 148 of the NIRC. Thus, regardless of who the buyer/purchaser is, the excise tax on petroleum products attached to the said goods before their sale or delivery to international carriers, as in fact respondent averred that it paid the excise tax on its petroleum products when it "withdrew petroleum products from its place of production for eventual sale and delivery to various international carriers as well as to other customers."[11] Sec. 135 (a) and (c) granting exemption from the payment of

excise tax on petroleum products can only be interpreted to mean that the respondent cannot pass on to international carriers and exempt agencies the excise taxes it paid as a manufacturer or producer.

As to whether respondent has the right to file a claim for refund or tax credit for the excise taxes it paid for the petroleum products sold to international carriers, the Solicitor General contends that Sec. 130 (D) is explicit on the circumstances under which a taxpayer may claim for a refund of excise taxes paid on manufactured products, which express enumeration did not include those excise taxes paid on petroleum products which were eventually sold to international carriers (*expressio unius est exclusio alterius*). Further, the Solicitor General asserts that contrary to the conclusion made by the CTA, the principles laid down by this Court in *Maceda v. Macaraig, Jr.*[12] and *Philippine Acetylene Co. v. Commissioner of Internal Revenue*[13] are applicable to this case. Respondent must shoulder the excise taxes it previously paid on petroleum products which it later sold to international carriers because it cannot pass on the tax burden to the said international carriers which have been granted exemption under Sec. 135 (a) of the NIRC. Considering that respondent failed to prove an express grant of a right to a tax refund, such claim cannot be implied; hence, it must be denied.

On the other hand, respondent maintains that since petroleum products sold to qualified international carriers are exempt from excise tax, no taxes should be imposed on the article, to which goods the tax attaches, whether in the hands of the said international carriers or the petroleum manufacturer or producer. As these excise taxes have been erroneously paid taxes, they can be recovered under Sec. 229 of the NIRC. Respondent contends that contrary to petitioner's assertion, Sections 204 and 229 authorizes respondent to maintain a suit or proceeding to recover such erroneously paid taxes on the petroleum products sold to tax-exempt international carriers.

As to the jurisprudence cited by the petitioner, respondent argues that they are not applicable to the case at bar. It points out that *Maceda v. Macaraig, Jr.* is an adjudication on the issue of tax exemption of NPC from direct and indirect taxes given the passage of various laws relating thereto. What was put in issue in said case was NPC's right to claim for refund of indirect taxes. Here, respondent's claim for refund is not anchored on the exemption of the buyer from direct and indirect taxes but on the tax exemption of the goods themselves under Sec. 135. Respondent further stressed that in *Maceda v. Macaraig, Jr.,* this Court recognized that if NPC purchases oil from oil companies, NPC is entitled to claim reimbursement from the BIR for that part of the purchase price that represents excise taxes paid by the oil company to the BIR. *Philippine Acetylene Co. v. CIR,* on the other hand, involved sales tax, which is a tax on the transaction, which this Court held as due from the seller even if such tax cannot be passed on to the buyers who are tax-exempt entities. In this case, the excise tax is a tax on the goods themselves. While indeed it is the manufacturer who has the duty to pay the said tax, by specific provision of law, Sec. 135, the goods are stripped of such tax under the circumstances provided therein. *Philippine Acetylene Co., Inc. v. CIR* was thus not anchored on an exempting provision of law but merely on the argument that the tax burden cannot be passed on to someone.

Respondent further contends that requiring it to shoulder the burden of excise taxes

on petroleum products sold to international carriers would effectively defeat the principle of international comity upon which the grant of tax exemption on aviation fuel used in international flights was founded. If the excise taxes paid by respondent are not allowed to be refunded or credited based on the exemption provided in Sec. 135 (a), respondent avers that the manufacturers or oil companies would then be constrained to shift the tax burden to international carriers in the form of addition to the selling price.

Respondent cites as an analogous case *Commissioner of International Revenue v. Tours Specialists, Inc.*[14] which involved the inclusion of hotel room charges remitted by partner foreign tour agents in respondent TSI's gross receipts for purposes of computing the 3% contractor's tax. TSI opposed the deficiency assessment invoking, among others, Presidential Decree No. 31, which exempts foreign tourists from paying hotel room tax. This Court upheld the CTA in ruling that while CIR may claim that the 3% contractor's tax is imposed upon a different incidence, *i.e.*, the gross receipts of the tourist agency which he asserts includes the hotel room charges entrusted to it, the effect would be to impose a tax, and though different, it nonetheless imposes a tax actually on room charges. One way or the other, said the CTA, it would not have the effect of promoting tourism in the Philippines as that would increase the costs or expenses by the addition of a hotel room tax in the overall expenses of said tourists.

The instant petition squarely raised the issue of whether respondent as manufacturer or producer of petroleum products is exempt from the payment of excise tax on such petroleum products it sold to international carriers.

In the previous cases[15] decided by this Court involving excise taxes on petroleum products sold to international carriers, what was only resolved is the question of who is the proper party to claim the refund of excise taxes paid on petroleum products if such tax was either paid by the international carriers themselves or incorporated into the selling price of the petroleum products sold to them. We have ruled in the said cases that the statutory taxpayer, the local manufacturer of the petroleum products who is directly liable for the payment of excise tax on the said goods, is the proper party to seek a tax refund. Thus, a foreign airline company who purchased locally manufactured petroleum products for use in its international flights, as well as a foreign oil company who likewise bought petroleum products from local manufacturers and later sold these to international carriers, have no legal personality to file a claim for tax refund or credit of excise taxes previously paid by the local manufacturers even if the latter passed on to the said buyers the tax burden in the form of additional amount in the price.

Excise taxes, as the term is used in the NIRC, refer to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported into the Philippines. These taxes are imposed in addition to the value-added tax (VAT).[16]

As to petroleum products, Sec. 148 provides that excise taxes attach to the following refined and manufactured mineral oils and motor fuels *as soon as they are in existence as such*:

(a) Lubricating oils and greases;
(b) Processed gas;
(c) Waxes and petrolatum;
(d) Denatured alcohol to be used for motive power;
(e) Naphtha, regular gasoline and other similar products of distillation;
(f) Leaded premium gasoline;
(g) Aviation turbo jet fuel;
(h) Kerosene;
(i) Diesel fuel oil, and similar fuel oils having more or less the same generating power;
(j) Liquefied petroleum gas;
(k) Asphalts; and
(l) Bunker fuel oil and similar fuel oils having more or less the same generating capacity.

Beginning January 1, 1999, excise taxes levied on locally manufactured petroleum products and indigenous petroleum are required to be paid *before* their removal from the place of production.[17] However, Sec. 135 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:
>
> (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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> (c) Entities which are by law exempt from direct and indirect taxes.

Respondent claims it is entitled to a tax refund because those petroleum products it sold to international carriers are not subject to excise tax, hence the excise taxes it paid upon withdrawal of those products were erroneously or illegally collected and should not have been paid in the first place. Since the excise tax exemption attached to the petroleum products themselves, the manufacturer or producer is under no duty to pay the excise tax thereon.

We disagree.

Under Chapter II "Exemption or Conditional Tax-Free Removal of Certain Goods" of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of