



Republic of the Philippines
Supreme Court
 Manila

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 WILFREDO V. PITAN
 Division Chief of Court
 Third Division

OCT 22 2014

THIRD DIVISION

**COMMISSIONER OF
 INTERNAL REVENUE,**

Petitioner,

G.R. No. 186223

Present:

VELASCO, JR., J.,
 Chairperson,

PERALTA,

VILLARAMA, JR.,

REYES, and

JARDELEZA, JJ.

- versus -

**PHILIPPINE ASSOCIATED
 SMELTING AND REFINING
 CORPORATION,**

Respondent.

Promulgated:

October 1, 2014

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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 Banc* Decision¹ 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 Resolution² dated January 30, 2009 denied the motion for reconsideration filed by the Commissioner of Internal Revenue (petitioner).

¹ Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr, Lovell R. Bautista, Erlinda P. Uy, Olga Palanca-Enriquez, concurring; *rollo*, pp. 51-67.

² Id. at 69-71.

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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).³ 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 (₱11,687,467.62).

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, 2007.⁴

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.⁵

On September 19, 2007, the CTA Second Division issued a Resolution⁶ 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 Resolution⁷

³ Id. at 52-53.

⁴ Id. at 54.

⁵ Id. at 59-60.

⁶ Id. at 89-92.

⁷ Id. at 94-95.

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dated December 3, 2007, PASAR filed a petition for review with the CTA *En Banc*.

In the assailed Resolution⁸ 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 Resolution⁹ 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.*¹⁰ and *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*.¹¹ 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.¹²

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.

⁸ Id. at 51-67.

⁹ Id. at 69-71.

¹⁰ 481 Phil. 31 (2004).

¹¹ 500 Phil. 149 (2005).

¹² Id. at 62-64.

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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.¹³

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.¹⁴

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.¹⁵

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."¹⁶ And on this issue, the Court finds that the CTA *En Banc* did not commit any reversible

¹³ Id. at 30.

¹⁴ Id. at 34-41.

¹⁵ Id. at 102-116.

¹⁶ See id. at 89.

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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. 66.¹⁷ 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 Banc* chiefly relied on the Court's rulings in *Commissioner of Customs v. Philippine Phosphate Fertilizer Corp.*¹⁸ and *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue.*¹⁹

Commissioner of Customs involved a claim for refund by Philippine Phosphate Fertilizer Corporation (Philphos) of the customs duties it indirectly paid on fuel and petroleum products purchased from Petron Corporation for the period of October 1991 until June 1992. This was opposed by the Commissioner of Customs. One of the issues raised in the case was the legal basis for Philphos' exemption from duties and taxes, it being an EPZA-registered company. While it may be true that *Commissioner of Customs* involved the refund of customs duties paid on petroleum products, it was nevertheless correctly applied by the CTA *En Banc*.

Notably, in *Commissioner of Customs*, the Court squarely interpreted the exemption granted under Section 17 of P.D. No. 66 as applicable to **both customs duties and internal revenue taxes, viz:**

The incentives offered to enterprises duly registered with the PEZA consist, among others, of tax exemptions. x x x

Section 17 of the EPZA Law particularizes the tax benefits accorded to duly registered enterprises. It states:

SEC. 17. *Tax Treatment of Merchandize in the Zone.* – (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, *supplies, articles, equipment, machineries, spare parts and wares of every description*, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise *or used whether directly or indirectly in such activity, shall not be subject to customs*

¹⁷ CREATING THE EXPORT PROCESSING ZONE AUTHORITY AND REVISING REPUBLIC ACT NO. 5490.

¹⁸ Supra note 10.

¹⁹ Supra note 11.

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and internal revenue laws and regulations nor to local tax ordinances, the following provisions of law to the contrary notwithstanding.

The cited provision certainly covers petroleum supplies used, directly or indirectly, by Philphos to facilitate its production of fertilizers, subject to the minimal requirement that these supplies are brought into the zone. **The supplies are not subject to customs and internal revenue laws and regulations, nor to local tax ordinances. It is clear that Section 17(1) considers such supplies exempt even if they are used indirectly, as they had been in this case.**²⁰ (Emphasis and underscoring ours)

Thus, the Court affirmed the refund of customs duties granted by the CTA and in closing, stated that “[t]he grant of exemption under Section 17(1) is clear and unambiguous. x x x.”²¹

Philphos, meanwhile, involved Philphos’ claim for refund of excise taxes passed on by Petron. One of the issues identified by the Court in the case was whether the CTA should have granted the claim for refund. In resolving said issue, the Court ruled that the CTA erred when it disallowed the petitioner’s claim due to its failure to present invoices as there is nothing in CTA Circular No. 1-95 that requires its presentation. The issue of whether the petitioner was entitled to exemption from payment of excise taxes was not lengthily discussed by the Court because it was already **undisputed**. Thus, the Court stated:

In this case, **there is no dispute that petitioner is entitled to exemption from the payment of excise taxes by virtue of its being an EPZA registered enterprise.** As stated by the CTA, the only thing left to be determined is whether or not petitioner is entitled to the amount claimed for refund.

x x x x

Since it is not disputed that petitioner is entitled to tax exemption, it should not be precluded from presenting evidence to substantiate the amount of refund it is claiming on mere technicality especially in this case, where the failure to present invoices at the first instance was adequately explained by petitioner.²² (Emphasis ours)

Applying the foregoing rulings in this case, it is therefore undeniable that PASAR is exempted from payment of excise taxes.

²⁰ Supra note 10, at 38-39.

²¹ Id. at 45.

²² Supra note 11, at 164, 168-169.


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The next pivotal question then that must be resolved is whether PASAR has the legal personality to file the claim for the refund of the excise taxes passed on by Petron. The petitioner insists that PASAR is not the proper party to seek a refund of an indirect tax, such as an excise tax or Value Added Tax, because it is not the statutory taxpayer. The petitioner's argument, however, has no merit.

The rule that it is the statutory taxpayer which has the legal personality to file a claim for refund²³ finds no applicability in this case. In *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*,²⁴ the Court distinguished between the kinds of exemption enjoyed by a claimant in order to determine the propriety of a tax refund claim. "**If the law confers an exemption from both direct or indirect taxes, a claimant is entitled to a tax refund even if it only bears the economic burden of the applicable tax.** On the other hand, if the exemption conferred only applies to direct taxes, then the statutory taxpayer is regarded as the proper party to file the refund claim."²⁵ In PASAR's case, Section 17 of P.D. No. 66, as affirmed in *Commissioner of Customs*, specifically declared that supplies, including petroleum products, whether used directly or indirectly, shall not be subject to internal revenue laws and regulations. Such exemption includes the payment of excise taxes, which was passed on to PASAR by Petron. PASAR, therefore, is the proper party to file a claim for refund.

WHEREFORE, the petition is **DENIED** for lack of merit. Accordingly, the Decision dated November 12, 2008 and its Resolution dated January 30, 2009 of the Court of Tax Appeals *En Banc* in CTA E.B. Case No. 351 are hereby **AFFIRMED in toto**.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice


²³ See *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 166482 January 25, 2012, 664 SCRA 33.

²⁴ G.R. No. 198759, July 1, 2013, 700 SCRA 322.


²⁵ Id. at 336.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

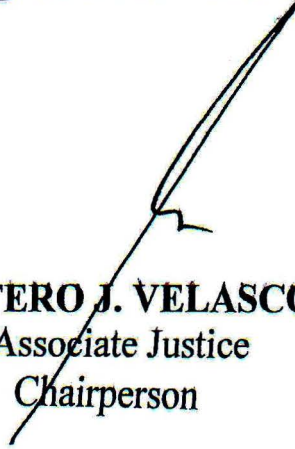

DIOSDADO M. PERALTA
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION


I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

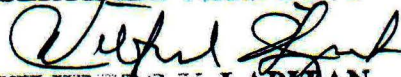

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPID
Division Clerk of Court
Third Division
OCT 22 2014