

## FIRST DIVISION

[ G.R. Nos. 171383 & 172379, November 14, 2008 ]

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

### D E C I S I O N

**CARPIO, J.:**

#### The Case

##### ***G.R. No. 171383***

Silkair (Singapore) Pte. Ltd. (petitioner) filed this Petition for Review<sup>[1]</sup> to reverse the Court of Tax Appeals' Decision<sup>[2]</sup> dated 20 October 2005 in C.T.A. Case No. 6217 as well as the Resolution dated 3 February 2006 denying the Motion for Reconsideration. In the assailed decision, the Court of Tax Appeals *En Banc* denied petitioner's claim for refund or issuance of a tax credit certificate of P4,239,374.81, representing excise taxes paid on petitioner's purchase of aviation jet fuel from Petron Corporation (Petron) for the period from 1 January 1999 to 30 June 1999.

##### ***G.R. No. 172379***

Petitioner filed this Petition for Review<sup>[3]</sup> to reverse the Court of Tax Appeals' Decision<sup>[4]</sup> dated 5 January 2006 in C.T.A. Case No. 6308 as well as the Resolution dated 18 April 2006 denying the Motion for Reconsideration. In the assailed decision, the Court of Tax Appeals *En Banc* denied petitioner's claim for refund or issuance of a tax credit certificate of P4,831,224.70, representing excise taxes paid on petitioner's purchase of aviation jet fuel from Petron for the period from 1 July 1999 to 31 December 1999.

On 2 August 2006, this Court issued a resolution to consolidate both cases since they involve the same parties and the same issue, whether petitioner is entitled to a refund of the excise taxes paid on its purchases of aviation jet fuel from Petron.

#### The Facts

Petitioner is a foreign corporation organized under the laws of Singapore with a Philippine representative office in Cebu City. It is engaged in business as an on-line international carrier, operating the Singapore-Cebu-Singapore, Singapore-Davao-Cebu-Singapore, and Singapore-Cebu-Davao-Singapore routes.<sup>[5]</sup>

From 1 January 1999 to 31 December 1999, petitioner purchased aviation jet fuel from Petron for use on petitioner's international flights.<sup>[6]</sup> Based on the Aviation

Delivery Receipts and Invoices presented, P3.67 per liter as excise (specific) tax was added to the amount paid by petitioner on its purchases of aviation jet fuel.<sup>[7]</sup> Petitioner, through its sister company Singapore Airlines Ltd., paid P4,239,374.81 from 1 January 1999 to 30 June 1999<sup>[8]</sup> and P4,831,224.70 from 1 July 1999 to 31 December 1999,<sup>[9]</sup> as excise taxes for its purchases of the aviation jet fuel from Petron. Petitioner, contending that it is exempt from the payment of excise taxes, filed a formal claim for refund with the Commissioner of Internal Revenue (respondent).

Petitioner claims that it is exempt from the payment of excise tax under the 1997 National Internal Revenue Code (NIRC), specifically Section 135, and under Article 4 of the Air Transport Agreement between the Governments of the Republic of the Philippines and the Republic of Singapore (Air Agreement).<sup>[10]</sup>

Section 135 of the NIRC 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;

(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.<sup>[11]</sup>

Article 4 of the Air Agreement provides:

**Art. 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 services performed, be exempt from the same custom 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.<sup>[12]</sup>

Petitioner contends that in reality, it paid the excise taxes due on the transactions and Petron merely remitted the payment to the Bureau of Internal Revenue (BIR). Petitioner argues that to adhere to the view that Petron is the legal claimant of the refund will make petitioner's right to recover the erroneously paid taxes dependent solely on Petron's action over which petitioner has no control. If Petron fails to act or acts belatedly, petitioner's claim will be barred, depriving petitioner of its private property.<sup>[13]</sup>

Petitioner also maintains that to hold that only Petron can legally claim the refund will negate the tax exemption expressly granted to petitioner under the NIRC and the Air Agreement.<sup>[14]</sup> Petitioner argues that a tax exemption is a personal privilege of the grantee, which is petitioner in this case. Petitioner further argues that a tax exemption granted to the buyer cannot be availed of by the seller; hence, in the present case, Petron as seller cannot legally claim the refund. On the other hand, if only the entity that paid the tax - Petron in this case - can claim the refund, then petitioner as the grantee of the tax exemption cannot enjoy its tax exemption. In short, neither petitioner nor Petron can claim the refund, rendering the tax exemption useless. Petitioner submits that this is contrary to the language and intent of the NIRC and the Air Agreement.<sup>[15]</sup>

Petitioner also cites this Court's Resolution in *Maceda v. Macaraig, Jr.*,<sup>[16]</sup> quoting the opinion of the Secretary of Justice which states, thus:

The view which refuses to accord the exemption because the tax is first paid by the seller disregards realities and gives more importance to form than substance. Equity and law always exalt substance over form.<sup>[17]</sup>

Petitioner believes that its tax exemption under Section 135 of the NIRC also includes its entitlement to a refund from the BIR in any case of erroneous payment of excise tax.<sup>[18]</sup>

Respondent claims that as explained in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*,<sup>[19]</sup> the nature of an indirect tax allows the tax to be passed on to the purchaser as part of the commodity's purchase price. However, an indirect tax remains a tax on the seller. Hence, if the buyer happens to be tax exempt, the seller is nonetheless liable for the payment of the tax as the same is a tax not on the buyer but on the seller.<sup>[20]</sup>

Respondent insists that in indirect taxation, the manufacturer or seller has the option to shift the burden of the tax to the purchaser. If and when shifted, the amount added by the manufacturer or seller becomes part of the purchase price of the goods. Thus, the purchaser does not really pay the tax but only the price of the commodity and the liability for the payment of the indirect tax remains with the manufacturer or seller.<sup>[21]</sup> Since the liability for the excise tax payment is imposed by law on Petron as the manufacturer of the petroleum products, any claim for refund should only be made by Petron as the statutory taxpayer.<sup>[22]</sup>

## **The Ruling of the Court of Tax Appeals**

### **G.R. No. 171383**

On 20 October 2005, the Court of Tax Appeals *En Banc* (CTA) ruled that the excise tax imposed on the removal of petroleum products by the oil companies is an indirect tax.<sup>[23]</sup> Although the burden to pay an indirect tax can be passed on to the purchaser of the goods, the liability to pay the indirect tax remains with the manufacturer or seller.<sup>[24]</sup> When the manufacturer or seller decides to shift the burden of the indirect tax to the purchaser, the tax becomes a part of the price; therefore, the purchaser does not really pay the tax *per se* but only the price of the commodity.<sup>[25]</sup>

The CTA pointed out that Section 130(A)(2)<sup>[26]</sup> of the NIRC provides that the liability for the payment of excise taxes is imposed upon the manufacturer or producer of the petroleum products. Under the law, the manufacturer or producer is the taxpayer. The CTA stated that it is only the taxpayer that may ask for a refund in case of erroneous payment of taxes. Citing *Cebu Portland Cement Co. v. Collector of Internal Revenue*,<sup>[27]</sup> the CTA ruled that the producer of the goods is the one entitled to claim for a refund of indirect taxes.<sup>[28]</sup> The CTA held that since the liability for the excise taxes was placed on Petron as the manufacturer of the petroleum products and it was shown in the Excise Tax Returns<sup>[29]</sup> that the excise taxes were paid by Petron, any claim for refund of the excise taxes should only be made by Petron as the taxpayer. This is in consonance with the rule on *strictissimi juris* with respect to tax exemptions. Petitioner cannot be considered the taxpayer because what was transferred to petitioner was only the burden and not the liability to pay the excise tax on petroleum products.<sup>[30]</sup>

The CTA also considered the Aviation Fuel Supply Agreement between petitioner and Petron, which states:

Buyer shall pay any taxes, fees or other charges imposed by any national, local or airport authority on the delivery, sale, inspection, storage and use of fuel, except for taxes on Seller's income and taxes on raw material. To the extent allowed, Seller shall show these taxes, fees and other charges as separate items on the invoice for the account of the Buyer.<sup>[31]</sup>

However, the CTA held that even with this provision, the liability for the excise tax remained with Petron as manufacturer or producer of the aviation jet fuel. The shifting of the burden of the excise tax to petitioner did not transform petitioner into a taxpayer. Hence, Petron is the proper party that can claim for refund of any erroneous excise tax payments.<sup>[32]</sup>

### **G.R. No. 172379**

The CTA *En Banc* held that excise taxes on domestic products are paid by the manufacturer or producer before removal of the products from the place of production. The payment of an excise tax, being an indirect tax, can be shifted to

the purchaser of goods but the statutory liability for such payment is still with the seller or manufacturer.<sup>[33]</sup> The CTA cited *Maceda v. Macaraig, Jr.*:<sup>[34]</sup>

It may be useful to make a distinction, for the purpose of this disposition, between a direct tax and an indirect tax. A direct tax is a tax for which a taxpayer is directly liable on the transaction or business it is engaged in. Examples are custom duties and *ad valorem* taxes paid by the oil companies to the Bureau of Customs for their importation of crude oil, and the specific and *ad valorem* taxes they pay to the Bureau of Internal Revenue after converting the crude oil into petroleum products.

On the other hand, "indirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise tax and *ad valorem* taxes that the oil companies pay to the Bureau of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the "cash" and/or "selling price."<sup>[35]</sup>

The CTA further cited *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*<sup>[36]</sup> and *Contex Corporation v. Hon. Commissioner of Internal Revenue*<sup>[37]</sup> and concluded that the tax sought to be refunded is an excise tax on petroleum products, partaking of the nature of an indirect tax.<sup>[38]</sup>

The CTA further ruled that while it is cognizant of the exempt status of petitioner under the NIRC and the Air Agreement, it is also aware that the right to claim for refund of taxes erroneously paid lies with the person statutorily liable to pay the tax in accordance with Section 204 of the NIRC.<sup>[39]</sup> The CTA also suggested that petitioner should invoke its tax exemption to Petron before buying the petroleum products.<sup>[40]</sup> The CTA concluded that the right to claim for the refund of the excise taxes paid on the petroleum products lies with Petron which paid and remitted the excise taxes to the BIR.

### **The Issue**

Petitioner submits this sole issue for our consideration: whether petitioner is the proper party to claim a refund for the excise taxes paid.<sup>[41]</sup>

### **The Ruling of the Court**

The issue presented is not novel. In a similar case involving the same parties, this 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."<sup>[42]</sup> The Court added that "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."<sup>[43]</sup>

***An excise tax is an indirect tax where the tax burden can be shifted to the consumer but the tax liability remains with the manufacturer or producer.***